

# **TO SPEAK OR NOT TO SPEAK: TACKLING RECENT VIOLATIONS OF FREEDOM OF EXPRESSION IN LEBANON**

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## **Summary**

*The past year has been tremulous for freedom of expression in Lebanon as several activists, journalists, and everyday citizens faced interrogations, detentions, and censorship at the hands of the judiciary and security forces. Many of these cases are rooted in outdated defamation laws and have garnered significant public attention, particularly on social media. This paper examines the various legal, political, and social aspects surrounding freedom of expression violations and what can be done in addressing the matter.*

## **KEY RECOMMENDATIONS**

- ▶ Legislators are strongly advised to initiate legal reforms on articles framing FoE, including their shift from Penal to Civil Code, clarifications around the notions of “libel”, “slander”, and “defamation”, and to reconsider their approach to digital rights.
- ▶ It is necessary to precisely define and limit the scope and power of the Cybercrimes Bureau and other security services in dealing with FoE cases.
- ▶ Training on FoE and digital rights needs to be provided to security officials, lawyers, and judges in order to limit extreme procedures and ensure the respect of citizens’ right to due process.
- ▶ Civil society actors are recommended to sustain and extend their efforts so that FoE protection gains greater importance within the country’s political agenda. Likewise, the international community and donors are advised to list FoE as a priority in Lebanon.
- ▶ The Lebanese Government, CSOs, and media outlets are highly advised to instigate public debate to form a social and legal understanding of FoE that could guide legislators when forming policy.
- ▶ The Government is advised to establish the Anti-Corruption Committee in order to ensure the compliance of government bodies and public institutions with the Access to Information Law.

## **Introduction**

Following the Arab Spring, freedom of expression (FoE) violations have increased in Arab countries and Lebanon is currently following in their footsteps. Yet, on both international and national levels, the Lebanese Government had expressed in the past its commitment to respect this fundamental right. The Lebanese Constitution, through its Article 13<sup>1</sup> and its statement to abide by the Universal Declaration of Human Rights<sup>2</sup>, is supposed to protect and guarantee freedom of expression as long as it remains “within the limits established by the law.” In the same vein, in 1972 the country ratified the International Covenant on Civil and Political Rights<sup>3</sup>, which emphasizes the importance of this freedom.

From 2017 onwards, there has been an increasing trend to summon and interrogate individuals regarding FoE matters, with the majority of the complaints originating from political and religious figures, symbolizing a show of force against outspoken critics and activists. These complaints are mainly enforced through the Public Prosecution Office, the Cybercrimes Bureau, and the government’s security forces.

1 Article 13 of the Lebanese Constitution: “The freedom to express one’s opinion orally or in writing, the freedom of the press, the freedom of assembly, and the freedom of association shall be guaranteed within the limits established by law.”

2 Lebanese Constitution: Part one, Fundamental provisions, Preamble, B): “Lebanon is also a founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights. The Government shall embody these principles in all fields and areas without exception.”  
FoE is described in the article 19 of the Declaration: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

3 Article 19.2 of the Covenant: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

This phenomenon constitutes a human rights violation and represents a significant threat to democratic and public debate.

Civil Society Organizations (CSOs) have been collecting data about the government’s uses of legislation to punish journalists, activists, and citizens, to call for amending laws to improve the status of FoE in Lebanon. This documentation identified several obstacles put forth by politicians, the judiciary, and security services that manifest through coercion, opinion suppression, media censorship, and stalling drafted FoE law bills at the Parliament. These actions have left the Lebanese social arena lacking public debate around the matter, giving more leeway to infringe upon the people’s right to FoE.

This brief was a result of thorough desk review, interviews with CSOs and persons who were interrogated by security officials, and an institute-led policy dialogue held with members of parliament, internal security forces, CSOs, media, academics, and international organizations. Our analysis will focus on the multiple dimensions encompassing the crackdown on FoE and it will suggest recommendations to deal with them.

### Reality of crackdowns on FoE

A sharp increase in the number of arrests and detentions shows that one’s right to free speech in Lebanon is drastically deteriorating, particularly in regard to FoE in digital spaces. Between 2017 and 2019, the number of detentions has more than doubled, and continues to rise, as the year 2019 has not ended.

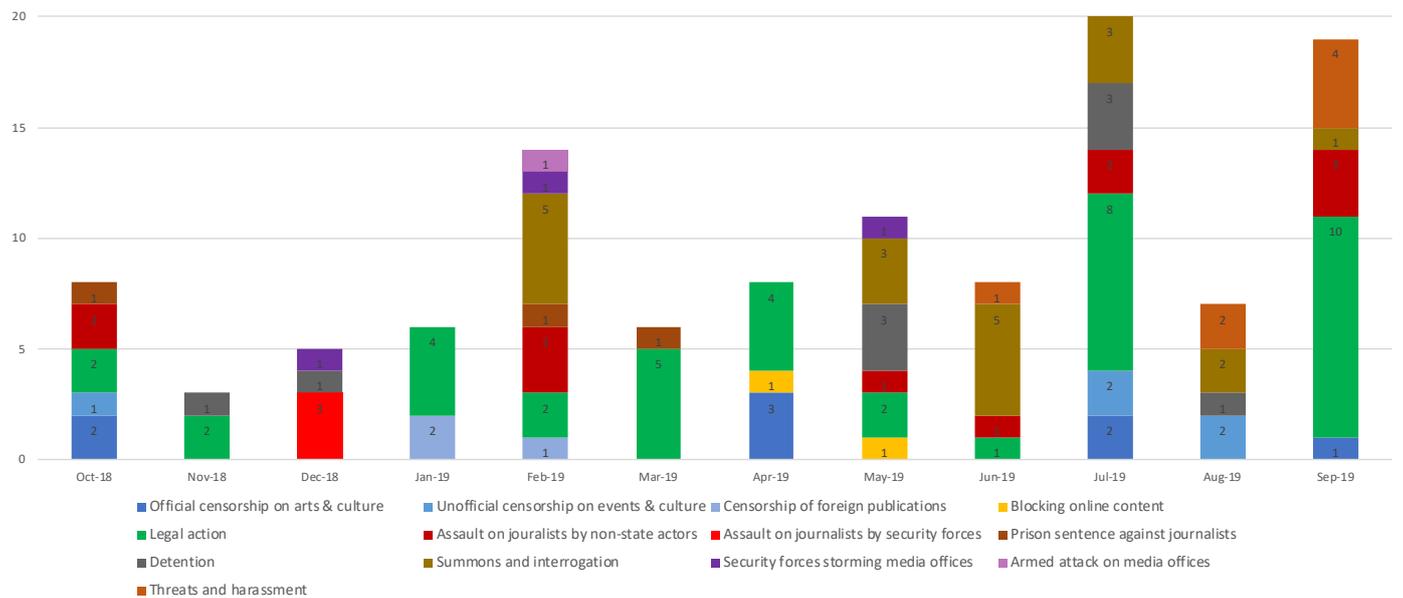


Figure 1 FoE Violations in Lebanon (October 2018 - September 2019). Statistics provided by SKeyses.

### Considering Lebanon’s legal and judicial systems

The Lebanese legal system is comprised of codes and laws dating back to the 1940s, which have been revised and amended over the years, but still in need for modernization. The Penal Code, enacted in 1943, remains out of touch with modern developments, specifically digital advances.

For instance, Article 385<sup>4</sup> of the Penal Code criminalizes libel and slander against public officials, while Article 384<sup>5</sup> may result in imprisonment for up to two years against whoever insults the President, the flag, or the national emblem. These broad stipulations overshadow the intention of Article 13 of the Constitution to protect FoE and are therefore frequently exploited to silence criticism and call for detentions. Article 47<sup>6</sup> of the Lebanese Code of Criminal Procedure defines the rights of those detained and the duties of the Judicial Police during the detentions, many of which are neither respected nor enforced.

Another entity concerned with FoE is the Publications Court (PC), established in 1962 via the Publications Law, which examines the crimes of publications made through text, audio, or visual media. Its jurisdiction does not include digital spaces, but there have been attempts to restructure the Publications Law to consider digital spaces as an official means of dissemination, which currently remain stalled in Parliament (Halawi, 2018). Adding to this lack of clarity is Article 209<sup>7</sup> of the Penal Code, which defines the means of dissemination of information but does not currently include digital spaces. Judges are also untrained in cases dealing with digital spaces and social media, which adds further inadequacy to the judicial system concerning FoE.

4 Article 385 of the Penal Code has defined slander as “ascribing to a person, even in doubt, something offensive to his honor or dignity”. It has defined libel as “any word, disrespect or insult and any expression or drawing indicating an offense shall be considered libel in the event it does not involve the ascription of a certain act”.

5 Article 384 of the Penal Code: “Whoever insults the head of state shall be punished by imprisonment from six months to two years. The same penalty shall be imposed on those who insult the flag or national emblem publicly by one of the means mentioned in Article 209”.

6 Article 47 of the Lebanese Code of Criminal Procedures states that “if [suspects] refuse to speak and remain silent, this must be mentioned in the official report. They must not be forced to speak or to be interrogated, under penalty of invalidity of their statements.”

7 The National Anti-Corruption Committee was endorsed by both the Finance and Budget, and Administration and Justice Committees and has not yet been enacted in the Lebanese Parliament.

As for monitoring and accountability bodies, the National Anti-Corruption Committee<sup>8</sup> is a yet to be formed as an entity tasked with holding corrupt officials accountable and implementing anti-corruption laws approved by the Parliament (Library of Congress, 2019), one of them being the Access to Information Law. This law obligates the government to provide citizens with information related to decisions, relevant data, and statistics from administrations, such as the number of arrests and detentions for cases of FoE.

Yet, it has been implemented with reluctance; requests are not being acknowledged across multiple departments or are processed with delay (Human Rights Watch, 2019). This indicates a persistent lack of transparency among government and public bodies, making it increasingly difficult to hold those bodies accountable.

### ***Security Services and the Cybercrimes Bureau: Tools of suppression***

The Cybercrimes and Intellectual Property Bureau is a security apparatus, created in 2006, that serves as an attachment to the Special Criminal Investigations Department of the Internal Security Forces' (ISF) Judicial Police. It holds a legally questionable status as it was established without amending the structure of the ISF (Frangieh, 2014). The Bureau's ambiguous authority allows it to breach digital spaces and jeopardize FoE online by receiving complaints through the Public Prosecution Office in addition to conducting criminal investigations into these cases. These referrals are done in a discretionary manner as they are not issued based upon a legal understanding of what libel, slander, and defamation mean, since these terms are not clearly defined in the legal text. The Bureau employs a diverse selection of coercive measures during these detentions, including, but not limited to: Pressure to sign pledges to refrain from speaking about a certain subject or person, detentions lasting hours or days, individuals denied their right to have a lawyer, and intimidation through excessive show of force. These measures do not only violate individuals' right to FoE, but also their right to a due process, as per Article 47 mentioned earlier. These measures have discouraged activists and journalists from remaining outspoken and critical. Moreover, they have encouraged self-censorship as a means of protection (Majzoub, 2019).

### ***Political influence on FoE***

There is an undeniable pressure exerted by politicians and religious figures upon the legislative and judicial spheres. Considering the numerous political, religious, and sectarian sensitivities, it is not surprising that the red lines drawn around free speech protect these same figures. Seeing as they frequently issue complaints to the Bureau, laws that may protect the defendant are often skirted and disregarded in their favor. On the legislative side, efforts made by CSOs to protect FoE through policy change have been met by reluctance and disinterest by policymakers, despite the efforts of some MPs to pass modern laws on FoE. This political influence also extends over to the judiciary to manipulate its decisions and actions regarding cases related to FoE. As such, judges must go along with the demands of certain parties and figures, which restrict their ability and willingness to carry out their work independently<sup>9</sup>.

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<sup>8</sup> The National Anti-Corruption Committee was endorsed by both the Finance and Budget, and Administration and Justice Committees and has not yet been enacted in the Lebanese Parliament.

<sup>9</sup> The executive branch's political role and influence on judicial appointments as a form of corruption is further elaborated on in NGO Legal Agenda's EU-funded project "The Judiciary as a Social Priority" and Konrad Adenauer Stiftung's 2018 conference report "Judicial Independence Under Threat?"

### ***Social and civic duties in upholding FoE***

There are multiple CSOs in Lebanon that dedicate their work to the defense of FoE. Their work focuses mainly on researching and monitoring FoE violations cases, raising awareness, and protecting persons under threat. However, these efforts have fallen short of inducing the desired change at the policy level due to the lack of political will in the country and partly due to the lack of international pressure. The lack of funding has limited CSOs' ability to provide safety training and legal aid. Consequently, there is a significant lack of public debate around FoE, mainly due to the hegemony of political parties over traditional media channels. These conditions make it difficult to question religious and political red lines on a large scale. Nonetheless, non-traditional independent media channels have been recently backing up FoE cases and shedding light onto the violations of various security services to garner public support in favor of FoE. As such, digital spaces have become the main platforms for CSOs to initiate debate on free speech.

### ***Recommendations***

#### **In response to the exploitative use of the law**

The Parliament is strongly advised to initiate reforms on the media, penal, and civil codes regarding FoE legal framework. Defamation should therefore be included in the civil code rather than the penal.

Additionally, the deliberate vagueness around notions such as "libel", "defamation", and "slander" allows for certain figures to exploit the law in their favor. Their current use rests upon a broad interpretation of the terms and is thus hindering criticism of government officials and demands of accountability. Clearer definitions are needed in order to specify what should fall under these denominations and ensure that those articles do not pose a threat to democratic and public debate.

#### **In response to the specific issue of FoE's online legal framing**

Recent legislation should not be seen as a step forward for promoting FoE within the legal framework. On the contrary, Law no. 2018/81 has enshrined the escalating trend to summon and detain people for their opinions expressed online. Further attempts to include digital spaces within the government's jurisdiction, such as the Publications Law or within Article 209, will only make matters worse (Mhanna, 2019). As such, the Parliament and the judiciary need to reconsider their approach to FoE by granting the internet a liberal status and by taking into account its particular features. To do so, it is necessary to train the judiciary on digital and FoE matters to ensure the relevant competency. Not only is the Ministry of Justice responsible for this, but CSOs should also take up these efforts by boosting their interactions with the judiciary to issue jurisprudence upholding FoE and digital rights.

#### **Clarifying the status and involvement of the Cybercrimes Bureau and other security services**

Existing bodies monitoring FoE cases such as the Cybercrimes Bureau require their power and scope to be more precisely defined. There is a strong need to narrow the role of security services on these issues, limit interrogations, and put an end to their coercive measures and pre-trial detentions. These actors should refocus their work on more urgent matters, such as online fraud, hacking, identity theft, online bullying, and cyber-attacks. Also, security officials should be trained on an ongoing basis in dealing with FoE and digital rights.

## Accountability and access to information within public administrations

The Government is strongly advised to establish the Anti-Corruption Committee in order to ensure the compliance of government bodies and public institutions with the Access to Information Law and hold corrupt officials accountable for their actions. This step is a necessary milestone that should allow for lawyers and individuals to ascertain the truth of alleged defamatory statements during criminal proceedings and provide for just judicial processes in cases of FoE.

## Empowering CSOs/CSAs to be more active on FoE and engaging the public

CSOs' and CSAs' current activities such as knowledge sharing and monitoring already constitute decisive steps forwards in prioritizing FoE protection, but they are not sufficient. They are encouraged to sustain and extend their efforts by securing funding, pushing for amendment drafts in favor of FoE, and raising public support for FoE to have more legislative impact. Furthermore, CSOs, in conjunction with the media, need to stir public debate on FoE to garner support and raise awareness on this right and necessity of its protection. It is a crucial move for forming a social understanding of FoE and how it differs from hate speech. The momentum created would increase the amount of commitment and accountability to the drafting of future laws.

## Role of the international community

The international community and donors are advised to list FoE as a priority in Lebanon, at least by lobbying for the reduced involvement of security forces, allocating related funding to CSOs, or suggesting special training to security services, lawyers, and judges as a prerequisite for new grants and funding.

## The Civil Society Actors and Policy-Making Program

The Civil Society Actors and Policy-Making program, at the Issam Fares Institute for Public Policy and International Affairs at AUB, examines the role that civil society actors play in shaping and making policy. Specifically, the program focuses on the following aspects: how civil society actors organize themselves into advocacy coalitions; how policy networks are formed to influence policy processes and outcomes; and how policy research institutes contribute their research into policy. The program also explores the media's expanding role, which some claim has catalyzed the Uprisings throughout the region.

## The Issam Fares Institute for Public Policy and International Affairs at the American University of Beirut

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We are committed to expanding and deepening policy-relevant knowledge production in and about the Arab region; and to creating a space for the interdisciplinary exchange of ideas among researchers, civil society and policy-makers.

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**This policy brief was written before the Lebanese October protests. Hence, it does not include the instances of violations against freedom of expression manifested in the series of arrests and detentions that were carried out by the state on protesters during this period.**

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