

The Right Honourable Gordon Brown, Prime Minister

Via facsimile:

20 March 2009

Dear Prime Minister Gordon Brown

I am writing to you on behalf of ARTICLE 19, an international organization promoting freedom of expression and freedom of information worldwide, to urge you to support the amendment of Dr Evan Harris, MP, to the Coroners and Justice Bill.

ARTICLE 19 has been calling for the repeal of criminal libel in the UK for several years and has a long track record of working on this issue around the world, as well as of developing international standards in this area. We have engaged in defamation litigation before a number of national courts, as well as before international and regional human rights courts.

ARTICLE 19 believes that, although dormant for a number of years, the continuing presence of criminal libel rules in the UK legal system is incompatible with basic democratic ideals, as well as international guarantees of freedom of expression. One of the most serious problems with criminal defamation rules, in the UK but even more so in some less established democracies, is that a breach may lead to a harsh sanction, such as a criminal record or even imprisonment. Even where the rules are not applied, the problem of a “chilling effect” often remains, since the severe nature of these sanctions means that they cast a long shadow.

It is now well-established internationally that unduly harsh penalties, of themselves, represent a breach of the right to freedom of expression even if the circumstances justify some sanction for abuse of this right. Furthermore, States should use the least restrictive effective remedy which in this case means carefully crafted civil defamation laws instead of heavy handed criminal laws. This position has been supported by various international officials, including the UN Special Rapporteur on Freedom of Opinion and Expression or the UN Commission on Human Rights.

The continued presence of the provision of criminal libel sends a signal to other countries that such laws are acceptable, as ARTICLE 19 has often been reminded in its campaigning for decriminalisation in other countries,. The fact that the criminal defamation laws in the UK are essentially dormant is not a convincing argument when advocating in places with a heavy reliance on criminal defamation. . We also believe that the abolition of criminal libel in the UK would send a strong message to the international community that leading democracies do not tolerate such laws.



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We note that British citizens can be charged under criminal defamation or related criminal laws in other countries. This risk is far from theoretical. In December 2008, a British couple, David and Fiona Fulton, were convicted in The Gambia for sedition for circulating emails critical of the authorities, and sentenced to a year in prison with hard labour. Academic Giles Ungpakorn, dual Thai-British citizen, fled Thailand in February 2009 after being charged under the Thai *lese majeste* laws for criticizing the 2006 coup in that country.

Finally, repealing what is essentially a 'dead letter' law might help to restore the UK's reputation in the area of defamation law, which took a battering after New York recently adopted a 'libel tourism' law in the wake of the controversial defamation victory in the UK of Bin Mahfouz against Rachel Ehrenfeld for her book, *Funding Evil: How Terrorism Is Financed and How to Stop It*. The New York law basically makes it clear that defamation decisions which fail to meet the standards of the 1st Amendment will not be enforced in that state.

We therefore urge you to support Dr. Harris's amendment to abolish the criminal libel in the UK.

Yours sincerely,

**Dr. Agnes Callamard,
Executive Director**