

CENSORSHIP IN LEBANON: LAW AND PRACTICE

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Preface

Lebanon ... An oasis of freedom in the Arab world that enjoys a climate of relative openness, free thought and creativity, guaranteed by the Constitution. Certainly, the cultural scene has witnessed many legal and media battles over these freedoms and over the right to reinforce this tradition in the face of the cyclic tendency of the authorities, over certain stages and at different times, to try to curb and restrict these freedoms. However, the cultural boom that the country experienced after the end of the Civil War as well as the rise of a new generation, striving to find itself from the rubble and which dared to challenge prevailing forms, questions and content, have highlighted the cracks in the basic laws and practices meant to protect these freedoms.

Censorship controls over literary and artistic works and publications in Lebanon today fall under the jurisdiction of the Directorate General of General Security. According to certain laws (some of which date as far back as the French Mandate), General Security has been entrusted with the task of licensing, monitoring and censoring creative works. Within this domain, General Security enjoys a certain degree of autonomy and a certain margin within which to maneuver, allowing it to control when and how much freedom will be permitted, heightening or reducing restrictions according to the prevailing political circumstances and the dictates of the various political and religious powers and parties.

After years of troubled relations between the cultural movement in the country and the censorship authorities, perhaps the time has come to finally open an in-depth and responsible debate on the structures, laws and institutions that permit the practice of censorship of literary and artistic works and publications in Lebanon.

“Marsad al-Raqaba (“The Censorship Observatory”), or “The movement for reviewing censorship laws in Lebanon” which includes several independent cultural organizations and individuals, is lobbying for a serious review of censorship laws and regulations. This endeavor seeks to strengthen and reinforce a climate of

openness, free debate and citizenship, and to make culture less elitist, and thus an integral part of a citizen's life. It is the right of any citizen to discover him or herself through creativity and to play a role in the discussion of current affairs.

The Lebanese Association for Plastic Arts, Ashkal Alwan

<http://www.ashkalalwan.org>

Assabil, Friends of Public Libraries Association

www.assabil.com

Beirut DC

<http://www.beirutdc.org>

Metropolis Cinema

<http://www.metropoliscinema.net>

Ne a Beyrouth

<http://www.neabeyrouth.org>

Beirut Art Center

<http://www.beirutartcenter.org>

UMAM Documentation and Research

<http://www.umam-dr.org>

Zico House

<http://www.zicohouse.org>

The Cultural Cooperative Association for Youth in Theater and Cinema "SHAMS"

Pierre Abi-Saab - Al-Akhbar Newspaper

Heinrich Böll Foundation - Middle East Office

<http://www.boell-meo.org>

Goethe-Institute Libanon

<http://www.goethe.de/libanon>



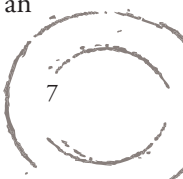
Executive Summary

This study aims to provide a comprehensive assessment of censorship in Lebanon which will hopefully allow the many local artistic and cultural actors the opportunity to lobby for the most appropriate legislative amendments to the current censorship regulations which are currently not conducive to their work. Thus accordingly, the study provides an extended definition of censorship covering both prior censorship (i.e. that which occurs prior to screening or production as is the case with cinema films and theatre plays) and post censorship (exercised following publication or production as is the case with print periodicals). Special emphasis is placed on censorship exercised by state institutions. Self censorship, though not uncommon, falls outside the scope of this study.

The first section of this study defines the legal institutional framework of censorship by presenting the various forms of censorship and the authorities that implement it. The second section is devoted to the topics which are censored. Such methodology allows an evaluation of the similarities and differences between prior and post censorship and paves the way for proposing conclusions and recommendations in the third and final section.

Several difficulties were faced in documenting censorship cases. Concerning prior censorship of films and theatre plays, decisions by General Security are only made public when covered by the media, usually to protest against a particular case of censorship. Therefore, documentation relied primarily on the cooperation of artists and individuals who have had their work censored. Moreover, General Security's decision-making process is partially influenced by the opinions of religious institutions and political groups which are often hard to access.

Regarding the post-censorship of publications, the study relies mainly on court rulings. The problem here is quite the opposite to the difficulties of documenting cases of prior censorship. While reviewing cases brought before the publications court is possible, a comprehensive assessment of post-censorship also requires an



assessment of the cases that were not pursued by the Public Prosecution Office in order to infer whether there is a degree of tolerance or indifference in the Press and Publications Court.

In the first section on the different methods of censorship, the study examines the institutional legal framework of censorship in four sub-sections:

Censorship of films:

With regard to **shooting films**, General Security exercises prior censorship based on internal directives that have no legal foundation. Censorship is applied to both documentary and feature films. General Security may censor scenes or sentences by crossing them out on the film script and asking the applicant (i.e. the director) to sign on the amendments as a proof of his or her approval. The censor also adds to the filming permit a statement where by the director pledges that the film production will not constitute any damage to Lebanon or upset political or military interests. Moreover, General Security may request film directors to obtain additional permits from other official and non-official authorities such as the Lebanese Army, the Internal Security Forces, district governors and other political organizations and private companies, e.g. Solidere (The Lebanese joint-stock company in charge of planning and redeveloping Beirut Central District). Thus, the underlying principle is not to ensure the exercise of freedom as is prescribed by the law but rather to give influential parties and individuals the power to interfere and restrict freedom of expression.

With regard to **film screening**, the current censorship methods constitute a clear violation of existing laws. Violations occur on several levels:

- Firstly, General Security acts as the sole censorship authority in breach of a law which stipulates that a committee should be established which consists of representatives from several ministries, as well as General Security. Moreover, in its decision-making process General Security seems to actively take into consideration the interests and opinion of religious and sectarian institutions as well as the leaders of political parties.
- Secondly, a screening permit granted to a locally produced film is no longer considered as a general permit to screen the film, but is specific to the applicant, meaning that every screening requires a new permit.
- Thirdly, decisions to censor parts of movies, refusing to reply to a request or restricting viewing to certain age groups are all based on arbitrary judgments which do not have any legal foundation.

Furthermore, there is a complete lack of specific provisions for film festivals and student films.

Concerning the **import and distribution** of films, General Security exercises strict censorship based on the general provisions stipulated in the decree that outlines General Security activities. This censorship is exercised by the Customs Department and films are either imported without conditions or with specific conditions such as a signed statement to remove specific scenes as a prerequisite to obtaining a screening permit. Films can be restricted to adult-only screenings or to personal use and may even be confiscated.

Censorship of theatre plays:

General Security exercises prior censorship on theatre plays based on a legislative decree passed in 1977 which explicitly gives it the right to fully reject or partially approve the staging of a play without directives or guidelines. It should be noted that the legislative decree was issued during the Civil War and shortly after court rulings which prohibited subjecting theatre plays to censorship by General Security (namely the case of 'Majdaloun', a play which was banned from being staged by the Internal Security Forces. However, the Judiciary dismissed all prosecution charges against the director on the basis that there can be no penalty imposed without reference to a law. Moreover, the director won the civil lawsuit against the State on the basis of breaching a constitutional freedom).

Censorship of publications:

All periodical publications, whether political or non-political, must obtain a **license to publish** from the ministry of information following consultations with the Press Syndicate. It should be mentioned that the 1953 Law which restricted the number of political newspapers that can be published converted the publishing license into a privilege enjoyed by only those who acquired the license before the law was passed, those who bought it from others, or had it conceded to them. Undoubtedly, the limited number of publishing licenses constitutes a basic violation of press freedom and an essential factor in converting these licenses into commercial privileges enjoyed by capital owners.

The situation is made worse by the inappropriate distinction between political and non-political periodicals. This is reflected in some of the rulings of the Beirut Publications Court which stipulated that news which is of human or national interest is not considered political.

Moreover, foreign publications require a license prior to import and distribution in Lebanon. The minister of information may prohibit the entry of a foreign publication and confiscate copies of it if the publication is perceived to endanger security, upset national sentiment, damage public morals or incite sectarian tensions. General Security exercises prior censorship on imported publications. In a press release justifying the prohibition of certain foreign publications following the death of Syrian President Hafez Al-Assad in 2000, General Security stated that although censorship cannot prevent the circulation of information and ideas due to the widespread use of the Internet, censorship reflects the government's policies and represents a kind of moral penalty imposed on publishers.

Besides the **administrative controls** which are rarely exercised by the ministry of information, the study tackles the **judicial constraints**, in other words, the legal mechanisms that penalize alleged press offenses. In this respect, several observations can be made:

- There is an absence of debate about the relevance of the criminal approach, in contrast to the 1960s and 1970s when several deputies repeatedly suggested the abolition of corporal punishment and restriction of penalty to personal indemnity.
- Judges are often appointed to the Publications Court without any prior expertise in the field. This lack of specialization leads to a decline in judicial independence.
- The current Publications Court which was appointed in March 2009 began to sentence press offenses with imprisonment, whereas formerly punishment was restricted to imposing fines.
- Judges, in general, appear to be very reluctant to take punitive measures against defendants (such as provisional detention or suspension of publication) before the final sentence is passed, so as to prevent the abuse of power. However, this judicial restraint was recently under threat when following the broadcast of news programs on certain judges, High Judicial Council and the General Assembly of Judges in July 2008, released two statements calling on the minister of justice to amend the press law and in particular lift the ban on temporary detention for press offences. Accordingly, the minister integrated their request into a draft law submitted to the council of ministers. However, he later withdrew it out of respect for media freedom. Similar situations are the arrest of four persons for publishing articles on Facebook (June- July 2010) considered hostile to the President of the Republic, the detention of Al-Akhbar newspaper journalist

Hassan Alleik (11-08-2010) for an investigative report on army intelligence forces following the escape of a retired officer suspected of collaboration with Israel and the detention (18-08-2010) of civil engineer Ismail el Sheikh Hassan by army intelligence following the publication of an article in the daily Assafir newspaper about the reconstruction of Nahr Al Bared Camp.

Moreover, the study criticizes articles in the 2008 electoral law which reduce the boundaries of criticism so that in addition to defamation and slander, press offences also included for the first time in legislation for “intimidation”, “treason” and “blasphemy”. These new offences may be used to restrict media freedoms instead of widening their scope, as is required during elections in order to better enable voters to choose their representatives based on their election agendas.

Regarding **copyright of audiovisual media outlets**, this study focuses on three main issues:

- Firstly, filming **permits** which can also be considered as privileges.
- Secondly, the extent of **prior censorship** exercised by General Security, which covers all filmed television programs except live programs such as news, reports, interviews, political talk shows, live entertainment and social programs. Although satellite TV channels are not subject to prior censorship, they are required to obtain the approval of the minister of information for their general program. In this respect, it should be noted that on 16 April 1997 the State Shura Council suspended the ministerial decision which allowed the prior censorship of satellite programs, basing its ruling on the right to freedom of expression as stated in the preamble of the Constitution.
- Third, **post censorship** exercised by the ministry of information and the National Audiovisual Council. Following the first breach of the law, the minister of information may decide to suspend the TV channel for a maximum period of three days. Following the second breach, the council of ministers may suspend broadcast for a period between 3 days and 1 month.

In both cases, the National Audiovisual Council plays only a consultative role, as it is part of the ministry of information and does not enjoy any independence. Moreover, the council of ministers may suspend satellite broadcasting immediately and for a maximum period of one month if the conditions of the broadcast permit are breached. The council of ministers may also refer the offending channel to court, suspend it or terminate its license on the pretext of protecting of State's higher interests.

Judicial post censorship and **increased censorship during elections**, is carried out according to the principles related to the publication offenses mentioned above.

In the second section on censorship, this study seeks to determine the red lines imposed by the censoring authorities.

First of all, the section outlines the **political considerations** on both national and foreign levels.

On the national level, General Security not only strives to preserve the positive image of state institutions but also actively promotes it, by often taking into consideration the interests of powerful political figures at the expense of creative freedom. Indeed, the screening permit stipulates that the film should not damage the state or any political group and nor should it incite confessional strife. This has frequently led to the suspension in production of documentaries, especially those that hold leaders accountable for their role in the Civil War. One recent example of General Security's censorship of documentaries is the ban on director De Gaulle Eid's film "Shou Sar" ("What happened") as it covered a violent period during the Civil War.

The Press and Publications Court, however, seems to be less open to influence from powerful figures in defamation and slander cases, and has frequently overruled their concerns. Some of the Court's decisions are based on Article 387 of the Penal Code which states that the defamation of a public official is justified as long as the defamation is proven to be true. However, we should note that the Court has not implemented this article in a consistent manner, as it has overridden the article several times, specifically in cases which involved the defamation of President of the Republic or the Army. In these cases, the criticism is considered to target the whole institution and not only the defamed person, is thus linked to other crimes such as endangering Lebanon's foreign relations, slander or provocation. However, at the same time, the Court has issued two rulings which justify defamation if the defendant can prove that the publication of the statement is beneficial to the public interest, even if the defamed person is not a public official.

Accordingly, the study draws two conclusions:

- First, censorship of items following their publication or release attempts to strike a balance between public interest and personal dignity, in contrast to prior-censorship which is based on ambiguous provisions and consideration of political interest, regardless of public interest.

- Second, despite the existence of two different regulating authorities and sets of laws, both types of censorship are similar in severity, lack of accountability and thus harm public interest.

Concerning **foreign political considerations**, censorship is also sometimes based on Lebanon's relations with friendly or enemy states, and usually depends on two matters: First, the extent to which the ruling regime of a foreign country is sensitive to criticism and accusations, and secondly possible ties that these countries have to local political groups.

Regarding **foreign relations with friendly countries**, the censor pays considerable attention to the political sensitivities of Arab regimes, and endeavors to safeguard diplomatic relations with these countries, and as well banning attacks on the Palestinian cause, and Arabs and Islam in general. Moreover, state institutions were willing several times to interfere in order to prevent criticism of certain countries, even in violation of the law, for example censoring a TV program prior to broadcast because it contained an episode on Saudi Arabia. Post-censorship is likewise applied in other cases, e.g. the criticism or defamation of a foreign head of state which is considered equal in offence to defaming the Lebanese president. Penal Code provisions have also been applied to offenses related to damaging relations between Lebanon and a foreign country.

Regarding **relations with enemy states**, there are two types of censorship directed mainly against Israel. Firstly, censorship is based on a national law which calls for the boycott of all Israeli products. However, it should be noted that General Security sometimes finds it difficult to censor material by anti-Zionist Israelis or Jews. Secondly, there is censorship of all forms of publicity or compassion for Israel. Thus General Security censors any scenes related to Jews, as well as their religious and national holidays or symbols. In some cases, the censor blurs compassion and publicity for Jews with compassion and publicity for Israel.

Concerning **censorship of material on religion or which contains religious content**, General Security exercises strict prior censorship and allows religious authorities (mainly Dar Al Iftaa and the Catholic Media Center) a fundamental role in decision-making. This is in contrast to court rulings which reflect a high degree of tolerance and respect of a citizen's right to free expression (e.g. The acquittals of singer Marcel Khalifeh for charges related to singing Qur'anic verses and writer Joseph Haddad for an article entitled "Kidnapped God"),

In this respect, the censor classifies material according to three categories, each with its own legal status:

- Category 1: topics or scenes that are not damaging to religion or religious beliefs, but question the ability of religion to counter evil (restricted to adults)
- Category 2: certain scenes, but not the entire contents of a film or play, considered offensive to religion (offensive scenes removed, screening is restricted to adults, or import is permitted but screening or copying the film is prohibited).
- Category 3 includes films or plays considered to be offensive to religion (films are confiscated).

Furthermore, a recent statement by the information minister indicates a trend towards further tightening of censorship of material which contains religious content, following the suspension of an Iranian-produced series about Jesus Christ on Al-Manar and NBN TV stations. The statement read: "Each believer has the right to interpret his own faith, and others must respect this interpretation of faith and ideology... We should not discuss other religions in a way that leads other believers not to recognize their faith, history and interpretation of ideology".

Regarding **censorship material which offends public morals**, the criteria of the censor may be classified into several categories. Besides scenes of nudity, sex and foul language which are inspected thoroughly and strictly censored (i.e. scenes which show the backside, breasts, or include moaning, etc.), the censor generally determines the extent to which the film or work does not offend public morals. Thus the import of certain movies which presumably promote homosexuality is usually prohibited. By contrast, General Security rarely censors violent scenes or scenes that depict drug use. Furthermore, it should be noted the Press and Publications Court (1999-2009) did not set any precedents whereby films or other artistic works were banned because they violated public morals.

In conclusion, the study raises two questions:

- First, the extent to which the legal constraints adequately restrict the actions of the censor within essential limits. The study demonstrates that the various institutions that implement censorship are not independent and lack the necessary qualifications and experience to do their work. Moreover, prior censorship does not allow individuals whose work has been censored to neither express their opinions or to defend themselves when necessary. Public discourse on censorship remains limited, as evidenced by the complete absence of any judicial review of censorship decisions as well as a considerable lack in legal information on the topic. For example, there is no written material on the abuse of power by General Security, whether in granting screening permits or

replacing the administrative committee (consisting of the director of advertising and publishing as its president, four delegates from the ministries of foreign affairs, education, economy and social affairs, and a representative from General Security) which is exclusively empowered to grant permits or censor parts of films or plays. The fact that decisions are made in secret is also cause for concern, as the lack of justification offered for censoring material and the extent of the power of the censor.

- Second is the extent to which censorship impacts the public debate on social and human issues. Except for political periodicals and television stations which are exempted, censorship extends to important matters such as holding public officials accountable, dealing with the memory of the Civil War as well as other critical social issues, thus restricting free debate. Moreover, prior censorship which is exercised in secret and is applied without adequate legal justification (i.e. *prima facie*) generally prohibits social debate over the legitimacy of censorship. On the other hand, censorship cases brought to court perhaps represent an important social opportunity to strike the most appropriate balance between freedom of expression and other values and interests.



Foreword

The objective of this study is to provide a comprehensive overview of the different forms of legal censorship practiced in Lebanon. It also aims to allow those working in the fields of culture and the arts to construct an informed opinion about more appropriate forms of legislation on censorship and thus lobby more effectively to endorse on such legislation.

In light of these objectives, we feel it necessary to put forward three initial introductory points:

The first is related to the definition of censorship itself. At the outset of this collaborative effort, a comprehensive definition of this concept and practice was sought which would 1) include the practice of prior censorship - or censorship that precedes the presentation of a completed work to the censor (and, in the case of Lebanon, exercised mainly on cinematic and theatrical works) and 2) post-censorship, or the censorship exercised on completed works (a practice that particularly focuses on print media, the press and on publications). Local television and radio broadcasts are subject to both forms of censorship.

On the other hand, a legal approach to this kind of comparative research requires that greater attention be paid to the types of censorship practiced by formal authorities such as the judiciary, the Directorate General of General Security (henceforth referred to as “General Security”) and so on. It is also important to note is that, any approach will inherently always fall short in its capacity to cover all the forms of self-censorship that exist as well as its ramifications.

The second point is related to the challenges we faced in the research methodology and approach. From the start of the project, it was clear that documenting all the different forms of censorship that actually exist was difficult. The greater challenge remained in trying to gather enough information to academically assess definitive or underlying trends of censorship practiced in Lebanon - or,

in other words, to be able to construct an informed opinion on the matter. Consequently, the majority of observations made here remain, for the most part, comparative or relative.

In the matter of prior censorship on cinematic or theatrical works (related to filming, screening or performing works, or to the import and distribution of works), General Security issues decisions within a framework of applications and procedures that is administrative and internal. It is not a domain open to public access and scrutiny except in matters of contentious cases that have caught the attention of the press and media. Consequently, in the absence of any law that allows access to decisions made by official authorities, the success of such documentation relies on the cooperation of those working in the field and specifically, the degree to which they are willing to disclose documents they possess regarding such applications and procedures. This was not without difficulty. Those who are concerned with eradicating censorship are largely outnumbered by private companies and their interests. Ultimately, private companies want to protect their commercial interests and safeguard the smooth operations of procedures with General Security and are clearly keen to avoid instigating any action that may disturb this process.

Despite the understandable constrictions they faced, we are grateful to everyone who cooperated with us. Many individuals were only comfortable with providing verbal accounts and thus did not offer or provide supporting documentation. Others entrusted us with copies of documents and other written forms of proof, but this disclosure often requested that we not publish names, sources and so on.

Consequently, we found ourselves having to act astutely, revealing only what we were granted permission to disclose, and constantly trying to find a balance between the academic requirements of such a study and our moral obligations towards these people. Often, we found ourselves having to sacrifice information that could have been of paramount importance precisely because we were unable to verify information or to refer to the original source. Adding to these complications is the fact that General Security openly admits that many of its censorship policies are influenced by the views and demands of religious bodies - bodies which have serious influence on “official” censorship practices - indicating an inner circle within censorship operations that is extremely difficult to access.

With regard to the different forms of post-censorship exercised on the press and on publications, we depended mostly on rulings and decisions issued by the Lebanese courts in specific cases. Here, the situation we faced was entirely reversed. Although it is possible to access and review all the cases referred to the judiciary in matters of post-censorship, forming a comprehensive opinion on post-censorship policies would have also required examining all the cases that the public prosecution abstained from pursuing - a fact that seems to indicate a certain tolerance or indifference on the part of the public prosecution in such matters. To include all the cases that were not prosecuted to those prosecuted was a matter that went well beyond the time and resources allocated to conduct and complete this study.

The third point we would like to make here is related to the manner in which the findings of the study have been presented. The first section is an overview of the various forms of censorship systems (or the forms of censorship and the authorities vested with control over censorship) that exist in Lebanon. This will help illustrate the larger legal context and institutional framework within which censorship practices operate in Lebanon. The second section of the study focuses on the kinds of topics subjected to censorship in its various forms. This aims to highlight the similarities and differences between these operations, practices and systems, which allows us to finish the study by drawing conclusions in this regard.



Section 1: Censorship Systems

In this part of the study, we will present the legal context and institutional framework within which censorship practices operate in Lebanon. This context and framework are presented in four different sections. The first section focuses on censorship practices and policies related to cinematic works, the second is on theatrical works and the third on the press and publications, and the fourth on audiovisual media.

Chapter 1: Censorship of Cinematic Works

In this chapter, we will deal with censorship policies and practices related to cinematic works or “prior censorship” on films from three different perspectives: filming, screening, import and distribution. Prior to this presentation, it is important to note that, in general, censorship in Lebanon operates in a manner that often exceeds and transcends the legal texts and provisions regulating it. This is the case with applications for film screenings that are subject to censorship without any legal foundation and prior censorship controls placed on the filming (in Lebanon) of cinematic or filmed works.

1- Censorship on filming

Here, the censorship procedures and controls placed over filming and producing cinematic or filmed works will be reviewed. Of course, these procedures are specifically related to works that are either partially or entirely produced or filmed in Lebanon, which means that any restrictions often negatively discriminate against local production.

The authority to practice this form of censorship is held by several institutions and bodies. In the absence of any legal provisions regulating procedures for permit applications, to whom to apply, and from whom and where they are to be processed, the process generally exhausts producers and directors. In several of the cases we were able to document, producers of certain films had to obtain more than ten different “prior” permits from various authorities to be able to proceed with filming.

General Security exercises censorship controls without legal bases

The first observation is that the Publications Department at General Security has been authorized with complete prior censorship control over the filming of cinematic scenes. This authority has been granted according to administrative protocols internal to this institution and without any legal basis or legal provisions that grant this authority.¹ Indeed, the only legal text regulating this form of prior-censorship can be found in a ruling made by the French High Commissioner on October 18, 1934, in which the High Commissioner actually vests this power to this specific post. Furthermore, it is a legal ruling that became invalid with the cancellation of the post itself. No other legal text or provision enacted thereafter relegates this power from this former authority to any other existing authority today.

The Lebanese courts actually confirmed this ambiguous legal status when it considered a case related to a certain theatrical production.² The judge appointed to the case declared that free theatrical expression is protected by the Constitution, and may not be restricted or subject to censorship unless otherwise indicated by a legal text or legal provisions. The decision clearly stated that the ruling issued by the administrative governor in Lebanon during the French Mandate (1922), which subjected theatrical productions to prior-censorship (by a committee appointed by the governor), became null and void with the cancellation of that post.

However to obtain a permit from General Security prior to filming remains a critical issue for those working in this domain. If permits are not obtained, producers and directors will most likely face obstacles while filming, particularly

1- It should be noted that in the 1993 General Budget Law, a lump sum related to the costs and remittance associated with the issuing of filming permits was determined and remains part of budget allocations despite the absence of any legal provisions governing these permits.

2- Refer to the case of Roger Assaf's play *Majdaloun* (1969) where the Criminal Court (on 7-3-1970) issued the ruling (which was upheld by the Court of Appeals on 5-5-1970) that “the said ruling [No. 1576/1922], which required scripts to be previewed prior to their production, became null and void with the cancellation of the post of the administrative governor in Lebanon, and with the fact that this provision was never replaced by any other legislation”. (Unpublished)

when filming takes place in public spaces and in locations that might “arouse certain sensitivities” - in which case obtaining prior permission to film is also required from other authorities, especially the Lebanese Army and the Lebanese Internal Security Forces (ISF). Other impediments include the fact that obtaining prior permission to film is a condition required before receiving any form of financial assistance for film production from the ministry of culture.³ Moreover, a prior filming permit is also a condition required to obtain a screening permit for the actual film when it is complete. As a film will undergo another censorship clearance process before screening if it is perceived as violating the initial terms of the prior-screening permit (see below). The criteria of which also falls outside any clear, legal framework.

A screening permit for a film is issued upon the request of the producer, the production company or the director. The requirements for obtaining a screening permit apply equally to feature films and documentaries; although, the way a documentary film is filmed and produced is taken into consideration by the censor. To obtain these prior permits, feature film producers or directors must provide a copy of the film’s complete script for review by the censor. For documentary films, it is enough to provide a synopsis of the subject as the actual scenes and dialogue filmed in documentary format are understood to be mostly improvised or spontaneous.

The question here is what about feature films which ultimately include improvised scenes? If so, what type of film would this be considered in light of the classification criteria of the censor? This was raised during the licensing the screening of the feature film “Phantoms of Beirut” (1999) directed by Ghassan Salhab. When General Security realized that the director had added improvised scenes to the screenplay which had previously been approved, they considered these additions as a violation of the terms of the film’s prior-permits. In cases like this, the final clearance for a film’s screening (after the film is complete) may require removing or re-editing the scenes which were not approved prior to filming.

Other problems with the provisions related to these permits include student films produced in the context of university film programs. Permits for student films are not facilitated in any particular manner and student films are not exempt from any of the fees subject to these permits. One of the conditions for obtaining a prior permit is for students to provide documented proof from their universities that they are pursuing a higher degree in filmmaking.

3- Confirmed to us by the head of the Lebanese Committee for Cinematic Affairs affiliated to the Department of Cinema, Theater and Exhibitions at the ministry of culture. The head of this committee further stressed upon the condition that one must show a (prior) filming permit (as referred to in the text of this study) when applying for any financial support (from the ministry of culture). This committee was recently formed in accordance with a decision by of a previous minister of culture [Decision No. 12/2006, dated 24-2-2006].

An application for a prior permit requires a lump sum fee of LL100,000 (USD \$67) for both local and foreign non-documentary films and series. A one-time fee of LL50,000 (USD \$33) is required for a prior permit for locally produced documentary films.⁴ A prior permit is usually granted for a three-month period and can be renewed by another request, with the same fee required for each new application.

Two copies of a feature film script or documentary synopsis must be submitted to General Security, and one copy is returned to the applicant after General Security has placed an official seal on each page of the returned copy of the script or synopsis. The censor retains a copy of the script or synopsis, which is then used as a reference upon the submission of an application for a screening permit. If the censor is of the view that certain scenes or dialogue should be deleted from the final film, the applicant must give his or her consent to such changes to obtain the required prior permits.

Occasionally, some of a film's dialogue is replaced by other dialogue, and sometimes the new dialogue is even suggested by the censor. But, these kinds of changes also require the consent of the applicant. In either case, where a scene or dialogue is either deleted or replaced by another scene or dialogue, the modifications are noted on the official (sealed) copy of the script, which the applicant signs, thus proving his or her consent of the modified version. We shall address the nature and ramifications of such decisions in the second section of the study, as they directly relate to the subject of censorship itself.

In general, prior permits are valid for and applicable to all Lebanese territories "with the exception of locations legally prohibited by law and by other standing regulations, and in which consent by all the recognized authorities concerned is required".

An additional condition placed by the censor on applications for prior filming permits reads to the effect that, "filming will not cause harm to Lebanon or stir any political or military sensitivities [...]". This condition has become a general given for all filming permits, whatever the documentary or film subject is. Often permits add the condition (mentioned above) of requiring "consent by all the recognized authorities concerned". One permit even dictated the necessity of «obtaining the consent of all the security forces operating in Lebanon».⁵ Finally, all filming permits include the condition and requirement that reels or tapes are screened

4- According to Article 9, appended to Law No. 173, issued on 14-2-2000, concerning Lebanon's General Budget in 2000

5- From an interview with director Mohammad Soueid about his feature film entitled «Civil War» (2003)

before (the National Audiovisual Council at) the Department of Television and Radio Broadcasting after filming is complete”.

Censorship by One Thousand and One Eyes

In addition to the comprehensive authority of General Security over this domain, and even after acquiring a filming permit from General Security, filming often requires obtaining more licenses and forms of permission from numerous other official and unofficial authorities.

These matters are often dictated by two major considerations. To deal pragmatically with these kinds of conditions often requires first, obtaining the “permission” of every person of “influence” in the film department - an obligation that is independent of any official, written provisions or regulations. The second, related to the first, where one is confronted by the vast ambiguity in trying to determine where lines of authority are drawn. Subsequently, many producers, production companies and directors automatically resort to systematically obtaining all permits possible from any authority they assume may have influence.

On the other hand and to our knowledge, there has never been an administrative or legal complaint lodged by any concerned applicant objecting to or challenging the very real obstacles placed by certain “authorities” against local filming and film projects. The most prominent authorities that one must consider when “applying” for permission to film, include:

- When filming in a public location or in a street, one must apply for a film permit from the Services and Operations Branch of the Lebanese Internal Security Forces (ISF). In principle, a permit for this kind of filming is granted on the same day as the application is submitted to the Central Command of this branch of the ISF. However, ensuring that the filming permit is communicated to all the police stations in all the various locations in which filming will take place often requires additional time. Most of the time, the concerned party takes the permit in person and submits by hand to one station after another in order to speed up the process. Meanwhile, any filming permit obtained from ISF is conditional upon it viewing the footage taken, especially footage that may include images of any of its forces, prior to its commercial use or any public screening including that footage.

Those working in the filmmaking domain have found a formula that deals with the requirements of this particular authority by adopting a single model that covers several bases. This approach includes making the general pledges to

“safeguard public morals and standards” and that the film “will not include any interviews with journalists or political or religious figures”, and that the ISF will view any scenes that may include such footage prior to its commercial use or any public screening using this material.⁶

- To obtain a permit to film scenes in which members of the Lebanese Army may appear, or which may be related to the Lebanese Army or its operations (such scenes could include any footage including individuals donning military uniforms or filming an army patrol, checkpoint, security post, as well as filming from the air, etc.), one must apply to the Lebanese Army Command Directorate of Information and Orientation.

A production company employee informed us that the Army Command, as of early 2009, now also requires previewing film scripts for any permit under application, and that it is also very strict with regard to locations that will be filmed and the dates in which filming will take place. Furthermore, permits from the Lebanese Army are given for restricted periods of time that rarely extend beyond 20 days and are also “limited pursuant to the general principle that the filming of army posts, barracks and checkpoints is not permitted”. All this is with the knowledge that this “general principle” is not based on any law or legal provisions. Obtaining permission in these cases also depends on the Army Command viewing the film for which permission was sought prior to its commercial use or public screening.

In addition to the above, regional authorities must also be considered by those concerned with permission to film in Lebanon. After obtaining the consent of General Security, Internal Security and the Army Command, applicants have to also ask permission from regional governors, other local authorities and mayors in the areas in which filming will take place. Applications for such permits, that are then issued by a regional governor, usually also include a request to all the authorities under the governor’s control (such as district police, district commissioners) to facilitate filming. These kinds of permits also stress on the obligation of those filming to abide by the law and regulations in force, including the “standards of

6- Applications for filming permits often include the following phrases, «This film will not include any interviews with any persons from the media or press or political or religious figures»; «We pledge to safeguard any locations referred to herein, and pledge to abide by the standards of accepted public norms and morality and all laws and regulations in force...»; “We pledge not to distort the image of or damage or deface any public location or property...”; “We pledge not to harm any standards of accepted public ethics or the higher interests of the state...” [Excerpts taken from the applications for filming permits for the documentary «Posthume» by Ghassan Salhab (2006) and the feature film «Je Veux Voir» by Joana Hadjithomas and Khalil Joreige (2007), and from applications to modify and “regulate” certain films in screening permit applications for the Cinema Days of Beirut Festival (2002)]

accepted public norms, morality and decency” [referenced from the filming permit obtained for the film “Terra Incognita” by Ghassan Salhab (2001)]. Finally, the time an application may take to process can vary between three days (in the District of Beirut, for example) and 15 days (in Mount Lebanon), according to the individuals we were able to interview on these matters.

Other examples include asking for permission to film anywhere near the Grand Serail⁷ in which case permission must be granted from the Head of Security at the Grand Serail. The same is the case with certain political parties which one must ask permission from when filming in areas or security zones considered under their authority, or control - with the knowledge that some of these parties will actually send a representative to accompany the film crew in order to monitor the filming process, as well as ask to view footage immediately after filming.

In addition, often the management of private agencies, conglomerates or companies must also be considered. For example, in cases we examined related to Solidere⁸ regarding scenes filmed on streets within the Beirut Central District (BCD), which falls under the company’s operations, we found that film-makers who want to film there must pay a fee of US\$500, plus a value-added tax of 10%, for every day of filming. This fee is considered in lieu of “general cleaning and security services” provided by the company. Some camerapersons also informed us that this fee is even required for filming in locations adjacent to the BCD if areas operated by Solidere appear anywhere in the footage!⁹

Because of the burden these filming permit procedures some directors actually risk filming without obtaining prior permits, which sometimes leads to legal consequences where they can be prosecuted or subjected to lengthy investigations.¹⁰ In other cases, directors try to circumvent these regulations by filming in private spaces or confined locations under the pretext that these scenes were actually filmed outside Lebanon.¹¹

7- Literally, the “government house”; it is the prime minister’s headquarters. [Translator’s note]

8- Solidere S.A.L. (*Société libanaise pour le développement et la reconstruction de Beyrouth*, French for “The Lebanese Company for the Development and Reconstruction of Beirut”) is a Lebanese joint-stock company in charge of planning and redeveloping Beirut Central District following the conclusion of the country’s civil war in 1990. [Translator’s note]

9- A local production company (that asked to remain anonymous) informed us that the Governorate of Beirut has recently made Solidere’s consent a requirement for obtaining a prior permit to film. This production company claims that this condition includes presenting receipts as proof of payment to the company, as a measure “to ensure the company’s interests are safeguarded”. We were however unable to verify these claims.

10- From an interview with a director

11- From an interview with a director

It is also important to note that General Security reserves certain privileges that allow it to demand modifications to a film that has already been shot –this suggests that an increasing number of films are being shot without prior permission. Thus, certain films are shot without prior permits whenever possible, not only to avoid the burden associated with obtaining prior permits but also with the knowledge that the post-censorship process (related to screening or to distribution permits) will retroactively seek to modify scenes that would have likely required prior permits in any case.

Pursuant to these privileges and similar to the regular conditions for obtaining a (prior) filming permit, General Security will make it a requirement that a film undergo a screening process after it is complete, to allow censors the latitude to demand “adjustments” or “modifications” to a finished film (*taswiya*)¹², if they deem it necessary. In this post-censorship process, obtaining a screening permit can also depend on the review of whatever authorities General Security considers as being “concerned parties” with regard to the content of certain filmed scenes. For example, General Security may require that permission be obtained from authorities such as the Lebanese Army Command and the Internal Security Forces prior to authorizing a screening permit. Furthermore, General Security retains the right to formally reject certain films even if they have undergone the official “adjustment” (*taswiya*) process and even if the films received various permits to be screened. An example of this is a series of eight short films, which were filmed locally and screened during the Lebanese Film Festival from 2001-2004 (produced by the Nama Production Company in Beirut, 2005), where General Security confiscated DVDs of these films prepared for export outside Lebanon and refused to provide a “commercial permit” for two of these films, despite the fact that Internal Security Forces had approved them. Subsequently, all the DVDs (5,000 in total) of these films were destroyed, after their distribution was officially banned in Lebanon.

2- Censorship on film screenings

The legislation related to these matters is a law that was enacted on October 27, 1947 which stipulates that all cinematic (film) reels or tapes shall be subject to censorship controls. This 1947 law replaced Ruling No. 165 issued on July 30, 1934. It is not difficult for the layperson to discern the vast contrast between the content and spirit of this legal text which was enforced for decades (from the time it was enacted in 1947 until the outbreak of the Lebanese Civil War in 1975) and the actual procedures and regulations that are operational today.

12- This process is called “*taswiyat al-film*” by General Security, and where *taswiya* in Arabic, literally means “reconciliation, or a settlement agreed to between concerned parties”.

Provisions on censorship in the 1947 Law

According to the 1947 Law, General Security's Radio and Television Department conducts a preliminary viewing of all films to be publically screened. If General Security finds a film fit for viewing, then it grants it a screening permit. If General Security finds what it considers enough cause to prevent part or all of a film from being screened, then the film it undergoes another "censorship" process or viewing by a special administrative committee (made up of the Director of Advertising and Publishing, a director and three representatives from the ministry of foreign affairs, the ministry of education, the ministry of the national economy and the ministry of social affairs, in addition to a representative from the Directorate General of General Security). In such cases, a decision is made by the special administrative committee according to a majority vote of its members to allow the film to be screened as is, to edit certain parts of the film or to ban the film from being screened altogether. Furthermore, the final decision to ban the screening of any film is officially issued by the minister of the interior alone, based on the recommendations presented to the minister by the committee.

It is abundantly clear that the 1947 legislation only grants General Security the initial authority to assess the extent to which the conditions for a screening permit have been met, and to assess whether or not a film has contravened any existing laws. In the event that General Security finds there is cause to suspect a film's content, or that the film poses certain problems and is in violation of certain laws, then the authority to censor the film is automatically transferred from General Security to the special administrative committee. Thus, it is evident that the text and intent of the 1947 legislation express a concern to ensure decisions to ban, modify or edit cinematic works are restricted by certain legal measures and safeguards, the most important of which are certain ministerial specializations. The legislation does not grant exclusive authority or a monopoly to General Security to decide or govern in such cases.

The special administrative committee did indeed exercise the authority it was granted by this law, at least until the Lebanese Civil War broke out in 1975 (and ended in 1990). In numerous cases, the committee's decision did differ from the position taken by General Security, where, for example, according to one local director, the committee was more liberal in its assessments of alleged acts that General Security felt went against the "standards of accepted public morals and ethics".¹³

13- In an interview with Samir Khoury about his 1971 feature film "Sayidat al-Aqmar al-Aswad" ("The Lady of Black Moons")

Moreover and in the same context, it should be noted that the 1961 Law which established the ministry of information (or the ministry of guidance, news and tourism at that time) took a similar approach, strengthening the role of civil society organizations and persons with expertise in the field. The law reinforced the ministry of information's authority to censor cinematic works from the "preliminary stage" of the "censorship process" - or, when an application to screen a film is first submitted (according to an explanation presented by the Legislative and Consultative Commission at the ministry of justice; Legal Consultation No. 210/R/1965).

But a power struggle took place between General Security (which considered that it had exclusive jurisdiction to exercise "first" or initial censorship, based on the 1947 Law) and the ministry of information (which considered that it was the primary authority with exclusive jurisdiction in this domain, based on the 1961 Law). The Legislative and Consultative Commission at the ministry of justice issued a compromise decision which compelled both bodies to share jurisdiction over initial censorship. The decision stated that if both parties found nothing to preclude a film from being screened, then the film automatically had permission to be screened. But, if either party found reasonable cause to restrict or prohibit a screening, then the film would be viewed and the matter decided by the special administrative committee.

In addition to the above provisions, the more important regulations stipulated by the 1947 Law are as follows:

- That a distinction is made between local films and imported films, with the former requiring one screening permit from the censor while the latter should undergo a censorship review and obtain a special permit every time it is imported into Lebanon.
- Films imported from abroad must first be sent to General Security in a sealed package; imported films should not obtain an import permit except after customs duties have been remitted. Any films that are rejected (by General Security) shall be returned, in a sealed envelope, accompanied by a release form and claim to the Customs Department. In such matters, General Security enjoys extensive latitude in its authority to reject films by prohibiting their entry or import –the only films being exempted from this process are those imported by diplomatic missions.
- Decisions by censors should take into account the following principles:

- 1- Respect for public order, norms, proper morals and ethics;

- 2- Respect for the feelings and sensibilities of the public, and avoiding any religious or racial incitement;
- 3- Preserving the reputation and status of public and state authorities;
- 4- Resisting any summons, calls or claims that are deemed inappropriate and unfavorable to the interests of Lebanon.

Needless to say, the above terms are very elastic and allow the censor to expand the framework of his interference and prohibitions, according to his approach or personal interpretation he maintains.

- Foreign language films must have Arabic subtitles to foreign language dialogue and scenes. While studying this draft law, the Legal and Administrative Parliamentary Committee found a justification for this article in considering this provision as part of the loftier goal of endorsing and reinforcing the country's official language. Meanwhile, the government justified this article by claiming that the intention behind this provision was to "ensure that all segments of the general public would be able to follow a screened foreign film, fully comprehend it and enjoy the screening".¹⁴

- In order to avoid any cause for the disruption of public order and to safeguard the public's welfare, and based on the recommendations of the Directorate General of General Security, the minister of the interior has the authority to impose a partial ban on the screening of any film, which was approved for screening, in certain parts of Lebanon's territory or to impose a general ban across all Lebanese territories, according to the principles established by this law.

Accordingly, the Single Civil Judge in Beirut banned the screening of a film based on a decision issued by the al-Metn¹⁵ Platoon Commander. But this ban was enforced without proof that a decision was issued by the minister of interior, which was a clear violation and assault on freedoms.¹⁶

14- The Sixth Legislative Assembly of the House of Parliament, in its second regular session; from the minutes of the Fifth Parliamentary Assembly in 1947, where the Lebanese Parliament reviewed the grounds for justifying the draft law for censorship of cinematic works. Records of these minutes can be referred to and reviewed at the following web address and link: <http://www.legallaw.ul.edu.lb/luonline/Parliament/Viewer.aspx?DocumentId=894.xml&MeetingTitle=%20الدور%20التشريعي%20السادس%20--%20العقد%20العادي%20الثاني-محضر%20الجلسة%20الخامسة%201947>

15- Al-Metn is a district in the Mount Lebanon Governorate

16- Ruling No. 33 issued by the Single Administrative Judge in Beirut (Administrative Chambers)

Beyond the law: Devising new methods of censorship

The first point that should be made here is that the censorship systems in effect in Lebanon today are in clear violation of legislation in force; and, these violations are evident as follows.

- Today, General Security exclusively carries out the task of censorship in an official capacity. It alone conducts initial or prior censorship without any other partner - a monopoly that is in direct violation of the law which established the ministry of information (the 1961 Law) and the legal consultative decision referred to above. In addition to this exclusive authority and control over censorship, if General Security is of the view that there are grounds for not issuing a screening permit, it can officially take any decision it deems necessary on deleting certain scenes - again, which it alone determines. Although the authority of all the other formal bodies officially stipulated by law are being completely superseded by General Security, at the same time, General Security (according to a general consensus of all those with whom we were able to consult) is very careful to consider the views and opinions that it actively solicits from concerned religious and sectarian authorities such as Dar al-Fatwa¹⁷ and the Catholic Media Office. At times, General Security even considers the views and opinions of certain leading figures from various political parties if it thinks this is necessary. These policies have reached the point that it seems General Security's primary responsibility is to tend to the needs of influential institutions, authorities and figureheads - and, all this based on elastic conceptual standards and criteria which, as shown earlier, are influenced to a great extent by the censor's personality and the censor's approach to interpreting matters.

In general, it can take up to a week to process an application for a screening permit. This timeframe is reduced to two or three days if applications for screening permits are related to film festivals. Of course, major screening and production companies have acquired the ability to process their screening permit applications in a period that can take as little as one day. But in any case, there is no specific timeframe to which General Security commits in processing applications for screening permits. This ambiguity in timeframes affects the ability of applicants to negotiate during the process, especially in light of certain financial obligations and special logistics required by certain screening venues or certain festivals.

on February 13, 1952; published in the 1953 Lebanese Judicial Records; Lebanese Courts Jurisprudence Section; pp. 313-315

17- The highest spiritual Islamic Sunnite reference in the Lebanese Republic;
<http://www.darfatwa.gov.lb/>

Furthermore, if General Security does not issue a ban on the screening of a certain film (which, in any case, is a decision that is legally under the sole jurisdiction of the minister of the interior, according to recommendations made by the special administrative committee to the minister of the interior, as stipulated by the 1947 Law), it can achieve the same outcome by preventing the *taswiya* (adjustment) of a certain film, as explained earlier, by denying another application for a screening permit, or by processing applications and issuing permits after the time scheduled for film screenings has expired. For example, the application for a screening permit for a film scheduled to be screened at a festival can actually be approved after the festival has ended. For example, the screening permit of the film “The Wolf’s Wedding” by Tunisian director, Jilani al-Saadi (2007; “The Wolf’s Wedding” being a film that was very critical of [the former] Tunisian regime) was issued by General Security in Lebanon one day after the festival in which it was to be screened actually ended.¹⁸

Other “censorship” tactics used by General Security include editing out significant parts of a film during the period in which a film is undergoing import procedures (we will expand more on that below). In even more extreme cases, General Security will actually revoke a permit that has already been issued, as was the case with the screening permit for the film “Help” by Mark Abi Rashid (2009), which was revoked by General Security who submitted to a demand by the Catholic Church to prevent the screening.¹⁹

- Changing the status of a screening permit issued for a local film from a “general screening permit” to a “special screening permit”, which requires the party who wants to screen the film in any other venue to apply for another screening permit specific to that particular screening. In such cases, if the applicant wants to screen the film in several theaters or venues at the same time, he or she must submit a copy of the film with each application to screen for each venue. General Security requires the same fees from the applicant for each application to screen in each venue.

18- More on this matter can be found in several articles published by local newspapers in October of 2008, including the following: <http://www.menassat.com/?q=en/alerts/5096-lebanon-no-censorship>; as well as an article by Pierre Abi Saab entitled “Jilani al-Saadi: A Victim of Lebanese Censorship”, published in the *Al-Akhbar* daily newspaper (October 20, 2008), which can be referred to at the following link: <http://www.al-akhbar.com/ar/node/97755>. [Titles translated from the Arabic; articles available in Arabic]

19- Reference to this matter can be found in local newspapers issued in February of 2009; in particular, refer to the article by Pierre Abi Saab, entitled “A Game of Coincidences on the Underside of the City: Mark Abi Rashid Caught Between Poetry and Crudity”, published in the *Al-Akhbar* daily newspaper on March 9, 2009. [Titles translated from the Arabic; articles available in Arabic]

Regarding the fees related to these applications, it is important to make note of the fact that several categories of fees are required for screening permits. In addition to the application for a film screening permit that has a fee of LL75,000 (USD 50) for every copy of a film submitted, a fee is also required for a screening permit for the commercial advertisement of a film, which is also LL75,000 (USD 50) for every copy of the advertisement submitted. A LL50,000 (USD 33) fee is required for a screening permit application for a film preview (for each title). A LL50,000 (USD 33) fee is required for an application for a permit to screen (broadcast) a TV spot (for each title). Finally, a LL 50,000 (USD 33) fee is required for an application for a screening permit for the “making of” a film (for each title). The different costs of permit application fees have progressively grown since the early 1990s.²⁰ These fees pose an additional burden on local directors and producers, particularly in light of the absence of any significant support for the local film industry.

It is also important to remember that General Security has here expanded the scope of its options. Besides the unrestricted permit to screen a particular film, the censor can and often will restrict a screening permit to an “adults only” rating (without providing an explanation or justification) or using a rating system for the ages to which a film can be screened according to criteria he himself sets.²¹ In fact, Article 753 of the Lebanese penal code is used as the legal reference, as the article implies that a classification system does exist for restricting certain age groups from viewing certain cinematic or theatrical works.²² However, often the conditions applied to screening permits by censors require parts of a film to be edited out, the criteria for which is also according to the personal judgment of the censor without any reference to any legal provision or legislation.

20- This became clear after a comparison was made on the different fees required in the 1993, 1999 and 2000 annual budgets.

21- According to an individual working with a local commercial film distribution company, General Security uses the following system for rating films to restrict screenings for certain age groups: Children under the age of 12 are restricted from viewing films that contain scenes of “light” violence or films that contain sexual content; those under the age of 15 are restricted from viewing films that contain scenes that reveal partial nudity; and those under the age of 18 are restricted from viewing films that have sexual but not pornographic content.

22- The text of Article 753 of the Lebanese Penal Code stipulates the following: “Managers of theaters and cinemas or those who employ such venues, who allow the screening or presentation of a theatrical show or cinematic film that may endanger the well-being or welfare of male or female children or teenagers, or girls under the age of 18 years of age unaccompanied by her father, mother, legal guardian or one of her close relatives of mature age, are liable to be punished and sentenced to no more than a 3-month jail term and a fine of a minimum of LL40,000 (USD26.67) to a maximum of LL 400,000 (USD 266.67); or one or the other punishment. In the case of a repeated offense an order for a closure of the venue can be issued for a period ranging from three days to three months.”

Other questions and issues for which General Security found “answers” and “solutions” are also worth noting. For example, one question that was raised was does censorship include all screenings, as well as screenings that are held free of charge, such as in the case of festival screenings; or, is censorship only related to commercial screenings. In the case that censorship is comprehensive and includes both cases, the other question that then poses itself is, are all screenings (and their permits) subject to the same regulations and procedures?

Before 1999, General Security had exempted festivals from prior censorship, but since then, it has subjected all screenings to prior censorship; although it has generally committed to applying special regulations and procedures for urgent cases (or cases where screening schedules were subject to tight time restrictions). For example, a film festival organizer may submit one application for all the festival’s screenings, on condition that the entire festival program is submitted with the application, as well as one copy of every film that will be screened at the festival, accompanied by a press book for each film; noting that in the course of these procedures, General Security does not require that foreign language films be translated or subtitled into Arabic. A screening permit for such an event would then include the dates and duration of the festival, outside of which no film (included in the festival program) can be screened elsewhere or on any other dates. Indeed, people in this domain admit that these kinds of events have become more easily facilitated. At the very least, this is true when it comes to organizing foreign language festivals.

When there seems to be no way to circumvent a screening permit or the related procedures, those working in the field depend on several methods for dealing with General Security, the most noteworthy of these being:

- Negotiating with those who have influence over censorship processes inside General Security. Such negotiations can be initiated by either party. If the Cinema Division at General Security insists on editing or deleting certain scenes, an applicant may present a petition to the Director General of General Security, who can repeal that decision. Another negotiating option is that General Security agrees to allow the scenes in question to remain as they are in return, the applicant agrees to altering the viewer restriction rating of the film to “adults only”.

- Communicating and negotiating directly with the body or the authorities that want to ban the film screening, when such a body or authority is the impediment to obtaining the screening permit, such as the religious authorities mentioned previously. Applicants can try to persuade this influential party or authority to

withdraw its reservations or objections. Indeed, several individuals confirmed that there were numerous cases where there was success in negotiating and overcoming these types of objections.

- Requesting from one of the ministers concerned in this domain, such as the minister of culture or of the interior, to intervene on behalf of the applicant and lobby or convince General Security to issue the screening permit. The press in Lebanon has covered some of these cases, such as the screening permit for the (controversial) film, “Persepolis”, and the debate that on granting its screening permit.²³

- Presenting the case to the media in order to publicize protests against certain cuts or bans. The most recent case where the media became involved in the debate over a screening permit was the film “The One Man Village” (*“Semaan bil Dai’a”*) by Simon Haber (2009).²⁴

- Submitting to the will of the censor and not completing the work or accepting that a completed work will not be screened in Lebanon.

On the other hand and to our knowledge, there has never been a case where the decisions made by General Security over such matters have ever been challenged before the Lebanese courts.

3- Censorship on the import and distribution of films and television

General Security exercises strict censorship and controls on the import and distribution of DVDs of films and television series based on provisions stipulated by Article 9 of Legal Decree No. 2873 (December 16, 1959), which is the decree that systemizes the Directorate General of General Security. This article grants the Censorship Department (for publications and recordings) the authority to censor cinematic works, audio tapes and records (now CDs) imported from abroad. This authority is also linked to the 2000 Budget Law, which set a fee of LL 50,000 (USD 33) for a “screening permit for laser videos or DVDs imported for commercial purposes that include rental or sale”. It is important to note the absence of any regulations or procedures which determine the criteria for this form of censorship and control.

23- Refer to the article by Pierre Abi Saab, entitle “Perse-Police?” published in the *Al-Akhbar* daily newspaper on March 28, 2008. [Article available in Arabic]

24- Refer to local newspapers issued in October 2009

The censorship process for importing and distributing films takes place at the Customs department and leads to different measures, some of which include the following:

- General Security will register that it has no objection to the distribution and screening of the imported film or series in question. This clearance will often include statements that reflect their assessment of that particular film or series based on justifications such as, for example, the film does not endorse Israel or does not encourage homosexuality, and so on. This clearance by General Security allows for a private screening of the film or series or for submitting an application for a screening permit of the imported film.
- General Security will allow the entry (import) of a film based on certain guarantees, for example, that certain scenes will be edited out if an application for a screening permit is submitted, or that the film will be screened to adults only, or that the film is for personal use only (and on condition that the film will not be copied or screened when a film is cleared for personal use). In such cases, General Security will deliberate and identify the scenes which it finds "objectionable" in its import and distribution permits.
- General Security will decide to confiscate (and ban) an imported film or series because it includes offensive scenes seen as violating the terms of the boycott against Israel (including the participation of any actor, producer, writer, cinematographer or cameraperson or musician whose names appear on a boycott blacklist); or because it is viewed as being against standards of accepted public norms, morals or ethics (such as encouraging homosexuality). When an imported film or series is confiscated, any fees paid upon its entry or for censorship applications and distribution permits are not reimbursed.²⁵

What is of particular significance here is that General Security does not follow any particular set of criteria or standards in granting a screening or distribution permit. Sometimes, conditions for a screening permit will include cutting certain scenes or parts of a work, while a distribution permit for the same film is granted without any such conditions, such as the film, "Charlie's Angels", which was screened in Lebanese theaters only after certain scenes were edited out, and the uncut version of the same film on DVD was allowed to be distributed to the local market. General Security also follows the same censorship procedures, based on Article 9, when it comes to imported audio recordings and music CDs.

25- This is according to the terms stipulated by the Legal Advisory Consultation No. 510/R/1965, issued by the Legislative and Legal Advisory Board at the ministry of justice, that requires films imported from abroad to be subject to port fee specified in the Municipal Fees Act, whether or not General Security actually grants a screening permit.

Chapter 2: Censorship on Theatrical Works: “War Laws” and “Majdaloun”

The Directorate General of General Security also exercises control over prior censorship on theatrical works based on Legislative Decree No. 2 issued on January 1, 1977. This legislative decree granted General Security the explicit authority to reject a theatrical performance or to approve it in whole or in parts.

Accordingly, anyone who wants to stage a theatrical performance must first submit an application to do so along with three copies of the play's script to General Security's department of publications, which is also the same department that exercises prior censorship control over screenplays and issues filming permits.

In contrast to the 1947 Law related to the censorship of cinematic works, Legislative Decree No.2 does not include any criteria, standards or guidelines for censorship on theatrical works or performances, which allows General Security a wider margin of freedom in the way it exercises censorship in this domain. There are no timeframes specified for the application process to clear a theatrical work or performance after successive interior ministers failed to determine such timeframes. People working in theater believe that the censor takes advantage of this fact (the absence of a definitive timeframe for processing a permit) to prevent the performance of certain theatrical works without actually having to issue a formal decision to explicitly prohibiting a performance. This tactic was confirmed by the director of the play, “How Nancy Wished that Everything was an April Fool's Joke” (a play by Rabih Mroueh, produced by Ashkal Alwan; 2007), where General Security did not prohibit the performance of the play outright, but rather refrained from issuing any official decision.

As is the case with the prior censorship of screenplays, if the censor is of the opinion that certain terms or phrases must be deleted from a play's script, the censor can make it a condition that the applicant agrees to such cuts in order to obtain a permit. Sometimes, applicants come to an agreement with the censor on replacing certain terms or phrases with others; and often, the substituted terms or phrases are proposed by the censor himself. In either case, revisions to scenes or phrases that have been deleted or replaced are manually recorded on one copy of the script, and the applicant must place his or her signature next to these revisions to prove that he/she has been notified (and has agreed to) these revisions, whether they are deletions or substitutions.

The legislative decree regulating prior censorship on theatrical works was issued in 1977 and calls for some scrutiny, including the following major points:

- The provisions stipulated in this decree were drafted and issued during wartime (in the early stages of the Lebanese Civil War). In other words, it was a period marked by extenuating circumstances. Overwhelming challenges and suspicions prevailed over any means of expression that could be viewed as having negative security implications. The best case in point is that this decree was issued in parallel with another legislative decree (Legislative Decree No. 1), which enforced prior censorship on the press, on periodicals and other forms of publications. But, this decree was repealed by the government less than six months after it was issued. Legislative Decree No. 1 was replaced by Legislative Decree No. 104, issued on June 30, 1977. On the other hand, Legislative Decree No. 2 was never repealed and remains in force today.

- Legislative Decree No. 2 was issued shortly after a court ruling declared that theatrical works were not subject to any prior censorship (in a case related to the theatrical performance of the play “Majdaloun”).²⁶ Based on this ruling, both

26- The following is from a written portfolio and intervention compiled by Hanan Hajj-Ali, which she submitted to us for the purposes of this study:

“Majdaloun” is the title of an allegorical novel in which the author presented certain social and political problems that Lebanon suffered and suffers from, the most important of which included the threat of attacks on Lebanese soil, guerilla activities, the mercantile spirit, capitalist greed and so on. In the novel, the author critically presents the positions taken by Lebanese politicians with regard to these issues. In the novel, Majdaloun is the name of an imaginary village that sits on the Lebanese border next to the Occupied Territories. The author turned the novel into a theatrical screenplay in order to present these aforementioned issues and to criticize the manner in which they have been dealt with. The first half of the play “Majdaloun” ends with a scene in which weapons are tossed back and forth from one person (a Palestinian man) to another (a Lebanese man). This scene was the first time that an armed guerilla was represented on stage in Lebanon. Then, during the third performance, which took place on April 19, 1969, a unit from Internal Security forcibly entered the theater and prevented some of the people waiting to go in to see the play - which were mostly students and academics - from entering the theater. Internal Security forces then stood amongst those already inside the theater and amongst those who were able to breakthrough the security barrier, and even stood between part of the audience and the actors on stage. When the actors continued their performance, the security forces took to the stage and forcibly removed the actors. In protest, the actors continued to perform their parts in the lobby of the theater, after which they continued their performance on the streets, accompanied by some of the audience. They continued the street performance until they reached the Horseshoe Café on Hamra Street in Ras Beirut, where they were joined by a crowd of students. The students were chanting, applauding and carrying banners, protesting Internal Security’s prevention of the original performance by force. The protestors were joined by the café’s customers and the original audience, transforming the crowd into a new audience, who continued to watch this live performance in a public space in Beirut. Indeed, the space and the street audience became a stage and an audience that challenged and defied the forcible prevention of the performance, expressing a spontaneous exercise of Lebanese civil, political and social rights. When a performance takes to the streets, this means that the street exists and that it lives. The street became the spark of salvation, as it alone is aware of its fate and it alone is capable of

the Court of First Instance and the Appeals Court²⁷ dismissed the charges and against Roger Assaf, the director of “Majdaloun”, pursuant to the principle that there can be no sentencing or punishments meted out in cases that have no legal basis. The courts also allowed Assaf to present a civil lawsuit against the state and ruled that the state had violated rights guaranteed and protected by the Lebanese Constitution when it prevented the performance of the theatrical work on the grounds that prior permission had not been obtained.²⁸ In this ruling, the courts also concluded that Decision 1576, issued on October 12, 1922 by the Administrative Governor in Lebanon - which authorized the censorship of theatrical works - was rendered null and void with the cancellation of the post of Administrative Governor. The court further declared that after Decision 1576 was cancelled, no other legal text existed and no other law had been enacted stipulating that theatrical works must undergo prior censorship.

This landmark court ruling included the following important points:

“... As Article 13 of the Lebanese Constitution guarantees the freedom of Lebanese citizens to express an opinion in both written or verbal form within the bounds stipulated by the law; and, as political theater represents a means of expressing a political or critical opinion; and, as the play ‘Majdaloun’ falls under this category of theater, as was made evident by the testimonies of both parties, particularly the testimony and justifications used by the defendant (the State) to explain its obstruction of this play’s performance; and, as the freedom to perform political theater falls under the right to express an opinion and thus, falls within the basic rights of Lebanese citizens as guaranteed by the Lebanese Constitution; and, as the manner in which the performance of the play ‘Majdaloun’ was prevented represents an unlawful violation of one of these fundamental freedoms; and as this conduct was without legal basis and without legal provisions granting the authority to do so; this conduct represents an infringement that involves a flagrant violation of the law and against one of the universal individual freedoms, and (it is the belief of this court) that this conduct was carried out with the knowledge that it was based on any regulations or legal provisions or legislation in force.”²⁹

driving change and transformation in the system, in a manner that the masterminds of revolutions dream of. We are talking about “Majdaloun”... Because, for the first time in the Arab world, the stage burst forth from its theater, pushing itself away from the privacy and exclusivity of its host, and began to think out loud and say what 80 million Arabs want to say, all at once and in one abstract idea.” (This particular excerpt comes from an article about this incident written by Edward Sa’ab, published in “Le Jour” newspaper, April, 19, 1969)

27- Refer to the rulings made by the Single Criminal Judge in Beirut on March 7, 1970 (unpublished) and the rulings made by the Criminal Court of Appeals in Beirut on May 5, 1970 (also unpublished).

28- Ruling no. 258, issued by the Court of First Instance in Beirut (3rd Chamber) on May 5, 1971, published at the ministry of justice, Rulings Section, 1973, page 730.

29- Ibid

The “Majdaloun” incident and case sparked an extensive debate amongst and between journalists, authorities, judges, artists and the public, and the issue of official censorship was exposed and debated on all fronts. For two years, Lebanese artists would reap the benefits of the “Majdaloun” case and would enjoy a wide measure and latitude of freedom in the theatrical domain. However, Legislative Decree No.2 was issued soon after as a denunciation of this freedom. It came to represent the final outcome of numerous, continued official efforts to restore prior censorship in this field.³⁰

Chapter 3: Censorship on the Press and on Publications

In the matter of censorship of the press and publications, the fundamental principle here is freedom of the press. The press, publications and publishing in Lebanon do not require prior authorization, licensing or permits except for matters that are explicitly stated by the law. However, a publisher or author can be legally pursued in cases related to published material that includes violations such as defamation, slander, and fabricated or false reporting. Accordingly, this particular subject shall be examined in two parts: the first part will focus on publishing matters which are subject to prior authorization and licensing; and, the second will focus on the restrictions and regulations in place related to publishing operations in Lebanon.

First we would like to make quick reference to the more important legal provisions related to regulating the press and publications: The Publications Law issued on September 14, 1962 (which is referred to henceforth as the 1962 Law), Legislative Decree 104/1977, was issued on June 30, 1977 (which is referred to henceforth as Legislative Decree 1977) and which was amended by Law No. 300, issued on March 17, 1994 or, in the post-Civil War period.

30- In the same context, we would like to make note of Legal Consultation No. 39/1973, issued by the Legislative and Consultative Commission that concluded with views that were contrary to the court's rulings, or: that theatrical works should be subject to control and censorship prior to their performance, based on Decision No.1576/1922; as, and in contrast to what came forth in the court's ruling, performing a theatrical play is considered a form of media in the same way that the news, radio, television, cinema, publications and press agencies are. The same department responsible for censorship of journalistic media and other legal matters, which has effectively replaced the committee stipulated in the provisions of Decision No. 1576/1922, is also responsible for the censorship of theatrical works prior to their performance. This is despite the fact that there no legal provision or law exists allowing for the transfer of this authority from the (aforementioned) censorship committee to another authority or body.

1- The Press: Freedom of the press or limited licenses and concessions (imtiyaz³¹)

The law in Lebanon stipulates that there are certain cases where publishing requires prior licensing or permission. In several of these cases, this prior licensing has turned into a kind of privileged or special license to publish, much like non-commercial concessions or a “franchise” license referred to as an “*imtiyaz*” license. These in turn, have created certain exceptions to the basic rule and principle that anyone has (or should have) the right to publish.

The most important criteria used in determining such cases include the following:

Periodical and non-periodical press and publications

The 1962 Law subjects periodical (timed, regular) press and publications to prior permission and licensing from the ministry of information after consultation with the Lebanese Press Union.³² This is with the knowledge that, in this context, the legislators who drafted this law did make a distinction between political publications subject to the “*imtiyaz*” system and non-political publications, as we will show below. Moreover, whereas the 1962 Law did not place any restrictions on the freedom to publish with regard to non-periodical publications (including books), a legislative decree issued on August 5, 1967, requires that flyers, printed declarations, printed communications material, and the like, obtain a (prior) publishing permit from General Security.³³

The 1967 decree - which was issued in the context of the 1967 War and defeat - granted General Security extensive discretionary powers in accepting or rejecting a prior publishing permit application without any specific criteria, legal guidelines or regulations. The decree also stipulated that if a decision for a publishing permit

31- *Imtiyaz* in this context [in Arabic] literally means privilege, concession or franchise; in the context of this study, it refers to a license that grants certain privileges or concessions that others do not have, or in a non-commercial sense, receiving a “franchise” license to publish (in this sense in the study) that is granted to a limited number of publishers (particularly newspaper publishers)

32- Failure to do so is under penalty of fines and of banning the publication by a decision from the ministry of information, as well as confiscating copies of the publication, and cancelling the publication’s owner’s publishing license or permit for a period of one year; this decision can also prevent the editor in chief of the publication from any responsibilities whatsoever, over any other publication, during that period.

33- Failure to do so is under penalty of a jail term of no less than one week and no more than one month, in addition to a fine. Refer to Legislative Decree No. 55 with regard to the prohibition on printing, publication and dissemination of certain publications without prior permission from the Directorate General of General Security.

is not issued within one week from the date the application was submitted, the publishing permit was to be considered rejected. It is also worth noting that lawsuits and legal prosecutions were carried out in the post-Civil War period (after 1991) based on this decree especially against young activists belonging to the Free Patriotic Movement.

When politics becomes monopolized

Of the most important criteria for granting *imtiyaz* licenses is the political nature of a publication. This particular distinction was established when the “non-political publication” was defined as any publication that “does not publish investigations or news or images or comments of a political nature”. According to this criterion, legislators deliberately subjected publications to two different systems of regulations; while licensing for a non-political publication remains open-ended, a permit for any political periodical publication may not be issued after licenses have been issued for (a maximum of) 25 political daily publications, or 20 political periodical publications of which, from this sum total, 15 are to be Arabic-language daily publications or 12 periodical Arabic-language publications.³⁴

Consequently, the regulations for issuing and obtaining a (political) daily or periodical publishing license have turned into a special concession (or *imtiyaz* status) enjoyed by those who had the privilege of having actually obtained a license before 1953, or by those to whom a license was transferred to due to some specific absence or special waiver.³⁵

34- This is directly in line with the provisions stipulated by a legislative decree issued on April 13, 1953; the only exception being that one can benefit from (or obtain) a new license, if that person once owned two newspapers of the kind which are considered “necessary” and whose circulation, for one reason or another, has completely stopped.

35- This system of regulations dates back to the post-independence period. On September 2, 1948 (during the Bechara El Khoury era), a law was issued that endorsed freedom of the press; but, this law itself was used to speed up efforts in drafting provisions related to licensing daily political publications in order to reduce that number to as little as 15 publications. Again, the only exception to these provisions was in the case where one could benefit from (or obtain) a new license if that person once owned two, daily, political newspapers, of the type which were considered as necessary, and which had completely stopped circulation. This status continued until a legislative decree was issued on November 22, 1952 (during Camille Chamoun’s presidency). This new legislative decree opened the doors, once again, for applications to obtain new licenses for political, daily newspapers without any further restrictions on the number of publications that could get publishing permits or licenses. The new decree also transferred the authority to issue these licenses from the ministry of the interior to the news ministry (which is, today, the ministry of information), with the period required for deciding on applications reduced from two months to 15 days. The decree also allowed applicants to issue a publication if there were any undue delays on the part of the ministry in deciding on its application for a license or permit within the designated time period. If this legislative decree recognized the importance of the freedom

In fact, the norms practiced in this domain would enhance the nature of the special privileges already inherent in such licenses or licensing practices.³⁶ On the one hand, the ministry of information tends to show great leniency towards a waiver of investment for a particular license in return for a permanent concession of a license - a practice that has led to a certain “price” for licensing that has become a given in the “media market”. The ministry also avoids exercising its authority in cancelling a license in cases where the investment in that license has been frozen for a specific period.³⁷

Of course, “closing the doors” to new licensing by these forms of concessions represent the most basic infringement on press freedoms and has become a fundamental factor in restricting journalism in Lebanon only to newspapers that have or are able to acquire a certain amount of capital³⁸.

Moreover, it should be noted that where a political publication can be either daily or periodical, a non-political publication can only be periodical, and cannot be issued more than once a week, including its supplements (the 1962 Law).

of the press in that it overturned the previous system, nevertheless, after no less than six months and prior to its resignation, the government would close the door - once again - to new license applications for daily newspapers when it issued a new legislative decree on April 13, 1953. It appears that the government was not as concerned with overturning the previous *imtiyaz* system as it was in allowing others - closer to it during that period - to obtain new licenses that would give them access into the club of the privileged (press) elite, before it closed the door once again.

36- For the identities of these *imtiyaz* license holders refer to Anis Moussallem, *La Presse Libanaise: Expression du Liban Politique et Confessionnel et Forum des Pays Arabes*, 1977, p. 86 et s.

37- According to the law, the minister of Information can repossess the publishing license of a newspaper publication after a two-week notice in the following cases:

- If that publication is not issued within six full months from the date the publishing license was issued, or from the date the publishing license was turned over to another by a waiver, or in the case that parts of the publication were turned over to another by a waiver, or from the date full rights to publish are restored by a court ruling or by an administrative directive.
- If the publication of that newspaper has been interrupted for a period of three consecutive months; however, the minister may extend this period by a reasoned decision made by him after consulting with the Lebanese Press Union if the license to operate is contrary to the definitions in Articles 5, 6 or 7 of this law,
- If the owner of that license appears to no longer meet the conditions required by the publishing license under Articles 30, 33, 34 of this law. (Article 29 of the law)

38- For more on this issue, refer to local newspapers issued during the time Law No. 300 was enacted and issued on March 17, 1994.

Apart from questioning these differences in regulations, it is also worth examining the extent to which the distinctions between “political” and “non-political” publications are appropriate. How clear are the criteria for determining what news is “of a political nature”? What are the limits of politics? Are news items related to family affairs, educational issues, unions, ethics, the law, economics and human rights of a “political nature”, or not? These questions have repeatedly been presented before the Press and Publications Court in Beirut during lawsuits against “non-political” publications which were charged with publishing news of a “political” nature. Indeed, in the cases which we were able to review, these lawsuits ended in acquittals based on criteria that determined “the nature” of the news items published.

In a ruling issued on February 27, 2003, the court states: “The photographs of the rally published in that particular issue of the publication, which was the subject of this legal action, were within the context of a humanitarian occasion with the intent of showing solidarity with the Palestinian people, who suffer from harsh social and humanitarian conditions that are considered catastrophic, and which stir the emotions of all Lebanese social organizations and all segments of the population... While certain elements of a political nature were published in this issue of the publication, during the aforementioned occasion, it remains that the majority of that which was published was done so with the objective of expressing concern for the humanitarian tragedy and the deteriorating social conditions suffered by the Palestinian people in the Occupied Territories, a concern also expressed during the occasion of the rally in Tripoli...”

Another court ruling issued on June 12, 2003, also points to the predominantly “socio-economic” nature of a news item, even though it did contain “certain political overtones”. The court comes to the same conclusion in a ruling issued on December 4, 2003. After the court shows that although the publication in question printed “a photograph of the barbed wire which was placed by the Israeli enemy in the area previously occupied by it, at the same time, it revealed the image of a young daughter accepting her mother’s hand through that barbed wire...” and although the headline on the cover of the issue was “Two Years after the Liberation: Testimonies of Freedom”, the court ruled that the publication had also “dedicated inside pages for interviews and testimonies on the subject of the ‘liberation’ and the restoration of the land to the nation’s embrace...”. The court also saw that the publication’s decision to display a photograph on that issue’s cover, which showed “the barbed wire that once separated the sons of the one homeland”, and the fact “that the issue’s cover included references to freedom, the nation, and the concerns of the nation, and that the testimonies inside that issue of the publication were also about these subjects - all this was intended to reflect the nature of the national, humanitarian and social

conditions South Lebanon suffered from during the years of the oppressive, brutal occupation”. In the same vein, the court rejected the argument that the “subject of South Lebanon remains a subject of a political nature on the national level” because, in the words of the court, “it represents, before anything else, a suffering that exists in the collective consciousness of the Lebanese people”. The court went even further by stating that it was not sufficient just to declare the right of the publication in printing the aforementioned news items, images and subjects, but rather that it was the publication’s duty to do so, for, “sympathizing and expressing solidarity and compassion with the cause of South Lebanon and its suffering, and setting this as an example to be learned from is the obligation of every individual and institution” and that it was “a duty to condemn and expose the social and humanitarian impact of that occupation”.

Thus, with these rulings, the court grants ample space for non-political publications to discuss issues that have an important political dimension, whenever it deemed it was their national or humanitarian duty to do so. This margin of freedom would reach even further heights when what was perceived as the duty to express the suffering of South Lebanon was also seen as the duty to express the suffering of the Palestinian people; and, in reference to the latter, the court states, “This conclusion (i.e. the dismissal of all charges) does not change with reference to the statement printed at the bottom of the publication’s cover, which says ‘Palestine Now’, because the social and humanitarian ramifications of the occupation are one and the same when it comes to Lebanon and Occupied Palestine”.³⁹

Foreign ideas: The right to express or not to express

As well as the above, we find that distinctions are also made between local publications and foreign publications. Whether a foreign publication is a periodical or a non-periodical, it requires prior permission and licensing before it can be published, issued or distributed in Lebanon.⁴⁰ The minister of information can prohibit the entry of any foreign publication into Lebanon and confiscate all issues of a foreign publication if it appears that the print may negatively effect security, or if it is seen as negatively stirring or national sentiments, or as being contrary to the accepted standards of public norms, morals and ethics, or inciting sectarian strife (1962 Law). Furthermore, General Security also exercises prior censorship over the entry or import of any such publications into Lebanon under Decree No. 2873,

39- Refer to the (unpublished) rulings indicated in the text

40- It is also prohibited that any newspaper issued or printed outside of Lebanon to be published independently, or as a supplement, or in any part or form in Lebanon, if it has not obtained a publishing license in Lebanon. The only exceptions are press and wire agencies that are published internationally or regionally.

issued on December 16, 1959 (related to the provisions and guidelines regulating the Directorate's administration and authority).

Within this context, following Syrian President Hafez al-Assad's death, General Security would issue a directive in which it clarified the standards it would use in exercising censorship, including the following:

- If any form of defamation, libel, slander or contempt is directed towards the dignity of the Lebanese head of state or the Lebanese flag, or any heads of state of friendly and fraternal countries;
- If contempt is shown towards any religion, or if any provocation of sectarian discord or religious strife is shown;
- If the integrity of the state, its sovereignty, unity, frontiers or foreign relations are compromised or threatened;
- If there is propaganda for the Israeli enemy, or if relations and cooperation with this enemy is encouraged.

Of course, these "principles" are quite elastic and widen the scope of prohibitions that are at the discretion of the censor, with little accountability and with impunity.

What is also remarkable in this directive is that General Security openly acknowledges that in light of the internet age, this form of censorship is virtually ineffective in preventing the entry of ideas into Lebanon. Despite this acknowledgement, the directive states that the exercise of censorship is linked to "the commitment of the censor to uphold fundamental national principles, and aims to adopt a form of moral retribution against those who deliberately abuse and threaten these principles for the service of the enemy and its vile intentions".⁴¹

The parameters of this control created great controversy involving the *Asharq Alawsat* newspaper, which has a Lebanese (*imtiyaz*) license and is edited and printed in Lebanon. When it published an article about an assassination attempt on President Emile Lahoud in Nice, France, General Security decided it would enforce prior censorship on the newspaper on the pretext that it fell in the category of a foreign publication as the director of the newspaper in Lebanon did not exercise any role in preparing or editing the material published by the newspaper.⁴² But ten

41- For more on this matter, refer to the directive issued by the General Directorate of General Security published in *Annahar* newspaper, June 19, 2000 (Available in Arabic)

42- Refer to the article, "Beirut: Continued Prior Censorship on *Asharq Alawsat* Newspaper: Its

days later, the prior censorship status placed on this newspaper was lifted after the position of its director and editor in chief was investigated and confirmed!⁴³

It is also important to note that General Security took this decision contrary to the demands made by (former) minister of information, Ghazi al-Aridi, to halt any prior censorship of the newspaper, because prior censorship could not be exercised on newspapers that have obtained a legal *imtiyaz* license to publish and operate in Lebanon.

Finally we would like to note that printing, publishing or disseminating a publication in Lebanon, which has been denied entry into Lebanon or whose issues have been confiscated in Lebanon, carries a penalty of a jail term of no less than eight days and no more than three months, and carries a fine of between one million and two million Lebanese Lira (or between US \$666 and US \$1333).

2- Censorship and publications

Censorship of publications involves several controls and restrictions exist, some of which are administrative and which are related to the ministry of information (and which, in fact, are completely inoperative), while others are of a more legal nature and thus, require more extensive examination. The remaining forms of control can be considered of a purely disciplinary nature, such as the 2008 Electoral Law, which sets specific regulations on censorship of the media, including publications, during elections.

The ministry of information: Oversight on publications

In the context of the ministry of information's authority and oversight on publications, censorship controls take on two different forms:

The right to repossess a publishing license (in certain cases)

The Lebanese Press and Publications Law stipulates that a publishing license and permit to issue a newspaper publication shall be repossessed in certain cases, the most important of which includes the failure to produce the publication or the discontinued production of publication for a certain period of time after two

Editor in Chief and Director Under Investigation" published in *Asharq Alawsat* newspaper, January 8, 2002 (Available in Arabic)

43- Refer to the article, "Lifting the Censorship on *Asharq Alawsat* in Lebanon: Investigations into the Case of the Prosecution", published in *Asharq Alawsat* newspaper, January 11, 2002 (Available in Arabic)

weeks have passed since written notification has been issued by the ministry that a publication must be produced.

Other major grounds for repossessing a publishing license includes if the publication has exceeded the scope of operations for which it has been licensed; i.e., if a publication has been licensed as a non-political publication and publishes subjects of a “political nature” or, if a publication has not adhered to its publication schedules or, if the owner of the license no longer meets the conditions and requirements stipulated by the license obtained. But under the *imtiyaz* system that prevails today in Lebanon those who want to publish a periodical political publication have a direct interest in requesting that the administration exercises its right to repossess a license to publish a political publication, as long as the right to apply for a new license remains restricted to the numbers mentioned previously. Despite this, *imtiyaz* licenses in general remain protected by the reluctance of the ministry to exercise its authority to repossess unused licenses.

Financial oversight

In the matter of financial oversight and illicit gains or profit, the legislators who drafted the 1977 Legislative Decree enforced certain provisions where administrative measures (by the ministry of information) or legal action (by the Press and Publications Court) can be taken against a publication’s operating license or right to publish.⁴⁴ These provisions include if a publication shows budgetary deficits or shortfalls, or if evidence of illicit gains or illegal profits exist, especially if they serve the interests of the state or any foreign or local body contrary to the public’s welfare and interest, or in a manner that may threaten the political system, provoke sectarian strife or incite unrest and disorderly conduct. However, it is also worth noting that this system of regulations was introduced during the Civil War period and since then, it has remained largely mere ink of paper. These provisions and regulations clearly require a review and further debate so as to achieve a more appropriate balance between the various interests and stakeholders active in this field.

Publication “offenses” before the courts

We shall present and examine the legal instruments and mechanisms used to address the publication of material which is considered in breach of the law, and specifically that which is considered a publication “offense”. However, prior to proceeding with this examination, it is important to make note of two specific points.

44- Articles 44-49 of the 1977 Legislative Decree

The first is that the 1977 Legislative Decree, as amended by Law no. 300 issued on March 17, 1994, is still considered the primary legal reference for deliberating publication offenses and violations. As such, the Civil War and its aftermath have had a direct impact on the implementation of this decree. The second point is that “publication offenses” are either offenses that have been stipulated by the laws specific to publications (such as the legal texts referred to above), and include publishing false information, defamation, slander, libel, etc., or offenses referred to in the Public Law and more specifically the Lebanese Penal Code such as being held in contempt of religion or charged with inciting sectarianism.

The punitive approach

Lebanese legislators continue to support a punitive approach as published material considered in breach of the law carries punitive measures and repercussions, some of which can be considered as violating universal freedoms. Some of these punitive measures can also be registered in the criminal records of persons convicted of these offenses and can bar these persons from exercising certain civil rights following the offense.

This punitive approach encountered certain opposition in the 1960s and 1970s, after which numerous amnesty laws were issued with regard to publication offenses.⁴⁵ This opposition was explicitly expressed by two members of parliament, René Mouawad and Samih Osseiran, during the November 17, 1970 parliamentary session (at the beginning of Suleiman Frangieh’s term in office) in which a general amnesty law on publication offenses was being debated. Mouawad makes his opposition clear in a statement during the debate: “I want to go further than that (the amnesty)... The reason being that successive governments, from time to time, approach us with certain amnesties on publication offences, which we unanimously approve in order to protect the [freedom of the] press and in order to allow the press to take on the important task with which it has been entrusted. Therefore, I would ask that Parliament agree with me in cancelling all so-called “publication offenses” and that any legal provisions and acts concerning punitive measures related to publication offenses be repealed from this day forth. We should suffice with protecting individual rights and indemnity as is the case with the more advanced countries such as England, where the scale of these indemnities is proportional to the defamation or slander.”

45- The late 1960s (during Pierre Helou’s presidency) witnessed the issuance of four amnesty laws with regard to publication offences, as well as one law issued during Suleiman Frangieh’s presidency.

This view is also evident in Samih Osseiran's speech during the same session, "Why does parliament want to grant amnesty for publication offenses? ... I believe that this is done in the spirit of believing in granting complete freedoms... in the spirit of democracy. However, as for the way in which matters stand, and so that we do not waste further time on such matters, I propose that, in lieu of discussing a general amnesty for publication offenses, that we abolish these offenses once and for all, and that we abolish all corporal punishments and jail terms for journalists and that penalties be restricted to individual reparations and compensation. For example, in the matter of bribing journalists, for example, I cannot fathom that, God forbid, on any given day, this offense could be granted amnesty and that the pens of such individuals could subsequently triumph. Indeed, the pens of journalists would no longer be free from that day forth. It would be better to end this matter, once and for all, particularly as more advanced and progressive countries have abolished jail terms and corporal punishment for men of thought. It is for all these reasons that I propose that the debate on this subject be suspended for one week, until the minister of press and publications can submit an amendment cancelling corporal punishment for journalists, and that the Publications Law limit punishment and penalties to personal compensation, and that this compensation be left to the discretion and order of the Lebanese courts."

However today, this issue appears to remain outside the realm of any public debate or discussion.

It is important to note that in cases of publication offenses, the right of the public prosecution to lay criminal charges has been limited to certain individuals only. Other than being able to prosecute the author of an article under question in a publications offense, the law also created the post of "the managing director". Every publication is obliged to appoint an individual to this post, who is held accountable and liable for any material published in the newspaper for which he/she is held responsible. Conversely, despite the fact that the owner of a newspaper can also be held liable, under civil law, for damages suffered due to material published by his or her newspaper, the owner cannot be criminally charged unless his or her direct involvement in the "publications offense" can be proven.⁴⁶ Indeed, in the case against *Asharq Alawsat* newspaper, the courts affirmed that the persons who can be legally and criminally charged for "publication offenses" are limited. The scope of litigation in such cases, therefore, does not include, for example, a publication's editor-in-chief, heads of departments or members of the editorial board.⁴⁷

46- Article 26 of the 1977 Legislative Decree

47- For more on this matter review the ruling issued by the Investigating Court Magistrate in Beirut,

The above provisions were intended to restrict the potential for turning prosecutions into opportunities to prosecute publications and those responsible for their editorial policies and politics. But, despite this law, the public prosecution has, in certain instances, expanded the scope of litigation to include the editor-in-chief or the publication's owner in circumstances that suggest intent to deter a newspaper from delving into a certain sensitive issue.⁴⁸

Specialized courts and provisions specific to trying publication offenses:

Specific jurisdiction and provisions for “specialized” courts designated to deal with publication offenses include the 1994 Law, which enforces provisions on how related to publication offenses are to be deliberated. The law gives jurisdiction over cases of publication offenses to one chamber of the Appellate Courts - meaning one chamber for each district, presided over by a tribunal or panel of three judges (a Head of Chambers and two Assistant Judges). The objective of this legislation was to create a specialized court with the expertise and experience to deliberate press and publications offenses. In principle, it also enabled the prosecution of different publications before a press and publication court in the area in which the newspaper (or publication) is distributed. However, press and publications offenses takes place before the Press and Publications Court in Beirut.

The 1994 Law contains provisions to ensure a speedy trial and swift regulations for deliberating conflicts and sentencing publication and press infringements. For example, the courts are required to commence trial procedures on any case referred to it within a maximum of five days of the case referral, and to issue a ruling within a period of no later than ten days from the date when trial proceedings begin. The period allowed for a review is limited to ten days for appeals, and to five days for objections. The Appellate Court is also required to commence trial proceedings within a period of five days at most, and to issue a ruling within a

Hatem Madi, who refused to hear the case put forward against the editor-in-chief of *Asharq Alawsat* newspaper, Abdel Rahim Abdullah al-Rashid, and to continue the trial and investigation against the other co-defendant - the “managing director” - Ibrahim Awad. Magistrate Madi justified his ruling on the basis that liability for publication offenses carried out by a publication rests on (only) the managing director and the author of the article in question, as they are the primary offenders (who can be charged and) who perpetrated the offense, which, thus, excludes the editor-in-chief from any direct responsibility or liability in the matter. [*Annahar* daily newspaper, Beirut, Lebanon; March 26, 2002]. The Prosecuting Tribunal in this case endorsed the Investigating Magistrate's decision to dismiss the case against the editor-in-chief of the publication. [*Annahar* daily newspaper, Beirut, Lebanon; April, 10, 2002]

48- In addition to the case against *Asharq Alawsat* referred to above, refer to the case brought against the *Al-Akhbar* daily newspaper by the Lebanese Forces with regard to an article the newspaper published about the assassination of General Khalil Kanaan.

period of no less than ten days from the date an appeal is submitted.⁴⁹ However, an examination of how these courts actually operate reveals a significant disparity between these legal provisions and the reality on the ground, in two major aspects at least. First, in most cases, judges appointed to these courts and cases have little previous experience in this domain. Secondly, the timeframes delineated above remain purely hypothetical as litigation in the majority of these cases has extended beyond a year (and sometimes years).

In addition to the above, it is important to note that investigations of publication offenses often take place before the public prosecution (and often before the public prosecution at the Court of Cassation to which people of influence or status often resort) or before magistrates, prior to being referred to the “special” courts legally designated for such matters.

Penalties applied in publication offenses (imprisonment, fines, publishing verdicts and/or suspending or banning the production and operations of a publication):

Guilty verdicts and sentencing in the majority of publication cases include jail terms that range from between eight days and three years, fines that range from between LL200,000 (USD 133) to LL100 Million (USD 67), and/or obligations to publish the verdict in the publication. In some cases, a publication has been suspended or banned. All of these penalties are in accordance to conditions detailed in the law.

After a review of all the rulings issued by the Press and Publications Court in Beirut from the beginning of 1999 until the time this research was concluded, the following observations can be made:

- The Press and Publications Court in Beirut has shown a general tendency to find cause and grounds to mitigate jail terms to modest fines.
- On the other hand, the Court has departed from this trend in certain rulings and in sentences issued in absentia (or when the defendant is not present in Lebanon). This approach appears to be with the objective of putting pressure on defendants to appear before the Court. This is evident in for example, the public prosecution’s case against *Asharq Alawsat* newspaper and Ibrahim Awad in the case of publishing a news item about the assassination attempt on President Lahoud. In the first verdict and sentence in absentia⁵⁰, the court

49- Article 7 of Law 330/1994

50- Refer to the sentence in absentia issued by the Press and Publications Court in Beirut on April,

sentenced Ibrahim Awad, as the managing director of the newspaper, to a jail term of one year for publishing false news and for showing contempt against the dignity of the President of the Republic. When Awad submitted an objection and personally appeared before the same court⁵¹, a new verdict was issued that repealed the original sentence against him once the court heard evidence and confirmed that the President of the Republic had indeed survived the alleged assassination attempt, “which proves God’s and the peoples’ satisfaction with him”.⁵²

- The new judicial body that was granted jurisdiction over such matters since March of 2009 has delivered several new adversarial rulings, which included jail terms (some suspended, while others were not). This is evident in the ruling issued on October 12, 2009 in the case between minister Gebran Bassil against the weekly political magazine “*Al-Shira’a*”, where the managing director and the author of the article in question were found guilty and sentenced to 3-month prison terms and fines of LL15 Million (USD 10,000). Judge Shukri Sader ruled against the talk show host of the “Corruption” television talk show, Ghada Eid, and the New TV Corporation, after a verdict that held the talk show host and the managing director of New TV guilty. Sader sentenced both to 3-month prison terms in addition to fining both LL20 Million (US D 13,333). If these sentences are appealed, it is expected that the debate on the punitive approach, and jail terms in particular, will resume once again.

What is important to note regarding the overall punitive approach is that the authors of Legislative Decree 104/77 were apparently serious in their intent to ensure that restraint would be used in the application of the penalty of temporarily or permanently suspending a publication. Unlike the aforementioned provisions, legislators restricted the application of this form of punitive measures to the following situations: A refusal by the publication to execute a court order or ruling by not publishing a denial or correcting a (false) news item, which in the view of the court is related to the public interest (and carries a penalty of a 2-month suspension of the publication). In addition, a publication can be suspended for a repeated offense (such as publishing false news that could disrupt public order and public peace) within a 5-year period of the first offense being committed (and is punishable by a 15-day suspension of the publication or a 3-month suspension for

22, 2004

51- Criminal court procedures allow a defendant sentenced in absentia to submit his or her objections before the court that issued the verdict on condition that he/she appears before that court. In such cases, the court will review the case once again and issue a new verdict upon the conclusion of the review.

52- Ruling issued by the Press and Publications Court on July 12, 2004

a second repeated offense). Another case in which a publication can be shut down is if a publication touches upon the dignity of the President of the Republic, or is found guilty of slandering, libeling or degrading this post or any other foreign head of state before three years have passed since the first offense (which is punishable by a 2-month closure). Finally, other publication offenses punishable by closure include repeatedly publishing material which is considered as showing contempt to any of the recognized religions in the country; inciting sectarianism or sectarian strife; discriminatory; inciting public disorder; or as endangering the nation's peace, unity, sovereignty, borders or its foreign relations, before seven years have passed since the first offence (which carries a penalty of a minimum of a 6-month closure of the publication).⁵³

What is also important to note is that cancelling a publication's license permanently can only be done if the court finds a publication (with a license as a non-political publication) guilty of repeating the offence of publishing news of a "political nature" one year before its first offense.

Immediate penalties and measures

Regarding publication offenses, questions include: can action be taken against a defendant before a final court ruling is issued or before a trial is complete, or as soon as trial proceedings commence, or even before they commence? If the answer to any of these questions is yes, then what body is authorized to take action against the defendant? Or, in other words, are the measures that can be taken against a publication or a defendant in publication offenses cases authorized and issued by the courts alone, or can such measures be taken by other administrative or governmental authorities?

Indeed, these questions are critical, as freedom of the press (and freedom of the press from prior censorship) is threatened as it is that measures can be taken against it, and those working in the field, before a final decision is issued by the courts. If a publication can be suspended or shut down, or if pre-trial detention of defendants can be carried out prior to a final ruling by the courts, it is more likely that abuses of authority and illegal measures will plague this field. Accordingly, we found it important to present three fundamental points:

53- A publication can also be temporarily (or permanently) suspended if it is published prior to obtaining a license and the required permits, or prior to providing the guaranteed credit or cash assurance requirements.

First: Examining this issue requires a study of the evolution of the various Press and Publications Laws in Lebanon, and perhaps even an examination of the history of rights and freedoms in Lebanon altogether. An example that comes to mind is the rash of temporary suspensions or permanent administrative closures of newspapers that took place during the Mandate period, which were often executed prior to any legal charges being laid against these publications or those working in them.⁵⁴

In successive governments and during different eras - from the Ottoman period to the French Mandate period, the post-independence era until the post-Civil War period - these (legal and administrative) instruments and measures were exploited in order to impose certain “red lines” and to stop any opposition media from crossing them. Indeed, during these different periods and for these successive governing authorities, there were certain matters that could not be tolerated and that required immediate response. Thus local authorities couldn’t ‘afford’ to wait for trial proceedings to take their legal course. This becomes increasingly clear, for example, when one reviews the different legislation that was drafted during various periods, which stipulate the different circumstances in which temporary suspensions and pre-trial detentions have been permitted. For example, a parliamentary debate took place in May 1962 on a law that allowed for an “immediate response” in cases where a foreign head of state is “defamed” and where the defense of national interests and preserving Lebanon’s relations with foreign states was seen as taking precedence over press freedoms.⁵⁵

54- One law, issued in 1948, stipulated that in cases where material published was deemed as defaming or slandering the President of the Republic, the government was granted the right to (immediately) suspend a publication by administrative order, as long as the suspension did not exceed 3 days; and, in such cases, the minister of the interior could refer the publication to the courts, where a decision made in chambers could extend the suspension until the courts made a final ruling in the case in question. The court could then decide, in its final ruling, to extend the sentence of suspension to a maximum of one year. Later, a legislative decree issued in 1952 included as a punishable crime the act of inciting against the nation’s unity, sovereignty, borders and peace, in addition to the act of insulting the dignity of the President of the Republic. The latter decree also stipulated that the minister of news (today, minister of information) could issue an administrative order to suspend a newspaper for a period of no more than 3 years while referring it to a court specialized in these matters - which could also suspend the newspaper’s operations by a decision taken in chambers for the duration of the trial and pending the outcome of a ruling.

55- For more on this matter, refer to the law issued on May 30, 1962 (which is linked to the amendment of the previous law) on penalties related to insulting heads of foreign states.

Second: As a result of the ongoing amendment and repeal processes related to such measures (the last in 1994), the only (legal) measure permissible prior to the conclusion of a trial proceeding, according to the law today, is confiscating all printed issues of a publication (whether it is a book, newspaper, magazine, etc.) or referring it to specialized courts, if the public prosecution finds cause that the material in violation of the law has been published, and thus lays charges against the publication.⁵⁶ Apart from the seriousness of entrusting the public prosecution with such broad, discretionary powers, which impairs any guarantees of independence, the pace of slow, drawn-out court proceedings are also problematic and can actually ban a certain book or suspend a certain publication for years, whatever the outcome the final ruling on the case may be. A case in point is the trial concerning the ban placed on the book by Adonis Al-Akra, "*Heen Asbah Ismi 16*" ("When My Name Became 16", a book that refers to the controversial events of August 7, 2001). The trial before the Press and Publications Court lasted for seven years and is pending before the Court of Cassation, which is still deliberating on the objection submitted before it.

Third: Recently, from 2008 to 2010, there were negative developments that could lead to a reversal in the legal circumstances of this field. An example is when news broadcasts and televised programs instigated discussions and debates about certain judges. Two statements were issued by the Higher Judicial Council and the General Assembly of Judges which demanded that the minister of justice amend the Press and Publications Law, and specifically that part of the law which prohibits pre-trial detentions in charges related to publication offenses! It appears that certain senior-ranking judges prefer immediate measures, pending the conclusion of trials, as a deterrent to "all those who dare to encroach upon the dignity of the judiciary".⁵⁷ Apparently, these judges are ready to sacrifice, without hesitation, what is considered one of the most

56- The Public Prosecution of the Court of Appeals in Beirut is granted this authority under the Criminal Court Legal Code and particularly Article 31 of this Code which allows the Public Prosecution of the Court of Appeals to seize all weapons and incriminating evidence used in the commission of a (witnessed) crime, and all items that may assist in uncovering the truth in the said crime. Legislative Decree 104/1977 also grants the Public Prosecution of the Court of Appeals the right to confiscate and refer a publication to the courts based on charges in the following offenses: Insulting the person of the Head of State, in a manner considered as touching upon his dignity, or publishing material which is deemed as defaming, slandering or degrading the head of a foreign state (Article 23), or publishing material considered contemptuous of one of the country's recognized religions, or which provokes or incites sectarianism or sectarian strife, or any other discriminatory material, or material which is deemed as a threat to the public peace or the state's peace, sovereignty, unity, borders or external relations (Article 25).

57- Refer to the statements issued by the Higher Judicial Council on 14 and 17 July, 2008; and, for more on this matter refer to Nizar Saghieh's, "*Majlis al-Quda'a al-'Ala Yulabis Washaban Jadidan*" ("The Higher Judicial Council Wears a New Sash"); available in Arabic, published in *Al-Akhbar* daily newspaper, Beirut, Lebanon, September 23, 2009.

important gains made in the domain of civic freedoms in Lebanon, in order to safeguard the prestige of the judiciary which, “they would never forsake”.⁵⁸ Indeed, the minister of justice did include this demand in the wording of the draft law which he submitted to Parliament before he backed off “out of respect for freedom of the press”.⁵⁹

What is even more dangerous is that a number of detentions have recently been carried out with regard to articles published on the internet or in daily newspapers. For example, in addition to the detention of four young men who created an electronic page on Facebook that was deemed insulting to the dignity of the President of the Republic⁶⁰, journalist Hassan Alik of the *Al-Akhbar* daily newspaper was detained on August 11, 2008 until the Army Intelligence Division at the ministry of defense concluded its investigation of an article written by him and published by *Al-Akhbar*, about the escape of a retired army officer suspected of collaborating with Israel.⁶¹ Civil engineer Ismail al-Sheikh Hassan was also detained by Army Intelligence on August 18, 2010 and held for two days, until it concluded an interrogation with him on an article he wrote regarding the reconstruction process of the Nahr el-Bared Palestinian refugee camp (published by the *Assafir* daily newspaper).⁶²

Journalistic Ethics: Self-Censorship and Discipline

In press self-censorship and “discipline”, it is important to make note of two major points:

58- Ibid.

59- Refer to *Annahar* Arabic daily newspaper, Beirut, Lebanon; January 6, 2010.

60- For more on this matter, refer to Nizar Saghiyeh's “*Aba'ad min al Facebook wa Karamet al-Ra'ees: Nahwa Isti'adat al-'Ougouba al-Fawriyah*” (“Beyond Facebook and the President's Dignity: A Return to the System of 'Immediate Measures'?”), available in Arabic and published in *Al-Akhbar* Arabic daily newspaper, Beirut, Lebanon; August 2, 2010.

61- For more on this matter, refer to the article entitled, “*Al-Murr: Tafih al-Kayl... Kul min Sayata'arad li Dubat al Jaish Sayatawaqaf*” (“Al Murr: Enough is Enough ... All Those Who Insult Army Officers Shall Be Detained”), available in Arabic, published by *Assafir* Arabic daily newspaper, Beirut, Lebanon; August 12, 2010; the article refers to the statement made by minister al-Murr at a press conference at the conclusion of a meeting by the Higher Defense (War) Council, where he said, “Any pen which insults and accuses an officer in the (Lebanese) army, by letter or by name, and where the information is false shall be detained and investigated until those who were behind such claims are found out.”

62- For more on this matter, refer to Bissan Tay, “*Tawqif Muhandis Mutatwi' fi l'adat l'mar al-Bared... 'Ala Khalfiyat Maqal*” (“The Detention of an Engineer Volunteering in the Reconstruction of el-Bared Camp... Because of a Newspaper Article”), available in Arabic, published by *Al-Akhbar* Arabic daily newspaper; August 20, 2010

- The 1962 Law stipulates that disciplinary measures against ethics violations committed by the press fall under the jurisdiction of the Disciplinary Council of the Lebanese Press Union, which is the competent body authorized and specialized in deliberating cases of press irregularities and punishable conduct.⁶³ The 1962 Law granted both press unions (The Union of the Lebanese Press and The Lebanese Press Syndicate) the right to determine and deliberate in such disciplinary cases.⁶⁴

- Press self-censorship was specifically proposed and presented in the form of a Declaration of Principles that came into force on March 20, 2009. The declaration was the outcome of an initiative by the minister of information after meetings held with several representatives the Lebanese press. However, this document met with some opposition, the most important of which was that it narrowed the margin for criticism.⁶⁵ Prohibitions on “contemptible criticism” and “criticism in ‘violation’ of the principles of the profession” were added to the original prohibition of “impermissible” criticism. The inclusion of such terminology allows for further pressure on journalists that dare to challenge or cross “red lines”.

- The issue of self-censorship and self-imposed discipline was also reflected in the debate on the text of the declaration. Some pointed to the fact that it could potentially pave the way to an agreement on a specific code of conduct for the profession, which could determine the rules and standards that the profession would adopt and apply (by choice) to bolster and reinforce national and professional interests.

- This issue was also reflected in some of the more ambiguous terms and phrases used in the document such as ‘renouncing language that was argumentative,

63- There are three cases in which a journalist may be referred to the Disciplinary Council; these are: First, a breach of the profession and professional conduct and ethics, based on a court ruling made against that journalist; second, for showing contempt for or slandering the Lebanese Press Union, its Higher Council, its Head, or the Lebanese Press Syndicate, its Board, the Syndicate President, the Disciplinary Council or any of its members, or the Syndicate’s Register Committee in an attempt to evade charges, or to help evade charges laid against a colleague before the Disciplinary Council, the Lebanese courts or other administrative authorities related to indictments or rulings issued by any of these bodies; and, third, for violating the regulations and administrative decisions or disciplinary measures issued by the Union’s Higher Council or one of the two unions. And, it is for the Disciplinary Council (in any of the aforementioned cases) to adopt one of the following two disciplinary measures: Censure or prohibiting the (guilty) journalist from the profession for a period not exceeding two years, or permanently disbarring the journalist from the profession.

64- Articles 99, 104, 105 of the 1962 Law

65- For more on this matter, refer to daily newspapers issued during this period.

obscene or confrontational, or which insulted religious symbols and figureheads, or which incited civil violence, or provoked calls for revenge, or which led to sensationalism, exaggeration and distortion in presenting the facts or in relaying information, or inciting tensions and deepening divisions, or transmitting rumors or fabricated news, or inaccurate or vague accusations, as well as endangering higher national interests and inflaming issues where there is a national “consensus”. On the other hand, the document - in its final form - did incorporate certain fundamental revisions in response to some criticism such as deleting the terms “treasonous” and “blasphemous” and including certain rights, such as the rights of journalists to access information and certain freedoms such as the freedom to express religious views and to refer to religious doctrines.⁶⁶

66- The text of this Declaration is as follows: “The Declaration of Principles rises from a commitment to preserve freedom of the press in Lebanon, as well as freedom of the media and the freedom of journalists and those working in the media. It responds to the broad desires of those working in the Lebanese media and press and from the desire of the Lebanese citizenry to ensure the credibility of their work, in accordance with the standards of the profession and its ethics. This Declaration paves the way for an agreement on a Code of Conduct for the profession which determines, defines and calls for respecting the following principles:

1- To strive constantly to preserve the integrity of higher national interests and issues which enjoy national consensus; and to protect these, despite political divisions and professional competitive considerations, from harm;

2- To stress upon and protect the right of the media and press, of journalists and of those working in the media and press to have unrestricted access to sources of information; and to ensure that these sources are not monopolized by any party whatsoever, in accordance to what is legally permissible; and to protect the right to exercise these rights and privileges;

3- To commit to the right to information and the freedom of expression and achieving a balanced approach to providing information, observations and opinions to the reader, listener and viewer in a manner which will allow the reader, listener and viewer to form his or her own convictions; with a commitment to the knowledge that clear distinctions exist and are made between what is news and what is opinion;

4- To strive to ensure that a balanced coverage of events and precise record of how events have transpired, and to ensure that this coverage is open to all the points of views of concerned stakeholders, and to ensure that these events and the concerned points of view have been honestly conveyed, far from any distortions, vague accusations, contextual bias and ambiguities;

5- To recognize and acknowledge differences of opinions and positions, and presenting these differences from a fair perspective; and to protect the right to express differences of opinions in positions; and to ensure that any false information presented regarding these differences are rectified; and that any inaccuracies in presenting these opinions are rectified quickly and honestly, and that these corrections are conveyed with an apology for presenting false or inaccurate coverage of any of these;

6- To hold fast to the right of others to express their religious faith, convictions, beliefs and interpretations on condition that the dissemination or broadcast of these expressions do not offend or insult religious sentiments, symbols or figureheads in a manner which incites sectarian or religious discord and strife.

7- To refrain from publishing anything that incites public discord and violence, or which calls for revenge or distinguishing between citizens on the basis of their allegiances and convictions or

Although this document is not binding, it has had a kind of moral influence on the courts, as there is perhaps a tendency to use it as a guide in expanding or restricting the scope of what the courts consider as ‘criminal or punishable conduct’. It may also come to represent the banner under which future legislation may be proposed and drafted in this regard.

3- Censorship during elections

Censorship during election periods was included in Election Law, No. 25, passed on October 8, 2008. The law established an oversight committee for electoral campaigns and granted it authority on several fronts, the most important of which was oversight and control (censorship) over paid advertisements and electoral advertisements placed in periodical publications (Article 66).⁶⁷

which calls for or encourages discrimination;

8- To work towards purging the media of the language of confrontation, threats, degradation, defamation, obscenity or ridicule or insults to the dignity of groups or individuals;

9- To avoid sensationalism and all that it may harbor in exaggerations and distortions in the presentation of facts and in relaying information that may contribute to raising tensions, or deepening or generating discord and division;

10- To stress upon the fact that the competitive objective of the media will never justify, under any circumstance, the fabrication of the news or the broadcast of rumors, or forsaking first sources of information, or not ensuring the accuracy of sources and information, or omitting facts, or ensuring the credibility of news sources or those who endorse these sources.”

[Source: *Annahar* Arabic daily newspaper, Beirut, Lebanon; March 21, 2009]

67- The legal provisions that must be adhered to in electoral advertising and promotion are as follows:

- That, no less than ten days prior to an election, a publication must submit a written notification to the Elections Oversight Committee declaring its intention to partake in electoral advertisement and promotion. This notification shall have appended to it a price list and sizes of advertisement space that the publication will allocate for these purposes;

- That the publication will adhere to the price list and space allocations it submitted to the Committee; and that the publication will not reject publishing any electoral advertisement it has committed to;

- That, upon the publication of any electoral advertisement, the publication shall declare that the advertisement was paid for and who requested the placement of the advertisement;

- That any party nominating and promoting a candidate shall submit a copy of the electoral advertisements and promotions for that candidate, along with a written request for broadcast-time or publication space reservations, to both the Committee and to the publication/broadcasting party no less than 3 days prior to the date of the publication or broadcast of that electoral advertisement or promotion. (The Committee justified this condition in that it has the right to accept a reservation request or reject it depending on the content of the advertisement or promotion. Consequently, the publication or broadcasting party is obliged to ensure the Committee has approved a request for a reservation prior to publishing or broadcasting any electoral advertisement or promotion... And, in our opinion, this constitutes a clear violation of the spirit of the law).

- That accepting free advertisement space or any price other than that which was stipulated in the price lists submitted to the Committee is prohibited;

The supervision and controls that publications are subject to during elections also include restrictions and regulations related to the publication of opinion polls during electoral campaign periods. These include:

- Publications are to refrain from publishing any opinion polls or related items during a ten-day period preceding the date of the elections (Article 74 of the law). Publications are required to publish corrections and the responses of candidates on any news item that was cause for complaint within a 24-hour period of publishing the news item (Article 77 of the aforementioned law). Decisions made by the Elections Oversight Committee are subject to appeal before the State Shura Council within a 3-day period of the decisions. The State Shura Council in turn must issue its decision within 3 days.

The kinds of controls exercised by the Elections Oversight Committee include:

- Giving a formal warning notice to a publication found in violation of the law, or obliging it to print a reply or decision;
- Referring the publication (or broadcast media) found in violation of the Elections Law to the relevant press and publications court, in accordance with summary procedures⁶⁸, and imposing a fine ranging from LL 50 to 100 Million (USD 33,333 to 66,666) and/or imposing a partial suspension⁶⁹ of the publication (or broadcast media) for a period not exceeding 3 days. In case of a repeated offense, a publication can be suspended completely or (in the case of broadcast media, all its programs can be completely suspended) for a period not exceeding 3 days (Article 76).

Undoubtedly, the panoptic purpose of Article 76 is to put all the listed violations in one proverbial basket, so that smaller infringements and larger violations are dealt with in the same manner - an approach which clearly contradicts the principle that reasonable punishment must be proportionate to the extent of a violation. What

- Presenting a weekly report to the Committee, which includes a statement with all the electoral advertisements and promotions placed during the week that passed, with all the times and dates these were published or broadcast, and how much was charged (in placement fees) and received for the broadcast or the publication of the advertisements or promotions.

68- A publication must submit a memorandum to the Press and Publications Court within a 24-hour period from the date it was given notification (of a Committee decision). The Court must issue a decision within a 24-hour period of receiving the memorandum, at most. Appealing a decision or objecting before an Appellate Court within 24-hours of notification of the Court's decision is also permitted.

69- A partial suspension includes suspending all political and news programs, broadcasts, interviews and debates.

is even more dangerous is that, under certain political pressures, the Committee might often discriminate against the weakest media body in the political equation, and subsequently widen the gap of disparities that exists between candidates instead of reducing these inequities - this brings to mind the case against MTV.⁷⁰

The Elections Law also granted the Committee authority over non-periodical publications, particularly the authority to exercise control and oversight on electoral advertisements and images published in non-periodical publications (Article 70). It also prohibited the dissemination of any ballots, flyers or any other (non-periodical) documents in favor of or against any candidate on an election day, at polling stations or any other location found within the perimeters of a polling station under penalty of confiscation of the said documents (Article 72).

Moreover, in a report published in the *Official Gazette* on December 23, 2009, the Committee announced that it would adopt a broad interpretation of its prerogatives and authority, and apply regulations specifically related to the audio and visual media (Article 68) to publications as well. The justification for this approach was that it aimed to reinforce equilibrium between candidates (with different abilities to, for example, finance their campaigns)⁷¹. Consequently, the Committee declared that it was the obligation of all publications to ensure that a balance is maintained between candidates, and that publications would refrain from promoting any specific candidate or electoral list. It also declared that publications would not be permitted to: print any form of libel, defamation or slander of candidates or electoral lists; denounce any particular candidate or list; provoke or encourage any form of discord, strife and incitement; accuse candidates or lists of treason or betrayal; lobby for or promote certain appeals; distort information, etc. On this basis, two publications were referred to the Press and Publications Court in Beirut, which dismissed the cases made against them. The court stated on the basis that that the Article 68 could not be applied to publications, as it was a specific

70- Refer to the two decisions issued by the Press and Publications Court in Beirut on September 4, 2002 and October 21, 2002, where the Court ruled to suspend broadcasts by MTV television station and the Mount Lebanon radio station, under Article 68 of the 2000 General Electoral Law. What is remarkable is that the article that prohibited the audio and visual media from employing or exploiting political electoral advertising ostensibly appears to aim to ensure equality in the prohibitions applied to all candidates; however, in reality and in practice, inequities between candidates are actually deepened through its selective application.

71- It is important to note that this type of approach does not take into account the real importance of regulating the media, knowing that the media plays a significant role during elections and in electoral processes. Subsequently, what is required is to create tiers of control in such matters where freedom of the press remains in force for the written media (newspapers, publications), while audio-based (radio) media are subject to restrictions that are less strict than that which is applied to visual media (televised media) - if maintaining a balance between candidates is the real objective of such controls.

legal provision that must be understood in the explicit and narrow scope in which it was intended.⁷²

The Committee would also adopt a broad interpretation of its authority with regard to its oversight on campaign advertisements. As the law stipulates copies of campaign advertisements must be submitted within a period of no more than 3 days prior to their broadcast, the Committee considered that publications were also required to comply with these stipulations as well. It declared that publications were not only required to inform the Committee but also obtain approval and permission prior to publishing any campaign advertisements or promotions. The State Shura Council would endorse this interpretation in its review of the case brought before it by former MP Fares Soued, who objected to the decision that ruled against permitting the broadcast of an electoral campaign television advertisement entitled “*Kuluna lil Watan*” (“We are All for Our Nation”) [also the title of the Lebanese national anthem].⁷³

72- Decision No. 68, issued on June 29, 2009, by the Press and Publications Court:

“Where the subject of this dispute is limited to the Press and Publications Court’s application of the ‘special law’, which stipulates explicit and exceptional ‘measures’ be taken with regard to specific offences and violations that take place specifically during ‘election campaign periods’; and as it is stated in the text of paragraph 5 of Article 68 of the aforementioned act within which the following is stipulated, ‘during election campaigns, the audio and visual media and candidates and candidate lists will comply with the following obligations: “To refrain from defaming, slandering or libeling or denouncing any electoral list or candidate”... And, as the aforementioned paragraph defined, in a conclusive manner, the specific forms of media which ‘must comply with the obligations’ indicated here, for the duration of these specific periods, and as the ‘written media’/newspapers were not specifically mentioned amongst the forms of media stipulated in this Article; and as it is not possible, in light of what has been noted, to widen the scope of interpreting this exceptional paragraph, which has stipulated specific provisions and explicit measures, to include the ‘written media’/newspapers; and where, in addition to that which has been noted here, the alleged article in violation was not authored by a ‘candidate’ running amongst other candidates in parliamentary elections; and where, according to the circumstances and conditions required for charges and prosecution as stipulated by Article 76 of the Parliamentary Elections Law are not met here, thereby, no measures will be taken against the Nahda Company S.A.L., owner of the *Al-Diyar* daily newspaper, in accordance with the provisions stipulated by the aforementioned act.”

In addition to the above, the decision issued by the Press and Publications Court on July 8, 2009, ruled that the conditions required for prosecution stipulated in Article 76 were not met and thereby ruled against taking any measures against the *Al Masira Al Najwa* magazine.

73- The decision made by the State Shura Council, Decision No. 433/2008-2009, issued on May 27, 2009, states that: “Whereby it is for the Committee with oversight authority over the electoral campaigns, pursuant to the provisions of Section 2 of Article 19 of the Parliamentary Elections Law, to control and oversee the compliance of electoral lists and candidates and the media with regard to violations of the law, and pursuant to the regulations governing the competition between electoral campaigns in accordance to the provisions stipulated by this law; and, as all forms of the media are obliged to comply, pursuant to Section 4 of Article 68 of the aforementioned law,

Chapter 4: Censorship on Radio and Television

In the same manner in which we reviewed censorship enforced on publications, we shall examine the censorship exercised on radio and televised broadcasts in two parts. The first section will focus on the provisions requiring prior licensing and the second section will focus on a review of the legal restrictions related to televised and radio broadcasting.

For these purposes, the laws regarding the authority granted to the institutions and provisions regulating audiovisual media and broadcasts include: Audiovisual Media Law No. 382, issued on November 4, 1994, televised and radio broadcast (which will be referred to from this point on as the 1994 Law); Decree No. 7997, issued on February 29, 1996, which requires that terms of reference (regulations)⁷⁴ are put in place for all forms of audio and visual media, according to media category; Law No. 531, issued on July 24, 1996, regarding satellite broadcast; and, Legislative Decree No. 104/1977 regarding publication offenses.

to 'abstain from broadcasting all that which provokes sectarian or religious or ethnic discord and strife or that which incites acts of violence or disorder or that which supports terrorism or crime or acts of vandalism'; and as Article 75 of the same law stipulates in Section 1 that, 'The Committee shall ensure the compliance of the visual and audio and written media in Lebanon with the provisions stipulated upon them in this act'; and as Article 76 granted the Committee the authority to take preventative measures and to enforce sanctions and penalties against any of the aforementioned media (found) in violation of these legal provisions and regulations; and, where penalties may extend to the partial suspension of the said media by the Press and Publications Court; and as the Committee is able to use the legal provisions mentioned above; it is therefore also up to the Committee's discretion to take measures it finds appropriate to ensure the credibility of an electoral campaign and the extent to which the visual, audio and written media has complied to the provisions governing electoral advertisements and promotions; and where it is also up to the discretion of the Committee, within this context, to prohibit the media from broadcasting any advertisement which violates the provisions stipulated by Article 68 of the Electoral Law, it is also the prerogative of the Committee to conduct a review with regard to any advertisement that is the subject of a dispute; and as, in this domain, the said Committee enjoys discretionary powers in its assessment of whether a certain advertisement, which is the subject of a dispute, actually violates legal provisions, public order or accepted standards of norms, or if it incites sectarian strife or provokes violence or disorder, the State Shura Council must decide unanimously to reject the objection submitted."

74- What is called "*daftar shurout*" in Arabic and in this context, or literally "terms or (a notebook) of conditions"; i.e. or what is closest in English translation to that which is better known as a "terms of reference"; [Translator's note]

1- Prior Licensing: Who has the right to broadcast?

The 1994 Law stipulates a distinction between: public media (primarily the state-owned TéléLiban) and private media, television and radio corporations that broadcast news and political programs (or first category media) and those that are non-political (or second category media); and terrestrial and satellite broadcasting.

Public and private media

The 1994 Law restricts public televised broadcast to TéléLiban⁷⁵ and stipulates that establishing a private media corporation requires a license, which is valid for 16 years and which is renewable only by a decree granted by the cabinet after consultations are conducted with the National Council for Audiovisual Media⁷⁶.

Several observers in this field have pointed to the fact that the restrictions enforced on the number of licenses that have been issued cannot be justified technically. Moreover, these licenses were issued on the (also questionable) basis of a quota system - or, in other words, like any other “limited” resource in Lebanon.⁷⁷ Consequently, licenses that have been issued in this domain have also become transformed into another form of *imtiyaz*⁷⁸ or concessional, franchise licensing. What should also be noted, is that private media also has to comply with terms of reference that are enforced according to the media category as per Decree No. 7997.

75- Revisions incorporated in Decree no. 7576, issued on March 8, 2002, established the internal statutes for the TéléLiban Corporation S.A.L. after all its shares became the property of the Lebanese state.

76- An application for a license is submitted to the cabinet, which refers the application to the minister of information, who then refers the application to the National Council for Audiovisual Media (CNA). The CNA ensures that the application complies with all the legally required prerequisites and provisions and then presents an advisory opinion and recommendation to the cabinet on whether to reject or approve the license application. The cabinet’s decision can be appealed by submitting it for review by the State Shura Council.

77- For more on this matter refer to the article, “*Annahar* (Newspaper) Publishes the National Audiovisual Council’s Technical Report: Capacities Available for 41 Television Stations Limited to 6 Political Licenses”, written by Antoine al-Nashef in “Radio, Television and Satellite Broadcasting” in “*Manshourat al-Halabi al-Hugouqiya*” (the “Al-Halabi Legal Journals”); 2003; p 635 (and its references). [Available in Arabic]

78- Refer to footnote 31 (please insert when document compiled)

The 1994 Law also stipulates a fee for obtaining a broadcast license⁷⁹ and an annual remittance for broadcast license leasing fees⁸⁰. Legislators restricted the right to repeal a broadcast license to one specific case: if the broadcast corporation does not become operational within one year of being notified of the cabinet's decision to allow the license. In this case, a broadcast license will be considered automatically withdrawn if a broadcast corporation does not present the ministry of information with a request for an inspection to verify that it has complied with all the license's administrative, technical and financial conditions within one-year of being notified of the cabinet's decision.⁸¹

Politics: Another criterion for discrimination

As previously indicated, a media broadcasting corporation is subject to different terms of reference (regulations) depending on its category and specifically, whether or not it has a political or non-political license. These terms of reference define "political programming" as programming on domestic or external politics; public issues related to ministries; state institutions and administrations; municipalities, the conduct of those employed in the public sector, relation between institutions in the public sector and the public sector and citizens. Here, difference between this definition and the one used to classify a "political" publication.

Terrestrial and/or satellite broadcasting

In order to obtain a satellite broadcast license, the applying media body must first already have a license for terrestrial broadcasting. Licenses for terrestrial broadcast are granted by a decree issued by the cabinet, after it has conducted consultations with the National Council for Audiovisual Media. Satellite broadcast licenses are issued according to a decree based on a recommendation by the minister of telecommunications, and live news broadcasts and live political programming must obtain a special license issued by the cabinet, based on a recommendation by the minister of information.

79- First and second category television broadcast corporations must pay a licensing fee of LL 250 Million (USD 166,666.67). First category radio broadcast corporations must pay a licensing fee of LL 125 Million (USD 83,333.33) and radio corporations classified as second category must pay a licensing fee of LL 50 Million (USD 33,333.33).

80- The first and second categories of television broadcast corporations must pay an annual license-leasing fee of LL100 Million (USD 66,666.67). First category radio broadcast corporations must pay an annual license-leasing fee of LL25 Million (USD 16,666.67) and radio corporations classified as second category must pay an annual license-leasing fee of LL15 Million (USD 10,000).

81- Article 32 of the 1994 Law

The rationale behind the legal provisions on satellite broadcast regulations indicate that the primary concern of these types of controls is to ensure that the image of Lebanon abroad is improved to attract foreign investment to Lebanon, and restores confidence in the country.⁸² This is reflected in the conditions imposed on media bodies that want to obtain satellite broadcast licenses, most notably the commitment to refrain from broadcasting programs that transmit any images or material that show public disorder; that may harm the nation's security; or that may harm the friendly relations with Arab or friendly countries, impact the national security of these countries. They also have to refrain from broadcasting any programs or material that may incite sectarian strife or are critical of or defame religious sentiments and beliefs in areas within the broadcast's reception.

2- Radio and television: Prior censorship and broadcasting & post-broadcast censorship

The freedoms of the audiovisual media are subject to different forms of censorship, the most notable of which are:

- Prior censorship exercised by General Security on certain broadcast media material;
- Administrative post-censorship exercised by the ministry of information and the National Council for Audiovisual Media;
- Post-censorship exercised by the courts in cases in which broadcasts which have been charged with certain violations such as libel, slander or fabrication of the news;⁸³
- Censorship during elections according to the 2008 Elections Law.

The above is in addition to the “disciplinary” censorship controls we mentioned earlier in the section on publications, and the measures that may be exercised during “exceptional” circumstances⁸⁴, as per to Article 39 of Legislative Decree 104/77.

82- These principles (or policies) include striving towards attracting large investments and creating a stronger image of the stability in Lebanon, and to show how strongly imbedded peace is amongst the Lebanese, and to persuade expatriates that their investment in Lebanon is guaranteed and secure, and to present an image of a politically secure and safe Lebanon, where freedoms are maintained ‘within limits’ meant to preserve its relations with fraternal and friendly countries.

83- For more on this we would like to refer the reader back to the section on the forms of censorship controls exercised over publications.

84- Exceptional or extraordinary circumstances may include placing the country or part of the country under the threat of war, armed resurrection, disturbances or may include circumstances or activities taking place outside the country that threaten the regime, the security or peace of the country; or cases where events take on a catastrophic nature. In any of these extraordinary or exceptional cases or circumstances, the government may subject all publications and media bodies

General Security and prior censorship: Ambiguity, selectivity and vast discretionary powers

General Security exercises prior censorship on certain television programs, as per Article 9 of Decree No. 2873 (which regulates and defines the authority of General Security) and which grants the Publications and Recordings Department at General Security the authority to exercise censorship over television stations in certain cases. Institutionalizing this type of censorship is also linked to the 2000 Budget Law, which defined permit fees for televised screenings.⁸⁵ It should also be noted that Article 9 is general in form and lacks any regulatory guidelines. It also authorizes censorship over televised broadcasts but not radio broadcasts, which are subject to post-censorship only. In light of this ambiguous legal context, General Security has come to “regulate” using internal administrative directives that allow it to be considerably selective in its practices.

Thus it is important to note that prior censorship, whether of filming or screening, is applied only to documentary films, series or feature films, according to the criteria outlined in the previous section which covered the censorship of filming and screening cinematic works.

On the other hand, programs that are based on live broadcast such as news items, reports and interviews are exempt from prior censorship, as are political talk shows, entertainment programs or programs of a social nature that are filmed live in the studio. Moreover, the management of one particular terrestrial television station informed us that satirical political shows are also exempt from prior censorship, based on an internal directive issued by General Security (that we were unable to review ourselves or confirm with other sources).

We would like to further point out that these regulations are not necessarily circulated to all local media bodies, as one documentary program producer working with a local television channel confirmed. The producer claimed that she has never had to apply for a filming permit or a (television) screening permit for

to prior censorship through a decree or decrees issued by the cabinet based on recommendations made by the minister of information, on condition that the decree/s define/s the manner in which this censorship will be regulated, how it will function and which body or individual is authorized with carrying out this censorship control.

85- The 2000 Budget Law defined three categories for television broadcast/show permits: The first is a permit to screen or televise a film made for television, which carries a fee of LL 75,000 (USD 50); the second is a permit to screen a television series, which carries a fee of 50,000 Lebanese Lira (USD 33.33); and, the third is a permit to screen commercial television advertisements (and for each advertisement broadcast by each station), which carries a fee of 200,000 Lebanese Lira (USD 133.33).

any of the episodes she has produced (which, according to this source, include over 30 episodes) despite the sensitive topics these episodes covered.⁸⁶ This fact was recently confirmed in the controversy that took place over the series “*Al-Masseeh*” (“The Messiah”), which both the NBN and al-Manar channels broadcast without obtaining prior permission - all of which points to the selective and discretionary nature of the policies in this field.⁸⁷

Finally, satellite broadcasts are not subject to any censorship measures. Instead, satellite stations are required to submit their general program list to the minister of information and obtain prior approval. In this context, it is worth mentioning the case in which the Lebanese Broadcasting Corporation International S.A.L. (LBCI) submitted an appeal to the State Shura Council, where LBCI requested a stay of execution on Decision No. 20/97, issued by the minister of information on January 23, 1997, and that the decision be overturned. The decision in question called for subjecting the satellite broadcast of political news, material and programs as well as non-political material and programs to prior censorship. Indeed, the State Shura Council issued a ruling on April 16, 1997 that overturned and repealed Decision No. 20/97, referring to the preamble of the Lebanese Constitution and the right to freedom of expression.⁸⁸

Administrative censorship controls and measures

Administrative measures and controls that can be exercised over audiovisual media include:

- The right not to renew a license:

86- The producer asked to remain anonymous and that we not mention the name of the station she works for or the title of the program she produced for that station.

87- For more on this matter refer to local newspapers issued on the 14th and 15th of August, 2010.

88- The justification for this ruling was stated by the State Shura Council as follows:

“As the contested decision is not linked to any specific legislative provision or to any applicable law or regulation in force, in general; and, as some of the terms and phrases used in the contested decision suggest grounds related to public order and the public’s welfare, it falls - in our legal opinion - outside the framework of the applicability of Section 3 of Article 77 of the State Shura Council’s regulatory code, as it is not inherently linked to the set of laws pertaining to public order and the public welfare, notwithstanding the fact that its (the decision’s) rationale does not apply or correspond with any of the normative interpretations of these laws. As for what was referenced in Section 2 of the aforementioned Article 77, which requires serious grounds and the infliction of significant damages, the State Shura Council - after reviewing the preamble of the [Lebanese] Constitution and specifically the provisions pursuant to Article 13 of the Constitution, and after reviewing Law No. 531, issued on July 24, 1996, related to satellite broadcasting and particularly the 3rd and 4th Articles of this Law - it is of the Council’s view that the conditions for a stay of execution are present in the current review”.

Legislators reserved the cabinet's right not to renew a license after its expiration, without notice or compensation.⁸⁹

- The right to halt a broadcast corporation's broadcast:

The minister of information has the authority to suspend a station's broadcast for a period of no more than 3 days in case of a first violation by the station. In the case of a repeated offense, the cabinet can suspend broadcasting for a period of no less than 3 days and no more than a month. In both cases, the decision is taken based on the recommendations submitted by the National Council for Audiovisual Media, which plays a consultative role in such matters.⁹⁰ In cases where the relevant courts find that measures taken against a broadcast corporation were in violation of the law, the corporation may claim compensation in accordance with the provisions stipulated in the 1994 Law. In this context, it should be noted that the Council is under the umbrella of the administrative management of the ministry of information - this interdependence is contrary to the approach of checks and balances taken by several countries where these kinds of "consultative bodies" are granted total independence.

In the past few years, there has been much controversy in the press regarding the politicization of the role of the National Council for Audiovisual Media. The most notable incidents include:

- The Lebanese Broadcasting Corporation's (LBC) coverage of the UNESCO crime (August 2002) was considered by the minister of information as being "... in violation of the law, as it incited sectarian strife and discord". Meanwhile, in this particular case, the National Council for Audiovisual Media sufficed to give a notice of warning to LBC.⁹¹

- In another incident the National Council for Audiovisual Media showed remarkable stringency when it recommended to the cabinet that the program "*Basmat Watan*" - a weekly political satire broadcast by LBC - should be suspended for an entire month because of a "joke in bad taste" directed at certain high-ranking politicians (February 2004).

89- Article 9 of the 1994 Law

90- Articles 34 and 35 of the 1994 Law

91- Refer to the *Annahar* Arabic daily newspaper's "*Mahaliyat Siyasiya*" ("Local Politics") section, Beirut, Lebanon; August 3, 2002.

This particular incident led the minister of culture, at that time, Ghazi al-Aridi, to make the following statement when asked about the parties or bodies that influenced the work of the Council, “In the past, the ministers asked that they be notified of such matters only. But, they pushed the Council to meet yesterday and to issue the recommendation to suspend the broadcast. Different criteria are applied when it comes to protecting their interests... I am with applying the law to all equally, without discretion or discrimination... But, to apply the law however we want, whenever we want... is completely unacceptable.”⁹²

Finally, a broadcast corporation is not permitted to sell its intellectual or commercial property rights, or parts of these rights or to waive such rights under penalty of suspension.⁹³

The 1994 Law also allows the cabinet to suspend a satellite broadcast immediately, for a period not exceeding one month, when the conditions of its broadcast license are violated. The cabinet also has the authority to refer a broadcast corporation to the courts, to discontinue the channel altogether, or to repeal a license-lease for reasons considered necessary for maintaining the nation's higher interests, without having to compensate the broadcasting station for any consequential damages. Obviously the authority to suspend broadcasting based on the “nation's higher interests” allows for a wide scope of interpretation - a point which we will return to later in this study.⁹⁴

92- Refer to Tony Abi Najem's article, entitled, “*Waqf 'Basmat Watan' A'ad Tasleet al-Daou 'ala al-Huriyat al-Ilamiya*” (“Suspending *Basmat Watan* Returns the Spotlight to Freedom of the Press”), published in the *Annahar* Weekly Supplement, Arabic daily newspaper, Beirut, Lebanon; February 8, 2004.

93- Ibid.

94- A case in point is Decree No. 11657, issued on January 10, 1998, which enforced a suspension of the use and lease of the channels used and leased by two satellite broadcasters, the Lebanese Broadcasting Corporation International (LBCI) and al-Mustaqbal (Future) Television, to broadcast their news and political programs according to the following reasons: “As certain political programs broadcast by satellite were found in violation of the provisions stipulated in the 4th Clause of Article 3 of Law No. 531/91 in that they violated provisions protecting the public order and the public's welfare, and in that they posed a threat to the nation's peace; and, as certain political programs broadcast by satellite were found to be in violation of the aims envisaged by legislators, whether that be in terms of negatively impacting the ability to attract foreign investments to the country, or in terms of presenting an image of the country that shows there is continued chaos and turmoil in Lebanon, or in terms of affecting expatriates so that they question the foundations of peace in Lebanon and its stability, pursuant to what has been stipulated in Law No. 531/96; and, as certain news broadcasts included that which in itself and in its content represent a clear deviation from the law and the requirements for maintaining public order, the satellite channels used and leased by the broadcasters, the Lebanese Broadcast Corporation International (LBCI) and the al-Mustaqbal (Future) Television Corporation, will

Financial (censorship) oversight and controls

In the same manner as Legislative Decree 104/77, the 1994 Law enforces certain provisions which allow for administrative measures (by the ministry of information) or judicial measures (by the Press and Publications Court) to be taken against any media body which shows certain budgetary deficits or shortfalls, or if evidence of illicit gains exist, especially if these illicit gains serve the interests of the state or any foreign or local body against the public's welfare and interest, or in a manner that may threaten the political system, provoke sectarian strife, or incite unrest and disorderly conduct.⁹⁵ This manner of financial oversight and control has, to a great degree, remained mere ink on paper as the cabinet has never issued another decree defining how the application of this control would be enforced on the revenues gained by (private) television and radio broadcast corporations according to Article 47 of the 1994 Law.

3- Radio and television before the Lebanese courts

In addition to the administrative controls and censorship measures referred to above, punitive and (legal) disciplinary measures are applied in broadcast offenses committed by television and radio corporations and stations as per Lebanese publications laws and other laws included of the Lebanese Penal Code, with tougher punitive measures incorporated in Article 257 in the Code. Accordingly, we would like to refer the reader back to the section in this study on the punitive and (legal) disciplinary approach to publications. Thus, we shall limit the discussion here to examining one particular advantage of the special status enjoyed by programs that are broadcast live, where the management of a television station or the head of a political program, and even the host of a political program are immune from criminal liability in cases where it is proven that they were not directly involved in the broadcast of the material in violation of the law.

This is evident in a past ruling issued in a libel case made against the guest of a political program, who responded to a question posed by a call-in viewer, where the viewer's question and the guest's response were broadcast live.⁹⁶ In such cases,

no longer be allowed for the broadcast of live or studio recorded political news or live or studio recorded political programs.”

95- Articles 42-46 of the 1994 Law

96- For more on this matter, refer to the ruling issued by the Press and Publications Court in Beirut on November 13, 2000 in the lawsuit made by Murr Television Corporation (MTV) S.A.L against the Lebanese Broadcasting Corporation S.A.L. (LBC) and Antoine al-Choueiri: “The question remains whether the institution (Lebanese Broadcasting Corporation S.A.L.), the (first) defendant in this case, actually participated in and was directly involved, in any way, in the offense with which the second defendant (Antoine al-Choueiri) is charged...; and, what is probable after

it is impossible to prove that criminal intent existed on the part of the program's host or on the part of the television station's management, due to the difficulty of predicting how a guest on a program may respond to a live telephone. As there is often an element of surprise during these kinds of broadcasts.

In a more recent case, the Press and Publications Court upheld this reasoning when it ruled in the case brought against the host of a program (Ghada Eid), in which her remarks were viewed in the context of a live discussion where there could have been no prior preparation or coordination between the show's host and the director of the program (Miriam al-Bassam). In this case there was no direct intervention by the director in the preparation and execution of episode.⁹⁷

In a recent case the broadcast of a particular segment of a program was prohibited by a ruling issued by the Summary Procedures Judge.⁹⁸ If the application and

examining the case file in question is that the latter committed the said offense in the course of a television program that was being broadcast live; and thus, his words came in the form of an immediate response to a question posed to him by a viewer, whose query by telephone was also being broadcast live; and as for the question of proving the presence of criminal intent by the (first) defendant - and in terms of the circumstances presented in this case - it remains doubtful (that criminal intent existed on the part of the first defendant) due to the difficulty of foreseeing what may transpire and what may be the response of the second defendant to a question posed live, and broadcast live, and due to the element of surprise which characterized this show...; thus, we rule, unanimously, that the element of complicity in this offense was not present on the part of the Lebanese Broadcasting Corporation SAL; and dismiss the charges directed against it (the first defendant) in this regard."

97- For more on this matter, refer to the above ruling and the ruling issued by the Press and Publications Court in Beirut on November 30, 2009 in the lawsuit made by Judge Shamssidine against Ghada Eid (the talk show host and first defendant), the New Television Corporation (New TV) (the broadcast corporation and second defendant) and Miriam al-Bassam (the director of the program and third defendant): "As the broadcast of this episode, as the subject of this claim, was live; and, as the statements made by the first defendant (Ghada Eid) against the plaintiff came in the form of a response to a live intervention by another individual, which was not prepared for beforehand and where there was no prior coordination between the host of the program and the program's director (Miriam al-Bassam), and where there is no proof of any direct intervention by the program's director in the actual preparation and execution of this episode...; we have ruled by consensus to dismiss all charges against the third defendant, Miriam al-Bassam".

98- For more on this matter refer to the petition issued by the Summary Procedures Judge in Beirut on March 5, 2010:

"After an examination of the case by the Summary Procedures Judge, he has ruled, in accordance to Article 604 [of the code of criminal procedure] and in the pursuit of preserving rights and in preventing damages, that the segment of the broadcast of the commercial program OVRIRA on the OTV channel, which refers to the plaintiff (Société Générale Bank SAL in Lebanon) using the insulting terminology 'Anti-Société Générale', shall not be broadcast; and that the broadcast of the said segment of the aforementioned program be prohibited on the Friday evening of March 5, 2010 as well as on any other day, and, in either case, under penalty of a compulsory fine of LL

function of similar rulings becomes general practice, they are liable to turn the Summary Procedures Judge into just another prior-censor of programs.

4- Censorship during elections

The legal provisions on censorship and oversight of newspapers and publications during elections are also applicable to television and radio broadcasts. These provisions are additional to other compulsory restrictions with which the audiovisual media must comply during election periods. The most important include:

- The official media must maintain a neutral stance throughout the duration of election periods (Article 67);
- The audiovisual media must refrain from supporting or promoting any candidate or electoral list in accordance with the principle of maintaining objectivity and autonomy (Article 68);
- The audiovisual media must refrain from libeling, slandering, defaming or offending any electoral list or candidate;
- The audiovisual media should refrain from broadcasting material which may incite sectarian, religious or ethnic strife, incite acts of violence or disorder or support acts of terrorism, criminal acts or acts of vandalism;
- The audiovisual media should refrain from broadcasting material that may be a form of pressure or intimidation, may be understood as accusations of treason or blasphemy, or as enticements, or as promises of material or moral gain;
- The audiovisual media must refrain from distorting, withholding, fabricating, concealing or misrepresenting information;
- The audiovisual media should commit to a balanced representation between competing electoral lists and candidates in its broadcasts;
- The audiovisual media must refrain from broadcasting any electoral promotion, advertisement or appeal from hour zero of the day prior to election day and until polling stations and ballot boxes have been officially closed (Article 73).

50 Million [US \$33,333.33] for each violation pursuant to Article 587 [of the code of criminal procedure]; and the aforementioned segment includes the girl wearing orange socks who is called the 'Chairperson of the Board of the Anti-Société Générale'; and the judge has delegated the Court Scribe to notify OTV of this ruling."

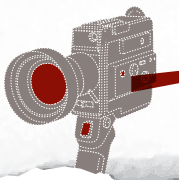
The elections law and particularly Article 68 contain many terms that are ambiguous and open to interpretation such as “intimidation”, “treason” and “blasphemy”. This is the first time that these terms have been introduced into legislation and that provisions may be employed to curb freedoms of the press, rather than increase the margins of freedom required during election campaign periods.

We would also like to note the document, the “Principles for Regulating Television and Radio Satellite Broadcast and Reception in the Arab Region”, approved by the Arab information ministers on February 12, 2008. This document aims to regulate broadcasts, repeat broadcasts and reception in the Arab region and guarantee the right to express opinions, promote culture and education, and to initiate cultural debate through satellite broadcasting. While this document embraces many noble objectives and commitments, such as “the right of people to access information”, “respecting the dignity of human beings and the rights of others”, “respecting the privacy of individuals”, “acknowledging the etiquette and protocols of dialogue, as well as respecting the right of others to respond” and “acknowledging the rights of those with special needs to access appropriate information services and knowledge suitable to their needs, which will enhance their integration in society”, it also contains numerous clauses that are regressive and work in the opposite direction.

Indeed, the document contains a vast array of vague terms, which are open to much interpretation, such as “social order and peace”, “national unity”, “protecting the higher interests of Arab states and the Arab nation”, “commitment to the religious values and the accepted standards of norms and ethics of Arab society”, “acknowledging the family structure and its social cohesiveness”, “acknowledging Arab solidarity and the bonds of cooperation and integration between Arab states”, “respecting the dignity of the state”, and “protecting children and young people from material that which may affect their physical, mental and moral development, promote the corruption of their morals, communicate wrongful conduct”... This elastic terminology can lead to the selective prosecution of journalists and satellite channels based on unclear terms and deprive the media of their role in enlightening public opinion and supporting social and economic causes.

Furthermore, the document also puts in place a vast number of prohibitions on “not offending heads of state, religious and national symbols and figureheads” and does so without defining the precise limits of what is “permissible and acceptable criticism” and what is “libelous, defamatory or slanderous criticism”. Indeed, it is these kinds of vague provisions that can deter journalists from their role in monitoring the political and social forces affecting their respective societies. Finally,

the document also contains regulations similar to a prior censorship system as they impose compliance to schedules, enforced by a committee authorized with censorship over the content of programs.



Section 2: Issues and Subjects Censored

In this section of the study, we shall attempt to identify the issues that are subject to censorship in its various forms. Or in other words, what are the red lines that censorship tries to impose? The most important subjects are political considerations, considerations that are specifically related to public 'norms' and morals, and religious and sectarian considerations.

We shall also attempt to distinguish between the different forms of prior censorship and post-censorship, to form a clearer picture of where these types of censorship meet and where they diverge.

Chapter 1: Censorship and Political Considerations

The political considerations covered by various bodies and certain institutions within the state apparatus authorized with censorship will be examined in two parts. The first part will focus on domestic political considerations and the second on foreign, or external political considerations.

1- Domestic Political Considerations

Political considerations subject to prior censorship

In the matter of domestic political considerations, it appears that, for the most part, General Security does not limit its concerns to preserving the dignity and prestige of higher public and state authorities (Article 4 of the 1947 Law) but also, in practical terms, works to safeguard the needs of all influential political parties and figures.

This became evident in our examination of the decisions made with regard to the procedures required for obtaining prior filming permits, particularly where a typical clause applied stipulates conditions such as: “Provided that it (the documentary or feature film) does not pose any danger or harm to Lebanon”; and where the word “Lebanon” is often substituted with the term “the state” or “the nation”, or where “political” or “military” “sensitivities” or “sectarian or factional strife or discord” becomes the focus of concern. Indeed, this clause - or its various versions - actually appears verbatim in the text of filming permits granted in 2006, 2007 and 2008.

In one of its decisions, General Security goes to the extent of immersing itself into minute details in order to clarify that a filming permit was granted. “Providing that it (the filming) does not pose any harm or threat to the state or to any political or partisan factions” (Review the filming permit granted to “Faces Applauding Alone” (*Wajouh Tasfaq Liwahduha*) by Ahmad Ghossein; 2008). This kind of broad terminology used by General Security exposes the fact that its concern in safeguarding the sensitivities of any party or person of influence greatly outweighs any particular concern for the requirements of creative freedoms.

Indeed, the texts of several filming permits reveal that General Security is keen to express certain reservations, including making very clear its own judgment of what these kinds of “sensitivities of parties or persons of influence” are. For example, in one filming permit (for a local television series produced in 2008), the permit stipulated that the term “Directorate General of General Security” anywhere in the series had to be substituted with the more general term “Directorate of Security”.⁹⁹ In another filming permit (for another local television series produced in 2008), the term “airport security” had to be interchanged with the term “security apparatus”.

In yet another filming permit (for a local television program produced in 2006 dealing with corruption issues), a stipulation was included that the show could not name the person of authority or the official administration that accepted a bribe. Another filming permit stipulated that the show in question could not name the public institution that workers were lining up in front of - the show implied that the workers were maltreated (in a local television program produced in 2006). Another filming permit stipulated that partisan slogans on resistance uniforms could not appear so as not to provoke “factional sensitivities” (in a local

99- A local production/media company allowed us to review certain filming and screening permits issued by General Security for some of the local programs and television series it produced, which were subject to prior censorship as these programs were not recorded or broadcast live. This company asked that they remain anonymous and that the titles of these programs remain unnamed in the present study. And, in light of the documents we have in our possession, the authors of this study assume full responsibility for the accuracy of the information obtained and presented in this regard.

television series produced in 2006). In the same context, a censor obliged one local production company to “delete scenes which relate to Armenians” in a feature film script in order to obtain a filming permit! The same production company was also asked to guarantee that “any apparel or uniforms belonging to a militia revealed (in the film) to be of a non-descript nature” in order to obtain a permit to film (in 2003).

General Security also worked hard to show (in the filming permit granted) that they wanted to safeguard any candidate or nominee from harm in one local television program that dealt with the parliamentary elections (of 2006). It also showed a stringent concern about scenes being filmed that revealed ‘foreign female performers’, who work in super night clubs, so that the reality of the places in which these women work would not be exposed (these workplaces are regulated by the same authority under which the censor works - General Security).¹⁰⁰

Moreover, prior censorship on screening permits is also an opportunity for General Security censors to express their concern for safeguarding certain political and military powers and parties, particularly anything related to the Lebanese Civil War period (1975-1990). For example, the screening permit granted to the film “*Al-Yaum*” (“This Day”; 2009), stipulates that the scene which included the phrases “the skirmishes between the Amal Movement and the Lebanese Army escalated...” and “The Amal Movement took over Channels 7 and 9 and began to broadcast images of Musa al-Sadr and Kamal Junblatt...” had to be deleted as a condition for obtaining the permit.

This is also evident in the screening permit granted for the film “The One Man Village” (“*Semaan bil Daiya*”, by Simon Haber; 2009), after the director agreed to delete parts of the film related to incidents that took place during the Civil War, and particularly the role of the Progressive Socialist Party in these incidents. Censored phrases include: “They destroyed the house... Israeli shells bombarded us from there, and the Progressive Socialist Party (PSP) from here... They (meaning the Israelis¹⁰¹) gave the PSP the green light to fire upon us... We were holed up, under fire, for three months in our house... I blame the Israelis because the PSP were pressured by them [...]”.

100- From an interview with a local production company that asked to remain anonymous in this study. We were unable to verify the information we obtained from the statements given herein.

101- The meaning behind this “insinuation” was clarified by the censor himself.

The same was the case with the screening permit granted to the film “Phantom Beirut” (*Ashbah Beirut*; 1999), where the censor stipulated that the following had to be deleted as a condition for the permit, “The war was going on any which way... I mean you thought with your boots, not in defending yourself in a military way, as you might anywhere else in the world... It was as though politics and thinking was for others... We were just soldiers”. For the same permit, the censor demanded that a scene “showing a bribe being given in order to issue a passport” also be deleted.

The same was the case regarding the permit application submitted by Director Mohammad Soueid to privately screen his film, “Civil War” (*Harb Ahliya*; 2003), at the Theatre Monnot. During the application process, General Security demanded that all parts of the film that included archive television footage showing the (Lebanese) Army during commemorations on Independence Day be deleted, and that any other scene showing the Lebanese Army in an “offensive” light or “critical” manner also be removed prior to granting the permit to screen the film. However, the director’s insistence on screening the complete version of the film finally convinced General Security to exercise a certain degree of “flexibility” in this particular case.

The subject of the Civil War memory and attempts to safeguard the parties and factions which participated in the war recently stirred a controversy when the permit for screening the documentary “What Happened?” (*Shu Sar*”, by Degaulle Eid) in two film festivals was rejected. The documentary in which the director reproduces the events of a massacre in his village where his parents, sister and other members of his family were killed and which was committed by a certain party.¹⁰²

The same occurred for the screening permit for the film entitled, “A Long Lebanese Film” (*Film Lubnani Taweel*”, by Nadim Tabet; 2005), which was part of a group of short films compiled on DVD, produced by a local production company established in Beirut (2005) (a case referred to earlier in the first section of this study). In this case, General Security stipulated certain requirements for granting a commercial investment permit for the film, which called for the adjustment or modification (*taswiya*) of the film by consent from the Internal Security Forces (ISF). Meanwhile, in turn, the ISF refused to grant the permit because the film included “scenes where actors wearing ISF uniforms are shown in a manner inconsistent with reality and which violates the legal provisions, guidelines and

102- See Sana Khoury’s “*Al-Muwajaha al-Sa’aba ma’ Thakirat al-Harb*” (“The Harsh Confrontation with War Memories”) and Pierre Abi Saab’s “*Al-Muraqaba Mujadadan: Awqifou Hathihi al-Mazhala*” (“Censorship Once Again: Stop this Farce”), published in *Al-Akhbar* daily newspaper, September 7, 2010. (Available in Arabic)

regulations followed by the institution of the Internal Security Forces". The scene in question shows a member of the Internal Security Forces smoking a *nargila* (water pipe).¹⁰³

Furthermore, comments by the General Security censor on the film "A Civilized People" (*Mutahadirat*, by Randa Shahal; 1999) showed not only a willingness to cut and delete scenes which were perceived as "offensive" to a specific party or faction, but also everything else "offensive" to the image and stereotype that the censor felt should be imparted about Lebanon and the Lebanese. In the eyes of the censor, this "image" does not allow for any admission to the atrocities committed during the Civil War. The censor in this case was successful in deleting a scene in which a French doctor from Medecins Sans Frontières is supposed to be abducted. The scene was cut based on the censor's view that the scene "showed the Lebanese as being shameless". The censor also succeeded in cutting a scene that showed a man kicking a coffin because it showed "a lack of respect for the dead". Another scene showing a sniper killing a cleric walking in the street was also cut from the film on the same basis.¹⁰⁴ The film "Hurricane" (*Al-Isar*, by Samir Habashi; 1992) underwent the same fate. It was the first feature film to be produced after the end of the Lebanese Civil War, and was granted a screening permit that was conditional upon deleting 10 minutes of the film that included scenes considered "offensive to Christian religious symbols and holy sites". One of the deleted scenes shows several dead and wounded people lying on the floor of a church, with one of the wounded turning to look at the doors of the church and imagining that Jesus Christ had come in to save him. The wounded man calls out "My Lord!" and the person who the wounded man imagined was Jesus Christ turns towards him and shoots him... Soon after, it becomes clear that the man at the door who shoots the wounded man is just another militiaman.¹⁰⁵

Censors would show the same concerns in justifying the censorship of certain theatrical plays of a political nature. Indeed, General Security rejected a permit to perform the play, "How Nancy Wished that everything was an April Fool's Joke" (a play by Rabi' Mroueh, produced by Ashkal Alwan in 2007), until minister of culture, Tarek Mitri, at that time, intervened. Finally, the permit to perform the play was granted after the director agreed to remove certain phrases from the performance (for example, the phrase "his party" was taken out of the sentence

103- From an interview with a local production company that asked to remain anonymous. We were unable to verify the accuracy of the information provided in this statement.

104- Available in Arabic, *Annahar* daily newspaper, October 22, 1999

105- From an intervention by director Samir Habashi related to one of the episodes of the "Sijel" program on NBN, which covered the subject of censorship controls over creative works; broadcast on September 18, 2007.

“cosmetic surgery against God and *his party*”¹⁰⁶) and substituting certain terms for others. The director of this play told us that General Security had initially rejected the permit to perform the play on the pretext that the play incited sectarian strife and discord. In a similar context, another young director¹⁰⁷ informed us that he decided to cancel the performance of his play “Take it Easy Boys” (*A’amahilkum Ya Shabab*”; 2006), which dealt with the deep political divisions between the opposition and loyalists in the country, after he was convinced by the censor’s opinion that the subject matter of the play was too sensitive.

Political considerations and the Lebanese courts

Political considerations dealt with by the Lebanese courts are particularly reflected in cases of libel, defamation, slander or contempt - or, in other words, when individuals or certain institutions or bodies are subject to affronts to their dignity or to their character. Indeed, as shown before, the majority of cases related to publication offenses are related to such charges. The most important question that arises is: Does the libel, defamation or slander of persons, authorities or bodies, and particularly those that serves in the public sector, represent a punishable crime in every case? Or are there circumstances in which the attack on the dignity or character of such persons, authorities or bodies is not only lawful, but an obligation or duty? Of course, responding to this question requires: 1) defining what constitutes an attack on the dignity or character of an individual, authority, body or institution and subsequently 2) determining the legal lines that must be crossed for a punishable offense to occur. These are questions we will try to answer in this part of the study. If we succeed, we will then proceed 3) to present a review of the conduct (or material) associated with libel, defamation or contempt, or the conduct independent of these, but which are also subjected to certain penalties and disciplinary measures under the law, such as the fabrication of the news in a manner which endangers public peace, or the incitement of sectarian strife, and so on.

- The legal bounds between what is “permissible” political criticism and what is libel or contempt

In such cases, and after an analytical examination of related rulings, we found it difficult to clearly define what constitutes libel (or defamation and slander) or of what constitutes an attack on or affront to the dignity or character of

106- We were unable to view the deleted phrases on the actual screenplay and sufficed to accept this information from the testimony given by director Rabi Mroueh.

107- From an interview with the director himself, who asked to remain anonymous. We were unable to verify the accuracy of the information provided in this statement.

a person or authority. While the courts often expand the definition of what constitutes an attack on or affront to a person's or authority's dignity to the point of instilling fear - i.e. whereby any kind of criticism can be construed as libelous -, in other cases it will narrow this definition so that different forms of censure are classified as permissible and legitimate political criticism, even if this criticism is extremely harsh. It appears that this polarization in legal precedents is influenced to a great degree by the relationship of the subject of the libel to the governing authorities. The tendency to narrow or expand the definition depends on how close or distant that person is to the governing authorities.

To support the above, we shall present two comparative analyses between juridical decisions.

First comparison

The following is a quick comparative analysis between two rulings. The first is in the case of the Public Prosecution versus Ibrahim Awad over an article published in *Asharq Alawsat* newspaper (April 22, 2004) and the second ruling is one issued in the case of the Public Prosecution versus Nawfal Daou over an article written by Daou published in the *Harmoun* magazine (June 28, 1999).

In the first decision issued in 2004, the court was of the view that the material published on the attempted assassination of the President of the Republic constitutes "an attack against the rank and post of the President of the Republic as the supreme symbol of the Nation" and, therefore, an insult to his person. Based on this reasoning, the court found that as "the image" of the President of the Republic was the object of an attack, this attack was in itself an assault on his dignity.

Meanwhile, acts that are considered an affront to the dignity of an individual or an attack upon his or her character attribute to the person in question a shameful act, committed by the individual, him or herself, which violate standard norms and morals; for example, when one is accused of corruption, theft or murder. However, in this case, the court went contrary to this (standard) definition. Indicative of this approach is the manner in which it adopted a different conception of what constitutes dignity, so that the essence of this dignity was embodied by the President of the Republic, and had to be protected - not only in terms of his faultless impeccability but also, and perhaps foremost, as an image of reverence, whose prestige and power is of such a degree that it defies the determination of any attack, or possibility of attack.

In this sense, and only in this sense, does the news of the assassination attempt amount to a coup against his image and thus, can be construed as an attack against his person and image. In so doing, the court joined the ranks of those who proclaim that the image of the leader is that of “impeccability” and “strength (power)”. In other words, the prestige of the position, and consequently the person holding that position, is fundamentally and inevitably worthy of protection and thus must be protected! What reinforces this conviction in this case is the court’s insistence, and, the investigating magistrate’s and the Public Prosecution’s insistence on pressing criminal charges on this basis.

In the second lawsuit, the court rules in the exact opposite manner where the right of political criticism triumphs over the notion of “presidential dignity”. In a decision issued on June 28, 1999, in the case against Nawfal Daou, the court rules for an acquittal and drops all charges against the defendant on the alleged attack against President Elias Hrawi before the end of his presidential term. This lawsuit was based on charges related to the following texts (authored by Daou and published by *Harmoun* magazine): that “Hrawi spearheaded the confrontation with the Christians” and, “all that is shameful with regard to the Christians can be attributed to Hrawi” and, “Hrawi’s decision to storm Baabda Palace and to forcibly enter all the areas under Aoun’s influence” and, “the decision to exile Aoun” and that, “Hrawi must take full responsibility for justifying the disbandment of the Lebanese Forces and the exile and imprisonment of its leader; and his (the President’s) excuse that ‘he (the leader of the Lebanese Forces) was offered a power-sharing arrangement in the governance of the country, but refused’ and that ‘he (the leader of the Lebanese Forces) was given more than any other Maronite leader, since independence, in the form of the endorsement of a decree that nationalized thousands of persons in a manner that harmed the nation’s demographic balance’; and so on.

Indeed, all these texts were found by the court to be within the parameters of what it considered “permissible criticism” despite “the severity of this criticism”. As the writer “named things as he saw them”, the court was of the view that he “did not depart from the accepted bounds of presenting a picture of things as he sees them to the reader; and, the image he presented did not include anything which is not already a matter of public knowledge or which has not been publicly declared on a daily basis. He did not use tactics of distortion or of inciting emotions and sentiments in a manner that would endanger civil peace”. It did not change matters for the court that “the reader of this article comes from a certain segment of the population; and

that this reader's convictions and opposition to the views held by President Hrawi on a series of issues in current affairs were reinforced by this article" as long as "the article itself was written in a manner that did not exceed the boundaries of a responsible and free press, which is recognized and firmly established in and expressed by the country's Constitution, laws and entrenched traditions - regardless of the accuracy of the opinions expressed in this article, which nevertheless remain viable and subject to criticism and dissection by those who do not support these views within the framework of this same free and responsible press".

In light of what has been presented above, it can be maintained that the political situation (prevailing at the time of either case) influenced both decisions. There was a wider latitude of tolerance with regard to the dignity of former President Hrawi, rationalized by the fact that he was close to the end of his term. But the margin of tolerance becomes much narrower in terms of the dignity of President Emile Lahoud, who at that time, was about to have his presidential term extended (in 2004).

Second comparison

The second analysis is based on a comparison between the decision made by the First Investigative Judge in Beirut in the case of Jamil versus Pakradouni (January 28, 2002) and the ruling issued by the Press and Publications Court in Beirut in the lawsuit presented by minister Nicolas Fattoush against the *Al-Diyar* newspaper (February 19, 2004).

In the first case, the tendency of the court was to expand the parameters of what it deems "permissible" political criticism. The investigative judge issued a decision to dismiss the lawsuit against Pakradouni on the basis that the elements required for the offense of libel to take place were not being present¹⁰⁸. The following reasoning: "For an offense to take place, it must be proven that the defendant's act included attributing conduct to the plaintiff and, that this conduct attributed to the person of the plaintiff represents an affront to his dignity... and, as the legal definition of what constitutes a libelous offense allows for a wider scope of tolerance when the persons involved are individuals who deal in public affairs, whether that involvement is in political, technical, cultural or social affairs, and so

108- Published in the *Annahar* daily newspaper in an article entitled "*Lian ma Qalahou al-Muda'I A'layhi Naqd Siyasi: Madi Yuqarir Man'I al-Muhakameh 'An Pakradouni fi Shakwa Al-Jamil*" ("Because what was Said by the Defendant is Political Criticism: (Judge) Madi Decides to Dismiss the Case Brought against Pakradouni by Al-Jamil"); January 29, 2002. (Available in Arabic)

on... and where this kind of censure is deemed to be closer to political, technical or social criticism and further from what is generally understood, in its narrow sense, as libelous in matters concerning cases of the average citizen [...]”. Consequently and based on this reasoning, the judge found it acceptable (and even necessary) to adopt a wider margin of tolerance in a case where specific censure targeted a public servant or person involved in public affairs.

- Is Libel ever legitimate? If so, when is it considered justifiable “to sacrifice the dignity” of others?

Here, we will try to answer the questions mentioned above by discussing whether or not libel automatically constitutes an incriminating act or whether or not there are situations which justify sacrificing the dignity of certain individuals, authorities or bodies in order to protect the public interest and welfare (or, the greater good). In the event that the answer to any of these questions is in the affirmative, under what circumstances is it justifiable “to libel” another individual, authority or body?

To try to understand these circumstances better, we shall present two fundamental categories for considering these types of cases.

Does libel become a lawful act if evidence proves the accuracy of the conduct under question when it is related to duties and service in public office?

The above category is derived from Article 387 of the Lebanese Penal Code, which justifies libel in matters related to public office (with the exclusion of the President of the Republic), or when libelous allegations are related to the duties of public office if the act under question is proven true. The law stipulates that such cases of libel are justified on the grounds that exposing violations and wrongdoing reinforces and strengthens accountability in the public sphere.

Theoretically, those serving in public office are obliged not only to accept exposing themselves to different points of view, but also to accept being the subject of libel on matters related to their position and conduct in public office when allegations are, in fact, proven true. Article 387, therefore, allows a wide scope within which the press can expose violations and wrongdoing committed by public servants or institutions, when supporting evidence is presented, with immunity from criminal prosecution. However, despite the legal grounds supporting this fundamental rule, the Press and

Publications Court has often adopted disparate positions in the application of this provision and appears to oscillate in its decisions depending on the prevailing political circumstances and environment.

For example, during President Emile Lahoud's early years in office which were characterized by a discourse advocating accountability and transparency, the Press and Publications Court showed a willingness to expand the parameters of applying this article. An example is the charges against *Annahar* newspaper for publishing an article that made allegations against a certain oil minister, accusing him of corruption handling of public fuel oil reserves (refer to the case of Barsoumian versus *Annahar*). In the ruling issued by the Court, on January 25, 1999, all charges against the defendant were dismissed and *Annahar* was acquitted despite the fact that "it (*Annahar*) did not present any absolute, conclusive and clear evidence to substantiate its claims". Indeed, the Court found that the defendant could benefit from Article 387 as, "It (*Annahar*) based its claims on solid and serious information from which it was able to form a legitimate conviction that it (the news item under question) was correct and true and genuinely worthy of publication, establishing facts which are of interest to society and which society has the right to access and review, and believing in the accuracy of these facts, on the basis of due evidence and investigation".

The precedent set in interpreting this legal provision (Article 387) can be seen as establishing the general rule that, when legal texts are ambiguous in these kinds of cases, a more merciful interpretation of the law should be adopted. More important is the means of proof adopted as the Court is of the view that "in criminal matters, the evidence is free and based on the system of convincing proofs where judges are not bound by objective criteria and evidence ... but rather a system that seeks all means of proof in uncovering the truth."

On this basis, the Court in this case also rejects the probative strength of evidence presented in official reports submitted by certain public servants, which supported minister Barsoumian. At the same time, the Court does not suffice with a mere examination of the documents presented by *Annahar* newspaper but also summons employees to present their testimonies, reflecting a deep commitment to the right to a defense and to a responsibility in seeking proper justifications "corruption scandals".

Accordingly, the Court established the grounds on which the press would not only be permitted to exercise its role in criticizing errors and wrongdoing in the administration of public affairs, with impunity from prosecution, but

also established the complementary roles played by the judiciary and the press in seeking to expose the truth.¹⁰⁹

It took almost a decade of deliberations for the Court of Cassation to issue a similar decision after looking into an appeal on the rulings issued by the Press and Publication Courts against defendant Ghada Eid.¹¹⁰ Based on Article 387, the Court of Cassation acquitted Ms. Eid of the charges of defamation, libel and contempt against a high-ranking public servant (employed by the ministry of health). Furthermore, in this particular case is the Court of Cassation expanded the scope of its interpretation of Article 387, and not only going beyond the literal meaning of the text, but also beyond what was put forth by the Press and Publications Court in the case of Barsoumian versus *Annahar*. Contrary to the decision contested before it, (which found that in Article 387 evidence must clearly and conclusively prove the accuracy of all information in question) the Court of Cassation highlights the notion of “the public trust in an employee in the context of his [or her] conduct in exercising the duties and responsibilities of his office and position”. This “does not require absolute culpability in cases of libel if an incident cannot, perhaps, be proven, as long as the incident falls within a broader framework of general proof that an employee has shown financial misconduct and conduct harmful to public monies and funds, which is of even greater importance than the actual incident.”¹¹¹

In addition, the Court of Cassation presented numerous opinions which reinforced a wider interpretation of Article 387. For example, after reasserting that the press is the “fourth estate in a state governed by the rule of law”, the Court presented the view that “(by enacting Article 387 of the Lebanese Penal Code) legislators wanted **every** public servant’s conduct and performance (in contrast to that of the average person), with the exception of

109- For more on this matter review the decision issued by the Press and Publications Court on January 25, 1999 in the case of Barsoumian versus Annahar. Also refer to Nizar Saghieh’s “*Mahkamat al-Matbou’at Taqra’ al-Qawanin: Al-Tashheer Haq Heen Yasbah Wajiban*” (“The Press and Publications Court’s Reading of the Laws: The Right to Libel When it Becomes an Obligation”), published in the Arabic *Al-Akhbar* daily newspaper; December 21, 2009 (Available in Arabic).

110- For more on this matter refer to Decision No. 87/2010 issued by the Court of Cassation on March, 24, 2010 in the case of Dr. Riad Khalifeh versus Ghada Eid and New TV. Also refer to Nizar Saghieh’s “*Mahkamat al Tamyeez Tafakh Hukman lil Matbou’at: Al-Tashheer bil Fassad Haq Li’annahou Wajib*” (“The Court of Appeals Overturns a Decision Issued by the Press and Publications Court: Libel in Corruption Cases is a Right because it is an Obligation”), published in the Arabic *Al-Akhbar* daily newspaper, April 9, 2010 (Available in Arabic).

111- Ibid.

the President of the Republic... to remain under the scrutiny and watchful eye of public opinion, and this conduct to be subject to the possibility of exposure if public servants deviate from their duties in a manner that impairs the good governance and functioning of the state". The Court continues: "the general impetus and aim of legislators was to warn all those serving in the public sector that, by virtue of accepting employment in it, it shall deprive him [or her] of all the latitude that private employment and services may grant the average person in terms of their individual and personal conduct and performance" for "the individual employed in the services of the public sector must be more committed to his [or her] job duties and functions, and must be more cautious against transgressions and of violating these obligations, so that he [she] may not fall under the scope of moral accusations and libelous allegations made against them by the press". This reality "means that, in principle, it is the right of every man [and woman], in general, and of the press, in particular and by virtue of their profession, to shed light on all that invokes suspicion with regard to any irregularities related to public services (and failures in good governance in the public sector) as required by the laws and regulations in force". The Court would even go to the extent of describing the role of the press as "providing support (to the judiciary and to public authorities) in combating the scourge of chronic waste and abuse that can undermine the state".

Guided by this reasoning, the Court would address these fundamental issues to create a precedent in Lebanese jurisprudence that would create a balance between the role of the press in exposing corruption and the considerations made for the dignity of public employees.

However, Article 387 and this precedent have been continually neglected; or, at best, their use is restricted to certain situations and circumstances, the most notable of which include:

First, in relation to the exceptions to these general provisions and this precedent regarding (the illegality of) encroaching upon, directing allegations or affronts against (the dignity) of the President of the Republic (Article 387) or of the Lebanese Army (Article 187 of the Military Legal Code). It is also important to note certain exceptions made with regard to material published or broadcast - the most important being those related to the terms of reference (regulations) instated for the audiovisual media (first category media) - which prohibit the publishing or broadcast of any economic subject or commentary that may directly or indirectly (negatively) affect the economic security of the country or its currency.

Second, when criticism of a public servant goes beyond criticism of that specific individual to constitute a challenge directed at the reputation of the public institution, this criticism or censure becomes a punishable offense - regardless of whether or not the allegations are proven to be true.

Perhaps the most striking evidence of the second exception is the ruling issued in the case of the Public Prosecution versus Adonis Al-Akra regarding his book on the August 7, 2001 incidents (mentioned earlier in this study). In its ruling, the Court finds that the unlawful conduct suffered by Al-Akra and his colleagues are inferior to the damage Al-Akra's book inflicted on certain public institutions. Accordingly, the Court chose to disregard the need to investigate further into the accuracy of the allegations made by Al-Akra and his colleagues about these abuses, while it showed stringent attention to the damage that it considered was inflicted upon the reputation of public institutions by Al-Akra's book.¹¹² Indeed, the Court ruling states that, "The book raises doubts and suspicions about the reputations of both the military, the judiciary and political authorities; and, through the suggestions and insinuations directed (by the book) at these institutions, it shows disdain and contempt towards what they represent, in a manner that constitutes libeling and defaming the Army and these authorities".

This is also evident in the ruling by Judge Saqr Saqr in the case against Yehya Chammas, which states: "He (Yehya Chammas) published the texts under question in a newspaper of stature, under a large headline, and within an article that is printed over two pages in that newspaper; and that text in that article shows contempt and disdain for the reputation, dignity and prestige of the judiciary, as the authority to which the plaintiff belongs, and inflicts harm on this authority, and the judges of which this institution is composed, at a social level. Moreover, he (Chammas) raises suspicions about the credibility of this authority, when he libels and defames one of the judges who belongs to it, through the public medium of publishing, instead of resorting to the administrative and judicial channels that the law has set forth for the citizen to use for the review of any objectionable treatment by a court to which a person may have been subjected."¹¹³

The same opinion was adopted by the Higher Judicial Council in another case in which a journalist made certain allegations against the judiciary (in

112- Refer to the decision issued by the Press and Publications Court on November 2, 2009.

113- Refer to the decision issued by the Press and Publications Court on March 10, 2005.

2008).¹¹⁴ In this case, the Council reiterates the view that the way to lodge complaints about judges is not through the press but rather through the channels provided and stipulated for those purposes by the law. The same is evident in the opinions presented for two drafts laws (in 1998 and 2008) dealing with the subject of libel and defamation of judges, which state that any insult or affront directed against a judge be considered an act of libel against the dignity of the judiciary itself.

Third, in disregarding a defendant's request to present evidence that may help prove the accuracy of acts or conduct in libel cases that defendants have been charged with, such as a request by the defendant that witnesses be heard, or a request by the defendant that public officials or institutions submit specific documents that may assist in supporting the defendant's claims (against the plaintiff).¹¹⁵ Of course, on a practical level, and particularly in light of the

114- For more on this matter refer to the statement below, issued by the Higher Judicial Council on July 14, 2008, published in the *Assafir* Arabic daily newspaper on July 15, 2008, in an article entitled, "*Majlas al-Quda'a Yatlub min Mirza Mulahaqat al-Mu'taridin lil Quda'a*" ("The Higher Judicial Council Asks Mirza to Prosecute Those Who Criticize the Judiciary"):

"If, for example, the law liberated journalists from pre-trial detention so that the freedom of speech granted to them by a state governed by the rule of law is protected, then they should not (freely) commit unrestrained attacks against the sanctity and dignity of citizens, especially those who serve justice and serve in the judiciary [...] The Higher Judicial Council also finds it important to take this opportunity to affirm that it (the judiciary) does not use any means to mask the misconduct of judges, and that the channels for submitting complaints against (any part of the judiciary) are open to everyone, but within and through the instruments and means stipulated by the law put in place to review and assess deviant conduct, within limits that protect dignities, and not through the free reign of insult, libel, defamation and cheap accusations lacking in basis and proof."

Also refer to the statement issued by the General Assembly of Judges on July 17, 2008.

115- For more on this matter, review the decision issued by the Press and Publications Court on February 19, 2004 in the case of minister Nicolas Fattouh versus *Al-Diyar* newspaper:

"In the matter of the defense's request to call witnesses and experts forward to provide evidence supporting the case that the libelous allegations against the plaintiff have legal grounds, these requests are open to review and objection, if the plaintiff has official, judicial or administrative decisions, by the Inspections Committee for example, which prove there was official endorsement of the decisions taken, and proving the legality and appropriateness of the conduct under question, then these decisions are not open to evidence proving the contrary that may be presented by witnesses or expert opinions. As opposing legal counsel or advice does not change this authority, because legal counsel or advice is not strong enough to refute the authority of official documents and papers; and this is notwithstanding the fact that legal counsel or advice is merely an advisory opinion that does not rise to the rank of authoritative and official endorsement".

Also, refer to the decision issued by the Press and Publications court on December 17, 2007 in the case of minister Rizk versus New Television S.A.L:

"It is evident that this Court conducted this trial publicly, and that it examined documents

absence of any laws that explicitly grant public access to official documents, this disregard by the courts can be explained by the fact that the objective of such trials is merely to prove the fair conduct or goodwill of the defendant, without making any real links to the question of improper conduct and the public welfare and interest, as a whole.

Fourth, by disregarding Article 387 and other precedents and issuing decisions and rulings as if this article does not exist.¹¹⁶

Fifth, in cases linked to other offenses such as endangering Lebanon's external relations, or in cases of contempt¹¹⁷ or incitement.

Does libel become lawful if the social circumstances surrounding the libel require the sacrifice of peoples' dignity?

We find the second important rule which is derived from jurisprudence, and can be construed as the general rule (followed by the courts) criminal intent must be excluded if goodwill has been proven. In jurisprudence, the proven intent to insult does not necessarily prove criminal intent.

This rule becomes particularly evident in an opinion stated in numerous rulings issued by the Press and Publications Court which tends not to prosecute in cases where the defendant has proven "the presence of facts and circumstances of an extraordinary nature and value, and where valid

and it questioned the defendant, Miriam al-Bassem, according to proper procedures. And in the last session convened by the Court, the Public Prosecution put forward evidence clarifying that the contracts in question in this lawsuit were approved by the Audit Bureau before these contracts were issued, in accordance with regulations and procedures in force, and before they became effective, pursuant to the provisions of Article 35 of Decree No. 82/83, which regulates the Audit Bureau, and which consequently led to the lawsuit and request that the defendants be charged and convicted, in accordance to the material and the most important motion submitted by the Public Prosecution and the leading counsel for the plaintiff; after which counsel for the defendants entered in a motion that claimed that the Press and Publications Court was not qualified to deliberate on the accuracy and validity of the contracts in question and the extent to which these contracts conform to the law; and it repeated all its statements, particularly the necessity of hearing the testimony of the plaintiff; but, in light of the documents highlighted in this case, the Court does not see the benefit in questioning the plaintiff or the benefit of hearing witnesses, and is of the view that it must dismiss the objection submitted by the defendant."

116- The most striking evidence of this form of disregard is the decision issued by the Press and Publications Court on November 2, 2009, referred to previously.

117- For more on this matter refer to the ruling issued in the case of Barsoumian versus *Annahar* newspaper, referred to previously, where both the author of the article and the newspaper which published the article were indicted for defamation, but acquitted of charges of libel.

grounds are recognized and allow for the sacrifice of the character of others, or of their honor, or of their dignity, by publishing news that may contain remarks, allegations or other material, whose content may be deemed libelous or defamatory, and where it is recognized that the presence of this form of libel may be necessary and even required by virtue of these pertinent, exceptional and extraordinary circumstances and grounds.”¹¹⁸

This opinion in jurisprudence is very important. It goes beyond Article 387 of the Lebanese Penal Code as it assumes that there are circumstances in which libel or defamation are not only necessary, but an obligation when it comes to the public interest and welfare, even if the libeled or defamed person does not serve in public office. In other words, defamation and libel become a right when they are an obligation and in this aspect, this rule converges with French jurisprudence.¹¹⁹ Indeed, this precedent in jurisprudence has had

118- For more on this matter refer to the decision issued by the Press and Publications Court on May 16, 2001 in the case of the Spartan Chemicals Company SARL versus Samih Soueidan. Also refer to the decision issued by the Press and Publications Court on November 19, 2001 in the case of Abdul Karim al-Khalil versus the National Broadcasting Network (NBN) SAL, where the Court states the following:

“Where it is without a doubt that the circumstances surrounding the reference to the massacre which took place in the town of Marakeh are considered pertinent, exceptional and extraordinary circumstances that necessitated the production and broadcast of an investigative report about this massacre; and, if it is the right and the duty of the defendant, the National Broadcasting Network, as a pioneering media outlet, to cover the commemoration of this atrocity which afflicted the nation, it (the defendant) has not proven that circumstances of an extraordinary nature, kind or value and pertinent grounds necessitated involving the name of the plaintiff in the investigative report, which covered this event, as a person who encouraged the perpetration of this massacre, and as an agent of the Zionist enemy, and as a soldier in its army; or that, due to these circumstances, it should be taken for granted that the defamation and libel of the character of the plaintiff, his honor and his dignity were necessary for completing the investigation and meeting its patriotic objective”.

119- Jurisclasseur, presse, diffamations et injures publiques, parag.123:

«Cet aspect de la bonne foi permet de comprendre le régime alternatif imposé aux journalistes diffamateurs. Les uns poursuivent une œuvre salubre. Utile à la vie politique, à la vie intellectuelle, à la vie morale de la nation : ce sont les bons diffamateurs. Les autres ont voulu satisfaire à la curiosité du public : leur but professionnel ne parvient pas à justifier la désignation diffamatoire» (note p. Mimin : D. 1938, I, p. 77)... Il faut que l'information soit utile et pertinente».

Encyclopédie Dalloz, pénal, diffamation, 1981, parag. 653:

«Pour écarter l'intention de nuire et renverser la présomption d'intention de diffamer, il ne suffit pas que le prévenu soit exempt de malveillance et de mensonge et même qu'il se soit proposé un but honorable, il faut, en plus qu'il démontre que ce but lui-même était soutenu et légitimé par des circonstances justificatives. La bonne foi ne peut donc se déduire que d'un ensemble d'éléments de justification et de leur faisceau, chacun d'eux étant isolément et par lui-même inefficace à l'établir. La bonne foi exige non seulement la loyauté et la sincérité, la circonspection

specific repercussions in Lebanon as many influential individuals - leading politicians, religious clerics or big businessmen - actually intervene in public affairs, but are not officially in public office.

Unfortunately, this rule has not yet yielded any concrete results, even in the two cases in which it was actually established. In the first case, the charges were that the management of the company in question was libeled by employees. In this case, ultimately, the Court concluded that, based on an examination of the circumstances surrounding the case, the circumstances did not permit “sacrificing the dignity of the company’s management”.¹²⁰ In the second case, the Court supported the “importance commemorating and maintaining the collective memory” in a special investigative report (broadcast on NBN) of a massacre that took place in the town of Marakeh in South Lebanon during the Israeli occupation. But, in one testimony presented in the investigation, a witness makes allegations against a certain person. The Court was quick to declare that the circumstances surrounding this case did not sufficiently justify the affront directed against the dignity of the person in question.¹²¹ Thereafter, rulings issued by the Press and Publications Court, abandoned opinions of similar standing, even in cases that dealt with more renowned massacres, such as the Sabra and Shatila massacre.¹²²

- Domestic political considerations in other publication and press offences

The more important publication and press offences related to matters of domestic political considerations are linked to the notion of maintaining the “public peace”. These types of offenses include publishing fabricated news that disrupts or undermines the public peace (Article 3 of the 1977 Legislative Decree) or publishing news that endangers or undermines the state’s peace, sovereignty, unity or borders, or disturbs or undermines the public peace (Article 25 of the 1977 Legislative Decree).

et la loyauté et la prudence que révèlent la vérification des sources et la modération des assertions dans leur contenu et dans leur forme, elle exige, en outre, que le but soit légitime. »

Jurisclasseur, pénal annexes, presse, fasc. 90, diffamations et injures publiques, parag. 67 :
« Cette généralisation de l’exceptio veritatis, à l’issue de la seconde guerre mondiale, devait permettre d’éviter qu’un journaliste ne soit condamné pour avoir reproché à un « particulier » des actes de collaboration dont il pouvait rapporter la preuve».

120- For more on this matter review the decision issued by the Press and Publications Court on March 16, 2001, referred to previously.

121- For more on this matter review the decision issued by the Press and Publications Court on November 19, 2001 referred to previously.

122- For more on this matter review the decision issued by the Press and Publications Court on September 7, 1999 in the case of Elias Hobeika versus Robert Maroun Hatem.

After examining the rulings issued by the Press and Publications Court in Beirut over the past decade, two major observations can be made. First, the criteria for classifying news by the Court is based on theoretical assumptions and assessments, which are isolated from the actual consequences surrounding the publication of a news item. Second, the Court often adopts an opinion that reduces the entire meaning of “undermining the public peace” to the reputation of a single institution and justifies this rationale by focusing on the role this specific institution plays in maintaining the public peace!

These two major tendencies are evident in several rulings issued by the courts in cases which involve the reputation of the Lebanese Army. The essence of these rulings suggests that a direct correlation is made between the notion of the Army’s “reputation” and the nation’s peace and security. For example, one ruling states, “The (Lebanese) Army represents a fundamental symbol of the nation’s unity, its defense, its sovereignty and its sovereign foreign relations”.¹²³ Accordingly, the ruling states that debasing the image and reputation of the nation’s military establishment - in this case, first by suggesting that the military establishment in Lebanon functions at an inferior level, and second by suggesting that an ‘Ottoman mentality’ pervades the military establishment - in the context of the published news item negatively affects the dignity, reputation and stature of this institution. The ruling also notes that harming the reputation of the army raises questions about those who serve in the military which affects their morale, represents an intent to harm and is a direct affront to the Lebanese Army and, therefore a threat to the nation’s peace and security.¹²⁴

In the same context, the Press and Publications Court found that publishing news about the attempted assassination of the President of the Republic, without verifying the accuracy of the incident, represented deliberate criminal intent, aimed

123- For more on this matter, review the decision issued by the Press and Publications Court in Beirut on March 19, 2003 in the case of the Public Prosecution versus Raymond Attalla (*Al-Diplomassi (Diplomacy)* Magazine). In this case, the defendant, Raymond Antoine Attala, was found guilty in absentia and sentenced to two years imprisonment and a fine of 50 Million (USD 33,333.33); and all copies of that issue of the magazine in which Attala’s article was published were confiscated and destroyed.

124- For more on this matter, refer to the decision issued by the Press and Publications Court in Beirut on November 30, 2009 in the case of the Public Prosecution versus Joseph Nasr and Rafi Madoyan (*Annahar* newspaper) where the defendants were found guilty and sentenced to a fine of LL 50 Million (the minimum fine) and 15 days imprisonment, later reduced to a fine of LL One Million (USD 666.67) and time served. The ruling in this case included the following opinion, “[...] In addition, attributing the incident of the death of a soldier to the mentality that prevails in the (military) establishment, which reflects - in the words of the article’s author - ‘the persistence of an Ottoman mentality in the Army, as made evident in the presentation of the facts’; - in itself shows contempt for the honor and dignity of the military establishment.”

at undermining public order and peace by inciting rumors and provoking fears amongst the Lebanese on all levels - i.e. security, political and economic levels. Here, once again, the Court justifies its opinion, not through facts or tangible consequences resulting from the news item, but rather by what the position of the Presidency of the Republic embodies in terms of national unity and the country's peace, and by the (need to protect the) prestige of this post, both on a domestic and external level. The Court considered the President of the Republic as the highest symbol representing the sovereignty of the nation, and the protector of the country, and the person to whom the constitution and the legitimacy of public institutions have been entrusted... in a manner that, once again, directly links questioning or insulting the position of the Presidency with undermining the country's peace and security.¹²⁵ What is remarkable in this specific case is that the Court revises its opinions, completely, after an objection is presented by the defendant, based on the claim that there was no intention to deceive or harm by publication of the news item.¹²⁶

If this point proves anything, at the very least, it shows the extent to which the act of “endangering or undermining public security and the nation's security and peace” has been reduced.¹²⁷

125- Refer to the sentencing in absentia issued by the Press and Publications Court on April 22, 2004 in the case of the Public Prosecution versus Ibrahim Awad.

126- Refer to the decision issued by the Press and Publications Court on July 12, 2004 in the case of the Public Prosecution versus Ibrahim Awad.

127- For more on these matters review the decision issued by the Press and Publications Court in the case of Hariri versus *Ad-Diyar* newspaper on November 19, 2009, where the court found the defendants, Charles Ayoub and Youssef Hanna al-Houeik, guilty and sentenced each to a fine of LL50 Million (USD 33,333.33) for publishing allegations against Saad al-Hariri that “undermined the public peace”. The allegations under question in the case were, as the newspaper claimed, “that Egyptian, Jordanian and Syrian intelligence agents held positions in the Future Party (*Tayyar al-Mustaqabal*)” and that, with regard to Hariri's (alleged) relations with Israel, “There is nothing left for the Future Party (*Tayyar al-Mustaqabal*) to do except openly declare that it is allied with Olmert. All that is missing is a declaration of unity between the Kadima Party and the Future Party. An agreement exists under the table between the Future Party and Olmert's government and the Kadima Party - The Future Party should just get out from under the table and declare that it has a secret agreement with the Israeli government [...] It is no longer acceptable for one to remain under the shadow of a Zionist government, which is leading the head of the (Lebanese) majority, Saad al-Hariri, into Israel's lap...”. Indeed, what is important to note in this case is that the court still ruled against the defendants although Saad al-Hariri withdrew the charges he personally made against the two writers in the lawsuit. Also, review the ruling issued by the Press and Publications Court in the case of the Lebanese Forces versus New Television on July 14, 2008. The case revolved around a news broadcast, where the defendant makes certain allegations about the confiscation of Israeli-made weapons and the training of groups affiliated to the plaintiff, as well as about maps of the al-Rabieh area and the

Finally, based on what has been presented above, two major observations can be made:

- First, that post censorship is exercised, in principle, within criteria and standards that try to balance between the public's interest and welfare and individual dignities. This is in direct contrast to prior censorship which is exercised according to elastic and discretionary terms that often converge with the need to accommodate certain political sensitivities and situations - despite what may actually be in the public interest.
- Second, that despite the differences between the legal procedures and standards practiced in this domain, the manner in which post censorship is exercised, particularly in light of elastic terms, is often similar to prior censorship in its rigidity when it comes to accountability in matters conceived to adversely affect and undermine public interests. This convergence is clearly shown above with regard to the way the idea of an institution's authority or an authority's prestige is used to punish any insults directed at any of its members - whether or not these allegations are accurate or true.

Indeed, the cases reviewed show how important it is to comprehensively review this domain.

2- External Political Considerations

Censorship exercised according to external political considerations is mainly focused on the friendly or hostile relations between Lebanon and other countries.

confiscation of sophisticated weaponry, including Israeli Uzi machine guns - which the Court believed would have negative consequences on the public peace. Also, review the ruling issued by the Press and Publications Court in the case of Mitri versus the electronic website "Cham Press" on June 11, 2009, where the Court finds the defendant guilty on charges of publishing fabricated news on its electronic website "Cham Press" and of publishing an article from the Montreal News, that directly insults the plaintiff - with both publications deemed by the Court as having "negative consequences on the public peace". The ruling concluded with a guilty verdict and sentenced the defendant to a 6-month prison term. The website had published an article entitled "minister Mitri Pays Zakat for Muslim Imams by Order of the CIA". In this article, minister Tarek Mitri was accused of "being responsible for the blood of every person killed since the beginning of the crisis until now, and if a civil war is sparked then minister Mitri is the cause" and that, "minister Tarek Mitri is one of those who executes orders given by Bush and the CIA... and he is an agent of the latter". This text is notwithstanding the inclusion of a news item from the Montreal News, dated June 3, 2007, which claimed that the minister shook hands and conversed with Israelis at a dinner party held by the French Ambassador in New York.

Friendly countries and the obligation to maintain conventional pleasantries and courtesies

Of course, friendly relations between Lebanon and other states include many countries. But, despite these many relations, censorship generally focuses on two major considerations. The first is related to how sensitive or tolerant the governing regimes in these (friendly) countries are to criticism, and the second depends on the extent to which the country in question is linked to local political factions. Needless to say, these concerns mean that censorship is primarily concerned with Arab countries as well as certain Muslim countries, such as Iran.

Indeed, these considerations are evident in the way that General Security pays special heed to the sensitivities of Arab countries when exercising censorship. For example, according to festival organizers in Lebanon we were able to interview, there is a great contrast between the way that General Security facilitates European or non-Arab film festivals and festivals that screen Arab films. In the latter case, censors tighten controls on the pretext of “maintaining diplomatic relations between countries” and “maintaining friendly relations with fraternal countries”.

A case in point is the permit to screen the documentary film, “Arna’s Children”, which was granted on condition that a scene which contains “the phrase ‘Arab leaders are dogs’ on the walls of houses in the Jenin refugee camp” be deleted. It is also on record that General Security blacklisted numerous films because they insulted or showed “contempt” for Arabs, such as “The Wind and the Lion” (2003) (confiscated) and “Sirocco” (2003) (blacklisted). Films are also blacklisted or confiscated if they insult the Palestinian cause (for example, in the film “Face of Terror” (2005), where the Sabra and Shatila massacre was mentioned without showing contempt for this incident) or contempt was shown towards Arabs and Islam (“Heaven’s Burning” - 2005).

The debate in the Lebanese press over the screening permit for the film “Persepolis” (Marjane Satrapi; 2008) over the parts which were critical of Islam in general, and critical of the Iranian government specifically, also reflect the special attention paid to safeguard Lebanon’s relations with Iran.¹²⁸ This particular incident

128- For more on this matter refer to the article written by Pierre Abi Saab entitled “Perse-Police”, available in Arabic and published in the *Al-Akhbar* Arabic daily newspaper on March 28, 2008. Also review the two statements issued by the Director of General Security, General Jezzini, with regard to the reversal of the decision to suspend the screening permit for the film “Persepolis”; these statements can be reviewed on the following two links: <http://www.middle-east-online.com/english/?id=25391>: “Lebanon may be Liberal, but Still Censored” published on 15-4-2008; and, <http://mobile.france24.com/en/20080328-lebanon-lifts-persepolis-ban-film-lebanon>: “Lebanon lifts Persepolis Ban” published on 28-3-2009.

concluded with General Security approving the screening permit, but only due to an intervention by the former minister of culture, Tarek Mitri, who presented a special written request to the director of General Security to approve the screening permit, without demanding the deletion of any of the film's scenes.

It is also important to refer to these considerations and their repercussions on the prior censorship of foreign publications. For example, General Security banned the entry of several foreign newspapers, such as "Le Monde" in 2000, following the death of Syrian President Hafez Al-Assad. In the case of "Le Monde", General Security justified the ban on the basis that the newspaper had taken the opportunity of President Hafez al-Assad's death to launch an "insulting and offensive media campaign that deliberately disparaged his life and wounded the sentiments that accompanied his passing". General Security also issued a statement in which it said that it wanted to impose "moral retribution and punishment" on the newspaper, which "insulted our (Lebanon's) reality" and "deliberately offended fundamental national stances" that "served the enemy, its interests and malice". The statement also said that "everyone knows that the majority [of foreign newspapers] are subject to direct and indirect political pressures and influence, the outcome of which is to appease Israel and to promote Israel, most of the time, and to insult the Arabs on every occasion - and particularly Lebanon and Syria, as they represent almost the last two entities that have maintained a war front against Israel."¹²⁹

In addition to such tendencies, in certain circumstances, other official authorities have shown their readiness to intervene - even illegally - to prevent any insult, offense or contempt directed at any one of these (fraternal) countries. For example, certain authorities will impose prior censorship over programs that, in principle, are only supposed to be subject to post censorship. The most striking evidence is when the New Television (NTV) studio was raided during the filming of an episode of the program "*Balla Raqib*" ("Without a Censor")¹³⁰, based on a decision to execute a "preemptory prohibition" order issued by the Public Prosecutor of the Court of Cassation, Adnan Adoum (2003). The episode specifically with a subject related to the Kingdom of Saudi Arabia, and had previously been promoted by advertisements broadcast on NTV. The decision to stop the filming and to ban the live broadcast of the episode was issued on the basis that it "would inflict harm on the relations between Lebanon and the Kingdom of Saudi Arabia", according to a

129- For more on this matter review the statement issued by the Directorate General of General Security with regard to the banning of (foreign) publications, available in Arabic in the *Annahar* Arabic daily newspaper, June 19, 2000.

130- This is a program that is broadcast live on the New Television (New TV) satellite channel; and, in principle, it is a show that is not subject to prior censorship.

statement by former prime minister, Rafiq al-Hariri.¹³¹ In this particular case, the television station's management agreed not to film and broadcast the episode, but refused to sign a statement pledging they would not cover these kinds of issues in the future.

In the same context, with regard to a request for a permit to perform the play, "Hobb Story", by a Tunisian director (2010), the censor demanded that one of the individuals involved in the production of the play sign a statement pledging that the play would not show any disrespect to Tunisia during the performance of the play. The person adamantly refused to sign the pledge and consequently, the censor backed off.¹³²

External Considerations and the Lebanese courts

Juridical censorship enforced in matters concerning Lebanon's external relations have also led to serious repercussions in the media and its coverage of various subjects. The most important of these has to do with showing any form of contempt or insult towards a foreign head of state. Unlike domestic considerations related to public servants, any form of disdain, contempt or libel directed towards a head of state cannot be justified by the fact that the news or allegations in question are proven correct or are actually true (as is the case with the President of the Lebanese Republic).¹³³ Furthermore, in these types of cases - which deal with

131- In fact, this incident provoked several reactions that quickly confirmed the (official) policy of maintaining the principle of "paying special heed to the sentiments of friendly Arab countries", and which neglected the restrictions and repercussions that this "attention" would have on the fundamental principle of freedom of the press. For, in addition to the official statement issued by minister Mikati, which called for "the practice of self-censorship and self-criticism by all the different types of media [in a manner] that will protect each institution from harm [...] (based on) the deepest convictions that the Arab world is living through unenviable and difficult times, amidst pressures and constant attempts to thwart it in its historical struggle to determine its own fate [...] And, it is not acceptable for Lebanon or for any institution in Lebanon to serve the interests of those who want to prey on any Arab country, especially the Kingdom of Saudi Arabia, which recently has been exposed to a hideous campaign that is both reprehensible and unacceptable...", several clerics and leading individuals from various political parties also expressed their dismay over "attempts to distort and misrepresent the image of the Kingdom of Saudi Arabia". These figures also stressed their deep concern over safeguarding and "maintaining the best of relations with this country, and to stand by it in its fight against this fierce campaign targeting it"! For more on this matter refer to the article published in *Asharq Alawsat* Arabic daily newspaper on January 4, 2003, found on the following link: <http://www.aawsat.com/details.asp?section=4&issue=8803&article=144980&feature>

132- From an interview with the director of the theater

133- According to Article 23 of Legislative Decree 104/77, the case for the Public Prosecution can be referred to the courts, without a complaint being lodged by the injured party, if a publication

libeling, defaming or insulting foreign heads of state - provisions from the Lebanese Penal Code related to endangering or undermining Lebanon's external or foreign relations are also enforced (Article 25 of the 1977 Legislative Decree).

This form of judicial censorship provoked a serious legal debate in the 1960s when the Press and Publications Act was being amended to include stringent clauses on offenses related to contempt, libel or defamation towards heads of foreign states. Indeed, the amended clauses allowed for immediate measures to be taken against the press or media violating them, without allowing defendants the recourse of proving the accuracy or truth of the allegations published (or broadcast).

The minister of foreign affairs, at that time, used the consternation of foreign ambassadors towards the way in which Lebanese newspapers had disdained their heads of state to justify the adoption of these new clauses. Ambassadors apparently demanded that the government respond appropriately to deter offending publications. These demands allegedly required that, in such cases, the government appease ambassadors with "immediate recourse". But this would not be (legally) possible except through administrative measures, and particularly those that allowed administrative suspensions.¹³⁴ Finally, these provisions remained in force

publishes anything that can be construed as libel, defamation or contempt against the head of a foreign state. The Public Prosecutor of the Court of Cassation also has the right to call for the confiscation of that issue of the publication and refer the violating publication to the relevant courts, which has the authority, consequent to the trial, to sentence a defendant to a prison term of 2-months to 2-years and a fine of LL 50-100 (USD 33,333.33 - 66,666.67), or one of these two punishments. And, in no case can a prison sentence be less than 1-month or a fine be less than LL 50 Million (USD 33,333.33). In the case of a repeated offence in a 3-year period from the sentence served, or before 3-years have passed since the first offence, the penalties stipulated are doubled and the publication can be suspended for a period of up to 2-months.

134- Here, it is important to take note of the insistence of the government in 1962 to pass this law (which was later repealed by the 1977 Legislative Decree), which stipulated three major provisions: The first was permitting the Public Prosecution to initiate a case of contempt shown towards a foreign head of state, or the libel or defamation of a foreign head of state, without the injured party lodging a complaint or pressing charges; second, giving the press minister (now the minister of information) the authority to suspend the operations of a newspaper found in violation of this act for a period not exceeding 5 days, and the authority to refer the offending newspaper to the courts; and third, the authority to suspend the operations of a newspaper for the duration of a trial in addition to the possibility of a sentence that rules to permanently suspend the operations of a publication if found guilty of the charges laid against it. At that time, this draft law was justified by the rationale that this conduct could damage Lebanon's relations with these (foreign) countries and their heads of state, in a manner that could have serious implications on Lebanon's policies and interests and on Lebanese expatriates all over the world... thus, the need (and the objective of the law is) to deter such acts. What is also remarkable and worth noting is that the minister of foreign affairs, himself, took on the mission of defending these provisions during the debates that took place over the draft law.

until the 1977 Legislative Decree was issued.

Examples of how these kinds of provisions were applied mostly involved cases where the heads of states or kings involved were of Gulf Arab countries. For example, in the case of the Public Prosecution versus Roger Akl, the Press and Publications Court found Akl guilty, and sentenced him to a one month prison term for the publication of his book that “promoted the global lie to which the Kingdom of Saudi Arabia and its King have been subjected.” The Court’s justifications state that the book claims that “the Kingdom of Saudi Arabia contributed to the establishment of Sunni fundamentalism, that it funded and financed terrorist Sunni cells and that it fortified the Syrian presence in Lebanon” and that “It then goes on to disdain the rule of the party led by the heir and son (of Rafiq al-Hariri), Saad al-Hariri, who (the book claims) is very close to the fundamentalist, theocratic, Islamist and fascist Saudi monarch”.¹³⁵

Other examples of the application of these provisions occurred during the period of Syrian tutelage in Lebanon. For instance, the case against Adonis Al-Akra in the context of his book “*Heen Asbah Ismi 16*” (“When My Name Became 16”), included charges of “disrupting and undermining relations with foreign states”. In this case, it seems that the policy behind initiating the lawsuit was the same policy which led to neglecting other considerations when the Court ruled in 2009 - where Al-Akra was found guilty of a criminal offense on the basis of “publishing fabricated news through which the (domestic) public peace is disrupted and undermined and through which contempt has been shown to the judicial and political authorities and the Lebanese Army, and through which these authorities have been defamed and libeled”. At the same time, the Court made no mention of the charges presented (at the beginning of the case) of “disrupting relations with a friendly country”, which were completely omitted and forgotten.

He personally detailed the reasons and rationale for this law during the parliamentary debate that surrounded the draft law with the majority of his interventions focusing on highlighting the external causes for defending the law; or, placating and appeasing external demands and requirements, without any attention given (by him) over the implications that these provisions may have on the domestic front. During these discussions, the said minister claimed that this law aimed, first, to maintain freedom of the press - even if that was at the expense of Lebanon’s sovereignty - as long as maintaining this freedom did not allow using these freedoms to cause harm to or undermine foreign states in areas where these freedoms do not exist, and particularly if this freedom was used (and according to this minister, this is what usually takes place) to interfere in the struggles that exist within and between these states. He claimed that it was, therefore, expected that all (the government, parliament, the press and the people) act responsibly, and that all tow the same line, despite everyone’s political opinions - as this is (or should) always (be) the case when a foreign or external threat is directed against the nation.

135- For more on this matter refer to the decision issued by the Press and Publications Court in Beirut on July 29, 2009.

In the same context, it is also important to note the case of the Public Prosecution versus Walid Abu Thaher (and “*Al-Watan Al-Arabi*” or “The Arab Nation” magazine). In this case, the court found that the news item in question alleged that “Syrian officers effectively command sensitive Lebanese security apparatuses”, “5,000 Syrian soldiers are clad in Lebanese Army uniforms” and that “there is a Syrian-Lebanese agreement that aims to impose Syrian control over the (Lebanese) military institution”. In this case, the Court ruled that the publication of this news item aimed at disrupting and undermining the public peace and at endangering the nation’s peace, its sovereignty, its unity and its relations between Lebanon and a fraternal country (Syria).¹³⁶

Hostile relations: Israel, boycott and blacklists

When it comes to hostile relations, censorship is specifically related to Israel and the relations of enmity which exist between Lebanon and Israel. In addition to the law pertaining to the boycott of Israel [the Israel Boycott Law of 23 June 1955 prohibits the establishment of any relations with Israel as an enemy state] and the resolutions passed by the Arab League in this regard, prior censorship in Lebanon is based on the principle of Article 4 of the 1947 Law, which stipulates “[...] resisting any appeal or plea that is not conducive or inappropriate to Lebanon’s interests”.

In this general context, censorship is exercised against works and individuals banned or blacklisted by the Israel Boycott Law.

Most of General Security’s work in this domain is focused on banning the entry of or confiscating films and music recordings in which the principle persons involved in the film or music recording (actors, scriptwriters, composers, musicians, etc.) are Israeli, or have been blacklisted. These blacklists have been compiled by various bodies and committees¹³⁷, and are rarely reviewed or revised.

136- For more on the matter refer to the decision issued by the Press and Publications Court on July 30, 2002 in the case of the Public Prosecution versus Walid Abu Thaher and the “*Al-Watan Al-Arabi*”; unpublished.

137- These lists are:

- The list of banned films by the Administration of the Publications and Cinema Censorship Departments at the ministry of information, issued on December 1974; and the grounds for banning these films are cited as: ... being harmful to Arabs or showing contempt for Arabs; the participation of a banned actor; produced by a banned producer; Zionist propaganda; harmful to public norms, morals and ethics; encouraging violence or criminal behavior; etc.
- The list of actors and singers whose work and productions are banned from entry into Lebanon pursuant to decisions issued and resolutions passed by the prime ministry, the ministry of interior and the ministry of economy and trade from 1959-1969.
- A declaration (with an appendix) containing the names of cinematic films and television series that are banned in the Arab world, issued on September 26, 1979 by the Head Office for the

Some examples include films which include Jane Fonda and appear on a specific blacklist such as, “The Chase” (2005), “Old Gringo” (2002) and “Cat Ballou” (2003). Another example is the film “The New Adventures of Pipi Longstocking” (2009), of which all copies were confiscated because the name of the film’s music composer is on a blacklist. General Security also confiscated and banned a film for showing contempt for religion, based on the “possibility that it was filmed in Israel”. This paved the way for banning other films on the same grounds, such as “Monty Python’s Life of Brian”. Also, “Force Ten from Navaronne” was banned (December 12, 2005) because the scriptwriter’s name is on a blacklist, despite the fact that at an earlier date (August 4, 2005), General Security was satisfied with merely cutting the scriptwriter’s name from the film’s credits.

On the other hand, it has been documented that General Security will sometimes allow the entry of a film (or series) which includes blacklisted individuals, if their contribution to the film (or series) is perceived as “limited”, such as in the case of the comedy television series “Mad About You” (Season 1, 2007), which included a blacklisted actor. In this case, General Security justified its decision by stating that, “the (blacklisted) actor appeared in only one episode of the series as a guest star and the series was already granted an entry permit into the Lebanese market several times previously”.

General Security has also allowed the entry of films and series that contain certain prohibitions, based on specific conditions. In such cases, for example, the screening permit for one film was conditional upon masking the “thanks to” credit to a blacklisted company (Viacom Enterprises, 2006). Another was conditional upon deleting names of blacklisted persons from the film’s opening credits - for example, cutting the name of the composer from the opening credits of the film, “Memoirs of a Geisha” (2006), and cutting the name of the scriptwriter from the opening credits of the film, “Force Ten from Navaronne” (2005). Thus that the censor often shows a certain indecisiveness and hesitation with regard to such issues.

Boycott of Israel affiliated to the General Secretariat of the League of Arab States in Damascus. This declaration includes all resolutions passed from the early 1950s to the late 1990s related to the Arab boycott of Israel.

Apart from the fact that this methodology lacks any standards or specific criteria, and is often ambiguous and contradictory¹³⁸ and contains questionable appraisals¹³⁹, General Security often faces other problems, such as how to deal with works in which anti-Zionist Israelis or Jews participate or appear.

Striking evidence of this dilemma is the position that General Security took with regard to the works of Daniel Barenboim, a renowned pianist and the conductor of the West-Eastern Divan Orchestra, who contributed to the book “Parallels and Paradoxes” (which explores the role and influence of music in contemporary society). Beyond his professional and artistic contributions, Barenboim was recently granted Palestinian citizenship (2008) for his support of the Palestinian cause. But, all his work was banned in Lebanon until a local newspaper published an article criticizing and condemning the censor’s decision to ban the recordings of some of the most important classical music in the world from entering into Lebanon merely because Jewish or Israeli musicians were involved (Bashir Sfeir, *Assafir* newspaper, 2004). The article cited the work of Barenboim and highlighted his political views on Zionism. As a result of this article, General Security took Barenboim’s name off the blacklist and his works have since been granted permission for distribution in the Lebanese market.

The same is the case with films that were automatically banned due to the involvement of the actor Paul Newman. A local distribution company wrote a letter to General Security in which the company explained the actor’s political views and background, requesting that his name be removed from the blacklist. General Security’s response to this letter was positive, and it recently granted a cinema screening permit for a film that included Newman.

138- An example of this is the case of two works by the Jewish producer Leonard Goldberg, who is blacklisted: The first is the film “Charlie’s Angels”, which was granted a screening permit for screening in Lebanese cinemas after certain scenes were cut, while this producer’s other work, the “Starsky and Hutch” (television series) was banned from distribution on the grounds that the producer was Jewish and blacklisted.

139- A local director told us that, over a twenty year period, General Security banned and confiscated any film produced by German companies whose names were appended with the acronym G.M.B.H. on the basis that this acronym was indicative of an Israeli company - That is, until a new employee at the Directorate General of General Security expressed his surprise at the number of films confiscated and enquired about the matter. It soon became clear to him that the aforementioned acronym was nothing more than the German acronym used to show that a company “was a company of limited liability”, like S.A.L in French or LTD in English! In fact, we were unable to verify this information or incident; and therefore, suffice to repeat it here in the exact manner in which the director recounted this incident to us when we interviewed him.

General Security also shows some flexibility with regard to works which blacklisted people participated in or contributed to after the death of these persons. Indeed, Frank Sinatra's music and DVD films in which he acted and sang were granted entry permits into the Lebanese market after his death in 1998.

Propaganda and invoking sympathy for Israel

Based on the same rationale, Lebanese censors have confiscated (and banned) films for "showing that the Israeli Mossad is successful and exceptional" ("Loose Cannons"; 2003) or for "showing Israel triumphing over the Arabs in six days and five hours" ("You Don't Mess with Zohan"; 2008). The film "Commercial Man" (2002) was also confiscated for including scenes of Israeli ambulances, upon which the word 'Israel' and the Star of David appear and which are seen transporting Israelis wounded in Lebanon, as this "constitutes propaganda for Israel and invokes sympathy for the Israelis and the harm they inflicted upon Lebanon". In another case, one Lebanese censor showed particular stringency towards a comedy series in which one of the actresses says to another actor, "I am going to go, with all my Israeli bones, as far away from you as I can". In this case, the censor described the word "bones" as a word that insinuated the idea that those with Israeli bones "possessed something great". Lebanese censors have also shown sensitivity towards certain Israeli symbols, even when these symbols appear in films that are anti-Israeli, such as the film, "The Kite" (Randa Shahal; 2003), where the censor granted entry and screening permits only when a pledge was obtained that any scenes which showed the Israeli flag would be cut from the film.¹⁴⁰

It is also important to note that, in this specific context, General Security shows certain sensitivities towards any scenes related to Jews, Judaism or the Holocaust, on the pretext that a subconscious and systematic mental link is triggered between these elements and Israel. This is clearly evident in comments made by Lebanese censors on entry permits for DVDs. In several of these permit applications, censors almost never miss an opportunity to make note of any reference to Jews or Judaism - even if these have nothing to do with Israel. What is odd is that these remarks are presented in the same way that censors remark upon scenes of nudity, sexual relations or other matters that may be linked to accepted standards of public norms and morals.

Sometimes remarks made by censors about Jews and accepted standards of norms and morals appear side by side, with both used to justify the rating of the film as "adults only" or "for personal use only" (without permission to commercially screen or distribute copies of the film. This is evident in a remark noted in a decision taken

140- We were unable to review any documents related to the conditions made by the censor to cut these kinds of scenes.

on a film, where the censor states, “[...] a girl placing an artificial male member in her private parts without revealing her private parts; sexual relations, without revealing private parts; breasts; a Jewish rabbi praying in Hebrew at a Jewish funeral; a Star of David on a tombstone; sexual relations, without revealing private parts; a kiss between two young girls playing a lesbian game; encourages lesbianism; scenes of drug use [...]” (Weeds, Season 1; 2007). Another censor’s remarks include the statement, “I thought you were Jewish” listed within on remarks about scenes of sexual relations and drug use (“Hostel”; 2006); and in another decision, one censor points to the phrase, “Mazel tov” (a toast similar to “cheers” in Hebrew), amongst remarks of “a man’s behind; a part of man’s behind” (“The Longest Yard”; 2005). Yet another censor points to the dialogue: “I’m Jewish... That’s funny; Jewish man: Is that right?... Yes, no doubt you know a lot of Jewish jokes, right?”, and lists this remark alongside, “sexual relations, without revealing private parts or motion or sighing” (“Taboo”; 2003). We would like to note the remarks of another censor in relation to the film, “Dream for an Insomniac” (2004), where the censor points (adversely) to the following dialogue, “If there is a reason for everything, explain to me the reason for the Holocaust and for gassing Jews”.

Needless to say, these positions taken by Lebanese censors reveal that they have gone to the extreme of entirely confusing judgment of a work promoting or invoking sympathy for Israel with showing support and sympathy for Judaism and Jews. This is evident in a decision made by General Security to delete scenes that show sympathy for Jews when it granted the screening permit for the film “Life of Adolf Hitler” (2008). Remarks justifying the confiscation (and ban) of the film “Eight Crazy Nights” (2003), state: “A large menorah [Jewish candle holder with eight candles - of religious significance] with a Star of David adorning the middle of the menorah, placed next to a large Santa Claus (scene is repeated several times); a menorah; a Star of David; a Star of David; a menorah; a menorah appearing on a greeting card; a Jewish dance”. The censor in this case concludes that the film “in general, does not invoke sympathy for Jews although it does include a subliminal endorsement for Jews”.

This is also evident in the remarks used to justify the confiscation (and ban) of the film “Joe and Max” (2004): “The film shows images of the practices, contempt and persecution that the Jews were subjected to in Nazi Germany, concluding with Jews being subjected to a wave of arrests. It comes within the context of a historical period that affected them; and it does not form the main plot of the film, in addition to the fact that the screenplay is an adaptation of a light-hearted story. Thus, the film’s political message aims to show, through its story, a German boxer who stands by his firm belief and convictions that the policy of racial discrimination followed by his government is something he totally rejects. Numerous parts of the dialogue mention the word ‘Jew’ in addition to images

of the Star of David appearing repeatedly. But, in its main plot, the film does not include any outward endorsement or sympathy for Jews, except for the scenes that include the discrimination against Jews that, in themselves, represent a way of promoting them and invoking sympathies for them - and which are repeated in the film.”

Again, in the same context, we would like to note the confiscation of the film “Snatch” (2001) based on the grounds that it includes “repeated scenes of Jewish religious men; men wearing kippahs on their heads; the music used for the film is based on Jewish folkloric music”. Also, the film “Funny Girl” (2002) was confiscated under a decision that states, “We see that at the end (of the film) the man who saves the world is Jewish, which is a form of promoting Israel despite the fact that the film’s plot does not promote or invoke sympathy for Jews”.

Indeed, the same rationale is used by other censors to justify their decisions to permit the screening or entry of the 8th episode of the television series “Strong Medicine” (Season 1; 2006), the series “Party of Five” (Season 1), and the films “Commandos” (2005) and “Strike at Dawn”¹⁴¹ (2005), where the censors state that these films or series have been granted permits based on the fact that they “do not promote or invoke sympathies for Jews”! This allows us to conclude - by inferring the opposite - that promoting sympathy for Jews represents, in itself, a threat to Lebanese public order!

On the other hand, it should be noted that in some decisions, certain censors have shown that their prejudgment of Jews is merely based on an intention to ensure propaganda for Israel is censored. Thus, their decisions are not based on any particular condemnation or criticism (of Jews). For example, one censor allowed the entry of the television comedy series “Mad about You” (Season 1; 2007) and the films “Taboo” (2003) and “Dream for an Insomniac” (2004) despite scenes about Jews, after the censor decided that they did not represent propaganda for Israel. So, it seems that, in contrast to what we noted above, there is a greater latitude of tolerance when it comes to the genre of comedy.

This tolerance is evident in decisions which permitted the entry of “The Nanny” (Season 2; 2006) where, after viewing repeated scenes that include the subject of Jews or Judaism, the censor remarks that the series does not represent propaganda for Israel as it is a comedy and its subject matter is not about Israel. In

141- In its decision on this film, General Security makes the following note, “Jews appear in the film as ranking first in the hierarchy of the human race. The film does not promote Jews as, in its main plot, it focuses on the English attack against the Germans, in addition to the fact that this dialogue appears within the context of the environment and circumstances that prevailed during the period of the Nazi occupation.”

this particular case, the censor also makes a clear distinction between what shows Jews in a positive light and what may be perceived as propaganda for Israel. The censor also notes that only propaganda/sympathy for Israel is subject to prohibitive measures and confiscation.

In another decision, which included over four lines of remarks on “Jewish” scenes in a series, the censor mentions that these scenes only promoted Jews and Judaism. He also notes that previous episodes in the series also proved that they did not include any promotion for Israel; and thus, the censor declares he has no objection to the broadcast of the series (“The Nanny”; Season 2; 2006).

Also, in this context, and with regard to judicial censorship, it is important to mention the charges laid by the Public Prosecutor of the Court of Appeals in Beirut, on April 11, 2002 against the “International Herald Tribune” (through the director of its representative office in Beirut, Jamil Mroueh) for the offense of publishing an advertisement in the newspaper (issue no. 37038 on April 5, 2002), which “supports and endorses Israel in its war against the Palestinians, in a manner that detracts from (Arab) nationalist sentiments and stirs sectarian discord and strife”. The charges also point to the fact that the advertisement covered one-quarter of a page in the newspaper, included the headline, “Israel, we are with you. Now more than ever”, and called for “the killing of children, women and men that strive to destroy the state of Israel”.

Finally, we should note that the terms of reference (regulations) for audiovisual media, classified as “category 1”, stipulate that it must “refrain from the broadcast of anything that may lead to promoting relations with the Zionist enemy”.

Chapter 2: Religious Beliefs and Freedom of Expression

In the matter of freedom of expression versus “respecting religious beliefs” in Lebanon, it is imperative to make a distinction between prior censorship and post censorship more than in any other domain. Unlike the prior censorship controls discussed earlier in this study - where religious bodies have come to play a fundamental and lobbying role in defining the course of many of the decisions made by Lebanese censors - recently, the corridors of justice have come to show a much higher measure of tolerance and flexibility in upholding and safeguarding the right to freedom of religious beliefs and of expression.

1- The Directorate General of General Security: Consultations with religious leaders

Prior censorship over issues related to religion (or “respect for religion”) are based on the provisions stipulated by Article 4 of the 1947 Law, based on the principle that “the emotions and sentiments of the public shall be respected and stirring racial and religious discord and strife shall be avoided”.

Censorship exercised by General Security when it comes to applying this very “elastic” provision is guided by the opinions of religious bodies. Such bodies include Dar al-Fatwa, the Catholic Media Center, the Council of Maronite Bishops and a Council of Sheikhs from the Druze Sect. Their guidance and the decisions made by General Security often show a confusion between “the emotions and sentiments of the public” and the opinions of religious bodies, as well as perhaps their interests.

Indeed, the Lebanese press has stressed upon the role of these religious bodies in how censorship is exercised.¹⁴² Based on their experience, several figures from within these religious bodies have confirmed that a close relationship with censors does exist. Certain directors and production companies have also confirmed that they often negotiate directly with religious bodies in order to facilitate the process of obtaining a screening permit.

142 For more on this matter refer to several articles that covered the controversy over the censorship of creative works in Lebanon; some of these include:

- Elias Khoury's article entitled “*Al-Thaqafa wa Rafid al-Tanabi*” (“Culture and the Refusal to Give In”); published in the Arabic *Annahar* daily newspaper's weekend supplement, Beirut, Lebanon; July 15, 2000;
- Nadim Jarjoura's article entitled, “*Al-Jins, al-Din wal Siyasseh: Muharamat al-Raqaba*” (“Sex, Religion and Politics: Censorship Taboos”); published in the Arabic *Assafir* daily newspaper, Beirut, Lebanon; January 16, 2002;
- Nadim Jarjoura's article entitled, “*Al-Raqaba al-Talamiya*” (“Fickle Censorship”); published in the Arabic *Assafir* daily newspaper, Beirut, Lebanon; September 6, 2007;
- “Lebanon may be Liberal but still Censored”; published in middle-east online; previous reference;
- Pierre Abi Saab's article entitled, “*Perse-Police*” (available in Arabic); previous reference;
- Pierre Abi Saab's article entitled “*An Lu'bit al-Musadafat fi Qa' al-Medina: Mark Abi Rachid bayn Sha'iriya wa Fajajeh*” (“The Game of Chance at the Heart of the City: Mark Abi Rachid, Poetry and Crudity”); published in the Arabic *Al-Akhbar* daily newspaper, Beirut, Lebanon; March 9, 2009;
- “HELP Lebanon against Censorship”; published in the English language “The Daily Star” daily newspaper, Beirut, Lebanon; February 18, 2009;
- Samah Idriss' article entitled, “*Al-Raqaba al-Arabiya: Al-Waqi', al-Thara'ih, al-Simat, al-Muwajjah*” (“Arab Censorship: Reality, Arguments, Attributes, Confrontation”); published in the Arabic *Al-Akhbar* daily newspaper, Beirut, Lebanon; February 1, 2010;

Moreover, the role and influence of these bodies has obviously increased, as is clearly shown by the commotion generated in the media over the broadcast of an Iranian series about Jesus Christ by the Al-Manar and NBN television networks. Objections were voiced at a press conference held by the Catholic Media Center about the broadcast of this series, which ended with a decision by both stations to halt the broadcast.¹⁴³ The influence of religious bodies was also clear in the process of obtaining a screening permit for the film “*Bintithar Abu Zayd*” (“Waiting for Abu Zayd”, directed by Mohammad Ali al-Atassi, 2010), where General Security explicitly asked the producer to obtain prior approval from Dar al-Fatwa. At the last minute, the screening permit was granted after General Security received notification that Dar al-Fatwa had granted its approval.¹⁴⁴

In light of their influence and the role given to these religious bodies, it is natural that the red lines of censorship are expanded when it comes to works that are critical of any of the recognized religions in Lebanon.

Insulting one of the (recognized) religions¹⁴⁵ and showing contempt for certain religious symbols

When it comes to insulting a religion or showing contempt for religious symbols, it is possible to classify the way in which censorship is exercised into three main categories, each with a different legal status:

- First category: includes subjects or scenes that do not insult religion or religious beliefs but casts certain doubt on religion's ability to confront evil (this category is restricted to “adults only” screening or viewing).

Under this category, General Security tends to permit the viewing of a work or the entry of a film or series into Lebanon only after its viewing or screening has been restricted to “adults only” in order to “avoid the negative repercussions that such pessimism could generate in adolescents and younger children”. This approach is evident in the decision issued on the entry permit for the film “Population 436” (2006), which portrays a struggle that ends with the triumph of evil (over good). The censor in this case justified his decision to allow the film by stating that the

143- For more on this matter refer to Nizar Saghie's article entitled, “*Al-Maseeh Yumathal Amam Mahkamat Mitri-Ra'i: Al-Hassasiya Da'iman 'ala Haq*” (“Jesus Christ is represented before the Mitri-Ra'i Court: Sensitivities are Always Right!”), published in the Arabic in the *Al-Akhbar* daily newspaper, Beirut, Lebanon, August 24, 2010.

144- Refer to the Arabic *Al-Akhbar* daily newspaper, Beirut, Lebanon, September 18, 2010.

145- A case in point being the confiscation (and ban) of the film “*El Crimen Del Padre Amoro*” (2003), based on the pretext that it insulted or showed contempt for the Christian religion.

film is based on fantasy, and that the Lord that ruled over the people (in the film) is Jesus, the Messiah, which is evident by the repeated images of the cross and of priests in the film.

What can be surmised is that the censor was trying to state two opinions. First, a film may be banned from entry if it is proven that it expresses beliefs that favor evil against good (with good being represented as God, or the Lord) permits, or rather, requires the censor to engage in a personal assessment of the director's beliefs. Second, if a film ends with the triumph of evil over good, and the film's events are based on some sort of portrayal of reality, then the film is biased towards evil. But if, on the other hand, the events portrayed in a film are based on fantasy, then it is not biased towards evil. Thus it can be assumed that if a film expresses certain "pessimism" rather than expressing "beliefs" that are "against good", adolescents and younger people should be protected from its influence. But it is considered as a threat to public order.

Another case that should be noted here is the film "The Professionals" (2003), where the censor saw that "the man who planted the cross upside down in the ground did so in order to signal his companions that he was in danger; therefore, in itself, this act does not represent an insult or show contempt for the Christian religion". However in this specific case, General Security still restricted the screening and viewing of the film to "adults only".

- Second Category: includes creative works which include scenes that show contempt for religions but which, as an entire work, do not insult religions. (In these cases, scenes are deleted, or the screening and viewing of a film is restricted to "adults only"; or the film is restricted to private viewing and copies of it cannot be made).

This second category is based on General Security's perception on how certain religious symbols are presented, and whether certain sensitivities may arise in relation to connections made between religion, and sexual innuendos and nudity. The censor may grant permits on condition that such "insulting" or suggestive scenes are deleted from the creative work. For example, a demand made by General Security to delete part of the dialogue of a theatrical performance, states, "I get naked in the cold and lie down in the form of a cross on the tiles of the cold church floor" ("Viva la Diva"¹⁴⁶ by Randa Asmar; 2009). Moreover, General Security also asked the producer to provide assurances that the performance of the play and any copies or any other use of it would be restricted to "adults only".

146- An adaptation from the novel by the writer Huda Barakat

The same decision was made with regard to a film in which a miniature model of a church appears, adorned by a cross that has a woman with bare breasts on it. However, after this film was perceived as evidently including “certain scenes that are offensive to the Christian religion” the censor believed that these scenes did not make the film offensive (“Slave of New York; 2005).

Another censor was of the same opinion regarding an animated film that shows Noah as the customer of a pimp, and where a picture of Jesus Christ appears surrounded by pimps and prostitutes. Without mentioning these scenes, the censor classified the film as restricted to “adults only” after he found that the film did not cause offense to Christianity (Lil’ Pimp; 2005). The same opinion was expressed by the censor of the film “Hurricane” (“*Al-‘Isar*”, by Samir Habashi; 1992) (mentioned previously).

One censor felt it necessary to delete a scene from the Lebanese film “*Mabrouk* (Congratulations) Again” (Hany Tamba; 1999), which contains the following dialogue describing a church as, “a pile of concrete lit by a cross”. The justification presented by the censor for this deletion was that the phrase should be removed as a “precaution in order to avoid provoking or inciting sectarian strife or discord”.

The screening permit for a television series, produced locally in 2009¹⁴⁷, required the deletion of a scene in which “the heroine is seen in a hotel room with the hero, where she is standing before a mirror, putting on her veil, while her lover lies in bed”. In this case, the deletion was demanded by the censor to prevent any connection between the veil, which is a religious symbol, and sex.

A filming permit was also granted to a production company in 2003 on condition that “the cross was removed from any images linked to militias”. The same permit was demanded substituting the phrase which was considered blasphemous: “God means nothing to me. He doesn’t exist. He never did anything good, ever” with the less intense: “Where is God? Where is God or anything that resembles him ...?”

- Third Category: includes all works that the censor finds offensive to religion. In these cases, works are banned altogether and exported films or series found in violation are confiscated.

147- The accuracy of this information was verified after reviewing the documents relevant to this screening permit. The name of the series is not mentioned here at the request of the party concerned.

Recently, the most famous case under this category is “The Da Vinci Code” (2009), which was refused entry outright, without any explanation or justification. Meanwhile, in other cases, decisions to ban or confiscate certain films or works, or ban their entry altogether, have been included justifications. For example, in his decision to ban the film “Five Girls” (2007), the censor made the following remarks “a cross falling to the ground, and breaking into pieces; a rosary falling apart, and falling to the ground; a phrase about Jesus Christ (going to hell) in the song that accompanies the credits; the pentagram (devil’s star) in the credits; the pentagram appearing repeatedly in the film; the practice of black magic; rites of devil worship; a girl’s bare breasts; blood gushing to the ground; satanic spirits possessing one of the girls in the film, who kills a priest with a cross; a quick kiss between two girls, twice in the film; several scenes of girls killing each other after being possessed by the devil.”

We should note that censors do not give comedies any special leeway when it comes to religion. Indeed, in one decision issued by General Security to confiscate a certain film, the justification contains the following remark; “offenses and insults to the monotheistic religions through comedy or by way of making fun [...]” (“The Onion Movie”; 2009). This approach is in contrast to the manner in which censors find that comedy masks propaganda, for example.¹⁴⁸

Other examples where religious offenses were used as the basis for banning a film include the film “Choke” (2009). The censor remarked that “there are repeated scenes where sexual intercourse takes place inside a church, without exposing private parts; an insult made to Jesus Christ in the following phrase ‘Do you think he was a dick and that he deceived people so that they would love him?’; the suggestion that Victor’s mother conceived him through immaculate conception like the Virgin Mary, suggesting that he was an half-original clone of Jesus Christ, and that he (Victor) represents the second coming of Jesus Christ”.

Showing contempt for religious values

Here we shall present cases in which the censor uses his ‘scissors’ when a scene insults a certain religious tenet or value - whether or not any other insult to religion exists in the rest of the work.

In one such case, General Security declined a television screening permit for an episode dealing with the history of the Druze sect, as part of a documentary series produced by Al-Jazeera that covered the history of the religious sects in Lebanon

148- Such as in the case of the series “Mad About You” (Season 1; 2007) referred to previously in this study.

(2009). Meanwhile, a broadcast permit was granted for episodes in that same series that dealt with the Shiite and Maronite sects. The station's management believes that the broadcast permit was rejected by General Security in deference to leading Druze sheikhs and figureheads. The justification was that, in contrast to other faiths, the teachings of the Druze faith are restricted to a limited number of sheikhs and scholars, and thus it would not be possible to present them to the general public.

This kind of censorship is also exercised over (imported and local) musical recordings and works. For example, one censor issued a decision to confiscate the CD "Islam Blues", which contains Sufi music by the Turkish flutist Kudsi Erguner,¹⁴⁹ on the basis that these (commercial) musical works included the use of Qur'anic verses, which is prohibited. This particular matter is similar to the controversial case of Marcel Khalifeh's song, "I am Yusuf"¹⁵⁰ (discussed further in part 2 of this chapter).

Meanwhile, the broadcast of the Iranian series "*Al-Messih*" ("Jesus Christ") led to an extensive media debate. Faced with the objections of Christian institutions (specifically the Catholic Church's Ecclesiastical Committee and the Catholic Media Center) as the series was based on the Gospel of Barnabas and presented Jesus Christ as a "prophet" and not as the son of God, the two stations, Al-Manar and NBN, decided to halt their broadcast of the series out of "respect for sensitivities" and so that the series would not become an issue exploited for "political purposes". Subsequently, before an audience which had congregated at the Catholic Media Center to voice their dismay at the broadcast of the series, minister of information, Tarek Mitri, declared that this incident had, once again, permitted the Lebanese to affirm the political principle that gives "every believer the right to interpret his own religion, and that others must respect this interpretation and this faith". The minister added; "Thus, none of us shall speak of the other's religion in a manner that the other does not find himself in, religiously, historically or in his own interpretation of his faith". Mitri, incidentally, took this "principle" verbatim from a document given to General Security by Maronite Catholic Bishop while the case was ongoing.¹⁵¹

149- From an interview with a local distribution company; we were unable to verify the accuracy of this claim or the documents related to the confiscation of the CD,

150- In 1999, singer and oud player Marcel Khalifeh was accused of blasphemy for citing a verse from the Qur'an in the song, 'Oh Father, I am Yusuf'. A Lebanese court subsequently found Marcel Khalifeh innocent of blasphemy. [Translator's note]

151- For more on this matter refer to Nizar Saghie's article entitled, "*Al-Maseeh Yumathal Amam Mahkamat Mitri-Al-Ra'i: Al-Hassasiya Da'iman 'ala Haq*" ("Jesus Christ is Represented before the Mitri-al-Ra'i Court: Sensitivities are Always Right"), previous reference.

Obviously, “sensitivities” with regard to such matters have become a higher priority, and much more important than considerations related to freedom of belief or of expression.

In another case (“Viva la Diva”, mentioned previously), we also notice that the censorship authorities show a certain “sensitivity” towards differentiating preferentially between religions - even if the context of the work clearly shows the intent is not to establish a particular preferential opinion, but rather present a form of popular criticism³. According to this rationale, the censor in this case demanded the deletion of the following phrase from the screenplay of “Viva la Diva” (2009): “What took you to those *matawleh* (derogatory term denoting Shiites)? Is Christ’s suffering not enough for you? Go to church instead of going to these mourning ceremonies. You go to cry like someone going to see a Faten Hamameh film... You compare that to Christ’s suffering? Oh Lord! May He not hear me! Are you mad ... Their Hussein is like the Son of God? Girl, are you saying we are the same as them? [...]”.

2- The Courts: Balancing between religious beliefs and freedom of expression

Censorship controls in the juridical system are generally presented through lawsuits, based on charges of “showing contempt for religious practices and rites” (Article 474 of the Lebanese Penal Code).

Lebanese courts would deliberate in two cases of extreme importance:

The first was a public lawsuit made against Marcel Khalifeh, based on a complaint submitted by Dar al-Fatwa against him for singing verses from the Qur’an (from the poem “I am Yusuf, My Father” by Mahmoud Darwish, the lyrics of which Marcel Khalifeh put to music). The charges were based on the supposition that singing verses analogous to the Qur’an is contrary to Islamic legal provisions (or Islamic *Sharia* or Law) and concluded that this violation in itself represents contempt for the religion. In the complaint and the charges laid, artistic freedoms were considered subject to legislative (and in this sense, the provisions of the Islamic *Sharia* or Law) restrictions which stipulate what is permitted and what is forbidden and thus are totally biased in favor of religion in the struggle against freedoms.

However, the opinions presented in the Court’s ruling in the case, entirely refute this position. The judge held the view that: “Firstly, societies, in their entirety, have come to know and experience different patterns of behavior and ways of

living in which religious tenets are not heeded” and secondly, “that it is not possible to consider any act that violates or that is not compatible with religious provisions and teachings as being a criminal act, unless otherwise specified by the precedents and provisions stipulated thereof by the (state’s) Criminal Code” and thirdly, “that the poem is sung in a respectful and sober manner, which springs from a deep sense of what is the essence of humanity, which negates any malicious manipulation of the sanctity of the text of the Qur’an, or any insult to it or to its essence, and which does not show any explicit or implicit contempt whatsoever towards religious practices or rites or disdain towards them; all of which requires drawing a line between that which may violate a religious provision and that which is actually contempt for the religion.”¹⁵²

The second case was brought by the Public Prosecution against Joseph Haddad for writing a series of articles that included an article entitled, “*Al-Ilah al-Makhtouf*” (“The Kidnapped God”). The ruling, which exonerated the writer of any wrongdoing, established a new balance between creative freedoms and preserving religious sentiments. In fact, it went beyond the ruling in Marcel Khalifeh’s case in reinforcing the rules of tolerance and supporting the right of the citizen to express his or secular opinion.

Indeed, the ruling was expressed by three different stances taken by the judge:

First: The judge insisted on making it clear that freedom of expression and beliefs includes, automatically, the freedom to express opinions and beliefs that are “secular and not religious, and which believe in a civil society, and which are not partial to the existence of sects inside society, and which reject the violence practiced in the world in the name of religion and upon notions not just related to faith in God, but also to upbringing.” As with the judge in Marcel Khalifeh’s case, he also rejected the dualism of the logic of white (total commitment to rules set by religion) or black (contempt for religion). This stance is taken further in his admission that freedom of expression not only goes beyond certain religious legal provisions (as stated in the ruling in Marcel Khalifeh’s case) but stems from the idea of accepting opinions that are actually critical of religion and its social role.

Second: Continuing in the same vein as above, the judge states, perhaps for the first time in Lebanese jurisprudence, that secularism is not only a legitimate individual freedom but is also a succinct group of notions and beliefs, and even a faith embraced by a group of people that represent a segment of Lebanese society. This particular opinion is extremely important

152- Refer to the decision issued by Judge Ghada Bou Karroum on December 15, 1999

because it ranks secularism on an equal footing with any other religious faith or creed, where secularism and those who believe in secularism have the same right to be respected as any other religious faith.

Third: The judge states that interpretations of “contempt for religion” or “inciting sectarian strife” (or acts that represent limits on freedom of expression) must be subjected to standards of tolerance. Anything else, in his opinion, would lead to a complete contradiction of these provisions’ original intention.

This is what we find particularly evident in the concluding statement of the ruling where the Court considers that, “this case is not so much about inciting sectarian discord or strife as much as it is about undermining the right to freedom of beliefs and the right to the freedom to express opinions; and also the right to shed light on certain terms or axioms that have religious connotations and significations; and extracting them from the general understanding of the context and content of that which was written, that which was meant and that which was intended; and, instead presenting narrow and literal interpretations that have displaced what was written from the meaning intended by it.” This is what happens, for example, when dark fanaticism and prejudice is used to interpret the words of others, so that the parameters used in defining the words stated - as insulting or inciting sectarian discord - are expanded to the point that others are accused of inciting sectarian discord, and when expanding this definition comes to the point that not only freedoms of opinion and belief are curbed, but sectarian discord is actually incited and the sources of conflict and enmity are actually augmented!

This is what is also evident in a reading of the other opinion, which states: “The notions and concepts inherent to an Islamic upbringing and education cannot be held in contempt by a certain party or particular opinion; for, what some may believe is a proper upbringing and education can be construed by others as being improper and opposite of what is correct, all within one, single, unified community, society or area.”¹⁵³

A reading of these opinions makes it very clear that there is a vast difference between what the courts will prohibit, according to what is prosecutable and what is not, and what the censor will prohibit which will almost always systematically follow the opinions of religious bodies.

153- For more on this matter, refer to Nizar Saghie's article entitled “Al-‘Ilmana fi Hama al-Qada’a” (“Secularism in the Protection of the Courts”), published in the Arabic in the *Al-Akhbar* daily newspaper, Beirut, Lebanon, January 17, 2008.

In this context, it is important to note when the founders of the “Samandal” Comics Magazine organization published a series of comics in one issue which poked fun at religious symbols (March 2010), General Security’s Information Branch called in the founders of the magazine for questioning and transferred this “file” to the ministry of the interior’s Non-Governmental Associations Department for further investigation into the organization’s work.

Chapter 3: Public Norms and Morals

Censors have also created several classifications aimed at maintaining and safeguarding public norms and morals. Scenes are classified as containing 1) nudity 2) sex 3) profanity. The forth classification is whether the creative work is consistent with “moral considerations”. On the other hand, the censor’s ‘scissors’ rarely extend to scenes that contain violence and drugs.

Before continuing further, we would like to note that the Press and Publications Court in Beirut did not prosecute any cases related to “a breach of public norms and morals” during the period under study (1999-2009), despite the fact that the Press and Publications Law includes provisions explicitly prohibiting the publication of materials which may adversely affect public norms and morals.

Subsequently, we shall focus our research only on the area of prior censorship.

1- Nudity

Here, we will try to understand the issues that General Security is concerned with monitoring, the most important of which include:

- Exposure of body parts (buttocks, breast, part of a breast, part of a buttock¹⁵⁴, private parts, a rear view of testicles¹⁵⁵);
- Exposing the sex of the individual by revealing body parts;
- How often exposure (of some form of nudity) is repeated (here, we would like to note that “exposure of a man’s buttocks” was repeated several times in one censor’s remarks with regard to a certain film);

154- Film: “Single White Female”; 2005

155- “MM28”; 2005

- The type of scene in which nudity takes place (i.e. a striptease act - in the case of the film “The Detonator” (2006), General Security showed they were quite tolerant of a scene where “nude females appear in the context of a striptease party”; the censor’s note stating: “The exposure of the females’ breasts during a striptease act does not present grounds for prohibition of the viewing and screening of the film is restricted to ‘adults only’”);

- How explicit or clear the image is (for example, with regard to the film “Single White Female” (2005) the censor’s notes contain the following remark, “naked women whose breasts are not clearly exposed);

- How long the image remains on screen; (i.e. one censor’s notes list the following remark, “a *glimpse* of a man’s private parts”; 2004).

In cases of nudity, censors provide an explanation only for certain acts (i.e. sexual intercourse; affronts to religion, such as a woman appearing nude in a temple). Otherwise, generally, we found remarks about nudity without any justification or reason - as if the censor actually wants to avoid delving into whether or not the nudity is (creatively) justified or not.

Indeed, it seems that General Security varies its position when it comes to censoring these kinds of images. For example, in 2004, General Security permitted the entry of certain foreign films, based on screening permits that were conditional upon deleting scenes exposing nudity (“Inquietudes”; “Je t’adore, Je t’aime”; “Les 11 Commandements”; “Grande Ecole”; “Wild Side”; and “Nathalie”). But, as of 2005, censorship authorities have permitted the entry of films based on the condition that the films can only be viewed privately, but not screened publicly, or on condition that public screening is restricted to “adults only” viewing (i.e. the case of the film, “The Marks Man; 2005). However, in yet another example, one censor did not mind the (public) screening of the film “The Cutting Edge Going for the Gold” (2006) despite the fact that the film includes scenes in which (in the censor’s words), “a man’s buttocks and a girls buttocks” are exposed. On the other hand, censors have also gone to the extent of confiscating (and banning) certain films in which images of male or female private parts are exposed repeatedly, on the basis that they pose a breach of public ethics and morals (“Betty Blue”; 2005).

2- Sexual acts and sexual innuendos

In addition to the decision to ban or confiscate certain films, General Security has also issued a wide range of decisions on sexual acts or sexual innuendos - based on the same conditions outlined previously (such as restricting screening or viewing to “adults only”, restricting use to personal viewing, or permitting

screening on condition that certain scenes will be deleted from the film, etc.). To justify censorship decisions based on these considerations, General Security focuses on monitoring certain elements, the most notable of which include:

- Whether or not body parts are exposed during scenes of sexual intercourse or sexual acts (examples include the censors' remarks on the film "A Fine Mess" (2005), which state, "foreplay and fondling with clothes on; foreplay or fondling under sheets"; or the film, "Slave in New York (2005), "... fondling behind a curtain"; or the film "The Devil's Chair" (2008), "... fondling without exposing private parts; a female sucking a man's organ without the organ being exposed". What is remarkable is one censor's remark on the film "Civil Brand" (2007), which made note of a "rape without exposing nudity", as well as the "rape of a man without exposing nudity" in the case of the film "Lockdown DJQLK" (2003) - as if rape is less dangerous or threatening if nudity is unexposed!);
- The degree or level of the sexual act (For example, censors remarked on scenes of "light intercourse", or, in one case, on a scene which showed "hard core lesbianism"; "MM28"; 2005);
- Revealing the sex of an individual, by exposing that person's body parts during intercourse (for example, "man's buttocks"; "woman's buttocks"; "part of a man's buttocks"; "part of a woman's buttocks"; "a man's private parts"; "a woman's private parts");
- Persons who are taking part in a sexual act, intercourse or group sex in cases where the acts between the individuals indicate they are of the same sex; such as "a kiss between two females"; "foreplay between two females" ("State Property"; 2007); or "of a kiss that takes place between a female and a transgendered male who still has his male sex organ, in a manner that appears that it is a kiss between two females" ("Casi Divas"; 2009); and also "a man sucking the organ of another male without exposing it" ("Lockdown DJQLK"; 2003);
- The length of the scene involving a sexual act ("a relatively long (sex) scene"; "Wild Things III"; 2005);
- The number of scenes in which sexual acts are exposed ("many scenes showing sexual intercourse"; "MM28"; 2005);
- The explicitness or clarity of the scene ("a female clearly fondling her private parts"; "MM28"; 2005);

- The sounds that accompany a sexual act (moaning; sighs; sounds...);
- The motions that accompany a sexual act (rocking; heaving...).

These types of considerations are clearly evident in certain decisions. For example, after noting scenes of “light fondling and foreplay with clothes on” in the film “Lords of Dogtown” (2005), General Security decided to restrict the film to “adults only” and “not for (public) screening”. The same decision was made in the case of the film “Hope and Glory” (2005), justified by the censor as containing “scenes of fondling, kissing, intercourse; and is not to be copied or (publicly) screened”.

General Security also shown a general tendency to confiscate certain films that it finds contain “strong” sexual scenes. This is evident in the description made by the censor to justify the confiscation of the film “MM28” (2005), which states, that the film “contains many scenes of intercourse without exposing private parts, and sighs; female breasts, buttocks and private parts; a kiss between two females; a view of testicles from behind and the man’s buttocks; scenes revealing the covers of pornographic films; pornographic scenes seen on a television screen, without private parts being exposed; a striptease act revealing private parts; breasts and buttocks of females; a female clearly fondling her private parts (repeated); a very strong lesbian scene and private parts exposed repeatedly”. The permit granted for the cinematic screening of “Red Road” (2007) includes the condition of “cutting the film from the point (scene) which begins with revealing the woman’s pubis until after the condom is placed and until the sexual innuendos and moaning become lighter”.

3- Profanity

General Security appears to be sensitive about what it deems as curses, insults or obscene language.

In terms of Lebanese films, perhaps the most striking example of this kind of sensitivity is the film “A Civilized People” (“*Mutahadirat*”, by Randa Chahal; 1999) referred to previously in this study. Indeed, in the screening permit for this film, 18 remarks (out of 21) used to justify cutting 47 minutes of this film, dealt with curses, profanities and “obscenities, deviating from what the public’s taste can handle”. In that same year, one censor deleted three scenes from the film “The Pink House” (“*Al-Bayt al-Zaher*”) by Joana Hadjithomas and Khalil Joreige (1999) because “profane words are used, which are insulting to religion and diminish the

dignity of the woman”.¹⁵⁶ General Security also refused to allow one short film to go through the “adjustment” (*taswiya*) process “because of the base language which repeatedly appears throughout the film” (“My Father’s House” or “*Bayt Bayee*”, Leila Kanaan; produced in Beirut; 2005).

Similar tendencies are evident when it comes to the prior censorship of film or theatre scripts. For example, to obtain permits, the term “shit” (“*khara*”) had to be deleted from the script of “Viva la Diva” (2009), as were the words “fuck” and “son of a bitch” from the script of one locally-produced television series (2009). Other cases show the censor suggesting that certain terms be replaced by others that are more “socially acceptable” such as replacing the phrase “to our asses” [a phrase that in the Lebanese vernacular means “we couldn’t care less”] with “to our butts” and the phrase “he’s riding her” with “he’s coupling with her” (again, in the screenplay for “Viva la Diva”; 2009).

General Security has also shown a particular sensitivity to what it deems “obscene terms” used in a religious context. One example is the import permit for a DVD film where the condition was that it would not be (publicly) screened and that no copies would be made of the film. This decision was issued after the censor established that “obscene language” was used in a conversation between two people that proceeds as follows: “one person says to the other, ‘I want to take a piss’; the other responds ‘me too’; after which both individuals enter a church” (“White Dragon”; 2005).

According to a statement made by a manager of a production company (who asked to remain anonymous), it also appears that General Security often monitors metaphors and figurative speech. According to this manager, General Security made a filming permit conditional upon the deletion of a scene that included the term “His pigeon came and went” (with the knowledge that the word “pigeon” in Arabic vernacular and slang also indicates “penis”), because this phrase created a “badly-intentioned” connotation. The decision was later reversed after discussions with the censor, where the party concerned made it clear that the phrase referred to an actual pigeon - the bird, and not a pigeon/penis.¹⁵⁷

156- We will suffice to quote this statement as it was given to us by the directors, with the knowledge that we were unable to verify the accuracy of this information ourselves.

157- We will suffice to quote this statement as it was given to us by the production company, with the knowledge that we were unable to verify the accuracy of this information ourselves.

4- Freedom of expression and public norms and morals

We shall examine General Security's official position towards films that touch upon issues of particular sensitivity, such as incest, "sodomy" [the term used for male homosexuality by censors is specifically the term "sodomy"] lesbianism or pedophilia.

The main concern of the censor is, does the way in which these particular issues are presented in a film (or a play) encourage this type of behavior or not? In the cases we were able to review, we found that a wide margin of discretion is used, and that contradictions appear in the positions taken by different censors, which sometimes can lead to the banning of a film by General Security.

One of the more important decisions taken in this regard was the decision to confiscate the film "The Walker" (2009), which was justified by the following observations: "a kiss between two young men; phrases about homosexuals (deviants); a nightclub for homosexuals; the film reveals a love affair between two young men and shows this as being something natural; it encourages sodomy". We should note here that the grounds presented for confiscating the film are related, specifically, to the film's plot and the fact that the love relationship between "two young men" is presented as "being something natural". But in other cases a "kiss between two men" does not generally speaking, represent one of the criteria set by General Security as grounds for banning a film. For example, the entry of the film "Un Fils" ("A Son"; 2004) was permitted, despite the fact that it contains scenes, which the censor describes as follows, "a young man fondling the private parts of another young man under his clothing; sexual intercourse, heaving and sighing between two young men; a kiss between two men". General Security decided to grant a filming permit for one local television program, which dealt with social issues (2006), on condition that, "any sentence or phrase that refers to emotional relationships or sexual deviance will be deleted, and that the subject covered by the program's script will remain within the parameters of academic or scientific logic and presentation, and that the program would preserve and safeguard public norms and morals".

A review of decisions related to lesbianism in particular, shows that General Security's decisions are more (negatively) influenced by the potency of a visual scene and more prone to be tolerant of a subject as 'a topic being put forward'. Thus, decisions to confiscate certain films because they "encourage lesbianism" are justified for example, as follows: "the film includes a scene where two females are kissing; repeated (acts of) lesbianism; a scene with two females fondling each other - lesbianism" ("D.E.B.S"; 2005); and "a kiss between two females; sounds and moaning coming from a pornographic film; a long lesbian scene [fondling,

kissing and breasts...]" ("Saving Face"; 2005). Meanwhile, Lebanese censors did not mind the broadcast of an episode of a television series that "included a meeting that takes place between the program's host and a doctor on the subject of in vitro fertilization, so that she (the host) and her lesbian partner could have a child" ("Strong Medicine"; Season 1; 2006).

In another case, General Security reversed a decision to confiscate a film ("State Property"; 2005), despite the fact that it included scenes "of kissing and fondling between two females", after it received a guarantee that the screening of the film would be restricted to "adults only" and, as "kissing and fondling" were not part of the film's main plot and thus, "did not encourage lesbianism". General Security also permitted the entry of a series on condition that it be restricted to "adults only", despite the fact that it contained "a kiss between two young girls, who are playing 'the game' of Lesbianism" ("Weeds"; Season 1; 2007). General Security also permitted the entry of a film because it included "scenes of sadistic performances by naked females inside a club for people who are fans of these types of sexual stimulations, but the film itself does not encourage lesbianism or sadism" ("Single White Female"; 2005). They also allowed the entry of another film, after it was restricted to "adults only" viewing, even though it included a scene "of a kiss that takes place between a female and a transformed male (transgendered male), who still has his male sex organ, which appears as a kiss between two females" ("Casi Divas"; 2009).

The same methods are adopted by censors when granting filming or screening permits for films and series that deal with similar topics, with permits usually being conditional upon cutting out certain phrases or scenes. For example, General Security granted a filming permit for a local television series (2007) on the condition that the following two phrases would be deleted from the script's dialogue, "Violette wants to sleep with me ('me' referring to the female first person in Arabic)" and "a woman finds another woman attractive". The permit also required deleting the "sentences in the dialogue that takes between two females (inferring certain sexual tendencies), where one female says to the other female 'honey, from my fingers to my hands, to my eyes that love you, for as long as I love you and stay loving you'". The permit also required cutting the scene where one female "caresses the other female's cheek", and, in general, required that the series abide by the following: 'that any scenes of fondling, hugging, touching do not take place between women', and that "scenes of women together in bed, in a manner that insinuates certain types of stimulation or connotations, shall not be permitted on television, and that no kisses on the mouth shall take place between females".

Lina Khoury's play "*Haki Niswan*" ("Women's Talk"; 2006) also met with great reservations by censors. Khoury spent over two years in confrontation with General Security censors, and the play's script was rejected three times with no room for negotiation. This firm rejection was justified on the basis that the main plot of the play - which relays the story of women's lives and discusses their sexuality, including subjects such as bisexuality, masturbation and women's relationships with their bodies - is a prohibited subject. The play was not granted a permit until the controversy was taken up by the media and the (former) minister of culture, Tarek Mitri, intervened.

In another case, one censor permitted the entry of the film "The Squid and the Whale" (2006) restricting it to "adults only" as it "did not encourage incest". The film included a scene of "a young man who masturbates and ejects his semen on books in the public library, and on his girlfriends' lockers, and plays with his mother's underclothing". At the same time, another censor showed particular stringency towards scenes "that may encourage pedophilia" in a decision on the screening and distribution of Danielle Arbid's film "*Maarek Hob*" ("Dans les Champs de Bataille"/"In the Battlefields"; 2004). However, after General Security demanded that a scene showing "a man kissing an underage girl" be cut from the film, the decision was reversed after the production company asked that it be restricted to "adults only" as showed that the underage girl's father had signed and given his approval prior to the filming of the scene.¹⁵⁸

5- Violence

The majority of observations made by censors on scenes of violence are listed with those on sex scenes. When violence is listed amongst remarks on sex-related subjects, they are generally used to justify the classification of a film as restricted to "adults only" or for "personal use only, without screening or copying".

These kinds of remarks are evident in the decision issued to allow the film "Kung Fu Hustle" (2005), which was granted an import permit on condition that the film would not be screened (publicly) since it "includes a man grabbing a woman's buttocks over her clothing; repeated images of a man's buttocks; and scenes of gory violence". The same was the case with the film "Underworld: Rise of the Lycans" (2009), which was restricted to screening and viewing by "adults only" because it contained "sexual intercourse, without revealing private parts; and scenes of gory violence". The film "Vampire: The Turning" (2005) was also restricted to screening

158- We will suffice to quote this statement as it was given to us by the company which produced the film, with the knowledge that we were unable to verify the accuracy of this information ourselves.

and viewing by “adults only” as “it includes a scene with sexual intercourse + heaving + images of a female’s breast (repeated); and scenes of gory violence”. On the other hand, we found that restrictions are rarely imposed on a film based on violence alone - the exception being the permit application of the film “Screamers: The Hunting” (2009), which was granted only on the condition that the applicant would not copy, screen or sell the film because it contained scenes of gory violence.

After reviewing the 1947 Law and examining documents issued by the Directorate General of General Security on the guidelines applied to the prior censorship of creative works¹⁵⁹, it became clear that internal administrative procedures condemn violence only when it may generate internal schisms and domestic conflict. There is a clear absence of any references to the impact that scenes of violence may have on the viewer.

It is also important to note here, that the terms of reference (regulations) enforced on the audiovisual media is that they must refrain from broadcasting anything which may encourage society, and particularly children, to physical and psychological violence, moral deviance, terrorism and racial or religious discrimination.

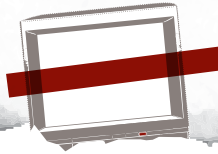
6- Drugs and drug abuse

In all the documents that were made available for our review, we were unable to find any decisions related to the confiscation or banning of a creative work or to the deletion of scenes or phrases on the sole basis of the way the work dealt with drug abuse. In certain cases, censors sufficed to mention images, dialogue or scenes related to drug abuse next to remarks made about either Jews (as was the case for the film “Hostel”¹⁶⁰; 2006), or next to remarks related to sexual innuendos (as was the case for the series “Weeds”, Season 1¹⁶¹; 2007). Furthermore, after reviewing the written guidelines issued by General Security referred to previously, it became evident that internal procedures followed by the censorship authorities make no reference to the subject of drug abuse.

159- These documents were presented at a roundtable discussion organized by the “Cultural Café”, affiliated with the “L’Orient le Jour” newspaper (Beirut, Lebanon) in 2009. Those present at this discussion included Minister of Culture, Tarek Mitri, at that time, and play director Lina Khoury; but, in fact, the representative for the Directorate General of General Security did not attend and instead sent a document delineating the legal provisions and principles that guide the procedures followed by censors.

160- Referred to previously in this study

161- Referred to previously in this study



Conclusions and Recommendations

If freedom of speech is one of the fundamental conditions of democracy, freedom of the press, of filming, screening and performance are also fundamental. Thus, it is also fundamental that any restrictions on these freedoms are based on necessity according to a consensus or, at the very least, they should be the product of social and civic instruments that define the criteria and the appropriate standards required for measuring them.

Thus, we felt it critical to examine two interrelated issues to better assess the procedures and guidelines within which censorship systems operate in Lebanon:

- 1- How adequately the legal provisions enforced in Lebanon restrict the work of the censor to the limits “required”;
- 2- To what extent the censor, as shown in this study, influences public discourse on social conditions and humanitarian issues.

Obviously, in both cases, we shall try to determine the issues which clash and those which comply with the various forms of censorship. Finally, if we are able to accomplish these tasks properly, we should be able to:

- 3- Make suggestions and recommendations related to this specific domain.

Chapter 1: The Work of the Censor and Constraints on Censorship

Here, we shall examine the adequacy of existing legal provisions, restraints and controls on censorship by posing the following questions:

- 1- Does the Lebanese censor have the qualifications and aptitude required to draw the “red lines” between what is permissible and what is not; and does the censor draw these “red lines” in a manner that is consistent with society’s views and needs?
- 2- Do adequate mechanisms exist within these censorship systems, which guarantee the right of those subjected to censorship to present their points of view and perhaps, more importantly, to defend their right to expression?
- 3- Do adequate mechanisms exist for assessing the directions taken and trends set by the censor in Lebanon; or, in other words, is the Lebanese censor subject to controls and limits set by society? (i.e. is the Lebanese censor subject to society’s “censorship”?)

1- The qualifications of the censor in defining “red lines” or “acceptable” limits

The questions we would like to pose are:

To what extent is the Lebanese censor qualified to draw the “red lines” between what is permissible and what is not permissible? To what extent is he qualified to apply legal provisions and interpret them in a manner that is consistent with society’s views and needs?

How autonomous is the censor?

Here, we would like to make the following observations:

- With the exception of cases that are subject to the deliberation of the courts, censorship in Lebanon is undertaken by administrative bodies that are generally devoid of any guarantees of autonomy. This lack of autonomy characterizes the special committee of representatives from relevant ministries and from General Security, which was established by the provisions stipulated in the 1947 Law. This has led to the expansion of the authority of General Security which ultimately is a security apparatus, in matters of prior censorship. This authority

has either been expanded by the law (for example, censorship over theatrical works was granted to General Security by the 1977 Law), or by established practices, the majority of which are in violation of existing laws (for example, there is no legal basis for the censorship of cinematic works which has become confined exclusively to the jurisdiction of General Security) or of any other laws (such as censorship by General Security of filming).

Subsequently, the censor has become subject to the hierarchy that exists within General Security, and is thus constrained by directives enforced by his superiors, which leaves a narrow margin for individual autonomy. This explains, for example, the detailed descriptions that accompany censors' evaluations of scenes from films or television productions, such as "part of buttocks, part of a breast... Jewish Menorah" ... and so on, which suggest that the censor wants to prove that he is adhering properly to administrative orders that came from above.

Consequently, censorship appears to be aimed primarily at serving the interest of governing authorities whose concerns are specifically reflected in the censor's decision-making processes.

- In the matter of post-censorship, the approach taken by legislators reveals certain contradictions. For instance, while the role of the judiciary has been strengthened, with the abolition of certain administrative measures against a publication or media source outside any judicial processes, at the same time, legislators have shown they can be hesitant when it comes to guaranteeing and enforcing the autonomy of recently established censorship bodies.

For example, the National Council for Audiovisual Media (CNA) was established as an autonomous deliberative entity that is part of the ministry of information (1994). In the same vein, the Elections Censorship Committee was established as part of the ministry of the interior (2008). The same can be applied to the Office of Public Prosecution, which is subject to the hierarchy that operates within the ministry of justice and thus, remains under the jurisdiction of the minister of justice. But, unfortunately the Office of the Public Prosecution can still take pre-trial measures, such as confiscating books already in distribution because they contain material that is "in violation". This is particularly troublesome in light of the long periods that trials can take in ruling in such cases (for instance, in the lawsuit against Adonis Al-Akra). What is even more unfortunate is that, in several cases, there is a gap between the position taken by the Office of the Public Prosecution and the courts. For example, when it comes to the balance between "freedom of expression" and

“insulting or showing contempt for religion”, the Public Prosecution has shown a bias towards religious bodies, but court judges have ruled to reinforce and strengthen the principle of freedom of expression and beliefs, and particularly secular beliefs (that violate religious tenets). Another glaring example is the difference between what the Elections Censorship Committee perceives is part of its jurisdiction, and the courts, which have ruled to confine this committee’s authority to the constraints and limits prescribed to it by the law.

- Despite the above measures taken by the courts, the guarantees for maintaining the autonomy of the judiciary remain relative, especially in light of the systems and regulations currently in force, many of which contravene accepted international standards. Unfortunately, delving further into this issue extends beyond the scope of this particular study. Nevertheless, in this report, we feel we were able to present clear political ramifications from several cases - whether these were related to drawing the line between what is permissible political criticism and what is libel, or in terms of drawing the line between what is legitimate and what is unlawful libel (refer to Section 2 of this study).

How qualified is the censor?

In terms of the qualifications of the Lebanese censor, we would like to make the following observations:

- Legislators reinforced the principle of “specialization and qualifications” in censorship through the Press and Publications Law of 1962. The 1962 Law granted exclusive jurisdiction over press and publications cases to one particular chamber in the Court of Cassation for each province - with the knowledge that, in practice, the Press and Publications Court in Beirut deliberates in the vast majority of these cases. The issue of competencies stipulated by this law is justified by the obvious need to ensure that the judge deliberating such cases is specialized and thus, qualified in his or her ability to apply certain concepts that are unclear - such as libel, incitement, threats to the state or endangering the public order, and so on.

It is critical that a judge is qualified in his or her ability to maintain an appropriate balance, in each case and at each stage of a trial, between freedom of expression and values that require protection. Having the necessary competencies will also allow judges to develop their jurisprudence in a manner that is more consistent with society’s needs and interests - particularly in light of the terms stipulated by prevailing laws which constantly require redefinition and interpretation. There is a need for contemplation and deliberation in matters that, for example,

require a judge to find a balance between protecting individual dignities and freedom of expression - particularly in cases where social circumstances call for sacrificing certain persons' dignities in order to meet a specific need or achieve a broader, public interest. But, unfortunately, the application of this rule has recently deviated from its original purpose, as judges appointed to this court do not have the required experience or knowledge. As a result, judges often revert to a purely technical application of the law, without considering the importance of political criticism or the social benefit and advantages that may result from exposing the dignity of a certain individual or authority to censure and criticism.

- Whether or not they succeeded, Lebanese legislators tried to ensure that the judges dealing with post-censorship would have certain qualifications and competencies. However, it is clear that the qualifications of those working on prior censorship at General Security remain virtually non-existent. There are no provisions, standards or regulations that ensure that persons working in prior censorship are trained for this kind of work, or are chosen because they have the required expertise. Indeed, the opposite is true. The primary competencies of persons working in General Security are related to matters of security, which logically makes them more inclined to prioritize security considerations, and more predisposed to expanding the definitions of such considerations. This makes it natural for censors to hesitate about approving work or activity that may generate opposition or social unrest. The hierarchical nature of security apparatuses certainly exacerbates this reality. Thus censors from General Security focus on removing terms, scenes or sounds that are stipulated by directives or internal administrative guidelines (as shown by the remarks listed by censors in censorship decisions quoted throughout other sections of this study) which often border on the comical.

2- To what extent do censorship systems allow for the right to defend freedom of expression and to defend one's work, when required.

Prior censorship generally operates "behind the scenes" where there are no legal constraints and no legal recourse available through which one may object to a censor's decision. Indeed, this particular censorship system is completely opposite to that of the judicial system and contrary to the provisions applied by the judicial system when it comes to the post censorship exercised by the courts.

The following three major observations related to prior censorship must be noted:

- There are no guarantees for those whose works have been subjected to (prior) censorship decisions, either to defend their works, to defend their right to expression, or even to present their opinions. Furthermore, a person whose work has been questioned by the censor does not have the right to legal counsel.

- A person whose work has been subjected to (prior) censorship decisions does not have the right to access or review the specific factors in the case file upon which the censor based his decisions. These usually include consultative opinions or directives that the censor solicited and received from a certain authority (and more often than not, these references are sectarian authorities). Consequently, the applicant does not have the right to appeal such a decision in the same way that, for example, a religious body has the right to present its opinion in this process. All this is notwithstanding the fact that certain decisions are not even written or based on a “case file” that can be reviewed.

- The censor does not have the right to initiate a file for a case where there may be a conflict between the person whose work is under question and the party who claims it has been “injured” by that work (i.e. religious bodies, political parties, public figureheads, etc.). The legitimacy of a decision becomes non-negotiable if there is no proof of the “injured” party, or if the “injured” party, in principle, is not supposed to “officially” contribute to these censorship processes. Again, this is exactly contrary to the way in which the judicial framework operates in cases of defamation or libel, where motions for cases and lawsuits are explicitly conditional upon an open claim and charges presented by the injured party, and consequently, upon the injured party’s active participation in the prosecution of the case (notwithstanding the fact that the defendant has the right to legal counsel and the right to defend his or her work and on an equal footing the plaintiff or injured party).

Naturally, in the Lebanese system of prior censorship, the censor’s paramount considerations are the interests and values that he finds important to defend. These considerations are obviously defined by the interests and values of those closest to him, or of those with influence over him. Clearly, stringency and discretion in such matters increase when the margin of involvement of other considerations and other authorities becomes narrower. These circumstances come to a head when the jurisdiction of one particular apparatus replaces an entire committee, which includes representatives of ministries and other bodies (such as in the case of prior censorship over cinematic works), or when, for different reasons, the latitude for judicial controls over the apparatus has been reduced to a minimum. Finally, having the resources or the “connections” needed to lobby censors does not change matters much when it comes to strengthening the means for recourse and

negotiation. In general, such abilities and connections remain limited to the larger production companies or cinema chains; and, in any case, this process is devoid of any accountability.

On the other hand, judicial censorship in principle operates within completely different paradigms. This contrasting legal framework is particularly evident in the growing trend towards repealing pre-trial measures (with the exception of the confiscation of books). The right to defend oneself and one's work is generally guaranteed within judicial and trial procedures. This right is important, not only for what it represents to defendants, but also for the subsequent legal debates that take place and the legal precedents on what should be prohibited and allowed, or where lines should be drawn on what is permissible criticism and what is not.

Furthermore, the law is the preferred instrument for ensuring that there is constructive debate and confrontations in this field, on two fronts:

First, a legal resolution is often not only linked to which acts are punishable, but also to the injured party's alleged crime. A legal resolution often balances between conflicting interests (for example, between rights to libel versus protecting individual dignities in cases where allegations made against an individual working in public office are proven true).

Second, the law requires that motions to prosecute in cases of libel, defamation or fabricated news be based on lawsuits put forth by injured parties, which guarantees that the injured party or plaintiff and the defendant are actively and openly represented in the case. Certainly, the positive social ramifications of the debate made during such public trials are reflected in the example of the lawsuit against Marcel Khalifeh. In this case, the defendant's appearance at his trial became an opportunity for lawyers from the Bar Association to come to his defense, and for the general public to protest in his defense on the steps of the Palace of Justice. Another example was the case of the (ISF's) forcible prevention of the performance of the play "Majdaloun", which was also transformed into a festive opportunity for the public to defend the right and the role of theater in engaging in political criticism. Indeed, these trials and processes generally pave the way for public opinion to become informed and engaged in the debate on such issues and the potential ramifications.

3- Freedom of speech and systemized censorship

What remains to be discussed in this section is the extent to which public discourse and debate exists on censorship and how censorship systems operate. This includes how the public perceives the authority of the censor and the legitimacy of the mechanisms he utilizes in exercising his authority, based on the assumption that freedom of speech represents a social issue par excellence. Before delving into an examination of this particular social angle, it is important to note that, up until this moment, the public discourse surrounding this issue remains limited. With the exception of articles and certain declarations published in newspapers, or statements in response to a decision taken by a censor to delete a particular scene, we rarely witness a widespread, organized response or action to question the limits of censorship, and how appropriate censorship is on a social level.

Indeed, the most striking evidence of the weakness of any methodical discourse is reflected in the total absence of any judicial reviews and appeals presented against decisions taken by those who exercise prior censorship (i.e. General Security). There is also a significant lack of legal knowledge and expertise in this area. For example, we did not find one single written document referring to or objecting to the fact that General Security may have overstepped its role and authority in matters related to filming permits, or to the fact that General Security had required replacing or deleting certain scenes or dialogues - matters which, for all intents and purposes, are anyway under the legal jurisdiction of the special committee authorized by the 1962 Law.

Finally, the most important problems include:

Secrecy in the decision-making process

The lack of disclosure is specifically linked to the manner in which prior censorship exercised by General Security operates, as procedures remain restricted to the parties involved and citizens do not have the right to access information. Subsequently, and unlike rulings and provisions that can be reviewed on the judicial level, decisions made by General Security are never declared or questioned unless the person involved makes the initiative to do so (which is rare and usually occurs only when somebody wants to raise certain objections to a decision made by the censor to delete certain parts of a film or when General Security tries to prohibit the performance of a theatrical work). As a result, it becomes difficult to study or assess how consistent and appropriate censorship practices are, or how they have evolved in Lebanon. However, on a more positive note, we would like to convey the fact that, recently, the Elections Censorship Committee has been required to publish its decisions.

Requiring justifications

Another problem is the essential lack of explanation or reasoning in justifying censorship decisions - and, sometimes, the complete absence of any justification for a censorship decision. This matter particularly applies to decisions made by prior censorship authorities, where laws (the 1947 Law regarding cinematic works and the 1977 Legislative Decree regarding theatrical works) do not stipulate this requirement.

If a censor decides to justify his decision, he does so by listing remarks on a statement that is not open to discussion or negotiation. For example, a censor may state - without leaving any room for debate - that, a film “encourages sodomy” (sodomy is the term used for homosexuality by Lebanese censors) or “does not encourage sodomy” or that, a film “represents a form of propaganda for Israel” - without presenting any justification as to how he came to such a conclusion. When a censor decides to offer a justification, it often has no relation whatsoever to principles stipulated by the law as grounds for censorship. For example, when censors decide to confiscate films because they represent “Jewish propaganda or invoke sympathy for Jews”, this has no legal basis whatsoever.

If rational justifications represent a fundamental pillar guaranteed by judicial processes, the legal justifications presented in rulings and decisions issued by the Press and Publication Court in Beirut are more often than not based on elastic notions, which are applied without precedent or without further definition (such as ‘affronting or insulting the political authority, the judiciary or judges, or the army’...). Furthermore, after reviewing rulings and decision issued by the Court during the time period covered by this study, it quickly became evident that there was a vast difference between the numbers of pages in the length of legal opinions and in the depth of the jurisprudence presented in rulings issued between 1999-2002 (by the judicial panel headed by Judge Zouein) and the rulings issued by any other judicial panel that followed. The failure of this Court to conduct any in-depth investigation into or to set precedents regarding libel (or any other similar notion) and the scope of its legal parameters makes it very difficult to form an opinion on the validity or accuracy of rulings.

The power of the censor

In addition to the above, a significant part of the influence of prior censorship authorities is related to the powers that come with being a branch of the General Security apparatus, where there is an enhanced ability to control any criticism or opposition to the way General Security operates. Part of the powers intrinsic to

prior censorship is that applicants are very reluctant to object to the imposition of a filming permit - that has no legal basis –, due to the fear that objecting at this early stage of production may actually lead to difficulties later, when one needs to apply for a screening permit, for example.

Indeed, in addition to the fact that production companies, cinemas, theaters and all forms of the audiovisual media in Lebanon need the cooperation of General Security to function on an almost daily basis, General Security also exercises broad powers in many other administrative matters (such as granting - or not granting - visas, issuing entry permits for foreign groups and visiting artists, allowing advertising permits, and a whole range of other issues connected to the temporary residence of foreigners in Lebanon, and so on) around which a whole network of relations exists.

What increases the powers of the censor is the policy of flattery that has been encouraged by General Security in its relations with people of influence and across the entire local power map. These conditions are evident in entrenched (and perhaps institutionalized) consultative role of religious and sectarian bodies. Conditions and pledges are also demanded of applicants if they want to obtain a filming permit - the vast majority of which cater to safeguarding the sensitivities of influential political, religious and sectarian factions in Lebanon.

This policy of currying favor and flattery is also evident when one examines General Security's stringency in censoring what is socially "unacceptable". General Security behaves as if it is the proclaimed protector of conservative values and all that 'may appeal to the popular impulses of the masses'. This helps explain the long lists of remarks on scenes that contain some form of nudity or sex, or appear critical or insulting of religion or are related in any way to Jews or to Israel.

Finally, we would like to point to the censor's occasional success in politicizing his work by staunchly defending certain sides or parties against any insult or affront. For example, it is important to note the debate on the film "A Civilized People" (*"Mutahadirat"*; 1999) by Randa Shahal. When the director said that General Security had cut out a large portion of her film because it wanted to avoid reminders of the war and its brutality, General Security published its list of objections to the film - the majority of which were related to profanities, coarse language and curses. Whatever the real motivation was in deleting these scenes, the fact that General Security published its list of objections to the film indicates a desire to reinforce the legitimacy of its censorship policies by focusing on justifications that would be perceived as "socially acceptable" by the public. Certainly, the censor avoided any other justifications which public opinion may have found less easy to accept. The same case can be made with regard to other justifications used to prevent reminders

of the war from reaching the screen where criticism of those who participated in the war is overridden by the pretext of “preserving the public peace”.

Indeed, it is a combination of all these factors which impelled us to further study the impact that censorship has on freedom of speech in public affairs.

Chapter 2: The Impact of Censorship on the Freedom to Speak Freely about Public Affairs

Regarding the impact of censorship on freedom of speech, we shall try to summarize this chapter in four distinct parts: The first will discuss the extent to which censorship affects public discourse in Lebanon. The second part will discuss the fundamentals of censorship practices. The third part will cover the types of works and subjects covered by censorship when it comes to discussing public affairs. Fourth, we shall summarize the overall effects of censorship on free speech and public discourse.

1- Who has the stage?

Any study that deals with the boundaries and restrictions set by censorship and the impact this has on society requires that we examine who in society actually has the freedom to speak out. In this regard, the *imtiyaz* system and licensing practices related to periodical political publications and television stations (first category media) comes to mind. It seems that the *imtiyaz* system is supposed to compensate for threats cancelling prior censorship controls over political publications and over live programs. In any case, prior censorship controls, are exercised most of the time depending on the identity of the applicant; at best, the applicant will challenge the boundaries, which prior censorship works to ensure can be “negotiated”.

2- The foundation of prior censorship: Preemptive measures against damages

Unlike post-censorship, the objective of which is to hold persons accountable for works that have violated specific legal rules and provisions, prior censorship often works towards preempting a violation that may take place. The censor appears to feel responsible for the content of any work that he has authorized. Consequently, he remains more inclined to withhold his consent any time he feels there is a chance that an influential person or institution may be insulted or offended by

a work. This mind-set explains the suspicions that are almost always against the interests of those applying for permits.

This preemptive mentality is also reflected in the criteria imposed by General Security in many matters related to prior censorship. For example, the criterion for granting filming permits is that filming will “respect” or, at least, not cause affront to the sensitivities of all the important Lebanese authorities, political factions, religious bodies and other influential parties. The same reasoning is used to justify the deletion of certain scenes or terms from creative works (such as the names of security apparatuses, important individuals, militias, etc.) or filming, screening or performance permits conditional upon replacing certain phrases with others, or avoiding filming or revealing certain locations (such as super night clubs).

It is this sense of precaution that has driven General Security to engage powerful bodies and authorities in the prior censorship process. This tendency, for example, has turned “consulting” with religious bodies and references into a common practice in cases related to religious content. Furthermore, it has become common practice, in the majority of these cases, to accept and integrate these religious opinions and input into the decision-making process - whether or not these concerns or opinions are legitimate. The same can be said for the involvement of security forces (such as the Army Command, the Internal Security Forces and private security forces affiliated to certain political parties) in the prior censorship process when it comes to granting filming permits. This extends to the now common practice of making the *taswiya* process of a film conditional upon the agreement and approval of such authorities, or conditional upon their viewing footage related to their “interests” prior to granting a screening permit. This vigilance in granting permits is also evident in the measures taken to ensure that artists or directors personally pledge to take the “necessary precautions” when filming or “to preserve and safeguard public norms and morals” and the “public peace” and many other elastic notions.

At this point, it is relevant to refer to a statement issued by General Security regarding its ban on the import of foreign newspapers following the death of the late President of Syria, Hafez al-Assad. General Security affirmed that the real objective of the censorship measures, which General Security openly admitted were futile in stopping readers from accessing the newspapers on the internet, was merely to make a point of upholding national tenets. Of course, understanding the preemptive mindset of the censor makes it easier to understand this need to reiterate commitments to “national tenets”.

This cautiousness reached unprecedented levels in the remarks made by minister Tarek Mitri with regard to the series on Jesus Christ, previously discussed in this study, where he made it abundantly clear that “any discourse about another’s” religion in which this ‘other’ does not find appropriate or find him or herself in - religiously, historically, or in terms of his or her interpretation of his or her faith - should be prohibited”.

Of course, in principle, the situation is reversed to a great degree when it comes to post-censorship. In post-censorship processes, the censor does not use precautionary measures against violations that may occur but rather punitive measures when violations of the law actually take place and are proven. However, this situation assumes, firstly, that legal provisions and legislation stipulating which violations are punishable by law actually exist and, that legal measures are based on the fundamental principle that punishment cannot be meted out without legal grounds. The second assumption is that the defendant - or the person responsible for the work in question - can benefit from a defense regarding the criminal charges.

These fundamentals emerged in certain lawsuits on charges of showing “contempt for religion” brought forward by Dar al-Fatwa or other Muslim bodies against defendants - charges that were not upheld by the Courts (as was previously shown in this study). In fact, in these cases, the exact reverse was upheld by the courts. These cases became an opportunity to remind religious institutions like Dar al-Fatwa that tolerance and respect for plurality and the right to freedom of belief were rights that would be upheld by the Court. The same can be said of political criticism - and even libel - when it comes to cases related to public servants. For example, allegations of embezzlement were ruled as not being “defamatory” or “libelous” in the case of the State versus Barsoumian, when these allegations were actually proven correct. More importantly, this particular case turned into an opportunity to set a precedent that those serving in public office were obliged to respect the law and were subject to accountability under the law as public servants; and, at the same time, the case presented yet an opportunity to uphold the principle of freedom of the press.

Several rulings referred to in this study have clearly shown that there is a vast difference between prior censorship and post censorship. However, due to various forms of pressure, certain jurisprudence and specific laws have also been exploited to narrow or to expand interpretations of legal concepts to better suit the needs of the prevailing political and social environment.

This naturally leads us to the topics subjected to censorship.

3- Forbidden (Censored) topics

Based on what was previously presented in this study, we shall discuss different forms of public discourse that are subject to censorship in Lebanon. This kind of censorship is not limited to the prohibition of circulating certain information but extends, to not only ideas but also the very methods by which these ideas are circulated.

What is even more dangerous in this report is the condition that one must concede to obtaining a filming permit that “considers and safeguards all the sensitivities of all the religious and political factions and authorities in Lebanon”. Such a condition makes it difficult for a real debate to actually take place on the political class or influential persons, or issues that are of a social or humanitarian nature - such as the subject of immigration and of foreign workers, for example. In the same vein, we would like to point to certain guilty verdicts issued on the basis of charges of “insulting or directing an affront to” the President of the Republic, or the judiciary, or the Lebanese Army, and so on, on the grounds that one must safeguard the “prestige” of these “authorities” (with the term “prestige” perhaps being synonymous with “sensitivity” when it comes to prior censorship). We find the same in a reading of the 2008 Election Law, which stipulates certain restrictions intended to protect candidates (or the political class) during electoral campaigns, when the freedom to criticize and to question these candidates should actually be enhanced amongst voters.

We were also able to show several cases linked to civil war memory or reminders of other atrocities committed where strict precautionary measures were taken to forbid the public dissemination of any related information. Moreover, this study has shown that there have been explicit prohibitions on the audiovisual media in terms of broadcasting anything which may adversely affect economic interests and Lebanon’s “image” abroad. It seems that such notions are influenced by the identity of the plaintiff, and by how close (or distant) he or she is to the prevailing authorities (compare the cases of Jamil versus Pakradouni and Hrawi versus Harmoun to the case of Fattoush versus *Al-Diyar* newspaper). Furthermore, it appears that the political environment also influences the way these notions are defined - an example is that accountability triumphed over safeguarding the “dignities” of the political class in 1999 (see *Annahar* newspaper versus Barsoumian) and safeguarding these “dignities” triumphed over accountability during other political periods (the case of *the Public Prosecution versus Adonis Al-Akra*).

We would like to point to the expansion of certain restrictive conditions and concepts during specific political periods, for example: where economic news was monitored and censored when the Hariri economic project was witnessing certain reversals; or the period where there were great precautions taken not to risk disrupting relations with fraternal countries (Syria); or when sensitivities towards any affronts to foreign presidents prevailed. This demonstrates a link between censorship policies, at least in certain aspects, to the prevailing political agenda of governing authorities during different periods or circumstances.

In addition to all these political and economic considerations, censorship has also become linked to ideas particularly those that may confront mainstream notions, especially in matters pertaining to private life. As such, certain films have been confiscated for no reason other than that they show homosexual relationships as “being natural”. Moreover, it has become necessary to question how and why certain notions have been categorized by the censors as socially “unacceptable”, and to question how qualified censors are in determining which ideas “encourage undesirable behavior or conduct” (such as, according to the censor, “sodomy” and lesbianism); or which ideas represent “an insult or affront to friendly countries” (such as the case of banning the “Le Monde” newspaper following the death of Hafez al-Assad); or which ideas represent “propaganda” for an enemy state.

Finally, censorship in Lebanon has imposed a certain approach on the way issues are discussed. This is evident in the widespread use of the terms “*satirical*” or “*sarcastic*” (when it comes to assessing who a newspaper published a certain item, for example) or in the way that one censor granted a filming permit for one television documentary on homosexual relations on condition that “the issue is presented in an *objective* manner; that is, without sympathies or emotions”.

4- The impact of censorship on producing or publishing works

The repercussions that censorship has had on the production or publication of works has been vast. It is particularly pronounced when one compares the effect of prior censorship and post-censorship.

The impact of prior censorship on film and television production include a set of measures that range from restricting viewing or screening of works to “adults only”, to deleting scenes and deleting or replacing terms as a condition for obtaining a screening permit, to actually prohibiting the filming of an artistic work. In reality, the ramifications of this form of censorship are obviously varied. In contrast to the impact of prohibiting the production or screening of a work, or cutting scenes from a work (which greatly limit public access and serious debate on social issues),

banning the entry of foreign publications into the country has quite a limited impact as these publications can be accessed through the internet.

On the other hand, post censorship is usually exercised in a manner that does not affect the actual publication or distribution of a work, especially as most pre-trial measures have been cancelled or repealed. These conditions, in turn, limit the possibilities of post censorship restricting the scope and exercise of free speech. This is notwithstanding the fact that a trial dealing with a certain work can sometimes present opportunities for defending the legitimacy of that particular work, and actually register points against the plaintiff (such as in the case where Barsoumian was the plaintiff and the court ruled against him, thus showing him as the guilty party). Meanwhile, the right of the public prosecution to confiscate books is open to criticism, as is that fact that the law still allows for jail terms as well as other penalties.



Appendices

Appendix A: List of Legislation

General Legislation

- 1- Decree No. 2873, issued on December 12, 1959: Regulating the Directorate General of General Security
- 2- Decree No. 8588, issued on January 1, 1962: Defining the authorities and prerogatives of units affiliated to the ministry of information
- 3- Law No. X, enacted April 2, 1993: For modernizing and regulating the ministry of culture and the ministry of higher education
- 4- Law No. 25, enacted on October 8, 2008: concerning the election of members of parliament
- 5- Law No. 173, enacted on February 14, 2000: concerning the 2000 General Budget

Specific Legislation

1- Legislation specific to cinema:

- Decision No. 243, issued on October 18, 1934: Prohibiting the filming of cinematic scenes and the export of films without prior licensing from the Directorate General of General Security
- Decision No. 509, issued on December 19, 1939: Subjecting cinematic institution to special restrictions and conditions
- Law issued on November 27, 1947: Subjecting all cinematic tapes to censorship by the Directorate General of General Security
- Decree No. 15666, issued on February 28, 1964: Establishing the National Council for Cinema
- Decree No. 17369, issued on May 2, 1964: Establishing the Arab Cinema Department at the ministry of information
- Decree No. 2438, issued on October 15, 1979: Establishing the areas in which cinemas can operate

2- Legislation specific to theater and theatrical works

- Decision No. 1587, issued on October 13, 1922: Requiring the preview of

screenplays prior to performances (repealed)

- Legislative Decree No. 2, issued on January 1, 1977: Subjecting theatrical works to prior censorship by the Directorate General of General Security

3- Legislation specific to publications

- Publications Law, issued on September 2, 1948
- Legislative Decree, issued on April 13, 1953: Concerning publications
- Law (No. X), issued on May 30, 1962: Penalizing insults directed at foreign heads of state
- Law (No. X), issued on September 14, 1962: Concerning publications
- Legislative Decree No. 55, issued August 5, 1967: Prohibiting the printing, production and dissemination of certain publications before obtaining prior authorization from the Directorate General of General Security.
- Legislative Decree No. 104/1977, issued on June 30, 1977: Amending Law No. 300, issued on March 17, 1944: Regulating publications offenses

4- Legislation specific to audiovisual broadcasting

- Law No. 382, issued on April 11, 1994: Regulating television and radio broadcasting
- Decree No. 7997, issued on February 29, 1996: Stipulating terms of reference (regulations) for audiovisual media
- Law No. 531, issued July 234, 1996: regulating satellite broadcasting

Appendix B: List of Judicial Decisions and Rulings

1- Rulings issued regarding cinematic and theatrical works

- Ruling No. 33, issued by the Single Administrative Judge in Beirut on February 13, 1952 in the lawsuit of Arax Cinema vs. The Lebanese State
- Ruling issued by the Single Criminal Judge in Beirut on March 7, 1970 in the lawsuit of The Lebanese State vs. Roger Assaf
- Ruling issued by the Criminal Court of Appeals in Beirut on May 5, 1970 in the lawsuit of The Lebanese State vs. Roger Assaf
- Ruling No. 258 issued by the First Instance Court in Beirut on May 5, 1971 in the lawsuit of Roger Assaf vs. The Lebanese State

2- Rulings issued regarding publications

- Decision issued by the Press and Publications Court in Beirut on January 25, 1999 in the lawsuit of minister Barsoumian vs. *Annahar*
- Decision issued by the Press and Publications Court in Beirut on June 28, 1999 in the lawsuit of the Public Prosecution vs. Nawfal Daou
- Decision issued by the Press and Publications Court in Beirut on September 7, 1999 in the lawsuit of Elias Hobeika vs. Robert Maroun Hatem
- Decision issued by the Single Criminal Judge in Beirut on December 15, 1999 in the lawsuit of The Public Prosecution vs. Marcel Khalifeh
- Decision issued by the Press and Publications Court in Beirut on May 16, 2001 in the lawsuit of The Spartan Chemical Company vs. Samih Sweidan

- Decision issued by the Press and Publications Court in Beirut on November 19, 2001 in the lawsuit of Abdel Karim al-Khalil vs. The National Broadcasting Network
- Decision issued by the First Investigative Magistrate in Beirut issued on January 28, 2002 in the lawsuit of Amin Gemayel vs. Karim Pakradouni
- Decision issued by the Press and Publications Court in Beirut on February 27, 2003 in the lawsuit of The Public Prosecution vs. *Al-Wifaq* Publication
- Decision issued on June 12, 2003 in the lawsuit of The Public Prosecution vs. *Al-Wifaq* Publication
- Decision issued by the Press and Publications Court in Beirut on December 12, 2003 in the lawsuit of The Public Prosecution vs. *Al-Shu'oun Al-Junoubiya* Publication
- Decision issued by the Press and Publications Court in Beirut on May 5, 2003 in the lawsuit of the Public Prosecution vs. Raymond Atallah
- Decision issued by the Press and Publications Court in Beirut on February 2, 2004 in the lawsuit of minister Nicola Fattoush vs. *Al-Diyar*
- Decision issued by the Press and Publications Court in Beirut on April 22, 2004 in the lawsuit of The Public Prosecution vs. *Asharq Alawsat*
- Decision issued by the Press and Publications Court in Beirut on July 12, 2004 in the lawsuit of The Public Prosecution vs. Ibrahim Awad
- Decision issued by the Press and Publications Court in Beirut on March 10, 2005 in the lawsuit of Saqr Saqr vs. Yehya Chamas
- Decision issued by the Single Criminal Judge in Tripoli on May 9, 2007 in the lawsuit of The Public Prosecution vs. Joseph Haddad
- Decision issued by the Press and Publications Court in Beirut on December 17, 2007 in the lawsuit of Charles Rizk vs. New Television Company
- Decision issued by the Press and Publications Court in Beirut on July 14, 2008 in the lawsuit of The Lebanese Forces Party vs. New Television Company
- Decision issued by the Press and Publications Court in Beirut on June 11, 2009 in the lawsuit of minister Mitri vs. The Cham Press Electronic Website
- Decision issued by the Press and Publications Court in Beirut on July 29, 2009 in the lawsuit of The Public Prosecution vs. Roger Aql
- Decision issued by the Press and Publications Court in Beirut on October 12, 2009 in the lawsuit of Gebran Bassil vs. *Al-Shir'a*
- Decision issued by the Press and Publications Court in Beirut on October 19, 2009 in the lawsuit of Judge Shukri Sader vs. New Television Company
- Decision issued by the Press and Publications Court in Beirut on February 11, 2009 in the lawsuit of The Public Prosecution vs. Adonis Al-Akra
- Decision issued by the Press and Publications Court in Beirut on November 19, 2009 in the lawsuit of Hariri vs. *Al-Diyar*
- Decision issued by the Press and Publications Court in Beirut on November 30, 2009 in the lawsuit of The Public Prosecution vs. Joseph Nasr and Rafi Madian

