



THE STATE OF WHISTLEBLOWER & JOURNALIST PROTECTIONS GLOBALLY: A Customary Legal Analysis of Representative Cases

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ABBREVIATIONS AND ACRONYMS

ADB	Asian Development Bank
AHRD	ASEAN Human Rights Declaration
ALADI	Inter-American Development Bank, the Latin American Integration Association
ANC	African National Congress
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
ATP	Anti-Terrorist Proclamation
BiH	Bosnia and Herzegovina
BPHR	Human Resources Division
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or Convention against Torture
CED	Convention for the Protection of All Persons against Enforced Disappearances
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CMW	International Convention of the Protection of the Rights of All Migrant Workers and Members of the Families
CoE	Council of Europe
CPJ	Committee to Protect Journalists
CPRD	Convention on the Rights of Persons with Disabilities
CRC	Convention on the Rights of the Child
DPL	Data Protection Laws
DRC	Convention on the Rights of Persons with Disabilities
ECLAS	Economic Commission for Latin America and the Caribbean
EU	European Union
FCPA	Foreign Corrupt Practices Act

FSMA	Food Safety Modernization Act
FTAA	Free Trade of the Americas
G15	Group of 15
G20	Group of 20
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
IDB	Inter-American Development Bank
ILSED	Latin American Institute for Security and Democracy
IOCCO	Interception of Communications Commissioner's Office
IPYS	Free Press and Society Institute
ITTF	Insider Threat Task Force
LAES	Latin American Economic System
LSCA	Broadcasting Communication Services Law
MENA	Middle East and North Africa
MERCOSUR	Mercado Común del Sur
MINUSMA	United Nations Multidimensional Integrated Stabilization Mission in Mali
NPA	Note Printing Australia
OAI	Office of Anti-corruption and Integrity
OECD	Organization for Economic Cooperation and Development
OSA	Organization of American States
OSCE	Organization for Security and Co-operation in Europe
OSHA	Occupational Safety & Health Administration
PAIA	Promotion of Access to Information Act

PFDJ	Popular Front for Democracy and Justice
PIDA	Public Interest Disclosure Act
RIPA	Regulation of Investigative Powers Act
RSF	Reporters Without Borders
SAARC	South Asian Association for Regional Cooperation
SEC	Securities and Exchange Commission
SOA	Summit of the Americas
SPP	Supreme People’s Procuratorate
SR	Special Rapporteur
TI	Transparency International
UK	United Kingdom
UN	United Nations
UNASUR	Unión of South American Nations
UNHRC	UN Human Rights Council
UPR	Universal Periodic Review
WPIFI	World Press Freedom Index

To: David Kaye, United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression

Topic: Regional Whistleblower and Journalist Protections

Authors: Joshua Birch, Joshua Dyer, Melissa Pasos, Melissa Sandoval, Kelsi Schagunn, Juanita Taylor, Scott Tuurie, Jorge Valdes, Seiko Yoshitake

I. Introduction

1. In their common perambulatory clause, the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights state that “the idea of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as economic, social and cultural rights.”
2. Nearly fifty years have passed since the General Assembly adopted the International Covenants on December 16, 1966. Much has changed since then, including the level of technology; however, the principles that form the foundation for the recognition and promotion of human rights remain the same.
3. The full enjoyment of human rights requires their promotion and protection. When Member States fail to uphold their human rights obligations, accountability and redress are necessary. However, neither accountability nor restitution is possible if and when those responsible for the violations hide behind a veil of secrecy. In his statement before the 68th session of the General Assembly’s Third Committee, Frank La Rue noted the intimate connection between the right to information and the right to truth, especially as enablers of other rights since access to truthful information is a necessary prerequisite when attempting to address human rights violations.
4. Violations of civil and criminal law require a level of transparency not always forthcoming for justice to be served and for wrongs to be righted. Human rights violations must be acknowledged and accounted for. Such acknowledgment and accountability is in the interest of the victims of the violations, the victims’ families, and their communities. It is also in the more general public interest; transparency can lead to reform of the system under which the human rights violations were perpetrated.
5. The right to access to truthful information is a right unfulfilled if individuals in the private and public sectors are able to refuse such access when it is in their interest to do so. Therefore, the right to access to truthful information must also be accompanied by the right to disseminate this information when it is in the public interest and when the responsible actors are unable or unwilling. Though speaking specifically in relation to the growing use of national security as a justification for the restriction on access to information, the following statement by La Rue can also be applied to all whistleblowers: “In this regard, I recall in my report that sanctions should not be

imposed on whistleblowers - individuals who, in good faith, decide to reveal confidential information on violations. In fact, every official who is involved in or witnesses a human rights violation should assume the moral responsibility to denounce it.”

6. In furtherance of the right to access truthful information through the protection of whistleblowers, as well as the journalists who often report the information they disseminate, this report evaluates the state of whistleblower and journalist protections globally through a customary legal analysis of representative cases.

II. Methodology

Scope

7. This report assesses whistleblower and journalist protections around the globe.

Regions

8. Our first step was to divide the globe into regions, including (1) the Asia-Pacific, (2) Sub-Saharan Africa, (3) Europe/Eurasia, (4) the Americas, and (5) the Middle East and North Africa.

Selecting Representative Case Studies

9. Within each region we scored each state using Freedom House’s *Freedom in the World 2015* report and Reporters Without Borders’ *World Press Freedom Index 2014*. The *Freedom in the World* report scores states on political rights (1 to 7) and civil liberties (1 to 7) and then determines an overall score (1 to 7) based on an average of the two previous scores. One is the most free and 7 is the least free. One to 2.5 is categorized as “Free,” 3 to 5 is categorized as “Partly Free,” and 5.5 to 7 is categorized as “Not Free.” There is also a category entitled “Worst of the Worst,” wherein all three scores are 7. The *World Press Freedom Index* ranks states from 1 to 180 and also gives a score of 0 to 100. Lower numbers indicate strong press freedom and higher numbers indicate weak press freedom.¹
10. For our purposes, we first categorized each state as “strong,” “middle,” or “weak” based on the *Freedom in the World* overall score. Strong was from 1 to 2.5, middle was from 3 to 5, and weak was from 5.5 to 7.
11. We then categorized each state as “strong,” “middle” or “weak” based on the *World Press Freedom Index* score. One to 24.5 was strong, 25 to 54 was middle, and 55 to 100 was weak.²

¹ Freedom House, *Freedom in the World 2015*, accessed on April 25, 2015, <https://freedomhouse.org/report/freedom-world/freedom-world-2015#.VTwYk2aXF-U>; and Reporters Without Borders, *World Press Freedom Index 2014*, accessed on April 25, 2015, <https://rsf.org/index2014/en-index2014.php>

² Reporters Without Borders came out with its *World Press Freedom Index 2015* after we made our selection of representative cases. We did not revisit our original determination for case studies but we did use the updated information in the report when researching our five categories within each state and in creating our table for each state (see additional methodology below).

12. We then made an overall determination, based on our two categorizations, whether the state was “strong,” “middle,” or “weak.” In the case of differing categorizations, we gave the *World Press Freedom Index* greater weight, as it focused on press freedom, information availability and disclosure factors more specifically. We also considered whether a state was trending up or down. From here, we selected representative states for our given regions. In the “middle” category we selected one state that was trending up and one state that was trending down. Thus, we had one state from the “strong” category, two from the “middle” category, and one from the “weak” category. In the case of the Americas, however, we selected five cases to get a truly representative sample. In determining cases we also made qualitative considerations as to whether the state was a significant actor in its region and whether its behavior could affect the behavior of other states in the region. For example, in the Asia-Pacific, in the “weak” category, we decided to research China instead of North Korea. In the Middle East and North Africa, in the “weak” category, we decided to research Saudi Arabia instead of Syria, as Syria is in the midst of a civil war and would not necessarily constitute a representative case. In Sub-Saharan Africa, in the “middle” category, we decided to research Nigeria instead of Cote d’Ivoire. In Europe/Eurasia, we decided to research Bosnia & Herzegovina instead of Hungary, as Bosnia & Herzegovina is a candidate for European Union membership, whereas Hungary is already a member. And in the Asia-Pacific, in the “strong” category, we decided to research Australia instead of New Zealand. (See Appendix)

Research Categories, Tables, and Research Processes

13. Within each case study, we focused on five research categories, including background, legislation, official statements, state practice, and trends and analysis. The background section included considering the nature of the regime and particular areas of concern, as well as the broader historical, political, social, and cultural context. The legislation section included considering protections (or lack thereof) found in the constitution and laws of the state. The official statements section included considering statements and references to protections found in speeches, interviews, white papers, and officially released statements. The state practice section looked at the actual operation of the state vis-à-vis protections and citizens. And the trends and analysis section assessed where the state is trending based on a qualitative and quantitative understanding of the situation in the given state.
14. For each state we have also included a table that references reports from Freedom House on *Freedom in the World*, *Freedom of the Press*, and *Freedom on the Net*, and Reporters Without Borders’ *World Press Freedom Index*. The table also includes the score, categorization and ranking for each state. We have also included a trend category for where each state is trending vis-à-vis each of the topics of each of the reports. This trend is determined based on the previous years scoring or ranking. Trend categories include ↑, ↓, or “same.” The information in the tables was the most up to date information available during the country selection phase of our research.

15. At the end of each regional section we also included a regional analysis section that considered protections in regional organizations. These often included regional declarations, conventions, or commitments, most of which are non-binding. Often time's specific protections for whistleblowers were not mentioned. In the case of the Middle East and North Africa, no regional organization encompassed all the representative cases, so significant social, cultural and political trends, like the Arab Spring, and the backlash against it, were considered instead.
16. The content of the report derives from literature reviews, Internet research, and consultations with NGO officials who visited our class in Washington, DC in person or via Skype.

III. Country Reports: Asia-Pacific

A. Australia

<u>Australia</u>		
Freedom House: Freedom in the World (2015)	1 – Free	Same
Freedom House: Freedom of the Press (2014)	22 – Free	↓ (1)
Freedom House: Freedom on the Net (2014)	17 – Free	Same
Reporters Without Borders: Press Freedom Index (2015)	#25	↑ (3)

1. Background

17. As one of the leading middle powers in the Asia-Pacific with strategic alliances among countries like the United States, the United Kingdom, and New Zealand, the Commonwealth of Australia often espouses some of the same ideologies actively pursued by their strategic Western allies, including liberal ideals of human rights; the importance of an active civil society; and anti-corruption measures to keep public officials accountable to the public. Australia has a federal parliamentary democratic system and a robust capitalist market economy.³ Australia has a common law legal system and a bicameral federal Parliament (Senate and House of Representatives) with heavy influences from the United Kingdoms' and United States' legal and legislative models respectively.⁴
18. Freedom House's 2014 *Freedom in the Press*, *Freedom on the Net*, and *Freedom in the World* reports ranked Australia as "Free," ranking 17 out of 100 in the Freedom on the Net report and 22 out of 100 in the Freedom in the Press report.⁵ Australia has been a long advocate for multilateral diplomacy and is an active member of several multilateral institutions such as the World Trade Organization,

³ Central Intelligence Agency. *The World Factbook: Australia*. Continually updated. Accessed February 20, 2015 <https://www.cia.gov/library/publications/the-world-factbook/geos/as.html>

⁴ Ibid.

⁵ Freedom House. "2014 Freedom in the Press Report: Australia." Freedomhouse.org. Accessed February 20, 2015 <https://freedomhouse.org/report/freedom-press/2014/australia#.VSMnseGLXfc>

East Asia Summit, Asian Development Bank, the Asia Pacific Economic Cooperation, and the G20.⁶

19. An area of concern regarding whistleblower and journalist source protections is the passing of the National Security Legislation Amendment Bill No. 1 (2014) that would allow punishing whistleblowers and journalists alike for publically disclosing any information about operations in the Australian National Security Intelligence Operation.⁷

2. Legislation

20. Before the passing of the most recent whistleblower protections act, the Public Interest Disclosure Act 2013, the most relevant public sector whistleblower protection in place was section 16 of the Public Service Act 1999, which was relatively progressive at the time it was passed.⁸ Not too long after the G20 Seoul Summit in 2010, Australia prioritized whistleblower protections for public sector employees and general anti-corruption measures. On July 15, 2013, the Australian government passed the Public Interest Disclosure Act 2013 – a policy under both state and federal jurisdiction that included a fairly comprehensive protections clause for public service employees who disclose wrongdoing.⁹ Some of the characteristics of the Act include requirements for public organizations to have clear internal mechanisms for disclosure; full confidentiality of whistleblowers; broad definitions of whistleblowing; and broad protections for people who report corruption or wrongdoing within the public sector.¹⁰
21. Public Interest Disclosure Act 2013 makes it easier than it previously had been for external disclosure of information, such as disclosing wrongdoing through channels including non-profit organizations and media, if there are trusted grounds to believe that internal mechanisms did not adequately investigate the public sector wrongdoing or corruption.¹¹ However, internal disclosure must precede external disclosure, even in situations where it may be unsafe for the whistleblower to use internal

⁶ CIA, World Factbook: Australia.

⁷ Paul Farrell, "Journalists and Whistleblowers Will go to Jail Under New National Security Laws," *The Guardian*, September 25, 2014, accessed February 20, 2015, <http://www.theguardian.com/commentisfree/2014/sep/26/journalists-and-whistleblowers-will-go-to-jail-under-new-national-security-laws>.

Parliament of Australia. "National Security Legislation Amendment Bill (No. 1) 2014" *Parliament of Australia*. October 1, 2014. Accessed February 20, 2015 http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s969.

⁸ For full text, see Commonwealth of Australia. "Public Service Act 1999 (No. 147, 1999: Includes Public Service Amendment Act 2013)." *comlaw.gov.au*. July 1, 2013. <http://www.comlaw.gov.au/Details/C2013C00310>.

⁹ Simon Wolfe et al. "Whistleblower Protection Laws in G20 Countries: Priorities for Action: Australia" *blueprintforfreespeech.net*. September 2014, 24-25. <https://blueprintforfreespeech.net/wp-content/uploads/2014/09/Whistleblower-Protection-Laws-in-G20-Countries-Priorities-for-Action.pdf>
For full text of Public Disclosure Act 2013: Commonwealth of Australia. "Public Interest Disclosure Act 2013 (No. 133, 2013)." *comlaw.gov.au*. July 16, 2013. <http://www.comlaw.gov.au/Details/C2013A00133>.

¹⁰ Ibid.

¹¹ Blueprint for Free Speech. "Australia-Whistleblowing Protection, Overview," Last modified November 20, 2014. Accessed February 20, 2015. <https://blueprintforfreespeech.net/document/australia-overview>

procedures.¹² Whistleblowers who decide to disclose information externally are fully protected under the Act.¹³ Another improvement under this law is that whistleblowers are now able to fully disclose information to direct supervisors instead of going through a disclosure office, making it easier and safer for employees to disclose information.¹⁴

22. Given the progressiveness of the Public Interest Disclosure Act 2013, there are some stark limitations as well. The Act lacks not only a disclosure policy for the private sector, but also does not protect whistleblowers from externally reporting any kind of information that relates to national security intelligence from the Australian Security Intelligence Organization.¹⁵ The Act also does not hold politicians accountable for wrongdoing.¹⁶ Lastly, another constraint of the Public Interest Disclosure Act 2013 is that it does not protect past public officials - only public officials currently working can take advantage of the Act's whistleblower protections.¹⁷
23. Private sector whistleblower protection legislation is much less comprehensive. The most substantial legislation passed was section 9.4AAA of the 2001 Corporations Act which protects whistleblowers who disclose any information to the Australian Securities and Investments Commission.¹⁸ The discloser has the right to disclose any information and is immune from punishment and entitled to compensation from any punished victimizer who may harass any employee or officer for disclosing information.¹⁹ However, anonymous complaints are not protected and most parameters for protections and compensations are ambiguous.²⁰ Some of the more industry specific whistleblower protections passed includes "the federal Banking Act 1959, Life Insurance Act 1995, Superannuation Industry (Supervision) Act 1993, and Insurance Act 1973."²¹ Most of the protections in these acts are still rather limited in their definition of whistleblowers, anonymity clauses, internal mechanisms for disclosing information, and how whistleblowers shall be protected and/or compensated once they disclose information.²²
24. In 2011, Parliament passed the Evidence Amendment (Journalists' Privilege) Bill to amend the 1995 Evidence Act which includes protections for journalists' informants.²³ The amendment allows journalists to protect their informant's identity

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Wolfe et al, "Whistleblowing Protection laws in G20 countries: Australia", 24-25.

¹⁶ Blueprint for Free Speech, "Australia Overview".

¹⁷ Ibid.

¹⁸ Commonwealth of Australia. *Corporations Act 2001 (No. 50, 2001 & Compilation No. 69: Includes Amendments up Act No. 19, 2015)*. April 10, 2015, accessed February 20, 2015.

http://www.comlaw.gov.au/Details/C2015C00163/Html/Volume_5#_Toc416707052

¹⁹ Ibid ; Blueprint for Free Speech. "Australia Overview".

²⁰ Wolfe et al, "Whistleblowing Protection laws in G20 countries: Australia", 24-25.

²¹ Ibid, 25.

²² Ibid.

²³ Blueprint for Free Speech. "Australia Overview".

if they promised their informants anonymity.²⁴ However, this protection can be repealed if the court believes it is in the public interest and “outweighs” any adverse effects of keeping the informant’s identity anonymous.²⁵

3. Official statements

25. In 2008, the Attorney General asked the House of Representatives Standing Committee on Legal and Constitutional Affairs (the Committee) to draft a report on a proposed model for public disclosure protections.²⁶ In 2009, the Committee released an official report that listed recommendations on how to go forth in drafting a public disclosure policy as well as stating their support for a “pro-disclosure culture in the Australian public sector” which should include the protections and mechanisms for whistleblowers who disclose “wrongdoing, misconduct, and corruption” among public officials.²⁷ This report also outlines areas of agreement and disagreement for particular policy recommendations that should be a part of the proposed legislation.²⁸

4. State practice

26. Some key cases regarding Whistleblowing Public Disclosure have been used as legal precedence and case studies outlining the need for Australia to adopt a comprehensive, broadly defined Public Disclosure policy. Some of the key cases include the cases of Mr. Mick Skrijel; Mr. Bill Toomer; Mr. Kevin Lindeberg; Mr. Jim Leggate;²⁹ and the most recent high-profile case of Mr. Brian Hood. Mr. Hood was a previous Secretary at the Note Printing Australia (NPA) agency, a subsidiary of the Reserve Bank Australia. Hood disclosed information on suspected bribes being exchanged by NPA executives and Malaysian agent, Abdul Kayum.³⁰ When Mr. Hood reported the suspected wrongdoing to the NPA chief executive and other supervisors within the agency, he received harassment and intimidation, as well as the loss of his job.³¹

27. According to a 2012 survey on whistleblowing conducted by Griffith University, 82 percent of people felt that it is “fairly or highly acceptable” to report wrongdoing

²⁴ Commonwealth of Australia. *Evidence Amendment (Journalists' Privilege) Act 2011 (No. 21, 2011)*. April 18, 2011. Accessed February 20, 2015. <http://www.comlaw.gov.au/Details/C2011A00021>

²⁵ Ibid.

²⁶ House of Representatives Standing Committee on Legal and Constitutional Affairs and Australian Government. *Whistleblower Protection: A Comprehensive Scheme For the Commonwealth Public Sector: Government Response*: 2. February 25, 2009. Accessed February 20, 2015.

<https://www.aph.gov.au/binaries/house/committee/laca/whistleblowing/report/governmentresponse.pdf>

²⁷ Ibid.

²⁸ Ibid, 2-16.

²⁹ For more information on these cases: Whistleblowers Australia. “Whistleblower cases of national significance: Four case studies and the argument for the establishment of a Whistleblower Protection Authority” http://www.bmartin.cc/dissent/contacts/au_wba/wbns.html.

³⁰ “Note Printing Australia Whistleblower Brian Hood Threatened, Magistrates Court Told,” *Herald Sun*, September 17, 2012, accessed February 20, 2015. <http://www.hearldsun.com/au/news/banknote-whistleblower-threatened-magistrates-court-told/story-e6frf7kx-1226476022069>.

³¹ Ibid & Will Ockenden, “Australia a Long Way Behind G20 Counterparts on Whistleblower Protection, Says Report.” *ABC*, September 9, 2014, accessed February 20, 2015. <http://www.abc.net.au/news/2014-09-10/australia-lagging-on-whistleblower-protection/5732778>.

within an organization even if it is to a top official within the organization. Of the 66 percent of the people surveyed who work in an organization, 80 percent would “feel personally obliged” to disclose wrongdoing.³² Eighty-one percent feel that whistleblowers should be protected even if inside information happens to be revealed in the process.³³ However, only 55 percent felt that wrongdoing would be urgently investigated within the organization, and only 49 percent felt that management would seriously protect employees who disclose wrongdoing.³⁴

28. There are serious concerns with the Public Interest Disclosure Act 2013’s limitations regarding national security related issues. A specific concern is that anyone who discloses information regarding national intelligence and security operations, even if made in good faith and for the public interest, will not be protected by the Act.³⁵ Recently, a new law was passed—the National Security Legislation Amendment Bill No. 1 (2014). Under this law, journalists and public whistleblowers alike could face punishment, including up to ten years imprisonment, if they disclose information relating to “special intelligence operation” in the Australian Security Intelligence Operation.³⁶

29. Even though there is official backing from the Australian government in support of whistleblowers protections, there are significant gaps between legislation and state practice. However, most of the information disclosed is based on trends and cases that were implemented before the Public Interest Disclosure Act 2013 officially became binding law in 2014. Given the infancy of this policy, it will take great effort and oversight from state and non-state actors alike to create a culture that embraces public disclosure and fully implements this comprehensive law as well as extend it beyond the public sector.

5. Trends and analysis

30. While there are shortcomings in the Public Interest Disclosure Act 2013, Australia is a clear forerunner in public sector whistleblower protection. Being one of the only two Western countries in the Asia/Pacific, Australia shares many of the same social, ideological, and political characteristics that other countries with established whistleblower protection laws have such as liberal ideals, solidified democracies, and capitalistic economies. Australia has been a clear advocate for whistleblower protections and general anti-corruption initiatives regionally and globally, especially with their efforts to push other G20 members to combat corruption and put in place

³² Griffith University, University of Melbourne, and Newspoll. "World Online Whistleblowing Survey Stage 1 Results Release- Australian Adult Population." June 6, 2012, accessed February 20, 2015. http://www.griffith.edu.au/__data/assets/pdf_file/0003/418638/Summary_Stage_1_Results_Australian_Population_Sample_FULL.pdf.

³³Ibid.

³⁴Ibid.

³⁵Blueprint for Free Speech. “Australia Overview”.

³⁶Ibid ;Farrell, "Journalists and Whistleblowers Will go to Jail Under New National Security Laws."; Reporters Without Borders. “Whistleblowers could face up to 10 years’ imprisonment in Australia” *en.rsf.org*. July 22, 2014, accessed February 20, 2015. <http://en.rsf.org/australia-whistleblowers-could-face-up-to-10-22-07-2014,46682.html>.

comprehensive whistleblower protection policies.³⁷ Two of the biggest limitations are Australia’s lack of legal protections for whistleblowers in the private sector and the recent passing of the National Security Legislation Amendment Bill No. 1 (2014). However, it is clear that even though there is a significant gap between legislation and implementation, Australia has shown a social and political trajectory in favor of creating a culture that is friendly and supportive of whistleblowers.

B. China

<u>China</u>		
Freedom House: Freedom in the World (2015)	6.5 – Not Free	Same
Freedom House: Freedom of the Press (2014)	84 – Not Free	Same
Freedom House: Freedom on the Net (2014)	87 – Not Free	↓ (1)
Reporters Without Borders: Press Freedom Index (2015)	#176	↓ (3)

1. Background

31. China is a one-party authoritarian state that highly circumscribes human, civil and political rights. There are significant restrictions in Chinese society for intellectuals, journalists, activists, and whistleblowers. Thus, the space for intellectual, investigative, activist and whistleblowing activity is limited, as are protections. Furthermore, as China lacks an independent judiciary, cases can be easily politicized if they challenge restrictions or encroach too far into the political or national security space. In terms of international conventions, China has signed but not ratified the International Covenant on Civil and Political Rights (ICCPR), but has signed and ratified the International Covenant on Economic, Social and Cultural Rights (ICESER).³⁸ In Freedom House’s *Freedom in the World*, *Freedom of the Press*, and *Freedom on the Net* reports, China is categorized as “Not Free.”³⁹ Furthermore, Reporters Without Borders ranks China 176 out of 180 in terms of press freedom.⁴⁰

32. In recent years, there have been notable advances towards whistleblower protections and an uptick in the number of individuals blowing the whistle on corrupt practices. But this is largely limited to the economic sphere as officials are seeking to combat corrupt practices in the public sphere. These advances in protections are not meant to protect those who challenge the interests or legitimacy of the state. In addition, China has a number of journalists in jail and is the only state to currently

³⁷ Genevieve Butler. "G20 targets impact of corruption on economic growth and resilience." *aph.gov.au*. October 15, 2014, accessed February 20, 2015.

http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2014/October/Corruption_and_G20

³⁸ United Nations Office of the High Commission on Human Rights, Ratification Status for China. accessed April 13, 2015.

http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=36&Lang=EN

³⁹ Freedom House, *Freedom in the World 2015*, accessed on April 6, 2015,

<https://freedomhouse.org/report/freedom-world/freedom-world-2015#.VTSVtmaXF-U>; Freedom House, *Freedom of the Press 2014*, accessed on April 6, 2015, <https://freedomhouse.org/report/freedom-press/freedom-press-2014?gclid=CM6K8eOahMUCFWcF7AodtRwA8g#.VTSWcWaXF-V>; and Freedom House, *Freedom on the Net 2014*, accessed on April 6, 2015, <https://freedomhouse.org/report/freedom-net/freedom-net-2014#.VTSWr2aXF-U>

⁴⁰ Reporters Without Borders, “World Press Freedom Index 2015,” accessed April 5, 2015. <http://index.rsf.org/#!/>

imprison a Nobel laureate. The charges against Liu Xiaobo emerge from his critique of the Chinese state and his advocacy for political reform, greater human rights, and an end to one-party rule. He was charged with “inciting subversion of state power” and is currently serving an 11-year prison term.⁴¹ Despite international pressure, China remains firm in its restrictive laws, political structure and authoritarian mentality. Moreover, since the ascendancy of Xi Jinping to the presidency in 2013, there has been a tightening of the media and political environment. Xi’s anti-corruption campaign seeks to curtail rampant corruption and also sideline political opponents.⁴²

2. Legislation

33. The Chinese Constitution establishes the country as a “People’s Republic” with a “socialist state” led by the “people’s democratic dictatorship,” and any “disruption of the socialist system by any organization or any individual is prohibited.”⁴³ This establishes broad parameters for state security and social stability and leaves great scope for activity to be limited or prohibited. Thus, even though the Chinese Constitution later delineates “freedom of speech, of the press, of assembly, of association, of procession and of demonstration” and the right “to make to relevant State organs complaints or charges against, or exposures of, any State organ or functionary for violation of law or dereliction of duty,”⁴⁴ this is all understood through the prism of state security and social stability, and can be curtailed, circumscribed or prohibited at any point. Furthermore, these constitutional provisions are read particularly strictly when charges involve national security issues or the leaking of state secrets.

34. China does, however, have a comprehensive petitioning system. This allows individuals to voice “complaints and grievances” through official channels. These channels exist throughout the bureaucracy and provide a mechanism for the Communist Party to keep abreast of social issues and local abuses of power. This system has been altered in recent years, however, in order to keep issues at the local and provincial level, as opposed to encouraging petitioners to appeal to Beijing directly.⁴⁵ Furthermore, China has a Freedom of Information Act (Order of the State Council, No. 492), however, which seeks to safeguard “the legal access to government information by citizen’s, other legal persons and other organizations.”⁴⁶ But in Chapter II, “Scope of Information to be Disclosed,” there are broad areas of government information that are not covered, including the machinations of the

⁴¹ PEN America. “Liu Xiaobo, China.” accessed on April 18, 2015, <http://www.pen.org/defending-writers/liu-xiaobo>

⁴² Evan Osnos, “Born Red,” *The New Yorker*, April 6, 2015, accessed on April 6, 2015. <http://www.newyorker.com/magazine/2015/04/06/born-red>

⁴³ Constitution of the People’s Republic of China, Chapter 1, General Principles, Article 1, accessed on April 5, 2015. http://www.npc.gov.cn/englishnpc/Constitution/node_2825.htm

⁴⁴ Constitution of the People’s Republic of China, Chapter 2, The Fundamental Rights and Duties of Citizens, Article 41, accessed on April 5, 2015, http://www.npc.gov.cn/englishnpc/Constitution/node_2825.htm

⁴⁵ “China Abolishes Petition System,” *The Japan Times*, April 25, 2014, accessed on April 19, 2015, <http://www.japantimes.co.jp/news/2014/04/25/asia-pacific/china-abolishes-petition-system/#.VTRNdmaXF-U>

⁴⁶ Freedom of Information in China, Order of State Council No. 492, April 5, 2007, accessed on April 5, 2015, <http://chinesefoi.org/regulation.aspx>

state's most important decision-making body (the Politburo Standing Committee) and death penalty information.

35. With respect to whistleblower protections, China has had a whistleblower protection framework since at least 1996. In that year, the Supreme People's Procuratorate established statutory whistleblower protections in connection with criminal investigations (SPP Rules). In recent years, these protections have been considerably strengthened, due in large part to president Xi Jinping's anti-corruption campaign. In 2009, these SPP Rules were amended, and in 2014 they were considerably strengthened. These amendments promote whistleblowing in the economic sphere and require procuratorates to inform whistleblowers of their rights. In the case of real-name whistleblowers, procuratorates are to assess risks, make reports, and develop a protection program if necessary. Whistleblowers can also receive cash awards from the state.⁴⁷

3. Official statements

36. China's lead state agency for whistleblower protections is the Supreme People's Procuratorate and it has stated that it will continue to strengthen protections for whistleblowers. The amendments to the SPP Rules in 2014 were preceded by strong statements "guaranteeing" protections for whistleblowers.⁴⁸ Statements from other government officials or agencies are rare to non-existent.

4. State practice

37. China maintains a vast censorship and propaganda apparatus that touches virtually every corner of society. Daily directives are sent out to media outlets and an "Internet army" patrols the Internet censoring what is deemed to be unacceptable content. The websites YouTube, Facebook, Twitter, The New York Times and Bloomberg are blocked in Mainland China. This significantly limits the information available for whistleblowers and journalists, and significantly inhibits their ability to hold the government to account, particularly in the political sphere. China's state practice before the 2014 amendments to the SPP Rules was poor, as little substantive protection was given and few came forward. Whistleblowers would put themselves at considerable personal risk, particularly in rural China where powerful local officials controlled the channels for reporting injustice.⁴⁹ Thus, although a comprehensive petitioning system is in place, too often protections are not offered to petitioners, and many distrust the system. Furthermore, recent reforms to the petitioning system channel more cases into the courts and give local officials greater power to resolve complaints.

⁴⁷ Steptoe, "China Supreme People's Procuratorate Strengthens Protections for Whistleblowers," November 4, 2014, accessed on April 5, 2015, <http://www.steptoe.com/publications-9954.html>

⁴⁸ "Top Chinese Prosecutor Guarantees Protections for Whistleblowers," *Reuters*, October 27, 2014, accessed on April 6, 2015, <http://www.reuters.com/article/2014/10/28/us-china-corruption-whistleblowers-idUSKBN0IH07Q20141028>

⁴⁹ Business Anti-Corruption Portal, "Chinese Public Anti-Corruption Initiatives," accessed on April 13, 2015, <http://www.business-anti-corruption.com/country-profiles/east-asia-the-pacific/china/initiatives/public-anti-corruption-initiatives.aspx>

38. Analysts see this as problematic, as courts can be slow moving, and corrupt and local officials too often fail to offer meaningful protections.⁵⁰ In terms of recent changes to the SPP Rules, it is too early to tell how effective the recent amendments will be and how consistently they will be respected. Furthermore, the SPP Rules apply to anti-corruption efforts, and therefore, large swathes of society are not covered, namely the political and national security spheres. Nonetheless, there has been an uptick in whistleblowing as President Xi’s anti-corruption campaign has intensified. Some whistleblowers are using increased protections to weaken competitors in the economic sphere, while others are using protections to undermine foreign competition.⁵¹ In addition, those who seek to blow the whistle outside of official channels, such as through online platforms like Weibo (China’s Twitter), or through the mainstream media, are not protected by the SPP Rules.⁵² Thus, China’s whistleblowing protections only apply to a limited space within society and serve a particular purpose. There are still large spaces within Chinese society where whistleblowing protections do not apply. This allows the state to leverage whistleblowing for the purposes of fighting corruption and tightening regulations, while restricting the ability of whistleblowers to fight political oppression or abuse.

5. Trends and analysis

39. There are conflicting trends in China. On the one hand, whistleblowing protections have been strengthened for those blowing the whistle on corruption through official channels. On the other hand, those who might blow the whistle on abuse of power, oppression, unjust policies, cronyism or nepotism receive little or no protection. This highlights a striking reality for whistleblowing in China – that is, the government seeks to use it to serve its interests, while curtailing or prohibiting it in virtually every other sector of society. Thus, China is trending up for the limited space that is officially granted for whistleblowing, but is trending down in virtually every other space.

C. India

India		
Freedom House: Freedom in the World (2015)	2.5 – Free	Same
Freedom House: Freedom of the Press (2014)	39 – Partly Free	Same
Freedom House: Freedom on the Net (2014)	42 – Partly Free	↑ (5)
Reporters Without Borders: Press Freedom Index (2015)	#136	↑ (4)

⁵⁰ “China’s Reform of Petitioning System Unlikely to Mean More Justice,” *Radio Free Asia*, November 29, 2013, accessed on April 19, 2015, <http://www.rfa.org/english/news/china/petition-11292013103445.html>

⁵¹ Forbes, “Behind China’s Corruption Crackdown: Whistleblowers,” February 12, 2015, accessed on April 13, 2015, <http://www.forbes.com/sites/riskmap/2015/02/12/behind-chinas-corruption-crackdown-whistleblowers/>

⁵² “Top Chinese Prosecutor Guarantees Protections for Whistleblowers,” *Reuters*, October 27, 2014, accessed on April 6, 2015, <http://www.reuters.com/article/2014/10/28/us-china-corruption-whistleblowers-idUSKBN0IH07Q20141028>

1. Background

40. India is a representative federal democracy that espouses liberty, democracy, human rights and the rule of law. But whistleblowing protections have historically been weak, in part because the ability of the federal government to enforce federal laws is limited. Particular areas of concern include limited statehood, corrupt officials, neglected protections, and a slow moving judiciary. In terms of international conventions, India has ratified both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESER).⁵³ Freedom House categorizes India as “Free” in its *Freedom in the World* report and “Partly Free” in its *Freedom of the Press* and *Freedom on the Net* reports.⁵⁴ Reporters Without Borders ranks India 136 out of 180 in terms of press freedom.⁵⁵
41. In recent years, protections for whistleblowers and journalists have been strengthened, but protections are still questionable. The push for strengthening protections followed several high profile murders where victims had blown the whistle on corruption in the public sector and business malpractice in the private sector. Great concerns also surround a lack of protection when national security issues are at stake. In recent years, the rise of Hindu nationalist forces, and the election of Narendra Modi as prime minister, has created a tense environment in the country between various communities, most notably between Hindus and Muslims. This has narrowed the space for liberalizing political forces and may affect support for whistleblowing and journalist protections. Nonetheless, the space for whistleblowing exists and has expanded, even if the federal government’s ability to enforce such laws is questionable, as the state suffers from limited statehood and rampant corruption.

2. Legislation

42. The Indian Constitution provides for freedom of speech, expression, conscience, and religion.⁵⁶ Citizens are also expected to carry out duties, like abiding by the Constitution, respecting its ideals and institutions, and promoting harmony and a spirit of brotherhood among all the peoples of India, regardless of religion, language, regional or sectional diversities.⁵⁷ With respect to protections for whistleblowers, the Indian government passed the “Whistle Blowers Protection Act, 2011” in May 2014. This federal law seeks to protect individuals who are making public interest disclosures related to corruption, misuse of power, or criminal offenses. Any public servant, or other person, or NGO, may make a disclosure to the Central or State Vigilance Commission. Every complaint must be accompanied by the identity of the

⁵³ United Nations Office of the High Commission on Human Rights, Ratification Status for India, accessed on April 13, 2015, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=79&Lang=EN

⁵⁴ Freedom House, *Freedom in the World 2015*; Freedom House, *Freedom of the Press 2014*; and Freedom House, *Freedom on the Net 2014*

⁵⁵ Reporters Without Borders. “World Press Freedom Index 2015.”

⁵⁶ The Constitution of India, Part III, “Fundamental Rights,” Articles 19, 21 and 25, accessed April 5, 2014, <http://lawmin.nic.in/olwing/coi/coi-english/coi-indexenglish.htm>

⁵⁷ The Constitution of India, Part IVA, “Fundamental Duties,” Article 51A, accessed April 5, 2014, <http://lawmin.nic.in/olwing/coi/coi-english/coi-indexenglish.htm>

complainant and individuals can be punished for knowingly making false complaints. This law was nearly a decade in the making but has now come into effect.⁵⁸

3. Official statements

43. Official statements on whistleblowing are rare. In the lead up to the passage of the “Whistle Blowers Protection Act, 2011,” there were statements affirming a commitment to strengthening protections and securing passage of the bill. The Indian government also recently released a statement offering a “cash reward” to a Swiss whistleblower if he would divulge further information about Indian entities that hold HSBC accounts in Geneva. These entities are alleged to be involved with “black money” and tax evasion.⁵⁹

4. State practice

44. Whistleblowers have been subject to threats, harassment, and even murder. The Indian state has too often been unable or unwilling to protect whistleblowers. In the mid-2000s, several whistleblowers were murdered for revealing high profile malfeasance. This generated public outrage and set the stage for the current whistleblowing law. How effective these new whistleblowing protections will be remains to be seen. It is also unclear what kind of resources will be given to the issue. Critics note that the law covers members of the Indian civil service but does not cover members of state governments. The law also offers little to no protection for those blowing the whistle on private or national security malfeasance. Given the fact that India suffers from limited statehood, citizens will likely be tentative to step forward, particularly in areas where governance is weak. Local officials are too often beholden to corrupt local forces and only apply laws selectively.

5. Trends and analysis

45. The trend in India is positive with significant qualifications. The new whistleblowing law is a step forward, but these new protections apply to the public sector and cover little space in the private sector. For whistleblowing involving national security issues, little to no protection is offered. And there is always the issue of limited statehood. There are swathes of the country where the writ of the government is weak or non-existent. In these areas, this reality may put a damper on potential whistleblowers feeling confident enough to step forward. Those who step forward are taking significant risks when they do so.⁶⁰

⁵⁸ Indian Ministry of Law and Justice, “Whistle Blowers Protection Act, 2011,” accessed on April 4, 2015, <http://www.indiacode.nic.in/acts2014/17%20of%202014.pdf>

⁵⁹ “Black Money: India Offers Cash Reward to HSBC Whistleblower,” *Bangalore Mirror*, March 23, 2015, accessed on April 5, 2015, <http://www.bangaloremirror.com/news/india/Black-money-India-offers-cash-reward-to-HSBC-whistleblower/articleshow/46665229.cms>

⁶⁰ “Measures for Fighting Corruption and Ensuring Better Governance,” *The Hindu*, accessed on April 5, 2015, http://www.thehindu.com/multimedia/archive/00761/Whistleblower_prote_761743a.pdf

D. Indonesia

Indonesia		
Freedom House: Freedom in the World (2015)	3 – Partly Free	Same
Freedom House: Freedom of the Press (2014)	49 – Partly Free	Same
Freedom House: Freedom on the Net (2014)	42 – Partly Free	↓ (1)
Reporters Without Borders: Press Freedom Index (2015)	#138	↓ (6)

1. Background

46. Indonesia represents one of the economic and diplomatic leaders in Southeast Asia. Not only does Indonesia have the largest Muslim population in the world, this country is also one of the few established democracies in Southeast Asia with a bicameral legislature called the People’s Consultative Assembly or Majelis Permusyawaratan Rakyat. The two houses are the House of Representatives (Dewan Perwakilan Rakyat) and the Regional Representative Council (Dewan Perwakilan Daerah). The Indonesian legal system is a Roman-Dutch based common law system and “influenced by customary law.” Indonesia is a founding member of the Association of Southeast Asian Nations (ASEAN), an organization which has prioritized creating institutions and legal doctrines that promote people-centered government, anti-corruption, better transparency within the organization and among member countries. Indonesia is also a member of many other regional and global organizations including the Asian Development Bank, Asia Pacific Economic Cooperation, the East Asia Summit, and the G20. They have ratified both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Indonesia is also a participating state of the controversial ASEAN Human Rights Declaration (AHRD) and currently has a National Human Rights Commission to implement the ideals listed in the Universal Declaration of Human Rights and the AHRD.

47. While Indonesia has one of the most vibrant civil societies and open media in Southeast Asia, in June 2013 the Indonesian Parliament passed the Law on Mass Organizations (Ormas Law), which limits much of the freedoms of local NGOs (such as having to register through the Home Affairs Ministry) and forbids foreign NGOs from activities that “disrupt the stability and integrity’ of Indonesia or ‘disrupt diplomatic relations.’”⁶¹ Freedom House ranked Indonesia as Partly Free (2014 *Freedom in the World* report)⁶², 42 out of 100 (2014 *Freedom of the Net* report), and 49 out of 100 (2014 *Freedom of the Press* report) mostly due to the passing of the Ormas Law.⁶³

⁶¹ Freedom House. "2014 Freedom in the Press Report: Indonesia." *Freedomhouse.org*. 2014. <https://freedomhouse.org/report/freedom-press/2014/indonesia#.VSMx-uGLXfc>.

⁶² Ibid.

⁶³ Freedom House. "2014 Freedom on the Net Report: Indonesia." *Freedomhouse.org*. 2014. <https://freedomhouse.org/report/freedom-net/2014/indonesia>.

Freedom House ranked Indonesia as “Free” in the 2013 *Freedom in the World* report. Indonesia trended down for the 2014 report due to the passing of the *Ormas Law*.

2. Legislation

48. Currently the only law that is used as a legal framework for whistleblower protection is the Law of the Republic of Indonesia Number 13 Year 2006 on Witnesses and Victims Protection (hereafter Law 13/2006).⁶⁴ Law 13/2006 defines Witnesses as those “[...]who can provide information for the purpose of investigation, litigation, prosecution, and examination in court proceeding on an offence, which they hear, see, and/or experience themselves.”⁶⁵ This law defines a victim as “people who have suffered from physical and mental harm, and/or economic loss due to a violation of criminal laws.”⁶⁶ After this legislation became official, the oversight body who is in charge of protecting victims and witnesses is the Witnesses and Victims Protections Agency (Lembaga Perlindungan Saksi dan Korban or LPSK).⁶⁷ While the LPSK was adopted as an independent organization that is only accountable to the President (in order to protect victims), there has to be collaboration and agreement among the LPSK and other public agencies – including the Corruption Eradication Commission (Komisi Pemberantasan Korupsi or KPK) and the National Police – which are infamous for corrupt practices.⁶⁸
49. Law 13/2006 entitles victims and witnesses, their immediate property, and blood-related and marriage family members (up to the third generation) as protected under the law during court proceedings.⁶⁹ Protections entail “any form of action to fulfill the rights and assistance to provide a sense of safety to Witnesses and/or Victims which are the obligations of Witnesses and Victims Protection Agency or other agencies stipends under the law.”⁷⁰ This law also states that Victims should be protected from counter-charges when disclosing crime, including charges of defamation.⁷¹ However, the transparent and universal implementation of these protections lags behind the legal framework.

⁶⁴ For Full text of the No 13. 2006 regarding the protection of Witnesses and Victims See: National Whistleblower Center. “2006 Law on Witness and Victim’s Protection”, <http://whistleblowers.nonprofitsoapbox.com/storage/whistleblowers/documents/law%20on%20witnesses%20and%200victims%20protection.pdf> for more details. 17. Note: This definition is based off the English translated version.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ “Editorial: Poor whistle-blower,” *The Jakarta Post*. October 19, 2012, Accessed February 20, 2015, <http://www.thejakartapost.com/news/2012/10/19/editorial-poor-whistle-blower.html>. The KPK is the agency in charge of pursuing investigations against any type of public crime or corruption.

⁶⁹ National Whistleblower Center, “2006 Law”, 17.

⁷⁰ Ibid.

⁷¹ Simon Wolfe et al. “Whistleblower Protection Laws in G20 Countries: Priorities for Action: Indonesia” *blueprintforfreespeech.net*. September 2014, 41-42. Accessed February 20, 2015. <https://blueprintforfreespeech.net/wp-content/uploads/2014/09/Whistleblower-Protection-Laws-in-G20-Countries-Priorities-for-Action.pdf>.

3. Official statements

50. Even though there are no explicit statements from government officials about whistleblowing protections,⁷² President Widodo built his political platform as a politician who aiming to combat corruption and lack of transparency within the state, both of which have been issues associated with the Indonesian government.⁷³ Indonesia ratified the United Nations Convention Against Corruption on September 19th, 2006.

4. State practice

51. While Indonesia does not have comprehensive whistleblower protection legislation, the biggest limitations with Law 13/2006 is the lack of transparency in its application; the close relationship between politicians and the officials in the LPSK and KPK; and the substantial gap between legislation and enforcement. While the KPK and LPSK agencies are widely respected in Indonesian civil society, these agencies are often caught between Parliament and the National Police force who often try to undermine their efforts.⁷⁴

52. The LPSK is egregiously underfunded, and undermined often by the National Police's actions when trying to protect victims and witnesses of crimes.⁷⁵ Even though the law claims to protect whistleblowers from retaliatory charges, there have been times when this has not been done by public prosecution.⁷⁶ Most whistleblowers who want to remain anonymous have to go through the KPK, another organization that is underfunded, understaffed, and overworked.⁷⁷

53. The lack of distance between these agencies and the state is concerning. Oftentimes, when the KPK tries to pursue investigations against politicians and police officials, they are targeted by the National Police. An example of such is when Bambang Wijayanto, deputy head of the KPK, was arrested by the National Police due to the KPK's on-going investigation of graft corruption among the former candidate for chief of police, Budi Gunawan.⁷⁸ While Gunawan was dropped as candidate by President Widodo (after immense pressure against Gunawan's nomination from civil society on the one hand and in favor by the National Police and Parliament on the other) many of Gunawan's colleagues and subordinates were still

⁷² This was to the extent of the research performed. Most of the searches and documents researched and referenced for the Indonesia Country Profile were entirely in English.

⁷³ Transparency International. "Transparency International supports Indonesia Anti-Corruption Commission." Last modified January 26, 2015.

http://www.transparency.org/news/pressrelease/transparency_international_supports_indonesias_anti_corruption_commission; Nick Perry and France-Presse Agence. "Test of Leadership: Indonesia police chief row sparks crisis for Widodo." *interaksyon.com*. February 8, 2015. <http://www.interaksyon.com/article/104633/test-of-leadership--indonesia-police-chief-row-sparks-crisis-for-widodo>.

⁷⁴ Ibid.

⁷⁵ Wolfe et al, "Whistleblowing Protection laws in G20 countries: Indonesia", 41-42.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Transparency International, "Transparency International supports Indonesia Anti-Corruption Commission."; "Budi's Lawyer Accuses KPK of 'Abusing Authority'." *Jakarta Globe*. February 9, 2015.

<http://thejakartaglobe.beritasatu.com/news/budis-lawyer-accuses-kpk-of-abusing-authority/>.

appointed to the police force.⁷⁹ While there are strong efforts by civil society and non-governmental organizations to combat corruption, as long as the two main agencies that protect witnesses and combat corruption have a close relationship with the state, and protection for whistleblowers remains weak and ill-transparent, corruption shall continue to undermine the Indonesian democracy and economy.

54. Many whistleblowers, including well known whistleblowers Wa Ode Nurhayati and Agus Condro, have been convicted by the KPK due to their involvement with the corruption cases they were disclosing information about.⁸⁰ This came as a shock to many people including the LPSK, given that the KPK should protect any whistleblowers that disclose information. The LPSK has stated that it would try to grant Agus Condro remission of charges or possible parole.⁸¹ Despite the honorable intentions these whistleblowers have, with the high likelihood of whistleblowers being convicted by the KPK, it largely disincentives other officials from disclosing information about corruption. This, along with the structural limitation of the LPSK only being able to protect witnesses as long as the Attorney General's Office, KPK, the Law and Human Rights Ministry, and the National Police agree, makes it exceedingly difficult for whistleblowers to receive protection or reduce their jail time sentences.⁸²
55. The Indonesian government recently detained two French journalists for 11 weeks for misuse of tourist visas for journalistic purposes before they were returned to France.⁸³ Even though the journalists were returned to France, there were subsequent arrests of their sources on charges of rebellion.⁸⁴

5. Trends and analysis

56. Indonesia still has a ways to go when it comes to creating comprehensive whistleblower protections. Unlike many of their Northeastern neighbors, many countries in Southeast Asia do not have the strong bureaucracies that oversee corruption and clientelist relationships between independent agencies and political

⁷⁹ Perry and France-Presse, "Test of Leadership"; Otto, Ben and Anita Rachman. "Indonesia's Widodo Drops Police Chief Nominee: President picks the force's acting chief as new nominee." *Wall Street Journal*. February 18, 2015. <http://www.wsj.com/articles/indonesias-widodo-drops-budi-gunawan-as-police-chief-nominee-1424248523>; Fedina Sundaryani. "Budi Gunawan's Men in, 'Traitor' Out." *Jakarta Post*. March 7, 2015. <http://www.thejakartapost.com/news/2015/03/07/budi-gunawan-s-men-traitor-out.html>.

⁸⁰ "LPSK vows to fight for whistle-blower's freedom." *The Jakarta Post*. August 6, 2011, accessed February 20, 2015. <http://www.thejakartapost.com/news/2011/08/06/lpsk-vows-fight-whistle-blower%E2%80%99s-freedom.html>; "KPK Names Whistle-Blower Wa Ode a Suspect in Budget Misuse." *The Jakarta Post*. December 11, 2011, accessed February 20, 2015. <http://www.thejakartapost.com/news/2011/12/11/kpk-names-whistle-blower-wa-ode-a-suspect-budget-misuse.html>.

⁸¹ "LPSK vows to fight for whistle-blower's freedom", *The Jakarta Post*.

⁸² "Editorial: Poor whistle-blower," *The Jakarta Post*. 2012.

⁸³ Reporters Without Borders. "Why Indonesia Should Release Two Detained French Journalists". *en.rsf.org*. October, 15, 2014, accessed February 20, 2015. <http://en.rsf.org/Indonesia-why-indonesia-should-release-two-15-10-2014.47112.html>; Reporters Without Borders. "Two journalists back in France after 11 weeks in Indonesian jails". *en.rsf.org*. October 31, 2014, accessed February 20, 2015. <http://en.rsf.org/indonesie-two-journalists-back-in-france-31-10-2014.47184.html>.

⁸⁴ *Ibid*.

figures. However, this should not take away from the many positive steps Indonesia has shown towards creating a culture that favors whistleblowers. Indonesia has an established democracy and very active civil society that has shown widespread support of agencies that are meant to protect whistleblowers and fight corruption such as the LPSK and the KPK.

57. Given that President Widodo is one of the first presidents that resided outside the tight political-military sphere that has dominated Indonesian politics, he received wide support from the public because his political platform was dedicated to making governmental activities more transparent and attacking corruption within the state. As a G20 member and a founding member of ASEAN, Indonesia wants to be looked upon as a legitimate state with an open society along with its other Northeast Asian neighbors and G20 members. With these changes and internal political dynamics within Indonesia, while comprehensive legal protection for whistleblowers may not exist yet, it has shown clear signs that it wants to align itself with regional and multilateral ideals. There are two major shortcomings that Indonesia must overcome to create a better environment for whistleblowers and journalists' sources. The first shortcoming is the lack of political agency and funding the KPK and LPSK receive. The second substantial shortcoming is the harsh punishments whistleblowers receive if they are involved with the cases on which they are disclosing information. The KPK's and LPSK's lack of funding and agency, along with the strict retribution of whistleblowers involved in any wrongdoing, undermines the budding culture that supports combating government corruption.

E. Regional Analysis

58. There is no regional framework for whistleblower or journalist source protections in the Asia-Pacific. However, the Asia-Pacific Economic Cooperation (APEC), which includes 21 Pacific Rim states, does have principles on the prevention of bribery and enforcement of anti-bribery laws. APEC states that it is committed to "cooperating in APEC to implement concrete actions to fight corruption and ensure transparency and accountability in the proper management of public affairs and public property." APEC also has the Santiago Commitment and Course of Action on fighting corruption and ensuring transparency.⁸⁵ These measures are meant to combat corruption and enhance transparency, while promoting economic efficiency.
59. In addition to APEC, the Association of Southeast Asian Nations (ASEAN), which includes 10 states in Southeast Asia, adopted the ASEAN Human Rights Declaration (AHRD) in 2012. This is aimed at creating a binding law around human rights in the Southeast Asia.⁸⁶ Officials within ASEAN understood that a legal framework around human rights was necessary in order to be seen as a legitimate diplomatic multilateral institution. However, many local and transnational civil

⁸⁵ United States, "APEC Principles on the Prevention of Bribery and Enforcement of Anti-Bribery Law," (paper presented at the Concluding Senior Officials' Meeting, Beijing, China, November 5-6, 2014) http://mddb.apec.org/Documents/2014/SOM/CSOM/14_csom_042.pdf

⁸⁶ Association of Southeast Asian Nations (ASEAN), "ASEAN Human Rights Declaration," November 19, 2012, <http://www.asean.org/news/asean-statement-communicues/item/asean-human-rights-declaration>

society organizations, including Human Rights Watch, have found the declaration to be highly flawed and only a mechanism to solidify state power through a guise of human rights.⁸⁷ While comprehensive individual human rights are listed within the declaration, these laws are completely under the limitations of domestic law.⁸⁸ Even though there is no whistleblower or journalist source protections framework in Southeast Asia, there are discussions to create an agency that will protect witnesses and victims of transnational crime.⁸⁹ Officials agreed that “effective protection of witnesses and victims leads to higher conviction rates.”⁹⁰

60. In addition to APEC and ASEAN, the Asian Development Bank (ADB), which includes 67 states, 48 of which are in the Asia-Pacific, drafted a Whistleblower and Witness Protection Administrative Order. This order grants protections to whistleblowers and creates internal mechanisms that staff and non-staff can use when they want to disclose information.⁹¹ It states in the General Principles of the Administrative Order that “ADB will pursue all reasonable steps to protect whistleblowers and witnesses acting in good faith and to ensure that they are not subject to retaliation.”⁹² Any staff member of the Asian Development Bank can disclose information of misconduct or corruption in good faith to the Human Resources Division (BPHR) or the Office of Anti-corruption and Integrity (OAI), respectively. The staff member may disclose anonymously or have their name kept confidential if requested. While disclosing any type of misconduct is encouraged, it is not required of staff to do so. However, for any type of “integrity violation,” which includes corruption or theft activity, staff is required to report to the OAI. This administrative order sets a solid example to other Asian regional institutions (public and private alike) of how whistleblower protections should be drafted and implemented.⁹³
61. The South Asian Association for Regional Cooperation (SAARC), which includes eight states in South Asia, has the “SAARC Charter of Democracy.” This document affirms fundamental human rights, the dignity of the human person, pluralistic democracy, inclusivity, and good governance.⁹⁴ In addition, the organization has

⁸⁷ Mong Palantino, "Human Rights Declaration Falls Short," *The Diplomat*, November 28, 2012, <http://thediplomat.com/2012/11/human-rights-declaration-falls-short/>; Human Rights Watch, "Civil Society Denounces Adoption of Flawed ASEAN Human Rights Declaration," November 19, 2012, <http://www.hrw.org/news/2012/11/19/civil-society-denounces-adoption-flawed-asean-human-rights-declaration>

⁸⁸ Mong Palantino, "Human Rights Declaration Falls Short,"

⁸⁹ Nurhayati, Desy. "Agency to be established to protect crime witnesses, victims". *The Bali Daily*. November 14, 2013. <http://www.thebalidaily.com/2013-11-14/agency-be-established-protect-crime-witnesses-victims.html>. The countries who agreed to this agency are Indonesia, Cambodia, Malaysia, the Philippines, Thailand and Papua New Guinea.

⁹⁰ Ibid.

⁹¹ Asian Development Bank, "Whistleblower and Witness Protection (ADB Administrative Order No. 2.10)," December 11, 2009, <http://www.adb.org/sites/default/files/page/149087/ao2-10.pdf>

⁹² Ibid. Section 3.1 of the General Principles in the ADB Administrative Order on Whistleblowers and Witness Protection.

⁹³ Ibid.

⁹⁴ South Asian Association for Regional Cooperation (SAARC), "SAARC Charter of Democracy," <http://saarc-sec.org/SAARC-Charter-of-Democracy/88/>

pledged to fight corruption but it has yet to take substantive measures on the issue.⁹⁵ Whistleblower and journalist source protections are not mentioned.

IV. Country Reports: Sub-Saharan Africa

A. Eritrea

<u>Eritrea</u>		
Freedom House: Freedom in the World (2015)	7 – Not free	Same
Freedom House: Freedom of the Press (2014)	94 – Not free	Same
Freedom House: Freedom on the Net (2014)	No Data	No Data
Reporters Without Borders: Press Freedom Index (2015)	#180/ Worst of the Worst	Same

1. Background

62. The Eritrean government is highly centralized and ranks consistently low on freedom indexes for human rights violations. According to Freedom House’s 2012 *Worst of the Worst Report*, the Popular Front for Democracy and Justice (PFDJ) in Ethiopia, the only legal political party, maintains virtually absolute control over the country’s political life and has become harshly authoritarian since the end of the war with Ethiopia in 2000.⁹⁶ A lack of presidential elections has worsened the state’s conditions. Current President Isais Afewerki has been in power since 1991 by holding off elections, obliterating the private press, and imprisoning critics of his regime.⁹⁷ Afewerki continues his monopoly on power with no functional legislature, independent judiciary, non-governmental organization presence, or independent press.⁹⁸ Eritrea has been coined “Africa’s biggest prison for journalists.”⁹⁹ Freedom of information is non-existent and the hostile political climate remains unchanged. Eritrea is consistently in the international news for “information black holes” and the oppression of journalists.

2. Legislation

63. A new Eritrean constitution was ratified in 1997, calling for “conditional” political pluralism and an elected 150-seat National Assembly, which would allow a majority vote to decide the presidency.¹⁰⁰ However, the ratified constitution remains unimplemented and national elections have been postponed indefinitely. Eritrea

⁹⁵ “SAARC Heads Urged to Control Corruption,” *Daily FT*, November 21, 2014, <http://www.ft.lk/2014/11/21/saarc-heads-urged-to-control-corruption/>

⁹⁶ Freedom House. *Worst of the Worst 2012: The World’s Most Repressive Societies*. 2013 <https://www.freedomhouse.org/sites/default/files/Worst%20of%20the%20Worst%202012%20final%20report.pdf>

⁹⁷ “10 Most Censored Countries.” *Committee to Protect Journalists*. Accessed April 22, 2015. <https://cpj.org/reports/2012/05/10-most-censored-countries.php>.

⁹⁸ Human Rights Watch, *World Report 2014* (New York: Seven Stories Press, 2014) https://www.hrw.org/sites/default/files/wr2014_web_0.pdf

⁹⁹ Habtom Yohannes. “Africa’s Biggest Prison for Journalists.” *This Is Africa*. September 18, 2014. Accessed April 1, 2015. <http://thisisafrika.me/eritrea-africas-biggest-prison-journalists/>.

¹⁰⁰ Piano, Aili, and Arch Puddington, eds. “Worst of the Worst 2007: The World’s Most Repressive Societies.” New York: Freedom House, 2007. <https://freedomhouse.org/sites/default/files/WotW2007.pdf>

currently operates under a provisional government without an electoral democracy. While the Eritrean constitution outlines in Article 19 that “every person shall have the freedom of speech and expression, which include freedom of the press and other media” and “every citizen shall have the right of access to information,”¹⁰¹ there is a disjuncture between legislation and state practice. The PFDJ and the military, both subordinate to President Afwerki, are in practice the only institutions of political significance in Eritrea. These institutions restrict civil liberties, including freedom of speech, press, and assembly. Other abuses include restrictions on freedom of the Internet.¹⁰²

64. In accordance with the law, independent media is not allowed to operate in Eritrea, and the government controls all broadcasting outlets. Further, Freedom House has deemed the judiciary unprofessional and notes that it has never issued rulings opposing the government position.¹⁰³ Constitutional due process guarantees are regularly ignored in cases related to state security. The International Crisis Group describes Eritrea as a prison state for its disregard for the rule of law and its willingness to detain anyone suspected of opposing the regime, usually without charge.¹⁰⁴ Torture, arbitrary detentions, and political arrests are also common.¹⁰⁵

65. Whistleblowing is criminalized and the government does not protect whistleblowers from retaliation. The law does not specifically provide protection to private and public employees for making internal disclosures or lawful public disclosure of evidence of illegality, such as the solicitation of bribers or other corrupt acts, gross waste or fraud, gross mismanagement, abuse of power of substantial and specific dangers to public health and safety.¹⁰⁶

3. Official statements

66. Eritrean government officials seldom comment on its mistreatment of journalists and criminalization of whistleblowers. President Afwerki explicitly refuses to account for the whereabouts, legal status, and health of jailed journalists, or even confirm reports that some journalists have died in custody.¹⁰⁷ With only one political party, objective statements are not made openly. There is no explanation for legal action taken against whistleblowers, and anonymity is not afforded to journalists who report on the country’s injustices.

¹⁰¹ The Constitution of Eritrea, art. 19, sec. 3. 1997.

<http://confinder.richmond.edu/admin/docs/Eritrea1997English.pdf>

¹⁰² Daniel Calingaert. "The Worst Dictatorships – and Most Enduring." Freedom House. July 13, 2012. Accessed March 1, 2015. <https://freedomhouse.org/blog/worst-dictatorships---and-most-enduring#.VTgy35TF-uk>.

¹⁰³ "Eritrea: Country Overview." Freedom House. January 1, 2014. Accessed March 6, 2015.

<https://freedomhouse.org/report/freedom-world/2014/eritrea#.VTg0MZTF-uk>.

¹⁰⁴ Eritrea: The Siege State. *Africa Report Number 160*. 2010. [http://www.crisisgroup.org/~media/files/africa/horn-ofafrica/ethiopiaeritrea/163%20eritrea%20the%20siege%20state.pdf](http://www.crisisgroup.org/~/media/files/africa/horn-ofafrica/ethiopiaeritrea/163%20eritrea%20the%20siege%20state.pdf)

¹⁰⁵ Ibid.

¹⁰⁶ United States Department of State, Bureau of Democracy, Human Rights and Labor, Eritrea 2013 Human Rights Report. 2014. <http://www.state.gov/documents/organization/220321.pdf>

¹⁰⁷ Committee to Protect Journalists. *Attacks on the press in 2009*. <https://cpj.org/AOP09.pdf>

4. State practice

67. Since President Afewerki ordered a shutdown of the press in 2001, press freedom has been eliminated. On state orders, independent newspapers were closed down and affiliated publishers and editors were arrested.¹⁰⁸ State media is subject to close surveillance and conceals innumerable developments in contemporary history such as the Arab Spring.¹⁰⁹ Accessing reliable information is an arduous task in the absence of satellite and Internet connections. Only a few independent radio stations, like Radio Erena, operating out of Paris, is allowed to broadcast news. Nevertheless, the information ministry closely supervises broadcasting.
68. According to Reporters Without Borders' press freedom barometer, 19 journalists have been killed and 160 journalists have been imprisoned.¹¹⁰ However, current leadership obscures injustice, making it difficult to hold perpetrators accountable for gross human rights violations. The Eritrea 2013 Human Rights Report released by the U.S. State Department indicated that there were several disappeared persons, many of whom were journalists.¹¹¹ The UN High Commissioner for Human Rights previously reported that there were between 5,000 and 10,000 political prisoners in Eritrea.¹¹² Prison conditions are harsh, and outside monitors such as the International Committee of the Red Cross are denied access to detainees.¹¹³ In some facilities, inmates are held in metal shipping containers or underground cells in extreme temperatures.¹¹⁴ Furthermore, the government maintains a network of secret detention facilities.
69. Journalism in Eritrea is innately opaque, as journalists are conscripted into their work and have no editorial freedom.¹¹⁵ These journalists serve as mouthpieces for the government and are handed comprehensive instructions on how to cover events. Deviation from government crafted scripts and suspicions of journalists sending information outside of the country results in imprisonment without charge or trial. Other consequences include being held for extended periods of time without access to a lawyer or without their family being notified. According to the Committee to Protect Journalists, an Eritrean journalist in exile anonymously reported, "Every time [a journalist] had to write a story, they arrange for interview subjects and tell you specific angles you have to write on."¹¹⁶ Ultimately, through extreme censorship and

¹⁰⁸ Jackie Marchildon. "Eritrea: A Story of Censorship." Canadian Journalists for Free Expression. November 6, 2013. <https://cjfe.org/resources/features/eritrea-story-censorship>.

¹⁰⁹ Reporters Without Borders. *World Press Freedom Index 2014*

¹¹⁰ "Press Freedom Barometer 2015 - Reporters Without Borders." Accessed April 23, 2015. <http://en.rsf.org/press-freedom-barometer-netizens-imprisoned.html?annee=2015>.

¹¹¹ United States Department of State, Bureau of Democracy, Human Rights and Labor. Eritrea 2013 Human Rights Report. 2014. <http://www.state.gov/documents/organization/220321.pdf>

¹¹² Ibid.

¹¹³ "Eritrea: Country Overview." Freedom House. January 1, 2014. Accessed March 6, 2015. <https://freedomhouse.org/report/freedom-world/2014/eritrea#.VTg0MZTF-uk>.

¹¹⁴ Roy Greenslade. "Press Freedom Body Highlights Plight of Eritrea's Jailed Journalists." *The Guardian*. December 8, 2014. Accessed March 23, 2015. <http://www.theguardian.com/media/greenslade/2014/dec/08/press-freedom-body-highlights-plight-of-eritreas-jailed-journalists>.

¹¹⁵ "10 Most Censored Countries." *Committee to Protect Journalists*. Accessed April 22, 2015. <https://cpj.org/reports/2012/05/10-most-censored-countries.php>.

¹¹⁶ Ibid.

disregard for the rule of law, whistleblowers and journalists live in perpetual fear of reprisal.

5. Trends and analysis

70. According to the Committee to Protect Journalists (CPJ), this is the third year that Eritrea has more than 200 journalists in prison (the 2014 CPJ report indicates there are 221 journalists jailed).¹¹⁷ While the number of journalists imprisoned per year has fluctuated slightly, they have remained consistently high and Eritrea is considered one of the most repressive states in the world for press freedom. Since 2012, Reporters Without Borders has listed Eritrea as the worst country for journalists.¹¹⁸ The political climate in Eritrea remains unchanged and does not support the protection of whistleblowers: government officials seldom make statements explaining their treatment of journalists and the abuse of journalists is persistent.

B. Mali

<u>Mali</u>		
Freedom House: Freedom in the World (2015)	4.5 – Partly free	Same
Freedom House: Freedom of the Press (2014)	37 – Partly free	↑ (9)
Freedom House: Freedom on the Net (2014)	No data	No data
Reporters Without Borders: Press Freedom Index (2015)	#118	↑ (4)

1. Background

71. The Republic of Mali is a country in transition. As internal conflicts between a weak central government and a disparate web of armed Islamic and separatist groups reached peak levels of violence after a 2012 coup, French military intervention quickly countered gains made by Islamic separatists and led to the establishment of the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA). International pressure led President Ibrahim Boubacar Keita—elected in 2013—and a coalition of six oppositional groups to sign a peace agreement in March 2015.¹¹⁹ This volatile environment has proven especially detrimental and dangerous to domestic and foreign journalists attempting to cover the conflict.

72. Despite its history of frequent, undemocratic political transitions—the 2012 coup being only one of several since independence—and poor economic development, Mali was, until recently, host to a stable, open environment for media. The country had been consistently rated “Free” in the annual Freedom House *Freedom in the*

¹¹⁷ Bill Sweeney, ed. *Attacks on the press in 2009*. New York: The Committee to Protect Journalists, 2010. <https://cpj.org/AOP09.pdf>

¹¹⁸ Reporters Without Borders. *World Press Freedom Index 2014*

¹¹⁹ “Mali signs UN Ceasefire to End Conflict with Northern Rebels,” *BBC*, February 20, 2015. <http://www.bbc.com/news/world-africa-31544438>

World ratings before plummeting to “Not Free” after the 2012 coup.¹²⁰ Freedom House also documented a significant decline in the country’s freedom of the press rating.¹²¹ Reporters Without Borders similarly adjusted their outlook on Mali, ranking it 188th in its 2015 *World Press Freedom Index*¹²²--just four years removed from a ranking of 25th in 2011-2012.¹²³ Even after a return to democratic rule, the country ranked 115 of 175 in the 2014 *Corruption Perceptions Index*.¹²⁴ In 2010 Mali ranked 116th, suggesting corruption was a problem long before military tensions boiled over.¹²⁵

73. Mali acceded to the ICCPR and ICESCR in 1974. In terms of regional treaties, the Malian government ratified the African Charter on Human and Peoples’ Rights in 1981. The country also acceded to the Convention against Torture and Other Cruel, Inhumane, or Degrading Treatment or Punishment in 1999 and ratified the Convention against Corruption in 2008. Mali ratified the International Convention for the Protection of All Persons from Enforced Disappearance in 2009.

2. Legislation

74. The passing of the 1992 Malian Constitution marked a transition from military rule to secular, multiparty democracy. The language outlining protected rights is sparse, and restricted by references to limitations within the bounds of unspecified laws regulating said rights. Article 4 guarantees freedoms of thought, conscience, religion, cult, opinion, expression, and creation.¹²⁶ Article 6 expands on public import of these freedoms by recognizing freedom of the press and ensuring equal access to an independently regulated state media.¹²⁷ Also of relevance to the work of journalists and media, Article 11 states “everything not prohibited by law shall not be hindered.”¹²⁸ Article 81 calls for the independence of executive and legislative authorities while delegating the task of safeguarding liberties to judicial authority.¹²⁹ Suspending briefly in 2012-2013, the transitional Malian government reinstated the Constitution after regional and international pressure.¹³⁰

¹²⁰ “Freedom in the World 2014: Mali,” *Freedom House*, 2014. <https://freedomhouse.org/report/freedom-world/2015/mali#.VTXDIxPF8xI>

¹²¹ *Ibid.*

¹²² “2015 World Press Freedom Index: Mali,” *Reporters Without Borders*, 2015. <http://index.rsf.org/#!/index-details/MLI>

¹²³ “Press Freedom Index 2011/2012,” *Reporters Without Borders*, 2012. <http://en.rsf.org/press-freedom-index-2011-2012,1043.html>

¹²⁴ “Corruption Perceptions Index 2014,” *Transparency International*. 2014. <https://www.transparency.org/cpi2014/results>

¹²⁵ “Corruption Perceptions Index 2010,” *Transparency International*, 2010. <http://www.transparency.org/cpi2010/results>

¹²⁶ Constitution of the Republic of Mali, article 4.

¹²⁷ *Ibid.*, article 6.

¹²⁸ *Ibid.*, article 11.

¹²⁹ *Ibid.*, article 81.

¹³⁰ “Malian Coup Leaders Restore Constitution,” *Al Jazeera*, April 1, 2012. <http://www.aljazeera.com/news/africa/2012/04/20124181943166936.html>

75. From 1982 on, Mali has passed a number of laws meant to curb corruption. Analysts suggest that public dissatisfaction with corrupt officials contributed directly to the 2012 coup that effectively destabilized the country in light of ongoing independence struggles in the north.¹³¹ In a 2013 policy paper, Afrobarometer cited the three primary contributing factors to conflict in the north as “foreign terrorists, corruption and the desire for natural resources.”¹³²
76. Mali has yet to pass comprehensive legislation concerning access to information. Domestic law No. 98-012, passed in 1998, establishes a baseline for access to information, but only narrowly and in the context of public-administrative relations.¹³³ Before the 2012 coup, the general attitude toward government-facilitated access to information in Mali was encouraging. This openness toward media was in part connected to a larger social process of “Communication for Development,” which sought to inform relevant parties and to make decisions in transparent, accessible formats.¹³⁴
77. Mali does not have a culture of whistleblowing, and few cases have arisen in which citizens, officials or employees have brought public attention to corrupt practices or general or systematic misconduct in public or private institutions. The situations in which whistleblowing typically takes place do not often materialize in Mali. One of the poorest countries in the world, 80% of the Malian population work in either farming or fishing-related industries and only 33% are able to read and write.¹³⁵ The average citizen is significantly distanced from centralized governmental agencies or private businesses. Additionally, there is no specific law designed to protect confidential sources.

3. Official statements

78. Speaking in reference to proposed new legislation to further criminalize corruption in 2013, the Malian Minister of Justice, Malick Coulibaly, stated that “Financial and economical delinquency is a Malian reality that compromises the basis of our young democracy...[it] is still a serious problem.”¹³⁶

4. State practice

79. Internet freedom in Mali remains a fledgling issue. As of 2013, only 2% of Mali’s 16.5 million citizens accessed the Internet in 2012.¹³⁷ A 2013 report found that no

¹³¹ Soumaila T. Diarra, “Mali to Adopt a New Anti-Corruption Law,” *Thomson Reuters Foundation*, June 12 2013. <http://www.trust.org/item/20130612082953-psf9m/>

¹³² Massa Coulibaly, “Popular Perceptions of the Causes and Consequences of the Conflict in Mali, *Afrobarometer* policy paper no.10 (2014): 1. <http://www.afrobarometer.org/publications/policy-papers/item/1414-popular-perceptions-of-the-causes-and-consequences-of-the-conflict-in-mali>

¹³³ “Study on the Right to Access Information in Mali,” *Africa Freedom of Information Centre* (2011): 12.

¹³⁴ *Ibid.*

¹³⁵ United States Central Intelligence Agency, *The World Factbook: Mali*, Continually updated. <https://www.cia.gov/library/publications/the-world-factbook/geos/ml.html>

¹³⁶ Soumaila T. Diarra, “Mali to Adopt a New Anti-Corruption Law.”

¹³⁷ Freedom House, “Freedom of the Press: Mali.”

traces of abuse or illegal monitoring were reported.¹³⁸ Despite having one of the lowest internet usage rates on the continent, Freedom House notes the impact of new mobile technology in media culture.¹³⁹

80. The French and Malian governments have been accused of unjustly limiting the means in which reporters gained access to cover events surrounding military efforts to combat various rebel groups in the north. Acknowledging the unavoidable physical risks associated with covering active conflict zones, Reporters Without Borders called efforts to keep journalists at least 100 km from various battles contrary to democratic values.¹⁴⁰
81. Various governments in Mali have implicitly and, at times, explicitly encouraged self-censorship. The transitional post-coup government of 2012 called on journalists to maintain their duty as citizens to support the military, “act responsibly,” and to avoid publishing stories of sensitive subject matter in relation to security issues.¹⁴¹
82. Mali regulates its media through its High Communications Council and the Committee for Equal Access to the State Media. Both have received insufficient support necessary for competent functioning.¹⁴² The central government sought the creation of various initiatives aiming to unite journalists and provide training facilities, but these efforts were largely undone after the increased unrest following the 2012 coup.¹⁴³ Professionalism within journalism remains an issue for Malians, but at least 50 journalistic associations have been formed.¹⁴⁴ A “Code of Ethics” for journalists was adopted in 1991, recognizing the social relationship and duties between the public and media professionals and clarifying the rights of journalists.¹⁴⁵

5. Trends and analysis

83. Although the Malian government has confronted separatist groups in the north since independence, these clashes had relatively little impact on freedom of the press until the 2012 coup. Corruption, however, has plagued Mali before and after democratic and nondemocratic political transitions. In spite of a relatively diverse media landscape, Mali’s underdeveloped economy and limited state infrastructure have capped human capital and limited the creation of a truly flourishing media culture. Despite these setbacks, Mali should look to formalize domestic law ensuring access to information, even in times of war. Malian officials should no longer encourage self-censorship and look to re-establish state-backed professionalism

¹³⁸ United States Department of State, Bureau of Democracy, Human Rights and Labor, “Country Reports on Human Rights Practices for 2013: Mali,” (2013): 12.

¹³⁹ Freedom House, “Freedom of the Press: Mali.”

¹⁴⁰ “French Military Intervention Achieves ‘Zero Image of the War Front’ Media Objective,” *Reporters Without Borders*, February 15, 2013. <http://en.rsf.org/mali-french-military-intervention-16-02-2013,44084.html>

¹⁴¹ United States Department of State, Bureau of Democracy, Human Rights and Labor, 11.

¹⁴² Freedom House, “Freedom of the Press: Mali.”

¹⁴³ *Ibid.*

¹⁴⁴ “African Media Barometer: Mali 2012,” *African Media Barometer*, (2012): 80. http://www.fesmedia-africa.org/uploads/media/AMB_Mali_2012_.pdf

¹⁴⁵ “Mali Code: Code of Ethics of the Malian Journalist,” *Donald W. Reynolds Journalism Institute*, (1991).

training for journalists. Until a lasting political solution is reached between the government and the dizzying array of contentious parties operating in the north, journalistic and media freedom--especially those attempting to cover the conflict--will remain restricted.

C. Nigeria

<u>Nigeria</u>		
Freedom House: Freedom in the World (2015)	4.5 – Partly Free	↓ (.5)
Freedom House: Freedom of the Press (2014)	51 – Partly Free	Same
Freedom House: Freedom on the Net (2014)	33– Partly Free	Same
Reporters Without Borders: Press Freedom Index (2015)	#111	↓ (2)

1. Background

84. The Federal Republic of Nigeria is the most populated country in Africa. In 1999 the country hosted its first presidential and parliamentary elections, bucking the post-colonial tendency toward military dictatorship. The former British colony boasts the largest GDP in Africa and produces nearly 3% of the world’s oil. The rise and recent abatement of Boko Haram in northern states has threatened the stability of the Nigerian Federation, perilously endangered the lives of many citizens, and ultimately exposed the inability of the central government to counter an increasingly strong internal security threat.¹⁴⁶ In oil-rich southern states, periodic clashes between the Movement for the Emancipation of the Niger Delta and security forces reveal the frustrations of a region wrecked by pollution and short on federally siphoned oil revenue.¹⁴⁷ Expansive anti-terror laws and the strategic realities of internal conflict have created an unstable and unsafe environment for the country’s journalists.

85. Endemic corruption in Nigeria connects politics and economics to the great disadvantage of the country’s citizens. Those opposing the prevailing climate of corruption must consider the costs of being charged with defamation, sedition, or similar criminal offenses. Journalists in particular are vulnerable to vindictive retaliation, as crossovers between political elites encourage swift response to claims that threaten the stature or future prosperity of powerful individuals. Newly elected President, and former military general, Muhammadu Buhari, will be tasked with combating this problem while continuing to manage the threat of Boko Haram and other internal threats to national security.¹⁴⁸

¹⁴⁶ Kevin Sieff, “War-Torn Nigerian Town Shows Devastating Legacy of Boko Haram,” *The Washington Post*, April 11, 2015. http://www.washingtonpost.com/world/africa/war-torn-nigerian-town-shows-devastating-legacy-of-boko-haram/2015/04/11/d7628ce6-dcad-11e4-b6d7-b9bc8acf16f7_story.html?hpid=z6

¹⁴⁷ Ilufoye S. Ogundiya, “Corruption and the Development Tragedy in the Niger Delta Region,” *Journal of Developing Societies* 27, 1 (2011): 58.

¹⁴⁸ James Emejo, “World Bank Commends Buhari’s Move to Address Past Corrupt Practices,” *This Day Live*, April 14, 2015. <http://www.thisdaylive.com/articles/world-bank-commends-buhari-s-move-to-address-past-corrupt-practices/206772/>

86. Freedom House has deemed Nigeria “partly free” for the last three years, but notes in its 2015 *Freedom in the World* Report that civil liberties have come under sudden and severe attack in 2014.¹⁴⁹ The organization has consistently rated the country in the middle of its range of possible scores in its *annual Freedom of the Press* ratings, citing the diverse and vast nature of Nigeria’s media landscape and noting the distinct challenges facing journalists in the public sphere.¹⁵⁰ Reporters Without Borders similarly positions Nigeria as a country both open to the press and suffering from government-induced restrictions and reprisals, ranking it 111th on its 2015 *World Press Freedom Index*.¹⁵¹ In 2013 the Committee to Protect Journalists placed Nigeria on its *Impunity Index*, a ranking system highlighting countries in which journalists are killed at an abnormal rate and convictions or investigations are consistently fruitless. 2013 marked Nigeria’s first appearance on the list--before repeating in 2014--as the report connected the peril of journalists to the internal struggle with the extremist group Boko Haram.¹⁵² Over the past three years Transparency International has ranked Nigeria near the bottom of its *Corruption Perceptions Index*, placing the country 134th in 2014.¹⁵³

87. Nigeria is party to a variety of international human rights treaties. While under military rule in 1993, Nigeria ratified the ICCPR and the ICESCR. Unlike these conventions, the African Charter of Human and Peoples’ Rights, of which Nigeria ratified in 1983, does not include a derogation clause allowing for the temporary restriction of rights to expression and opinion in extraordinary circumstances. Article 9 of the Charter offers individuals the rights to receive information, hold their own opinions, and to share their opinions within the law.¹⁵⁴ In 2004 the country ratified the Convention against Corruption. Nigeria also ratified the Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Practices in 2001 and the International Convention for the Protection of All Persons from Enforced Disappearance in 2009.

2. Legislation

88. The Constitution of Nigeria was enacted in 1999. In reference to mass media, Chapter II, Section 20, ensures the uninterrupted freedom of various press mediums to hold the government accountable.¹⁵⁵ Chapter IV spells out the freedom of thought in Section 38(1) and, relatedly, freedoms of expression, opinion, and the ability to openly receive and impart information in Section 39(1).¹⁵⁶ Subsection (2) of Section

¹⁴⁹ “Freedom in the World 2015: Nigeria,” *Freedom House*, 2015.

¹⁵⁰ “Freedom of the Press 2014: Nigeria,” *Freedom House*, 2014.

¹⁵¹ “2015 World Press Freedom Index: Nigeria,” *Reporters Without Borders*, 2015.

¹⁵² “Getting away with Murder: CPJ’s 2013 Impunity Index Spotlights Countries Where Journalists are Slain and the Killers Go Free,” Committee to Protect Journalists, New York: 2013. <https://www.cpj.org/reports/2013/05/impunity-index-getting-away-with-murder.php#table>

¹⁵³ “Corruption Perceptions Index 2014,” *Transparency International*, 2014.

¹⁵⁴ Organization of African Unity, African Charter on Human and Peoples’ Rights (1981): chp. 1, article 9.

¹⁵⁵ Constitution of the Federal Republic of Nigeria, chp. 2, section 20.

¹⁵⁶ *Ibid*, chp. 4, sections 38(1); 39(1).

- 39 elaborates the content of these rights further, listing the ability to own and operate media companies as related freedom.¹⁵⁷
89. A Freedom of Information Act, first introduced in 2006, passed through the Nigerian Senate and House of Representatives in May 2011. Intended to protect personal privacy and provide access to information consistent with public interest, the act aims to “protect serving public officers from adverse consequences for disclosing certain kinds of official information without authorization.”¹⁵⁸ Ostensibly conceived as a measure to protect whistleblowing, Section 27 of the legislation bars interested or affected parties from pursuing criminal proceedings against officers or persons disclosing information in good faith.¹⁵⁹ Subsection 27(2)(b) and (c) describes approved disclosures as presenting information that gives evidence of “mismanagement, gross waste of funds, fraud, and abuse of authority,” as well as dangers to public health or safety.¹⁶⁰ Critics of the act, however, note that Section 27 refers only to public institutions, giving no mention to private entities. Additionally, Section 27 narrowly bans the advancement of legal cases against whistleblowers, but gives no mention to other more subtle means of reprisal aimed against those disclosing damaging information about various institutions or officials. Beyond the specifics of the law, implementation has also proved difficult and incomplete. Freedom House notes how representatives of various states within Nigeria have tried to discredit the law by means of its federal character.¹⁶¹ In a joint contribution to the 2013 Working Group of the Universal Periodic Review on Nigeria, various INGOs approved the initiative, but expressed dismay in the misuse of the Official Secrets Act by government officials to unfairly block legitimate requests for information.¹⁶²
90. In 2011, a Whistleblower Protection Bill was brought before the Nigerian Senate. The bill has received limited support upon its introduction and lacks the political will necessary for its successful adoption. The act seeks to provide standards for the disclosure of information pertinent to the greater public good; to establish protections for whistleblowers; and to create a fund for those reporting misconduct.¹⁶³ Potential whistleblowers are referred to as “patriots” throughout the text; furthering the notion that whistleblowing is primarily for the public good.
91. In response to the violence of Boko Haram, Nigeria passed The Prevention of Terrorism Act shortly after Goodluck Jonathan's reelection in 2011. The Act was designed to disrupt and, more explicitly, criminalize the financing of terrorism; to

¹⁵⁷ Ibid, chp. 4, section 39 (2).

¹⁵⁸ Laws of the Federation of Nigeria, *Freedom of Information Act* (2011). <http://www.nigeria-law.org/Legislation/LFN/2011/Freedom%20Of%20Information%20Act.pdf>

¹⁵⁹ Ibid, section 27.

¹⁶⁰ Ibid, section 27 (2) (b); (c).

¹⁶¹ “Freedom of the Press 2014: Nigeria.”

¹⁶² “PEN International, PEN Nigeria, Committee to Protect Journalists, and International Publishers Association Contribution to the 17th Session of the Working Group of the Universal Periodic Review Submission on Nigeria,” *Universal Periodic Review*, United Nations Human Rights Council (2013). http://www.upr-info.org/sites/default/files/document/nigeria/session_17_-_october_2013/js8_upr17_nga_e_main.pdf

¹⁶³ Laws of the Federation of Nigeria, Draft: *Whistleblower Protection Bill* (2011). www.proshareng.com/news/download.php?item=HB82201.pdf

provide guidelines for the prevention and prohibition of terrorist acts; and to detail implementable measures to combat terrorism.¹⁶⁴ Organizations such as Freedom House expressed concern¹⁶⁵ over the inclusion of several amendments to the Act in 2013,¹⁶⁶ most notably Section 5(2)(c), which broadly links the “*receipt or provision of information* or moral assistance, including invitation to adhere to a terrorist or terrorist group” to support for terrorist groups [emphasis added].¹⁶⁷

3. Official statements

92. When asked in a 2014 interview with *The Global Conversation* if his country protected whistleblowers, President Goodluck Jonathan claimed, “Nigeria has the freest press” and that “no whistleblower has been arrested” or indicted.¹⁶⁸

93. Commenting on accepted recommendations made by third parties to a 2009 Universal Periodic Review report, the Nigerian government affirmed its belief that “the press in Nigeria is free.”¹⁶⁹ Additionally, the state is said to supply judicial means for redress if a person feels his rights have been infringed upon.¹⁷⁰

4. State practice

94. PEN International and other organizations, citing information from CPJ, reported that from 1992 to 2013 there have been 19 documented deaths likely linked to journalistic practices in Nigeria.¹⁷¹ More disturbingly, these deaths have not led to any successful convictions.¹⁷²

95. As of January 2015, the Institute of Chartered Accountants of Nigeria created a fund purposed to assist whistleblowers with litigation expenses and to protect persons from any instances of reprisal.¹⁷³

96. In February of 2014, central bank governor Lamido Sanusi, an internationally renowned banker and advocate for reforms with Nigerian institutions, was suspended and replaced by then President Goodluck Jonathan after publicly claiming upwards of

¹⁶⁴ Laws of the Federation of Nigeria, *The Prevention of Terrorism Act* (2011).

<http://stepupnigeria.blogspot.com/2011/06/does-nigeria-freedom-of-information-act.html>

¹⁶⁵ “Freedom of the Press 2014: Nigeria.”

¹⁶⁶ Laws of the Federation of Nigeria, *Terrorism (Prevention) (Amendment) Act* (2013).

<http://www.sec.gov.ng/files/TERRORISM%20PREVENTION%20AMENDMENT%20ACT%202013.pdf>

¹⁶⁷ *Ibid.*, Section 5 (2)(c).

¹⁶⁸ Goodluck Jonathan, interview by Isabelle Kumar, *The Global Conversation*, Euronews, April 11, 2014.

<http://www.euronews.com/2014/04/11/no-no-no-president-goodluck-jonathan-no-regrets-over-suspending-nigeria-s->

¹⁶⁹ United Nations Human Rights Council, Working Group on the Universal Periodic Review: Seventeenth Session, *National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution*

16/21: Nigeria. Geneva: United Nations (2013): section 4, para. 99, pg. 16. http://www.upr-info.org/sites/default/files/document/nigeria/session_17_-_october_2013/a_hrc_wg.6_17_nga_1_e.pdf

¹⁷⁰ *Ibid.*

¹⁷¹ “PEN International...,” para. 9.

¹⁷² *Ibid.*

¹⁷³ “The Case for Whistleblowers--The Guardian,” *The Citizen Online*, January 5, 2015.

<http://thecitizenng.com/public-affairs/the-case-for-whistleblowers-the-guardian/>

\$20 billion in state oil profits could not be accounted for.¹⁷⁴ According to *Quartz*, Sanusi challenged the legality of his suspension and called for an internal audit to account for the reportedly lost revenue.¹⁷⁵ Dissatisfaction with Jonathan's action prompted op-eds and opinion pieces in places such as *Premium Times*, some calling for new Whistleblower Protection Laws.¹⁷⁶

97. In April 2013, four journalists employed by the Nigerian newspaper *Leadership* were detained for questioning after failing to disclose a source who allegedly supplied the outlet access to a leaked document sensitive to President Goodluck Jonathan.¹⁷⁷ The journalists were released a day later but were ordered to report daily to police headquarters for some length of time.¹⁷⁸ Two of the detained reporters were charged with “11 criminal counts, including forgery, conspiracy to commit a felony, and incitement of public disaffection against the president.”¹⁷⁹
98. *Premium Times* reports in October 2013 that the Nigerian Civil Aviation Authority was actively pressuring officials who blew the whistle on the Minister of Aviation after her inappropriate use of NCAA funds to buy herself two armored vehicles.¹⁸⁰
99. In 2012, the Central Bank of Nigeria, as reported in Nigeria's *The Citizen*, developed a series of whistleblower guidelines meant to curb corruption and fraud.¹⁸¹ A draft version of the policy emphasizes the need for banks to actively inform employees of the new process.¹⁸²

5. Trends and analysis

100. Internal conflict has detrimentally affected Nigeria's relationship with the press. Although state pressure on members of the media is consistently strong, recent advances against Boko Haram and the election of a new president may encourage positive change. Efforts to combat economic corruption and fraud receive considerable amount of attention, yet the risks experienced by journalists covering sensitive issues surrounding national security draw less coverage. Considering the joint private-public mismanagement of oil revenue and other monies, the Nigerian

¹⁷⁴ Jake Bright, “Things Might Fall Apart: 20 Billion and an Ousted Whistleblower Threaten Nigeria's Fragile, Carefully Crafted Success Story,” *Quartz*, February 28, 2014. <http://qz.com/182271/20-billion-and-an-ousted-whistleblower-threaten-nigerias-fragile-carefully-crafted-success-story/>

¹⁷⁵ *Ibid.*

¹⁷⁶ Ogala Emmanuel, “Sanusi, Whistleblowing and Corruption, By *Integrity Organization*,” *Premium Times*, February 28, 2014. <http://blogs.premiumtimesng.com/?p=155951>

¹⁷⁷ Konstantin Balev, “UPDATE: Nigeria Journalists Freed: Pair Must Continue to Check in with Police,” *International Press Institute*, April 10, 2013. <http://www.freemedia.at/newssview/article/update-nigeria-journalists-freed.html>

¹⁷⁸ *Ibid.*

¹⁷⁹ “Freedom of the Press 2014: Nigeria.”

¹⁸⁰ Festus Owete, “Armoured Cars Scandal: Outrage as Nigerians Demand Minister Stella Oduah's Sack, Probe,” *Premium Times*, October 17, 2013.

¹⁸¹ “CBN Develops Guidelines for Whistle-Blowing,” *The Citizen Online*, August 9, 2012. <http://thecitizenng.com/business/cbn-develops-guidelines-for-whistle-blowing/>

¹⁸² *Ibid.*

public would be better served to have the protections outlined in the 2011 Freedom of Information Act extended to include private companies. In terms of national security issues, Nigeria should not treat the press as a potential enemy or impediment to successful military campaigns against groups such as Boko Haram.

101. With the establishment of anti-corruption organizations and safe-disclosure websites, domestic support for whistleblowing is growing despite lackluster political support to pass specific legislation officially protecting those disclosing information and misconduct in good faith and for the public good. Recent studies on lower-level whistleblowing in Nigerian public institutions suggests that many employees are hesitant to blow the whistle on misconduct because they believe their superiors are too powerful, they fear social exclusion, and feel their efforts while not contribute to any meaningful change.¹⁸³ However, public backlash against government treatment of high-level whistleblowers has government leaders shifting the conversation from the established concept of whistleblowing itself to accusations of the distribution of false information. Nigeria should pass a version of the long-dormant Whistleblower Protection Bill to provide legal protections to high and low-level whistleblowers.

D. South Africa

<u>South Africa</u>		
Freedom House: Freedom in the World (2015)	2 – Free	Same
Freedom House: Freedom of the Press (2014)	33 – Partly Free	Same
Freedom House: Freedom on the Net (2014)	26 – Partly Free	Same
Reporters Without Borders: Press Freedom Index (2015)	#39	↑ (3)

1. Background

102. Human rights advocates regard South Africa as a national and global leader in freedom. Freedom House describes South Africa as “home to vibrant journalists and press freedom advocacy organizations that regularly and effectively push back against government.”¹⁸⁴ Freedom of expression and press freedom are enumerated in the constitution, and are generally respected in practice. However, government officials still make efforts to limit press freedom irrespective of protections afforded to journalists and whistleblowers in the constitution. The Committee to Protect Journalists (CPJ) fear recent events—particularly the release of classified cables in February (2015) that breached state security—will galvanize government officials to crackdown on the media more strictly.¹⁸⁵ This crackdown has the potential to limit both political and civil rights.

¹⁸³ Bolanle Ogungbamila, “Whistleblowing and Anti-Corruption Crusade: Evidence from Nigeria,” *Canadian Social Science* 10, 4 (2014): 153.

¹⁸⁴ “Freedom of Press: South Africa.” Freedom House. Accessed March 23, 2015. https://freedomhouse.org/report/freedom-press/2014/south-africa#.VSQK85PF_3o.

¹⁸⁵ David Smith. “South Africa Scrambles to Deal with Fallout from Leaked Spy Cables.” *The Guardian*. February 24, 2015. Accessed February 14, 2015. <http://www.theguardian.com/world/2015/feb/24/south-africa-scrambles-to-deal-with-fallout-from-leaked-spy-cables>.

2. Legislation

103. The South African Constitution protects freedom of expression and press freedom, and these provisions commonly align with state practice. Article 16 states, “Everyone has the right to freedom of expression, which includes, freedom of press and other media, and freedom to receive or impart information or ideas.”¹⁸⁶ Furthermore, the Constitution outlines whistleblower protection as, “protection [for] employees working for the government and private companies who disclose information about unlawful activity by their employer or fellow employees.”¹⁸⁷ The effectiveness of these laws, however, remain in question: there is no dedicated, independent monitoring body charged with collecting statistics on whistleblowers or investigating complaints on whistleblower harassment.¹⁸⁸ Whistleblowing was common, still most whistleblowers, fearing reprisal, spoke to the press anonymously instead of raising issues within their chain of command.¹⁸⁹ Therefore, while laws seemingly protect them, whistleblowers do not believe laws will be executed impartially.
104. The 2004 Law on Anti-Terrorism permits authorities to restrict reporting on security forces, prisons and mental institutions, and, therefore, is particularly problematic for press freedom. CPJ indicates that this legislation is the government’s attempt to impose more restrictive controls over the nation’s media.¹⁹⁰ The 2013 Protection of State Information Bill, commonly referred to as “the secrecy bill,” further restricts press freedom. The “secrecy bill,” described by CPJ as a draconian measure, allows the African National Congress (ANC) to cover up corruption and send whistleblowers and journalists to jail for up to 25 years.¹⁹¹ Furthermore, the bill outlines the following: “If a person is found to have communicated classified information which the person knows or ought reasonably to have known would directly or indirectly benefit a foreign state or a non-state actor, or prejudice national security, they will be deemed guilty of espionage or hostile activity.”¹⁹² These government stipulations create a vast space for legal action to be taken against whistleblowers and journalists for the content of their reporting.

¹⁸⁶ Constitution of the Republic of South Africa, 1996 - Chapter 2: Bill of Rights (Constitution of the Republic of South Africa, 1996). <http://www.gov.za/documents/constitution/chapter-2-bill-rights#16>

¹⁸⁷ United States Department of State, Bureau of Democracy, Human Rights and Labor, South Africa 2013 Human Rights Report. 2014. <http://www.state.gov/documents/organization/220371.pdf>

¹⁸⁸ Ibid.

¹⁸⁹ "South Africa." Freedom House. January 1, 2014. Accessed January 1, 2015.

<https://freedomhouse.org/report/freedom-press/2014/south-africa#.VTa9DZTF-ul>

¹⁹⁰ "Journalists Killed in South Africa." Committee to Protect Journalists. Accessed April 21, 2015.

<https://cpj.org/killed/africa/south-africa/>

¹⁹¹ David Smith. "ANC's Secrecy Bill Seen as Assault on South African Press Freedom." *The Guardian*. June 6, 2012. Accessed April 21, 2015. <http://www.theguardian.com/world/2012/jun/06/south-africa-secrecy-bill-press-freedom>.

¹⁹² "President Refuses to Sign Draconian Bill into Law." Reporters Without Borders For Freedom of Information. September 12, 2013. Accessed April 21, 2015. <http://en.rsf.org/afrique-du-sud-president-refuses-to-sign-12-09-2013,45168.html>.

105. The Criminal Procedure, namely section 205, requires whistleblowers to reveal their sources in open court.¹⁹³ Additionally, the Apartheid Act and the Anti-Terrorist Proclamation (ATP) worsen the treatment of reporters and obscure the freedoms of speech and expression afforded to them by the constitution.

3. Official statements

106. Corruption in South Africa, largely government officials using state funds for personal gain such as absolving their debt,¹⁹⁴ reportedly undergirds restrictions on press freedom. President Zuma and the minister of information seldom make direct comments on the treatment of whistleblowers. While Zuma's rhetoric persistently conveys seriousness in tackling corruption,¹⁹⁵ the reality is that many whistleblowers are assassinated, criminalized and marginalized when they report on these issues. For instance, security forces forcibly removed opposition lawmakers from court when they demanded President Zuma answer questions regarding a spending scandal.¹⁹⁶ Events that probe government officials to reveal non-sensitive information are becoming more frequent, and without anonymity provisions, the lives of whistleblowers are in constant danger.

4. State practice

107. Freedom House reports that journalists and media houses are occasionally threatened with legal action or charged under the ATP for the content to their work.¹⁹⁷ In November 2011, for instance, lawyers of Mac Maharaji, the special advisor and spokesperson to President Zuma, and the ANC party threatened independent weekly and online daily *Mail & Guardian* with criminal prosecution for alleging that Maharaji lied to the anticorruption agency regarding his involvement in an arms-deal scandal from the late 1990s.¹⁹⁸ The newspaper was subsequently required to censor most of the article. Other cases of threatened whistleblowers include judges forcing journalists to reveal their sources.¹⁹⁹ Civil cases, oftentimes involving large monetary fines, continue to be brought against members of the press based on the content of their reporting.

108. South Africans routinely speak out against restrictive and unconstitutional government practices, however, the climate remains relatively unchanged. In 2010, for instance, South Africans created the Right2Know campaign in opposition to the

¹⁹³ "Right2Know Campaign, Together with Amubhungane, Corruption Watch, Greenpeace, Section 27 and ODAC." Accessed March 23, 2015. http://www.r2k.org.za/wp-content/uploads/Whistleblowing-Research-Report_FD.doc.

¹⁹⁴ Joe Brock. "South Africa Questions Its Democracy after Parliament Brawl." *Reuters*. February 13, 2015. Accessed March 23, 2015. <http://www.reuters.com/article/2015/02/13/us-safrica-politics-zuma-idUSKBN0LH1ID20150213>.

¹⁹⁵ Koyana, Xolani. "'DA Councillor Dismissed for Whistleblowing'" *EWN*. April 4, 2015. Accessed April 21, 2015. <http://ewn.co.za/2015/04/04/DA-councillor-dismissed-for-whistleblowing>.

¹⁹⁶ Joe Brock, "South Africa Questions Its Democracy after Parliament Brawl."

¹⁹⁷ "South Africa: Freedom of Press 2014." Freedom House. Accessed March 23, 2015. <https://freedomhouse.org/report/freedom-press/2014/south-africa#.VTjjDmRVikp>.

¹⁹⁸ "South Africa." Freedom House. January 1, 2014. Accessed March 23, 2015.

<https://freedomhouse.org/report/freedom-press/2014/south-africa#.VTa9DZTF-ul>.

¹⁹⁹ *Ibid.*

government's Protection of State Information Bill, which they believe is open to interpretation and abuse by officials.²⁰⁰ This legislation is perceived as a powerful and suppressive tool of opposition, as it prevents journalists from reporting on corruption. While this campaign created awareness and pressured the government to repeal the bill, as of 2013, the constitutional court has yet to hear the case.

109. Although there are specific protections, such as the right to access information and acts designed to protect these guarantees, like the Promotion of Access to Information Act (PAIA),²⁰¹ there is a disconnect in how they are protected in court. There has been an increase in court interdictions and gag orders by both governmental and nongovernmental actors in recent years, and enforcement of existing disclosure rules is sometimes less than adequate. State agencies are increasingly classifying information as being in the "national interest" and thus subject to significant restrictions on publication and potential prison terms for violations.²⁰²

110. These restrictions often manifest themselves in relation to sensitive news stories. In 2012, for instance, security forces blocked journalists from reporting on wildcat mining strikes.²⁰³ Furthermore, under the apartheid-era National Key Points Act,²⁰⁴ journalists are unable to access areas deemed of interest to national security and the number of locations labeled of interest to the national security is growing.

111. Additionally, South African government and political officials often criticize the media for its lack of professionalism and react sharply to media criticism.²⁰⁵ Black journalists have frequently been accused of disloyalty while white journalists have been accused of racism.²⁰⁶ Journalists believe the government's sensitivity to criticism, particularly regarding corruption, resulted in media self-censorship.

5. Trends and analysis

112. South Africa has consistently received high scores from Reporters Without Borders and Freedom House for freedom of expression and press freedom. However, given the recent release of confidential government documents, many human rights advocates believe this political climate is likely to deteriorate. The Apartheid Act, ATP, and "Secrecy Bill" in particular jointly operate to restrict the liberties of

²⁰⁰ "Right2Know Campaign, Together with Amubhungane, Corruption Watch, Greenpeace, Section 27 and ODAC."

²⁰¹ "South Africa." Freedom House. January 1, 2014. Accessed January 1, 2015.

<https://freedomhouse.org/report/freedom-press/2014/south-africa#.VTa9DZTF-ul>.

²⁰² David Smith. "ANC's Secrecy Bill Seen as Assault on South African Press Freedom." *The*

Guardian. June 6, 2012. Accessed April 21, 2015. <http://www.theguardian.com/world/2012/jun/06/south-africa-secrecy-bill-press-freedom>.

²⁰³ United States Department of State, Bureau of Democracy, Human Rights and Labor, South Africa 2013 Human Rights Report. 2014. <http://www.state.gov/documents/organization/220371.pdf>

²⁰⁴ Hartley, Wyndham. "Apartheid-era National Key Points Act Here to Stay, Say ANC Ministers." *Business Day Live*. November 13, 2013. Accessed March 23, 2015. <http://www.bdlive.co.za/national/2013/11/08/apartheid-era-national-key-points-act-here-to-stay-say-anc-ministers>.

²⁰⁵ United States Department of State, Bureau of Democracy, Human Rights and Labor, South Africa 2013 Human Rights Report. 2014. U.S. State Department. <http://www.state.gov/documents/organization/220371.pdf>

²⁰⁶ "South Africa", Freedom House.

journalist and whistleblowers. Reporters from *The Guardian* expect that South Africa's state security structures will portray the release of confidential reports as a hostile act, and use this event to seek greater control over the flow of information.

113. Non-government organizations, such as Open Democracy Advice Center, realize the underlying issues that engender restrictions on reporting and the broadening definition of content deemed of national security interests. Ultimately, the lives of journalists and whistleblowers continue to be threatened by corporate and government unaccountability.

E. Regional Analysis

114. The African Union, which replaced the Organization of African Unity in 2001, is the principal organization for the promotion of socioeconomic integration across the continent.²⁰⁷ It consists of 54 African countries as member states. Objectives of the AU include: promoting and defending common African positions on issues; enabling conditions for the continent to play its rightful role in the global economy and in international negotiations; and advancing the continent's development through research in all fields.²⁰⁸

115. The AU drafted the Resolution on the Safety and Protection of Journalists at the 20th African Union Summit²⁰⁹ and it was successfully adopted by The United Nations Human Rights Council in 2014.²¹⁰ This resolution is specific and concrete about the measures that should be adopted to better protect journalist, and calls on member states "*to promote a safe and enabling environment for journalists to perform their work independently.*"²¹¹

116. The Safety and Protection of Journalists Resolution states that journalists must be protected in peacetime as well as wartime, condemns illegal or arbitrary surveillance of their communications, and calls on states to take concrete measures to combat impunity and to create preventive protection mechanisms. However, not all member states have moved into action on this resolution and still need to create mechanisms for monitoring compliance with their obligations.

117. The African Union Convention on Preventing and Combating Corruption and The Southern African Development Community Protocol Against Corruption

²⁰⁷"The Need for Whistleblower Protection." Transparency International: The Global Coalition Against Corruption. Accessed April 10, 2015.

http://archive.transparency.org/global_priorities/other_thematic_issues/towards_greater_protection_of_whistleblowers/the_need_for_whistleblower_protection.

²⁰⁸"African Union (AU)." African Regional Coverage. Accessed April 10, 2015.

<http://africasd.iisd.org/institutions/african-union-au/>.

²⁰⁹"Draft African Union Resolution on Safety & Protection of Journalists." The International Federation of Journalists. April 3, 2014. Accessed April 10, 2015.

²¹⁰"New UN Resolution on Safety of Journalists - Reporters Without Borders." New UN Resolution on Safety of Journalists. Accessed April 13, 2015. <https://en.rsf.org/governments-must-do-more-to-16-09-2014.46959.html>.

²¹¹ African Union Convention on Preventing and Combating Corruption. Maputo: Mozambique, 2003. http://www.au.int/en/sites/default/files/AFRICAN_UNION_CONVENTION_PREVENTING_COMBATING_CORRUPTION.pdf

(adopted on August 14, 2001 and enacted on July 6, 2005)²¹² are other examples of legislation that seek to better the treatment of whistleblowers and journalists.

118. Founded in 1975, ECOWAS--made up of Mali, Nigeria, and 13 other member states--is designed to promote and facilitate regional economic integration and growth.²¹³ To combat domestic barriers toward economic development, members signed the Protocol on the Fight Against Corruption in 2001. The Protocol encourages states to be proactive in the prevention of corruption by enacting laws protecting “persons who, acting in good faith, provide information on acts of corruption” and by ensuring “freedom of the press and the right to information.”²¹⁴
119. In 2010 the governments of ECOWAS signed the Supplementary Act On a Uniform Legal Framework on Freedom of Expression and Right to Information in West Africa, effectively broadening the obligations of states toward the media and expanding the rights of journalists. Article 10 (3) states that media professionals not be required to “reveal confidential sources of information or to disclose other material held for journalistic purposes,” albeit accompanied by conditional clauses allowing states to determine when these protections do not apply.²¹⁵ ECOWAS itself has noted the slow ratification and implementation process of its protocols and supplementary acts.²¹⁶
120. In partnership with the Network of National Anti-Corruption Institutions in West Africa, ECOWAS hosted a roundtable on whistleblower protections, norm development, and lessons learned in March of 2015 for various government representatives.²¹⁷

²¹² "Southern African Development Community Protocol Against Corruption." Council on Foreign Relations. August 14, 2001. Accessed April 12, 2015. <http://www.cfr.org/corruption-and-bribery/southern-african-development-community-protocol-against-corruption/p28048>.

²¹³ *Economic Community of West African States*, <http://www.ecowas.int/about-ecowas/basic-information/> (accessed April, 2015).

²¹⁴ *Economic Community of West African States, Economic Community of West African States Protocol on the Fight Against Corruption*, article 5 (c), 2001.

²¹⁵ *Economic Community of West African States, Supplementary Act A/SA.../6/10 On a Uniform Legal Framework on Freedom of Expression and Right to Information in West Africa*, article 10 (3), 2010.

²¹⁶ *Economic Community of West African States*, <http://www.ecowas.int/ecowas-law/find-legislation/> (accessed April, 2015).

²¹⁷ "The Network of National Anti-Corruption Institutions in West Africa (NACIWA) Elects New Executive Committee and Adopts a Strategic Plan (2015-2017) with Support from UNODC," *United Nations Office on Drugs and Crime*, March 2015. <http://www.unodc.org/westandcentralafrica/en/the-network-of-national-anti-corruption-institutions-in-west-africa-naciwa-elects-new-executive-committee-and-adopts-a-strategic-plan-2015-2017-with-support-from-unodc.html>

V. Country Reports: Europe/Eurasia

A. Bosnia & Herzegovina

<u>Bosnia and Herzegovina</u>		
Freedom House: Freedom in the World (2015)	3.5 – Partly Free	↓ (.5)
Freedom House: Freedom of the Press (2014)	50 – Partly Free	↓ (1)
Freedom House: Freedom on the Net (2014)	No Data	No Data
Reporters Without Borders: Press Freedom Index (2015)	#66	Same

1. Background

121. Bosnia and Herzegovina (BiH) is listed as a transitional government or hybrid regime by Freedom House.²¹⁸ The country is a potential candidate for European Union (EU) membership and is a current member of the Council of Europe (CoE) and Organization for Security and Co-operation in Europe (OSCE). Freedom House's 2015 report shows a decline in political rights as the government "largely ignored a significant civic movement protesting corruption and calling for reforms in early 2014..."²¹⁹ In Transparency International's (TI) 2014 *Corruptions Perceptions Index*, BiH ranked 80th in the world with a score of 39 (0 highly corrupt, 100 clean). TI states that the complexity of the country's legal framework and legislation is inefficient and enhances corruption.²²⁰ Lack of judicial independence remains a problem in BiH and, according to the EU, access to justice has slightly improved, but remains "not uniformly guaranteed."²²¹ The EU also notes many issues, including domestic and transnational criminal networks; arms trafficking; sexual, drug, and labor trafficking; and forced marriages.²²² As a member of both the CoE and OSCE, BiH is obligated to uphold the principles of these organizations on the protection for whistleblowers, freedom of expression, and journalist protections, which both organizations have issued declarations and recommendations.²²³ BiH has ratified most of the major United Nations Conventions on Human Rights, including Civil and Political Rights; Elimination of All forms of Racial Discrimination; and Economic, Social and Cultural Rights.²²⁴

2. Legislation

122. The government of BiH states that the following laws are present for the protection of witnesses: Law on Protection of Witnesses under Threat and Vulnerable Witness and the Law on Witness Protection Program.²²⁵ In 2012, BiH State Aid Law

²¹⁸ "Bosnia and Herzegovina: Nations in Transit 2014". Freedom House. Accessed April 8, 2015.

https://freedomhouse.org/report/nations-transit/2014/bosnia-and-herzegovina#.VTvH_mZEwos

²¹⁹ "Freedom in the World 2015". 2015. Freedom House: 13

²²⁰ "Bosnia and Herzegovina". Transparency International. Accessed March 3, 2015. www.transparency.org

²²¹ "Bosnia and Herzegovina Progress Report". Oct. 2014. European Commission: 1, 14

²²² *Ibid*, 16.

²²³ Banisar, David. "Silencing Sources: An International Survey of Protections and Threats to Journalists' Sources" 2007. Privacy International: 15-16

²²⁴ United Nations Office of the High Commissioner for Human Rights. Accessed April 8, 2015

²²⁵ "UN Gen. Assembly A/HRC/WG.6/20/BIH/1". August 8, 2014. UN High Commissioner for Human Rights: 4

was passed to address corruption as a condition of EU membership to “regulate misused budget finances.”²²⁶ The law uses the term ‘prijavitelji korupcije’ or ‘corruption reporters’ as the translation for whistleblower.²²⁷ The 2014 EU report states that the legal framework to fight corruption is largely in place, but uneven and weak implementation of these laws remains a problem. In addition, parts of corruption legislation fail to comply with international standards.²²⁸ According to the EU, progress has been made on in-court witness protections measures.²²⁹ In January 2014, legislation to protect state-level employee whistleblowers who report corruption was enacted into law.²³⁰ The EU reports that a proposed law, adopted by the parliament, to specialize certain departments in the Prosecutor’s Office and Supreme Court of Federation to fight corruption could be beneficial; however, limited criminal justice policy and ineffective corruption sanctions pose a problem.²³¹

123. In the corporate sector, no whistleblower-specific laws are present, although some Republika Srpska laws provide similar protection. Law on Companies of Republika Srpska in paragraph four of Article 38 protects persons acting in good faith who indicate the “existence of corruption to competent authorities.”²³² Law on Public Enterprises of Republika Srpska in Article 17 discusses a person who comes to know “of any information that in his/her opinion represents proof of violation of the law and bylaws applicable to the enterprise” should reveal this knowledge via the internal mechanisms, but also “other competent entities” that can be interpreted as law enforcement agencies.²³³ However, it does not specify protections for those who report.²³⁴

124. Legal provisions for freedom of expression and press freedoms are present in the human rights annex of the BiH Constitution of the Dayton Accords.²³⁵ The Law on Protection Against Defamation states that journalists who receive information from a confidential source has the right not to disclose the source’s identity, including “document or fact which may reveal the identity of the source particularly any oral, written, audio, visual or electronic material.”²³⁶ The 2000 Freedom to Access Information Act remains unevenly incorporated in public institutions, according to the EU.²³⁷ The UN Human Rights Council (UNHRC) noted that in 2014 the act was

²²⁶ “Bosnia and Herzegovina”. Transparency International. Accessed March 3, 2015. www.transparency.org

²²⁷ “Whistleblower International Translations”. 2014. Whistleblowing International Network. Accessed: Mar. 2, 2015

²²⁸ Bosnia and Herzegovina Progress Report”. Oct. 2014. European Commission: 16

²²⁹ Ibid, 14-16.

²³⁰ “Protecting Whistleblower in Bosnia and Herzegovina”. Nov. 3, 2014. USAID. Accessed Jan. 20, 2015

²³¹ “Bosnia and Herzegovina Progress Report”. Oct. 2014. European Commission: 15-16

²³² “Bosnia and Herzegovina/Research. Accessed April 16, 2015. Whistleblower-cee.org.

²³³ Ibid.

²³⁴ Ibid.

²³⁵ “Freedom in the World 2014: Bosnia and Herzegovina”. 2014. Freedom House. Accessed Feb.7, 2015.

<https://freedomhouse.org/report/freedom-world/2013/bosnia-and-herzegovina#.VTvIwWZEwos>

²³⁶ Banisar, David. “Silencing Sources: An International Survey of Protections and Threats to Journalists’ Sources” 2007. Privacy International: 74

²³⁷ “Bosnia and Herzegovina Progress Report”. Oct. 2014. European Commission: 18

more successfully incorporated at the state level than at other levels and that there were no sanctions for institutions which did not respond to requests.²³⁸

3. Official statements

125. BiH responded to a UNHRC 2014 report on freedom of expression by stating that criminal legislation does not list an attack on journalists as a “separate criminal offense,” but that legal protection for all citizens “is ensured by the entities’ and Brcko District BiH criminal codes, which prescribe penalties for various types of attacks on the specified principles.”²³⁹ In response to a newly passed law criminalizing ‘offensive and disruptive’ online posts in February 2015, Interior Minister Dragan Lukac stated, “Nobody aims to ban with this law the expression of anyone’s opinion...Our primary intention is to protect the citizens.”²⁴⁰ Critics and watchdog organizations are worried this will further limit expression and media independence.

4. State practice

126. The 2014 UN High Commissioner for Human Rights report expresses concern for “the lack of adequate measures of witness protection and support, and at cases of intimidation against witnesses and of attempts at bribery by perpetrators.”²⁴¹ According to the European Commission, progress in witness protection measures has been primarily due to international financial support, not domestic.²⁴² The EU finds that investigation and prosecution of high-profile cases remains “unsatisfactory” and the “level of effective investigation, prosecution, and conviction is low.”²⁴³ Little progress was made in reforms to reduce corruption that affects the entire public sector and political patronage networks influence in all levels of government.²⁴⁴

127. The EU has also expressed concerns regarding increased political pressure on the media, including intimidation and threats against both journalists and editors, as well as growing incidences of wiretapping.²⁴⁵ Human Rights Watch’s (HRW) 2015 report found that, as of November 2014, “the national journalists’ association recorded 27 violations of freedom of expression, including 5 physical and 14 verbal assaults, and 1 death threat.”²⁴⁶ During February 2014 protests, HRW noted that police “intimidated and beat” journalists, and “confiscated raw footage.”²⁴⁷ The EU found police investigations into these February instances have been insufficient.²⁴⁸ The

²³⁸ “UN Gen. Assembly A/HRC/WG.6/20/BIH/3”. July 25, 2014. UN High Commissioner for Human Rights: 8

²³⁹ “UN Gen. Assembly A/HRC/WG.6/20/BIH/1”. Aug. 8, 2014. UN High Commissioner for Human Rights: 17

²⁴⁰ Sito-Sucic, Daria. “Bosnian Serbs impose fines for offensive Internet Posts”. Feb. 5, 2015. *Reuters*. Accessed March 5, 2015. <http://www.reuters.com/article/2015/02/05/us-bosnia-socialmedia-lawmaking-idUSKBN0L928D20150205>

²⁴¹ “UN Gen. Assembly A/HRC/WG.6/20/BIH/2”. Aug. 8, 2014. UN High Commissioner for Human Rights: 10

²⁴² “Bosnia and Herzegovina Progress Report”. Oct. 2014. European Commission:14

²⁴³ *Ibid*, 2.

²⁴⁴ *Ibid*.

²⁴⁵ *Ibid*, 2, 16-17.

²⁴⁶ Human Rights Watch, *World Report 2015* (New York: Seven Stories Press, 2015): 4 https://www.hrw.org/sites/default/files/wr2014_web_0.pdf

²⁴⁷ *Ibid*.

²⁴⁸ Bosnia and Herzegovina Progress Report”. Oct. 2014. European Commission: 16-17

confidentiality and security of journalist sources also remains a concern. On December 30, 2014, Reporters Without Borders (RSF) condemned a police raid on the headquarters of Klix.ba news website in Sarajevo the previous day in an attempt to gather information relating to an informant acknowledging vote-buying of political parties during a recent parliamentary election. RSF called the raid “an unacceptable violation of the confidentiality of journalist sources.”²⁴⁹

5. Trends and analysis

128. According to the EU, following the Dayton/Paris Peace Agreement, which ended the 1992-1995 war, the BiH’s constitution prevents citizens who are not members of one of the three major ethnic groups from running for the Presidency and Parliamentary Assembly.²⁵⁰ The EU notes this system has been “declared in breach of the European Convention on Human Rights in the Sejdic-Finci judgment...”²⁵¹ BiH has been at a standstill in EU integration process since 2008, because of a lack of political will from leaders to create and implement necessary reforms and to adopt full implementation of this judgement.²⁵² However, on March 16th, 2015, the EU agreed to an economic and trade pact with BiH after the government agreed to a range of reforms, signaling a step in resuming the accession process.²⁵³ Overall, while legislation for whistleblowers, witness protection, and journalist protections exist in BiH legislation, in practice these guarantees are not always upheld and pressure on the media and journalists has increased.²⁵⁴ Unless the government can bring real reform of its judiciary and political system, these conditions are likely to remain stagnant.

B. Russia

<u>Russian Federation</u>		
Freedom House: Freedom in the World (2015)	6 – Not Free	↓ (.5)
Freedom House: Freedom of the Press (2014)	81 – Not Free	Same
Freedom House: Freedom on the Net (2014)	60 – Partly Free	↓ (6)
Reporters Without Borders: Press Freedom Index (2015)	#152	↓ (4)

1. Background

129. Russia is categorized as a consolidated authoritarian regime by Freedom House.²⁵⁵ Russia continues to be both an influential global and regional power, and strives for control over regional affairs in Eurasia. Because of the continued reliance on Russian energy, the relationship of both European and Central Asian countries to

²⁴⁹ “Republika Srpska police violate confidentiality of sources”. Deb. 20, 2014. Reporters Without Borders. <http://en.rsf.org/bosnia-herzegovina-republika-srpska-police-violate-30-12-2014,47432.html>

²⁵⁰ Bosnia and Herzegovina Progress Report”. Oct. 2014. European Commission: 6-7

²⁵¹ Ibid, 7, 16.

²⁵² Ibid, 1, 4.

²⁵³ Lawrence Norman. “EU Foreign Ministers Unblock Bosnia’s Path to Eventual Membership”. *The Wall Street Journal*. March 16, 2015. Accessed March 20, 2015. <http://www.wsj.com/articles/eu-foreign-ministers-unblock-bosnias-path-to-eventual-membership-1426517868>

²⁵⁴ “Freedom in the World 2014: Bosnia and Herzegovina”. 2014. Freedom House.

²⁵⁵ “Russia: Nations in Transit 2014”. Freedom House. Accessed April 8, 2015

Russia proves both crucial, yet challenging. Freedom House's 2015 report lowered Russian civil liberties score to 'not free', due to "expanding media controls, a dramatically increased level of propaganda on state-controlled television, and new restrictions on the ability of some citizens to travel abroad."²⁵⁶ Corruption remains a serious problem in Russia. The 2014 *Corruptions Perceptions Index* ranks Russia 136 of 174 countries with a score of 27 (0 highly corrupt, 100 clean).²⁵⁷ Russia's judiciary is heavily influenced by the government and the UN Special Rapporteur, during a visit in 2013, expressed "strong concern" regarding judicial interference, threats, and attacks on lawyers.²⁵⁸ Russia has ratified many of the UN Human Rights Conventions, including Torture and Other Cruel Inhuman or Degrading Treatment or Punishment; Civil and Political Rights; Elimination of All Forms of Racial Discrimination; and Economic, Social and Cultural Rights.²⁵⁹

2. Legislation

130. The freedom of expression, freedom of media, and right to information are guaranteed in Constitution of Russian Federation in Section 1: Chapter 2-Rights and Liberties of Man and Citizen: Article 29.²⁶⁰ Most 'whistleblower' protections fall under other areas of legislation, specifically anti-corruption measures and journalist protections. One Russian term for whistleblower is 'osvedomitel,' which has negative connotations meaning 'rat' or 'snitch'. A more neutral term now being used more widely is "лицо сообщающе о правонарушении," which means 'person reporting violation of the law.'²⁶¹ The 2013-2014 report from Blueprint for Free Speech states that the 2006 United Nations and Council of Europe anti-corruption mechanisms listed in the conventions and adopted by Russia have yet to be fully introduced into national legislature.²⁶² The report notes that to get government protection, whistleblowers must go public and participate in a long trial.²⁶³ According to the G-20 Corruption Action Plan, Russian Federal Law on Combatting Corruption (Art. 9.4) provides protections for anti-corruption public officials who divulge government corruption, although this reference does not mention the protection of non-governmental individuals.²⁶⁴

131. Labor law protections can be found in Chapter 14: Articles 85–90 and Chapter 38: Articles 234 and 237 of the Labor Code of the Russian Federation. These articles protect employees confidential information and reimburse underpaid wages of an employee due to an illegal removal, dismissal or transfer from the job; refusal to fulfill labor dispute decisions by the government or other government laws; or

²⁵⁶ "Freedom in the World 2015 report" Freedom House

²⁵⁷ "Transparency International Corruptions Perceptions Index 2014". 2014. Transparency International

²⁵⁸ Knaul, Gabriela."UN General Assembly A/HRC/26/32/Add.1, Addendum, Mission to the Russian Federation". UN High Commissioner for Human Rights: 2

²⁵⁹ United Nations Office of the High Commissioner for Human Rights. Accessed April 8, 2015

²⁶⁰ "The Constitution of the Russian Federation". Accessed Feb. 13, 2015

www.departments.bucknell.edu/russian/const/ch2.html

²⁶¹ "Whistleblower International Translations". 2014. Whistleblowing International Network. Accessed: March 2, 2015

²⁶² "Russia - Whistleblower Protection." Blue Print for Free Speech. 2014. Accessed February 13, 2015.

²⁶³ Ibid, 2.

²⁶⁴ "G20 Anti-Corruption Action Plan Action Point 7: Protection of Whistleblowers". OECD. pg. 19

inflicting “moral damage to an employee by illegal activities;” with a reimbursement amount determined by the courts.²⁶⁵

132. In April 2014, Transparency International (TI) Russia noted that a new national plan approved by President Vladimir Putin for 2014-2015 included more anti-corruption measures and extended legislation to Crimea and Sevastopol.²⁶⁶ One change includes an automatic system to monitor incomes, expenses, and property of officials currently recorded in paper. The information will be collected and stored, but the plan does not specify if the information will be released to the public.²⁶⁷ Anton Pominov, head of TI research, stated the plan was a positive step in fighting corruption, but that concerns remained in continuous separation between policy and state practice.²⁶⁸ In September 2014, *The Russian Times* reported that Russia’s State Duma had plans to amend existing anti-corruption law, widening legal protection for individuals who report cases of corruption among state officials to the media or police.²⁶⁹ Member of Parliament Ilya Kostunov notes that under the current presidential decree for corruption reporters, an individual can only be fired under a prosecutor’s order and should have free legal assistance, but that this decree is widely ignored.²⁷⁰ Proposed amendments would allow for sanctions or job termination of managers who penalize corruption whistleblowers; as now corrupt officials can only be fired for a “loss of confidence,” which is not enough to open a criminal case against them.²⁷¹ Many experts believe the plans will not produce real results because they see the government’s anti-corruption campaign’s “main purpose is to ensure elite loyalty and prevent the issue [corruption] from mobilizing the opposition.”²⁷² In regards to corporate whistleblowers, there is little protection under the law. Government assistance is supposed to help the individual find another job, but no working means of assistance are present.²⁷³

133. According to Blueprint for Free Speech, under the Russian statute “On the mass media” or the Mass Media Law, Part 2 of Article 41, unless there is a demand from a court in relation to a specific case, editorial offices must protect the confidentiality of their sources.²⁷⁴ Freedom House finds that, although freedom of speech is constitutionally guaranteed, the government controls “directly or through state-owned companies and friendly business magnets, all of the national television networks and

²⁶⁵ "Russia - Whistleblower Protection." Blueprint for Free Speech. 2014. Accessed February 13, 2015.

²⁶⁶ “President Putin approves new anticorruption measures”. Transparency International Russia. April 28, 2014. Accessed March 10, 2015 <http://transparency.org.ru/en/news/president-putin-approves-new-anti-corruption-measures>

²⁶⁷ Ibid.

²⁶⁸ Ibid.

²⁶⁹ "Russia Govt to Protect Anti-corruption Whistleblowers - Report." *Russia Today*, Sep. 24, 2014. Accessed Mar. 4, 2015. <http://rt.com/politics/190264-anti-corruption-fighters-law-russia/>

²⁷⁰ Ibid.

²⁷¹ Ibid.

²⁷² “Freedom in the World 2015 report”. 2015. Freedom House

²⁷³ "Russia - Whistleblower Protection." Blueprint for Free Speech. 2014. Accessed Feb.13, 2015.

²⁷⁴ Ibid, 5.

many radio and print outlets” and that the Russian government has passed vague laws on extremism to control anti-government information.²⁷⁵

134. Blueprint for Free Speech also found that despite protections provided in the Mass Media Laws, The Civil Defamation Law, found in Articles 150-152 and 1099-1101 of the 1995 Civil Code of the Russian Federation, remains “a source of concern both in the international community and internally to Russia as well.”²⁷⁶ Protections exist for “dignity of personality and privacy,” but only “reputation (honor and good name, and business reputation) are afforded detailed codification.” Successful plaintiffs are awarded compensation “proportionate” to the “non-economic harm (moral damages)” by the Courts. Article 152 of the Civil Code gives protections for “retraction, right of reply if the defendant is a mass media organization, and monetary compensation.”²⁷⁷

3. Official statements

135. In June 2013, U.S. National Security Agency whistleblower Edward Snowden flew to Moscow to avoid U.S. government prosecution. In July 2013, President Putin allowed Snowden to stay in Russia for one year. Reuters quoted President Putin stating, “Ask yourself: should such people be handed over to be imprisoned or not” in regards to Snowden and Julian Assange, another whistleblower and co-founder of WikiLeaks.²⁷⁸ However, President Putin did not support the unlimited disclosure of U.S. government information when faced with pressure from the U.S., stating at a July 2013 news conference in Moscow, “If he (Snowden) wants to remain here there is one condition – he should stop his work aimed at inflicting damage on our American partners no matter how strange this may sound coming from me.”²⁷⁹ According to Snowden’s attorney, Russia granted an extended three-year visa in August 2014.²⁸⁰

4. State practice

136. While protection measures exist in Russian legislation, state practice does not always reflect a desire to enforce these guarantees. Blueprint for Free Speech notes that although there are phone hotlines and email addresses for the public to make complaints of corruption against public officials, some experts claim the Office of Prosecutor General collects data for other purposes.²⁸¹ For example, “in September 2007, the Office of Prosecutor General in Sverdlovsk opened a hotline through which citizens could report on corrupt officials. Some experts claim, however, that this was nothing but an attempt to collect so-called ‘kompromat’ [incriminating evidence] on

²⁷⁵ “Freedom in the World 2015 report”. 2015. Freedom House

²⁷⁶ “Russia - Whistleblower Protection.” Blueprint for Free Speech. 2014. Accessed February 13, 2015.

²⁷⁷ Ibid.

²⁷⁸ Alexei Anishchuk and Thomas Grove. “Putin Rules out Handing Snowden over to United States.” *Reuters*. June 25, 2013. Accessed Feb. 20, 2015. <http://www.reuters.com/article/2013/06/25/us-usa-security-flight-idUSBRE95M02H20130625>

²⁷⁹ “Russia’s Putin tells Snowden to stop US secrets leak”. *BBC*. July 1, 2013. Accessed March 10, 2015. <http://www.bbc.com/news/world-us-canada-23135734>

²⁸⁰ Michael Birnbaum. “Russia grants Edward Snowden residency for three more years” *The Washington Post*. August 7, 2014 Accessed March 4, 2015

²⁸¹ “Russia-Whistleblower Protection.” Blueprint for Free Speech. 2014. Accessed Feb.13, 2015.

local bureaucrats on the eve of the December 2007 parliamentary election and obtain an instrument of control over regional authorities.”²⁸² In July 2013, Russian lawyer Sergei Magnitsky was posthumously found guilty of fraud following his death in 2009 in a Moscow prison from an apparent severe beating.²⁸³ Magnitsky had previously “unearthed a \$230 million fraud by police and tax officials, but was arrested and charged with perpetrating the fraud himself.”²⁸⁴ After the 2013 trial, the State Department declared, “The trial was a discredit to the efforts of those who continue to seek justice in his case.”²⁸⁵

137. In the public sphere, some Russian companies are making changes for anti-corruption outside of legislation by strengthening transparency in corporate governance.²⁸⁶ However, in September 2014, TI investigated websites and legal documents of 50 Russian companies on the Forbes 2013 “‘Largest Business’ in Russia,” reporting that “many of those working for supervisory boards or management within companies, or their close relatives, are also members of the legislative assembly,” “many deals between local authorities and companies are based on informal agreements,” and that Russian enforcement agencies “remain unwilling to impose stiffer penalties which would force companies to establish anti-corruption compliance programmes.”²⁸⁷

138. In a 2014 UN report, the NGO ARTICLE 19, states that since 2000 no case of crimes against journalists has been fully resolved and the Russian government has created a climate that “encourages more severe violations of freedom of expression.”²⁸⁸ The 2014 Reporters Without Borders report finds that “at least 33 journalists have been murdered in connection with their work in Russia since 2000.”²⁸⁹ The report lists dangers facing journalists. “In August, Kabardian journalist and human rights activist Timur Kuashev was found dead near Nalchik; poisoning was suspected. Before his death, he reported receiving threats from the police for his activities and postings on his blog.”²⁹⁰ In addition, the Russian presence in Ukraine has produced dangerous conditions for Russian journalists, politicians, and families who question the deaths of Russian servicemen in Ukraine, facing what RSF describes as “bureaucratic obstruction and trumped up charges.”²⁹¹ In January 2015, The Committee to Protect Journalists (CPJ) condemned the extended three-year sentence of imprisoned reporter Sergei Reznik, who had previously served 18 months for “insult, briber, and deliberately misleading authorities,” charges which his lawyers

²⁸² Ibid, 2-3.

²⁸³ Will Englund. “Russia Convicts dead whistleblower”, *The Washington Post*. July 11, 2013. Accessed March 5, 2015

²⁸⁴ Ibid.

²⁸⁵ Ibid.

²⁸⁶ “Russia-Whistleblower Protection.” Blueprint for Free Speech. 2014. Accessed Feb.13, 2015.

²⁸⁷ “Antu[i]-corruption compliance in Russia: A way forward”. September 26, 2014 Transparency International Russia. Accessed January 26, 2015. <http://transparency.org.ru/en/news/antu-corruption-compliance-in-russia-a-way-forward>

²⁸⁸ “UN General Assembly A/HRC/27/NGO/27”. August 26, 2014. UN High Commissioner for Human Rights: 2

²⁸⁹ “World Press Freedom Index 2014” Reporters without Borders. Jan. 31, 2014: 22

²⁹⁰ Freedom in the World 2015: Russia” Freedom House. 2015. Accessed Feb. 17, 2015. freedomhouse.org

²⁹¹ Ibid.

claim are all fabricated in response to his articles criticizing and accusing both municipal and regional authorities of corruption.²⁹²

5. Trends and analysis

139. While Russia has legislation and programs in support of freedom of expression, journalist protections, and whistleblower protections; state practice does not support these rights. Increasing restrictions and control over the media has produced dangerous conditions for journalists. Whistleblower protection suffers in the country from rampant corruption, a judicial system that is not independent and recent examples of prosecuted whistleblowers. Unless the Russian government strives for legitimate change in the political sphere and anti-corruption initiative implementation, these conditions are likely to continue or increase in severity.

C. Turkmenistan

<u>Turkmenistan</u>		
Freedom House: Freedom in the World (2015)	7– Not Free/ Worst of the Worst	Same
Freedom House: Freedom of the Press (2014)	95 – Not Free	↓ (1)
Freedom House: Freedom on the Net (2014)	No Data	No Data
Reporters Without Borders: Press Freedom Index (2015)	#178	Same

1. Background

140. Since achieving independence in 1991, Turkmenistan has been a dictatorship with nominal attempts at democracy. The government has opposed the free flow of information and offered little to no protection for whistleblowers or journalists' sources. Turkmenistan is a member of the European Bank for Reconstruction and Development, the G-77, the OSCE, and an associate state of the Commonwealth of Independent States. Turkmenistan is a member of the Non-Aligned Movement and is officially neutral in global politics, despite its associate membership in the CIS. With high levels of corruption, a cult of personality surrounding the president, state violence against journalists,²⁹³ and less than 2% of the population having even limited monitored Internet access,²⁹⁴ Turkmenistan is one of the most closed and authoritarian states in the world. With the exception of one newspaper focusing on business and economic news, all Turkmen media is owned by the state, with President *Kurbanguly* Berdymukhamedov as a major shareholder. Radio Free Europe / Radio Liberty operates in the country with extreme constraints. In power since late 2006, Berdymukhamedov has made nominal reforms; however, there has been no change on the ground. Turkmenistan has acceded to most of the major UN

²⁹² “Imprisoned Russian journalist sentenced to new three-year jail term”. Jan 22, 2015. Committee to Protect Journalists. Accessed February 25, 2015. <https://cpj.org/2015/01/imprisoned-russian-journalist-sentenced-to-new-thr.php>

²⁹³ Human Rights Watch *World Report 2015* (New York: Seven Stories Press, 2015), Accessed March 12, 2015, <http://www.hrw.org:8080/world-report/2015/country-chapters/turkmenistan>.

²⁹⁴ *The World Factbook*. Washington, DC: Central Intelligence Agency. Continually updated. <https://www.cia.gov/library/publications/the-world-factbook/>.

Conventions on Human Rights, with the exception of the CAT-OP, the CED, and the CMW.²⁹⁵

2. Legislation

141. The constitution of Turkmenistan offers a number of protections, including life, honor, dignity,²⁹⁶ due process,²⁹⁷ and the right to freedom of opinion and expression.²⁹⁸ The constitution does not explicitly mention whistleblowers or media organizations, and subverts personal and collective liberties to “the requirements of morality or social order or...national security.”²⁹⁹ Article 78 of the constitution states that the Cabinet of Ministers (which includes the president) is charged with “defending the rights and freedoms of citizens...and preserve [sic] public order and national security.”³⁰⁰ However, there is no explanation regarding how these policies are formulated or what limitations exist.

142. A media law enacted on January 4, 2013 (hereafter media law), written with the assistance of the OSCE, officially permits non-government media, bans censorship, and affirms the right of freedom of expression, while prohibiting restrictions on media activity, and government control of media sources. Chapter II, Article 4, Section 3, states that media can be limited to prevent foreign propaganda, the disclosure of state secrets, incitement to commit acts of violence or racial, ethnic, or religious discrimination, or the dissemination of pornography. Additionally, section 3 details “abuse of freedom of speech,” which can result in legal proceedings against a journalist, and is defined as printing false information, harming the honor or dignity of a person, or damaging the esteem of a legal entity.³⁰¹ In Chapter 6, Article 31, the media law offers specific provisions for the protection of journalists’ sources. In addition to writing only truthful information provided from multiple sources, journalists are entitled to “maintain the confidentiality of information and (or) its source.” However, they are prohibited from pressuring a source of information or providing compensation.³⁰² Article 39, regarding confidential information, states that the “editorial staff is obliged to keep secret the source of information and is not entitled to call the person who provided information on the condition of non disclosure of his name, except in the case when the corresponding demand from the Court.”³⁰³ Consequently, protection of journalists’ sources is theoretically protected, unless the government wants to know who the source is.

²⁹⁵ United Nations Office of the High Commissioner for Human Rights. Accessed April 10, 2015 <http://www.ohchr.org/EN/>

²⁹⁶ Turkmen Constitution. [Article 3] Accessed March 12, 2015. <http://turkmenistanembassy.org/the-turkmenistan-constitution-%E2%80%A2-articles-1-56/>

²⁹⁷ Ibid, [Article 16].

²⁹⁸ Ibid, [Article 26].

²⁹⁹ Ibid, [Article 19].

³⁰⁰ Ibid, [Article 78].

³⁰¹ Law of Turkmenistan “*On the Media*” (2013), Chapter II, Article IV, §3 <http://medialawca.org/posts/08-01-2013/68209.html>

³⁰² Ibid, Chapter VI, Article XXXI, §5.

³⁰³ Ibid, Chapter VII, Article XXXIX, §2.

3. Official statements

143. The Turkmen government rarely comments on issues related to journalists' sources and treats whistleblowing as a crime. The government rarely comments on issues that might embarrass the leadership or that would confirm the poor level of rights enjoyed by Turkmen citizens.

4. State practice

144. Turkmenistan routinely violates its constitution and contravenes its media law. As one of the most authoritarian states in the international community, the Turkmen government has no qualms arresting and/or intimidating journalists and their sources, or anyone considered to be undermining the government's version of reality. Despite the existence of laws, especially the 2013 media law, that are intended to protect speech, at the federal and local level Turkmen authorities do not tolerate dissent or respect privacy.

145. In those rare cases when foreign journalists have been granted access to the country, they have been kept under 24-hour surveillance and forbidden to speak to those not included in an official itinerary.³⁰⁴ Contrary to the media law's ban on censorship, the practice has continued.

146. Harassment of journalists and their families is common. While there is little direct evidence regarding how their sources are treated, the atmosphere of violence and intimidation prevents journalists from being able to report on events. Amangelen Shapudakov, an 80-year-old activist, was committed to a psychiatric institution after claiming that a local politician had engaged in corrupt practices.³⁰⁵ Reporters Without Borders has stated that forcible institutionalization is a growing practice in Turkmenistan for journalists and their sources, and went on to allege that "The inhuman and arbitrary way that Shapudakov is being treated is new evidence of this central Asian dictatorship's harsh repression of the media and their sources."³⁰⁶

147. Umid Halliyev, a radio broadcaster and the son of a journalist, reported government persecution, including attempted blackmail by the security services. Mr. Halliyev was barred from leaving the country.³⁰⁷ Osman Khallyev, a radio journalist for RFE/RL, was interviewing villagers near the city of Turkmenabat regarding home demolitions in December of 2014 when he was detained for several hours by both uniformed and undercover police who threatened him with imprisonment and fines before releasing him.³⁰⁸

³⁰⁴ "Freelance journalists for foreign media outlets kept under almost 24-hour surveillance in Turkmenistan – Open Democracy" LexisNexis, June 6, 2014.

³⁰⁵ "Confined to a Psychiatric Hospital for Talking to a Radio Station." Reporters Without Borders. April 5, 2011. Accessed March 20, 2015. <http://en.rsf.org/turkmenistan-confined-to-a-psychiatric-hospital-05-04-2011,39955.html>.

³⁰⁶ Ibid.

³⁰⁷ "Turkmen Journalist Seeks Asylum." *Alternative News Turkmenistan*. March 20, 2015. Accessed March 28, 2015. <http://habartm.org/archives/2360>.

³⁰⁸ "Interrogation Subjected to Another Correspondent of "Azatlyk"" *Alternative News Turkmenistan*. December 23, 2014. Accessed March 24, 2015. <http://habartm.org/archives/1810>.

5. Trends and analysis

148. Turkmenistan has consistently ranked as one of the most repressive states in the world for press freedom. Freedom House has given Turkmenistan the worst score for independent media each year.³⁰⁹ Similarly, Reporters Without Borders (RSF) has ranked Turkmenistan in the relatively same position since 2002 in the *World Press Freedom Index* (WPFI).³¹⁰ While the country moved from the number 123 position (out of 178) in 2012 to the 116 position (out of 180) in the 2015 WPFI, there has been little overall progress or changes in how the constitution has been interpreted.

149. There has been no improvement in freedom of speech or press freedom since the 2013 media law. This has been despite pressure from foreign governments and the OSCE.³¹¹ Turkmen authorities do not attend events where they might come into contact with dissidents, or face a great deal of public criticism.³¹² Similarly, Turkmenistan has not granted prior requests from the Special Rapporteur (SR) on the promotion and protection of the right to freedom of opinion and expression for a country visit.³¹³ A request was granted in 2008 to the SR on freedom of religion or belief. Perhaps, this was because this is a topic on which Turkmenistan was making progress.³¹⁴ The Turkmen Government may be impervious to international criticism. Despite its record, there are many companies and governments that do business with the country. There is little attention paid to the overall human rights situation in Turkmenistan; educational campaigns or highly publicized events or announcements might change that.

D. United Kingdom

United Kingdom		
Freedom House: Freedom in the World (2015)	1 – Free	Same
Freedom House: Freedom of the Press (2014)	23 – Free	↓ (2)
Freedom House: Freedom on the Net (2014)	24 – Free	↓ (1)
Reporters Without Borders: Press Freedom Index (2015)	#34	↓ (.07)

1. Background

150. The United Kingdom (UK) is a nominal constitutional monarchy that operates as a parliamentary democracy. The UK is a member state of the EU, and part of the Commonwealth of Nations, the OSCE, and the Council of Europe. Despite a press freedom score of 23 out of 100 from Freedom House,³¹⁵ and a score of 20 in the 2015

³⁰⁹ "Nations in Transit - Turkmenistan." Freedom House. 2014. Accessed March 23, 2015.

³¹⁰ "2015 World Press Freedom Index." Reporters Without Borders. 2015. Accessed March 23, 2015.

<https://index.rsf.org/#!/index-details/TJK>.

³¹¹ "Turkmenistan - Country of Concern." UK Foreign & Commonwealth Office. January 21, 2015. Accessed April 10, 2015. <https://www.gov.uk/government/publications/turkmenistan-country-of-concern>

³¹² Ibid.

³¹³ "Freedom of Opinion and Expression – Country Visits." United Nations Office of the High Commissioner for Human Rights. SR on the promotion and protection of the right to freedom of opinion and expression. Accessed April 10, 2015. <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Visits.aspx>

³¹⁴ Ibid.

³¹⁵ "Freedom of the Press - United Kingdom." Freedom House. 2015. Accessed March 23, 2015.

World Press Freedom Index, placing it 34th out of 180 states in the 2015 World Press,³¹⁶ the United Kingdom still experiences gaps in its laws and practices regarding whistleblowing and the protection of journalists' sources. Laws passed with the intention of preventing crime and terrorism have been especially problematic. As a political union, the legal system in the UK is divided into three geographic units: English Law in England and Wales; Northern Irish Law, which is based on common law principles; and Scot Law, which is pluralistic and based on civil law principles.³¹⁷ The UK is a signatory to most human rights treaties, with exceptions being the International Convention for the Protection of all Persons from Enforced Disappearance, ICCPR-OP, ICESCR-OP Convention on the Rights of the Child-OP, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.³¹⁸

2. Legislation

151. The UK has the strongest whistleblowing laws in the EU.³¹⁹ Whistleblowing laws in the UK were passed in the late 1990s, while modern protection of sources has been firmly established in court cases from the 1980s to the early 21st century.

Additionally, the UK is bound to standards of freedom of the press and expression as expressed in the charters and operation of the EU, CoE and OSCE. Article 10 of the European Convention on Human Rights affirms that the right to freedom of expression includes the ability “to receive and impart information and ideas without interference by public authority and regardless of frontiers;”³²⁰ however, this is subverted by the requirements of national security and public safety.³²¹

152. Section 10 of the Contempt of Court Act 1981 states that UK courts cannot compel an individual to disclose “the source of information contained in a publication for which he is responsible,”³²² with exception being granted to national security or “prevention of disorder or crime.”³²³ The European Court of Human Rights in *Goodwin v. UK* affirmed that protection of sources is the foundation of press freedom;³²⁴ however, the Legal scholar Louisa Donnelly noted that UK courts have interpreted this within the context of a balance between speech and the possible harm that can come from speech. In *John and Others v. Express Newspapers and Others*, the court upheld the Contempt of Court Act 1981, stating that journalists are morally bound to protect their sources.³²⁵ Similar to Article 10 of the ECHR, protection of journalists' sources does not extend to issues of national security or public safety.

³¹⁶ "2015 World Press Freedom Index"

³¹⁷ Laws are usually initially passed in English Law, and then enacted in Northern Irish Law and Scot Law.

³¹⁸ United Nations Office of the High Commissioner for Human Rights. Accessed April 10, 2015

³¹⁹ Nielsen, Nikolaj. "EU-wide whistleblower protection law rejected." *EU Observer*. October 23, 2013. Accessed April 10, 2015. <https://euobserver.com/justice/121873>

³²⁰ *European Convention on Human Rights*, European Court of Human Rights: Strasbourg, June 1, 2010: 11

³²¹ *Ibid.*

³²² §10 Contempt of Court Act 1981 quoted in Donnelly, Louisa. *Media Law-Protection of Journalistic Sources in the UK*: Ghent University. March 12, 2015: 2.

³²³ *Ibid.*

³²⁴ *Ibid.*, 3.

³²⁵ *Ibid.*, 1.

153. Most UK laws regarding whistleblowing are confined to the private sector. For government employees, the Civil Service Code 1996 establishes a strict hierarchy in disclosing government information, requiring that an individual seek permission from a supervisor.³²⁶ The Public Interest Disclosure Act 1998 (PIDA), passed in 1999 and replicated in other UK legal systems, is the most important whistleblowing mechanism in the country. While PIDA applies to all public and private employees including the National Health Service, police officers, and trainees, it does not include individuals who are self-employed, or members of the armed forces or intelligence agencies.³²⁷ The act defines “protected disclosures” (also known as 43B disclosures) as those pertaining to criminal offenses (whether perpetrated or likely to be), failure to comply with a legal obligation, a “miscarriage of justice,” those pertaining to risks to health or safety, damage to the environment, or concealing of information related to a disclosure.³²⁸ Crucial to PIDA’s operation is that a “disclosure of information is not a qualifying disclosure (and therefore protected under the act) if the person making the disclosure commits an offence by making it.”³²⁹ PIDA provides compensation for whistleblowers, as well as defines what classes of individuals disclosures can be made to, including employers, journalists, lawyers, and government officials.³³⁰ However, if disclosures are made to the media, they cannot be made for “personal gain,” which is a thorny issue, and the individual must believe that their employer will not take the disclosure seriously.³³¹ PIDA discourages anonymous reporting, preferring instead confidential reporting.³³² The International Anti-Corruption Academy in Austria ranks whistleblower laws in the UK as “advanced.”³³³

3. Official statements

154. Prime Minister David Cameron has voiced his support for whistleblowers, stating that they “help improve the provision of public services.”³³⁴ Similarly, during a whistleblowing case involving an employee of the signals intelligence agency GCHQ, an official in the British government asserted, “The UK firmly supports the right to freedom of expression. We take great care to balance individual rights with our duty to safeguard the public and the UK’s national security.”³³⁵ The interception communications commissioner, Sir Anthony May, has stated that UK police have

³²⁶ “United Kingdom - Whistleblower Protection.” Blueprint for Free Speech. 2014. Accessed February 16, 2015. <https://blueprintforfreespeech.net/document/united-kingdom>

³²⁷ Ibid.

³²⁸ Ibid.

³²⁹ “Public Interest Disclosure Act 1998 (s.43A - F)” Public Concern at Work. Accessed February 25, 2015. <http://www.pcaw.org.uk/pida-43a-f#43a>

³³⁰ “United Kingdom - Whistleblower Protection.” Blueprint for Free Speech. 2014.

³³¹ Ibid.

³³² Ibid.

³³³ “Whistleblowing in Europe and International Organisations” (presentation at New Challenges for Anti-Corruption Measures and for the Protection of EU Financial Interests” IACA, Laxenburg, Austria, May 15, 2014).

³³⁴ David Cameron quoted in “Workplace whistle-blowers 'ignored', survey suggests” *BBC*. May 14, 2013. Accessed March 20, 2015. <http://www.bbc.com/news/uk-22516737>

³³⁵ Owen Bowcott. “GCHQ whistleblower calls for public interest defence” *The Guardian*. November 21, 2014. Accessed March 20, 2015. <http://www.theguardian.com/world/2014/nov/21/gchq-whistleblower-public-interest-defence>

abused anti-terrorism legislation and “did not give due consideration to freedom of speech.”³³⁶ Prime Minister Cameron has spoken out against encrypted communication.³³⁷

4. State practice

155. In February 2015, the Committee to Protect Journalists expressed its dismay that since 2012 British law enforcement agencies had made more than 600 attempts to uncover journalists’ sources.³³⁸ Because prevention of crime and national security have been cited as reasons to void confidentiality, it has become common to use these justifications in appeals to the Interception of Communications Commissioner’s Office (IOCCO), which must approve and regulate the use of communications surveillance. There have been numerous reports of federal and local law enforcement agencies performing surveillance on journalists’ communications, including attempts at identifying confidential sources, citing the Regulation of Investigative Powers Act (RIPA).³³⁹ Regarding these violations, the interception of communications commissioner stated, “The need to protect the confidentiality of journalistic sources is crucial to safeguard the free press in a democratic society.”³⁴⁰

5. Trends and analysis

156. Despite a strong history of press freedom, the UK has recently been using anti-terrorism legislation to undermine whistleblowers and violate the confidentiality that journalists require. Based on RSF’s WPI index the UK has gone from 29th place in 2013 (with a score of 16.89), to 34th place in 2015 (with a score of 20). Unless the British government makes RIPA justifications more difficult to invoke, or increases safeguards, it is very possible that the situation will continue to deteriorate.

157. The UK considers itself a free and open society. However, recent events have shown the need for greater protections. In the aftermath of the Snowden leaks, GCHQ cooperation with the NSA, and additional whistleblowing events, the public is acutely aware of domestic issues under the Special Rapporteur’s purview. Pointed criticism

³³⁶ Sir Anthony May Quoted in Josh Halliday and Joshua Rozenberg. “Police will need judge’s permission to access journalists’ phone and email records.” *The Guardian*. February 4, 2015. Accessed March 30, 2015.

<http://www.theguardian.com/world/2015/feb/04/police-600-applications-trace-journalist-sources-snopping-watchdog>

³³⁷ Alex Hern. “How has David Cameron caused a storm over encryption?” *The Guardian*. January 15, 2015. Accessed March 20, 2015. <http://www.theguardian.com/technology/2015/jan/15/david-cameron-encryption-anti-terror-laws>

³³⁸ “UK police used anti-terror legislation to uncover journalists’ sources” Committee to Protect Journalists. 2015. Accessed March 20, 2015. <https://cpj.org/2015/02/uk-police-used-anti-terror-legislation-to-uncover-.php>

³³⁹ Jason Collie. “Police stonewall over misuse of RIPA to spy on journalists” *Oxford Mail*. March 17, 2015. Accessed March 20, 2015.

“UK government fails to deliver promised protection for whistleblowers” The Scottish Newspaper Society. February 26, 2015. Accessed March 20, 2015. <http://www.scotns.org.uk/uk-government-fails-to-deliver-promised-protection-for-whistleblowers/>

³⁴⁰ Sir Anthony May Quoted in Josh Halliday and Joshua Rozenberg. “Police will need judge’s permission to access journalists’ phone and email records.” *The Guardian*. February 4, 2015. Accessed March 30, 2015.

<http://www.theguardian.com/world/2015/feb/04/police-600-applications-trace-journalist-sources-snopping-watchdog>

or international investigations could have a strong impact, as long as they are addressed within the context of a slip in standards.

E. Regional Analysis

158. Article 10 of the European Convention on Human Rights “provides for a right to receive and impart information without interference from authorities.”³⁴¹

159. European Union: The EU has been reluctant to pass legislation that would provide for the comprehensive protection of whistleblowers.³⁴² EU commissioners have noted the importance of whistleblowing. Yet, they are currently unwilling to take this up as an intergovernmental issue. Member states continue to have a patchwork of national laws offering different levels of protection. Whistleblowers in any EU state facing retaliation may bring their cases to the European Court of Human Rights as a violation of Article 10 of the European Convention on Human Rights.³⁴³ The EU itself has guidelines for whistleblowing internal to the organization through the office of the Ombudsman.³⁴⁴

160. Council of Europe: On April 30, 2014, the Council of Europe adopted Recommendation CM/Rec(2014)7 of the Committee of Ministers to member states on the protection of whistleblowers, recommending member states have institutional and judicial framework to protect individuals who in “work-based relationship, report or disclose information on threats or harm to the public interest.”³⁴⁵ According to Privacy International, since 1949, the Council has issued more than 40 declarations and other instruments relating to freedom of expression and the media. Among these, the COE has issued a number of high-level declarations recognizing the need for protection of sources.³⁴⁶ In 2000, the COE Committee of Ministers adopted a recommendation for “common European minimum standards concerning the right of journalists not to disclose their sources of information.”³⁴⁷ The European Court of Human Rights has described the importance of freedom of expression as “one of the essential foundations of a democratic society.”³⁴⁸

161. Organization for Security and Cooperation in Europe: Privacy International notes that in 1986, OSCE States met in Vienna for “Co-operation in Humanitarian and Other Fields” and “agreed to principles relating to free expression, including a principle of protection of journalists’ sources.” In 2007, the organization completed a

³⁴¹ David Banisar. “Silencing Sources: An International Survey of Protections and Threats to Journalists’ Sources” 2007. Privacy International: 16.

³⁴² Nikolaj Nielsen. “EU-wide whistleblower protection law rejected.” *EU Observer*. October 23, 2013. Accessed April 10, 2015. <https://euobserver.com/justice/121873>

³⁴³ Thad Guyer, and Nikolas Peterson. *The Current State of Whistleblower Law in Europe: A Report by the Government Accountability Project*. 2013: 9-10.

³⁴⁴ “Draft Decision of the on Internal Rules concerning Whistleblowing.” European Ombudsman. February 26, 2015. Accessed April 10, 2015. <http://www.ombudsman.europa.eu/cases/correspondence.faces/en/54612/html.bookmark>

³⁴⁵ Council of Europe, European Committee on Legal Co-operation. Accessed April 9, 2015.

³⁴⁶ David Banisar. “Silencing Sources: An International Survey of Protections and Threats to Journalists’ Sources” 2007. Privacy International:15.

³⁴⁷ *Ibid*, 15.

³⁴⁸ *Ibid*, 16.

study of member states’ recognition of sources protection and found most generally recognized the protection of sources information.³⁴⁹

162. G-20: According to Privacy International, in 2010, G-20 Leaders “identified the protection of whistleblowers as one of the high priority areas in their global anticorruption agenda. Recognizing the importance of effective whistleblower protection laws, leaders, in point 7 of the G-20 Anti-Corruption Action Plan, called on G-20 countries to lead by: To protect from discriminatory and retaliatory actions whistleblowers who report in good faith suspected acts of corruption, G-20 countries will enact and implement whistleblower protection rules by the end of 2012.”³⁵⁰

VI. Country Reports: The Americas

A. Argentina

<u>Argentina</u>		
Freedom House: Freedom in the World (2015)	2 – Free	Same
Freedom House: Freedom of the Press (2014)	51 – Partly Free	↑ (1)
Freedom House: Freedom on the Net (2014)	27 – Free	Same
Reporters Without Borders: Press Freedom Index (2015)	#57	↓ (2)

1. Background

163. Argentina’s form of government is comprised of a federal constitutional republic and a representative democracy. The government is regulated by a system of checks and balances defined in the Constitution of Argentina where the power is shared and spread among three branches: 1) the legislative with a bicameral congress comprised of the Senate and Deputy of Chambers, 2) the executive, ruled by the President as Commander-in-Chief directly elected by the people, and, 3) the judiciary constituted of the Supreme Court and lower federal courts. The 2014 Reporters Without Borders Report ranks Argentina 55 out of 180 countries scoring 25.27 showing noticeable problems and transitioning downwards. Meanwhile, in Freedom House’s 2015 Report, Argentina scored a 2, meaning it is considered ‘free.’ The mixed results of the various reports demonstrate the disparities that Argentina has on whistleblower protection and the protection of journalists.

164. Argentina’s regional affiliations include: the Organization of American States (OAS), the Inter-American Development Bank (IDB), the Latin American Integration Association (ALADI) and of Mercado Común del Sur (MERCOSUR). In December 2004, Argentina was one of 12 countries that were signatories to the agreement, signed in Cusco, Peru, creating the *South American Community of Nations* (UNASUR), intended to promote greater regional economic integration. The country is also a member of the Community of Latin American and Caribbean States (CELAC), which was formally inaugurated in December 2011. Furthermore,

³⁴⁹ Ibid, 18.

³⁵⁰ G20 Anti-Corruption Action Plan Action Point 7: Protection of Whistleblowers. 2010, 2.

Argentina was a founding member of the UN in 1945, and commenced a two-year mandate as a non-permanent member of the UN Security Council on January 1, 2013. Also, as a contracting party to the General Agreement on Tariffs and Trade (GATT), Argentina joined the World Trade Organization (WTO) on its establishment in 1995. The country is also a member of the Group of 15 (G15) and the Group of 20 (G20).³⁵¹

165. Argentina is an avid supporter of various international treaties and conventions in support of human rights. Argentina has signed and ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD 1965), International Covenant on Civil and Political Rights (ICCPR 1966), International Covenant on Economic, Social and Cultural Rights, (ICESCR 1966), Convention on the Elimination of All Forms of Discrimination against Women, (CEDAW 1979), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (CAT 1984), Convention on the Rights of the Child, (CRC 1990), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, (ICRMW 1990), Convention on the Rights of Persons with Disabilities (CRPD), International Convention for the Protection of All Persons from Enforced Disappearance (CED).³⁵²

2. Legislation

166. Argentina has no adequate law to provide protection for whistleblowers.³⁵³ Anti-corruption activists and investigators are afraid of reprisals when they report cases of corruption and bribery.³⁵⁴ This is reflected in Transparency International's 2012 *Government Defense Anti-Corruption Index*, where it is reported that whistleblowers and witnesses are encouraged to report acts of corruption; however, there is no legal framework to protect them.³⁵⁵ Nevertheless, cases of corruption can be reported to the *Oficina Anticorrupción* (anti-corruption office) via its online whistleblower mechanism and the *Auditoría General de la Nación* (national auditing office) via e-mail, telephone or in person. Complaints can also be filed to the *Oficina del Defensor del Pueblo de la Nación* (national public defender's office) via e-mail.

167. While Argentina has no specific whistleblower protection laws in place, there are labor laws, a constitutional and Data Protection Law (DPL), as well as jurisprudence that provides certain guidelines.³⁵⁶ In addition, there are restrictions on the transfer of data in a whistleblowing program. On March 6th, 2003, Argentina became the first Latin American country to receive the European Union (EU) Data Protection Working Party's approval for its data protection framework. The adequacy finding

³⁵¹ Ibid, 1.

³⁵² "Argentina." International Treaties Adherence. The Geneva Academy of International Humanitarian Law and Human Rights, 2015.

³⁵³ *Global Guide to Whistleblowing Programs*. The World Law Group, Ltd, (2012): 1.

³⁵⁴ "Business Corruption in Argentina,". Business Anti-Corruption Portal. GAN Integrity Solutions, 2015.

³⁵⁵ Ibid, 1.

³⁵⁶ *Global Guide to Whistleblowing Programs*. The World Law Group, Ltd, (2012): 1.

means that data can be freely transferred between EU member states and Argentina without fear of violating the EU Data Protection Directive.³⁵⁷

168. According to the World Law Group, section 9 of the DPL establishes that the person responsible for or the user of data files must take such technical and organizational measures as necessary to guarantee the security and confidentiality of personal data, in order to avoid its alteration, loss, unauthorized consultation or treatment, and which allow for the detection of any intentional or unintentional distortion of such information, whether the risks arise from human conduct or the technical means used. Moreover, Section 9 provides that it is prohibited to record personal data in files, registers or banks that do not meet the requirements of technical integrity and security. The material must be deleted once used for the purpose for which it was collected.³⁵⁸
169. Argentina's broadcasting legislation is in the process of being overhauled in an effective manner by a similar law called the Broadcasting Communication Services Law (LSCA).³⁵⁹ Adopted in 2009, Argentina's LSCA was the pioneer of this kind of legislation, reserving a third of broadcast frequencies to non-profit organizations. Such a provision would provide a real opportunity to Latin America's community broadcasters, who are denied legal frequencies and, by extension, are often criminalized.³⁶⁰ The provisions of Argentina's LSCA have directly influenced legislation in other countries in the region aimed at ensuring a fair distribution of frequencies according to the type of broadcaster (commercial, public and community).³⁶¹ While on paper, Argentina's initiatives on battling corruption are apparent, in matters of whistleblower protection; Argentina has a lot to improve.
170. According to Privacy International and the *Asociación por los Derechos Civiles*, (ADC), governments across Latin America are struggling to put in place effective intelligence and surveillance oversight regimes that guarantee the rights of citizens.³⁶² Furthermore, Argentina passed its National Intelligence Act in 2001,³⁶³ this Act created the Bicameral Committee for the Oversight of Intelligence Bodies and Activities.³⁶⁴ The committee began operating in 2004 with four sub-committee's feeding into the work of the main committee.³⁶⁵
171. Furthermore, while anonymous reporting is granted in legislation, it is up to the employer to determine whether anonymous reporting is allowed. Also, the company must obtain the information legally and guarantee the accused employee's right to be

³⁵⁷ Ibid, 2-3.

³⁵⁸ Ibid.

³⁵⁹ Argentina. World Press Freedom Index 2014. Reporters Without Borders.

³⁶⁰ World Press Freedom Index 2014, Ibid.

³⁶¹ Argentina. World Press Freedom Index 2014. Reporters Without Borders.

³⁶² Matthew Rice. "New Report Finds Little Oversight of Surveillance, Intelligence Agencies in Latin America." *Privacy International*, 2014. https://www.ifex.org/americas/2014/11/24/oversight_watchers/

³⁶³ *Privacy International*, 2014.

³⁶⁴ Ibid, 1.

³⁶⁵ Ibid.

heard.³⁶⁶ This can create huge problems for the whistleblower, especially if the company neglects the employee's voice, threatens their job, or takes legal action.

3. Official statements

172. Civil society in Argentina has been challenging the weak accountability regime. Repeated requests were made by ADC and the Latin American Institute for Security and Democracy (ILSED) for basic information regarding the committee such as the number of meetings held, reports produced, requests made to the Secretariat of Intelligence,³⁶⁷ but none were answered. This led the ADC and ILSED to file a claim at the Supreme Court seeking to declare the refusal to answer unconstitutional.³⁶⁸

4. State practice

173. After his election in 2003, former president Néstor Kirchner initially made fighting corruption a priority, and various institutions were established in order to curb corruption. *Mecro Press*, in a January 2012 article, reports that Argentina targeted USD 60 to 70 billion operating “outside the financial system” as it tries to combat money laundering.³⁶⁹ José Sbattella, economist and government official, stated that the enforcement of new rules would increase financial control in real estate operations, cooperatives, and medical insurance companies.³⁷⁰ Private sector companies are required to submit more information about their transactions and must report any financial or commercial operations suspected of money laundering.

174. When whistleblowers enter the equation their protection becomes troublesome. For instance, in Argentina a federal prosecutor who accused Argentina's president of helping to cover up Iran's role in the deadly 1994 bombing of a Jewish community center was found dead of a gunshot wound to the head. Alberto Nisman's death was discovered just hours before he was due to testify before lawmakers on his findings.³⁷¹ Nisman accused President Cristina Fernandez de Kirchner and other top Argentine officials of plotting to conceal the role of Iranian suspects in the attack in exchange for deals on Iranian oil.³⁷² The authorities say his death remains under investigation, while the government insists that it was most likely a suicide.

5. Trends and analysis

175. Even though Argentina ranks significantly higher than other countries in the Americas, Argentina's lack of whistleblower protections is rooted in the prioritization of the president over freedom of expression. Despite the contradictions between the rankings and state practice, as a member of the G20, Argentina has also made a public pledge to protect whistleblowers from retaliation. Although G20 countries

³⁶⁶ *Global Guide to Whistleblowing Programs*, 98-101.

³⁶⁷ “Business Corruption in Argentina.”

³⁶⁸ *Ibid.*

³⁶⁹ *Ibid.*

³⁷⁰ *Ibid.*

³⁷¹ “Argentina: Prosecutor Who Accused President of Iran Cover-Up Found Dead,” *Democracy Now*, January 20, 2015.

³⁷² *Ibid.*

have made improvements, whistleblowers would still not be fully protected from being fired, harassed or demoted if they report wrongdoing.³⁷³

176. Despite commitments made in 2010 and 2012 to pass adequate whistleblower protections within two years, Argentina has failed to do so. Without strong laws to protect whistleblowers from retaliation, employees and contractors working in government institutions and private companies are deterred from coming forward to report crime and misconduct. This perpetuates government and corporate misconduct, leading to unsafe consumer products, public health threats, environmental crimes, human rights violations, and wasted taxpayer money. In sum, fear of reprisal chills freedom of expression.³⁷⁴

B. Brazil

<u>Brazil</u>		
Freedom House: Freedom in the World (2015)	2 – Free	Same
Freedom House: Freedom of the Press (2014)	45 – Free	↓ (1)
Freedom House: Freedom on the Net (2014)	30 – Free	↑ (2)
Reporters Without Borders: Press Freedom Index (2015)	#99	↑ (12)

1. Background

177. One of Brazil’s biggest sources of economic growth is the petrochemical industry. With large natural reserves of oil and gas combined with foreign direct investment, Brazil will soon pass China and the United Arab Emirates to become the world's fifth largest oil producing nation—behind only Russia, Saudi Arabia, the U.S., and Iran.³⁷⁵ Brazil’s form of government is comprised of a Federal presidential constitutional republic under the mandate of President Dilma Rousseff. The government’s legislature is structured by a bicameral national congress with a federal senate and a chamber of deputies.³⁷⁶

178. The regional organizations of which Brazil is a member include: The OAS, Free Trade of the Americas (FTAA), the IDB, MERCOSUR, Economic Commission for Latin America and the Caribbean (ECLAS), Latin American Economic System (LAES), ALADI, and UNASUR.³⁷⁷

179. Brazil has signed the following international treaties and conventions: ICERD ICCPR, ICESCR, CEDAW, CAT, CRC, ICRMW, CRPD, and CED.

³⁷³ Business Anti-Corruption Portal, *Ibid.*

³⁷⁴ Wolfe et al.

³⁷⁵ “Potential for Whistleblower Exposure of Corruption in the Brazilian Oil and Energy Industries.” *International Whistleblowers & Foreign Corrupt Practices Act Information Center*, 2013.

<http://www.internationalwhistleblower.com/brazilbribe-whistleblowers.htm>

³⁷⁶ *Ibid.*

³⁷⁷ *Ibid.*

2. Legislation

180. With the rise of corruption both in the public and private sector, a strong focus on legislation has been needed as a way to mitigate this problem. The Organization for Economic Cooperation and Development (OECD) Anti-Bribery Convention, which Brazil has adopted, established legally binding standards to criminalize bribery. This is aimed to improve Brazil's ability to attract foreign investment as well as improve Brazilian multinational corporations' ability to expand internationally.³⁷⁸ According to the International Whistleblower Organization, the rating of legislative regime against international principles ranks countries on their practices towards whistleblowers in various areas. The rating is broken down into three metrics, which include: 1 as very or quite comprehensive, 2 as somewhat or partially comprehensive and 3 as absent or not at all comprehensive towards whistleblowers in both private and public sectors.³⁷⁹ First, the principle of broad definition of whistleblowers in the public sector is rated 2 and in the private sector 3.³⁸⁰ Second, the protection of confidentiality is rated 2 in both public and private sector. Third, the transparent use of legislation is rated 3 in both the public and private sector. Clearly the framework to prevent corruption in Brazil is relatively strong on paper with the exception of whistleblower protection legislation.³⁸¹

181. Brazil's public legislation in regards to whistleblower protection is extremely limited. Beyond standard protections offered to witnesses in criminal cases, three laws refer to whistleblowing directly: Law 8.112 of 1990 (Civil Service), Law 8.443 of 1992 (Organic Law of the Court of Accounts of the Union), and Law 12.846 of 2013 (Anti-Corruption). Moreover, in the public sector, Law 8.112 of 1990 was amended in 2011 (by the Freedom of Information Law 12.527 of 2011) to: Make it the duty of all civil servants to "bring irregularities of which they have knowledge because of their position to the attention of their higher authority" or "another competent authority" where there is suspicion of involvement or knowledge by their higher authority (Art 116-IV).³⁸² However, this law does not provide for confidential disclosures, nor does it provide recourse against retaliation. While some protection is afforded for external disclosure as parliamentary immunity provided in Article 53 of the Federal Constitution of 1988, which states: "The Senators and Representatives shall be inviolable civil and criminally, for any of their opinions, words and votes."³⁸³ In a few words, if a Senator or Representative makes the disclosure externally, protection by immunity is granted. Law 8.443 of 1992 provides that any citizen, political party, association, union or professional association may file a complaint with respect to irregularities and violations of the national audit law. This law, therefore, covers both the public and private sectors.³⁸⁴

³⁷⁸ Stocker, Frederick, T. *Anti-Corruption Developments in the BRIC Countries*. Manufacturers Alliance for Productivity and Innovation, Arlington, VA: 2012.

³⁷⁹ Wolfe et al., 26.

³⁸⁰ Ibid.

³⁸¹ Ibid, 26-27.

³⁸² Ibid.

³⁸³ Ibid, 27.

³⁸⁴ Ibid, 26-27.

3. Official statements

182. Brazil's president, Dilma Rousseff, has launched a blistering attack on US espionage at the UN General Assembly (UNGA), accusing the National Security Advisor (NSA) of violating international law by its indiscriminate collection of personal information of Brazilian citizens and economic espionage targeting the country's strategic industries.³⁸⁵ Rousseff's angry speech was a direct challenge to President Barack Obama, who was waiting in the wings to deliver his own address to the UNGA, and represented the most serious diplomatic fallout to date from the revelations by former NSA contractor Edward Snowden.³⁸⁶ Furthermore, Rousseff rallied: "Brazilian diplomatic missions, among them the permanent mission to the UN and the office of the president of the republic itself, had their communications intercepted." Rousseff was also very vocal during this incident arguing that: "Tampering in such a manner in the affairs of other countries is a breach of international law and is an affront of the principles that must guide the relations among them, especially among friendly nations. A sovereign nation can never establish itself to the detriment of another sovereign nation. The right to safety of citizens of one country can never be guaranteed by violating fundamental human rights of citizens of another country."³⁸⁷ Despite the US efforts to smooth relations with Brazil after the NSA espionage scandal, Rousseff has proposed that Brazil build its own Internet infrastructure.³⁸⁸

4. State practice

183. Brazil's current state practices on whistleblowers and journalists are clear reflections of the massive amount of corruption in the country by completely neglecting and even attacking those who pose a threat or any form of retaliation to the regime or government officials. In actuality, the widespread corruption in the current state of affairs in Brazil has led to many detrimental effects and costs including protests, unemployment, and violence, among others. According to TI, on March 15th of 2015, thousands of Brazilians took the streets to protest corruption centered on Petrobras, the country's oil giant that exposed a web of deceit that involving alleged bribery and kickbacks among top politicians and top businesses.³⁸⁹ In fact, 34 sitting politicians and 18 companies linked to the scandal currently face investigations.³⁹⁰ It is clear that corruption and public discontent are realities that Brazil has been facing for years. Petrobras has become the epicenter where the private and public sector clash as a result of corruption.³⁹¹ As TI describes, the problems of Petrobras exacerbate an already weakened economy where jobs across many industries are under threat.³⁹² Petrobras has lost more than two-thirds of its market capitalization in the past year.³⁹³

³⁸⁵ Julian Borger, "Brazilian president: US surveillance a 'breach of international law.'" *The Guardian*. September 24, 2013. <http://www.theguardian.com/world/2013/sep/24/brazil-president-un-speech-nsa-surveillance>

³⁸⁶ *Ibid.*

³⁸⁷ *Ibid.*

³⁸⁸ *Ibid.*

³⁸⁹ Wolfe et al.

³⁹⁰ "Whistleblower Protection Laws in G20 Countries: Priorities for Action."

³⁹¹ *Ibid.*

³⁹² *Ibid.*

³⁹³ *Transparency International Australia, 2014.*

184. Reporters Without Borders describes Brazil’s social and political environment as a not so “sunny spring” due to the harsh treatment on news providers who were among those hit by the major police crackdown in Brazil in 2013.³⁹⁴ The large-scale protests that erupted in Sao Paulo in June 2014 in response to public transport fare hikes spread to the rest of the country, fuelled by discontent about the massive spending on the 2014 World Cup and the 2016 Olympics. The “Brazilian spring” protests raised questions about the dominant media model and highlighted the appalling methods still used by the state military police since the time of dictatorship. During the protests, around 100 journalists were attacked and more than two thirds of these were blamed on the police.³⁹⁵

5. Trends and analysis

185. Brazil has made good progress in the past three years passing key anti-corruption laws, but the fractured political system makes the cost of entering politics too high.³⁹⁶ This crude reality has encouraged corruption among the political classes. In fact, as TI conveys, it is alleged that some Petrobras divisions diverted three percent of their value into slush funds for political parties.³⁹⁷ Despite the political environment in Brazil and the President’s involvement in corruption, it is unlikely that the President will be impeached. Furthermore, under the Constitution impeachment can only happen for misconduct in the current term. President Rouseff’s second term started in January.

C. Cuba

<u>Cuba</u>		
Freedom House: Freedom in the World (2015)	6.5 – Not Free	↓ (.5)
Freedom House: Freedom of the Press (2014)	90 – Not Free	↓ (2)
Freedom House: Freedom on the Net (2014)	84 – Not Free	↑ (2)
Reporters Without Borders: Press Freedom Index (2015)	#169	↑ (1)

1. Background

186. Cuba’s current leader, Raúl Castro, assumed office in 2008, after his brother, Fidel Castro announced his intention not to seek re-election. Raúl continued Fidel’s socialist agenda, which included cracking down on and censoring anyone who dared to question or speak out against the current government. Cuba has been consistently classified as “Not Free” according to the Freedom House *Freedom of the World Index*³⁹⁸ and is the worst ranked country in Latin America according to the *World Press Freedom Index* by Reporters without Borders.³⁹⁹

³⁹⁴ “World Press Freedom Index 2014.”

³⁹⁵ Ibid.

³⁹⁶ *Transparency International Australia, 2014.*

³⁹⁷ Ibid.

³⁹⁸ “Freedom in the World 2015.” Freedom House.

³⁹⁹ “2015 World Press Freedom Index.” Reporters Without Borders.

187. Cuba is a member of the following regional organizations, the African, Caribbean, and Pacific Group of States (ACP), the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL), the LAES, the Latin American Integration Association (LAIA), the OAS, the Permanent Court of Arbitration (PCA), the *Unión Latina*, and finally, the CELAC.⁴⁰⁰

188. Cuba is party to the CAT, the CED, CEDAW, CPRD, and the CRC. The Cuban government has signed but not ratified the ICCPR and the ICESCR.⁴⁰¹

2. Legislation

189. According to the current Socialist Constitution, freedom of speech and the press is allowed as long as they align with the country's socialist values (Article 53).⁴⁰² All mass media outlets, including radio, TV, film, and press are owned and operated by the government. Privately owned companies, blogs, and newspapers are prohibited. There is one digital newspaper, *14ymedio*, that is tolerated and is allowed to criticize the government, but it is still illegal to print and distribute such media.⁴⁰³ Independent journalists have found ways to share their stories online and via information pamphlets that circulate in the black market.

3. Official statements

190. Even though there are no official statements regarding whistleblower protections at this time, Cuba's socialist constitution does mention freedom of speech, the press, and the right of access to information; as long as the speech is not harmful to the socialist principles of the republic and the information is not related to matters of national security.

4. State practice

191. In matters of state practice, many justifications are used for the arbitrary detention of media personnel, including trumped up or made up charges. For example, the recent imprisonment of Angel Santiesteban Prats, a freelance journalist whose critical blog caught the attention of the government in 2013.⁴⁰⁴

192. In July 2010, as a result of talks held with the Catholic Church, Cuba agreed to release 20 journalists and over 30 other political prisoners to live in exile in Spain.⁴⁰⁵ The government agreed to the talks after a plea from Havana cardinal Jaime Ortega, to address the violent actions towards a peaceful protest by the Ladies in White, a movement of mothers who

⁴⁰⁰ Appendix B: International Organizations and Groups." Central Intelligence Agency. Accessed April 26, 2015. <https://www.cia.gov/library/publications/the-world-factbook/appendix/appendix-b.html>.

⁴⁰¹ "Treaty Bodies Countries." UN Office of the High Commissioner for Human Rights. Accessed April 21, 2015. http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=CUB&Lang=EN.

⁴⁰² "1976 Cuban Constitution." Constitutionnet.org. Accessed April 21, 2015. http://www.constitutionnet.org/files/Cuba_Constitution.pdf.

⁴⁰³ "14 Y Medio", English Version. Accessed April 21, 2015. <http://www.14ymedio.com/englishedition>.

⁴⁰⁴ "Dissident Blogger Completes Year in Detention." Reporters Without Borders. February 24, 2014. Accessed April 21, 2015. <http://en.rsf.org/cuba-dissident-blogger-completes-year-28-02-2014,45939.html>.

⁴⁰⁵ "Assisting Journalists Forced to Flee Censorship." Committee to Protect Journalists. Accessed April 21, 2015. <https://cpj.org/blog/2012/05/assisting-journalists-forced-to-flee-censorship.php#more>.

demand information on their relative's whereabouts.⁴⁰⁶ More recently, as part of the normalization agreement with the U.S., Cuba has released a number of political prisoners, including U.S. contractor Alan Gross.⁴⁰⁷

5. Trends and analysis

193. Cuba could potentially be trending upwards. While there is little freedom of speech or expression allowed, the recent ongoing normalization of relations with the United States government could indicate a shift towards a more open policy. In fact, both governments met recently on March 31 to start a human rights dialogue at Cuba's request.⁴⁰⁸ Cuba's deputy director for multilateral affairs and international law, Pedro Luis Pedrosa insists that the talks show Cuba's commitment to human rights and its intention to make them more of a priority for the country. Tom Malinowski, the Undersecretary of State for Human Rights and Democracy, explicitly mentioned U.S. concern for the harsh punishments directed towards political activists and their treatment in jail.⁴⁰⁹ In June 2009, the OAS removed a 47-year ban on the inclusion of Cuba in its yearly Summit of the Americas (SOA). For the first time, Cuba was invited to participate in the seventh annual SOA, which just recently concluded on April 12, 2015 in Panama City, Panama.⁴¹⁰ President Barack Obama and Raúl Castro met face to face for the first time in a plenary session.⁴¹¹ President Obama expressed hope for continued dialogue with Cuba, specifically mentioning more universal access to information, "We hope to be able to help on humanitarian projects, and provide more access to telecommunications and the Internet, and the free flow of information".⁴¹² The inclusion of Cuba in the SOA, plus its continued dialogue with the United States and cooperation with other Latin American countries opens up a much needed space for discourse on issues that have been buried for too long.

D. United States of America

<u>United States</u>		
Freedom House: Freedom in the World (2015)	1 – Free	Same
Freedom House: Freedom of the Press (2014)	21 – Free	↓ (3)
Freedom House: Freedom on the Net (2014)	19 – Free	↓ (2)
Reporters Without Borders: Press Freedom Index (2015)	#49	↓ (3)

⁴⁰⁶ Patricia Zapor. "CNS STORY: Prisoner Releases, Ongoing Talks with Castro Give Cuban Cardinal Hope." *Catholic News Service*. Accessed April 21, 2015. <http://www.catholicnews.com/data/stories/cns/1003153.htm>.

⁴⁰⁷ "Alan Gross Freed from Cuba Prison, Returns to U.S." *CBSNews*. December 14, 2014. Accessed April 21, 2015. <http://www.cbsnews.com/news/alan-gross-released-from-cuba-prison/>.

⁴⁰⁸ Mimi Whitefield. "U.S. and Cuba Face off on Human Rights in Washington Meeting." *The Miami Herald*. Accessed April 21, 2015. <http://www.miamiherald.com/news/nation-world/world/americas/cuba/article16930205.html>.

⁴⁰⁹ "U.S., Cuba Hold First Formal Talks on Human Rights." *Reuters*. March 31, 2015. Accessed April 21, 2015. <http://www.reuters.com/article/2015/03/31/us-cuba-usa-rights-idUSKBN0MR1XP20150331>.

⁴¹⁰ "OAS: Press Releases: E-131/15." Organization of the American States. Accessed April 21, 2015. http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-131/15.

⁴¹¹ Lucas Koerner. "Regional Leaders Back Venezuela at Panama Summit as US Blocks Final Declaration." *Venezuela Analysis*. Accessed April 21, 2015. <http://venezuelanalysis.com/news/11334>.

⁴¹² "Remarks by President Obama at the First Plenary Session of the Summit of the Americas." The White House Press Office. Accessed April 21, 2015. <https://www.whitehouse.gov/the-press-office/2015/04/11/remarks-president-obama-first-plenary-session-summit-americas>.

1. Background

194. The government of the United States is led by the President, with a bicameral legislature, and a robust judicial system. This three-way system of checks and balances is in place to assure no branch take unconstitutional liberties and monopolize the government.

195. Despite the U.S. having some of the strongest laws in place to protect whistleblowers, it has been far from exemplary in its response to those accused of blowing the whistle on matters of national security, classified information leaks, the prosecution of individuals, and enforcing punitive measures. Eight whistleblowers have been prosecuted since Barack Obama became president.⁴¹³ Prior presidents had only used alleged Espionage Act violations to justify prosecution three times since its enactment in 1917.⁴¹⁴ The role of whistleblowers is not only centered on the public sphere, but on the private sphere as well. Small businesses, corporations, and other entities are also strictly related to the whistleblower discourse and thus their adherence to government regulations are also at stake. Several events have occurred in the past decade where sensitive information has been filtered and made public, which placed the U.S. government's image under scrutiny and shifted the focus on access to information, the role of whistleblowers, and the protection of journalists. Examples of these controversial events include, but are not limited to WikiLeaks revelations and the Snowden case.

196. The United States has signed and ratified the following human rights treaties: CAT, CERD, ICCPR, as well as two optional protocols for CRC, without having ratified the main CRC document. The United States government is only a signatory to and has not ratified the CEDAW, the ICESCR, and the CPRD.⁴¹⁵

2. Legislation

197. Looking at U.S. legislation at the public level there is no question that the Espionage Act stands out in matters of whistleblower protection. According to Reporters Committee for Freedom of the Press, as it is currently written, the Espionage Act of 1917 makes it a crime to hurt the United States or benefit a foreign country by collecting or communicating information that would harm the national defense.⁴¹⁶ Knowingly receiving classified information that has been obtained illegally, as well as passing it on, is also a violation of the Espionage Act. However, the Espionage Act has been criticized as a vaguely worded law, which has created huge repercussions for whistleblowers. According to Steven Aftergood, who directs the Project on Government Secrecy for the Federation of American Scientists, "The

⁴¹³ "Justice Department Finally Stops Harassing New York Times Reporter." *Reporters Without Borders*, 2015.

⁴¹⁴ *Ibid.*

⁴¹⁵ Treaty Bodies Countries." UN Office of the High Commissioner for Human Rights. Accessed April 21, 2015. http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=USA&Lang=EN

⁴¹⁶ Emily Peterson. "WikiLeaks and the Espionage Act of 1917: Can Congress Make it a Crime for Journalists to Publish Classified Information?" Reporters Committee for Freedom of the Press, 2015. <http://www.rcfp.org/browse-media-law-resources/news-media-law/wikileaks-and-espionage-act-1917>

Espionage Act is so vague and poorly defined in its terms, that it's hard to say exactly what it does and does not cover.”⁴¹⁷

198. At the private level, legislation does exist in the U.S. requiring certain types of companies to enact whistleblowing programs. Examples of these programs include the Sarbanes-Oxley Act of 2002 (SOX) (18 U.S.C. § 1514A) along with the Securities and Exchange Commission (SEC) and stock exchange regulations, which audit and ensure compliance and established procedures of committees of companies listed on a U.S. stock exchange.⁴¹⁸
199. Another piece of legislation that the U.S. has enacted that relates to whistleblower protections is the Dodd–Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111- 203, H.R. 4173). According to the U.S. Commodity Futures Trading Commission, the Dodd Frank Act provides whistleblowers with the option to go directly to SEC under the Subtitle B. Subtitle B provides the SEC additional powers of enforcement including a “whistleblower bounty program”. Furthermore, the SEC program rewards individuals who provide information that leads to an SEC enforcement action.⁴¹⁹
200. Another key federal whistleblower statute of the U.S. is the False Claims Act (31 U.S.C. § 3729 et seq.). According to the World Law Group, the False Claims Act prohibits the submission of “knowing” false claims to obtain federal funds. Whistleblowers with evidence of fraud against government contracts and programs may bring an action known as a *qui tam* case, on behalf of the government, in order to recover the stolen funds.⁴²⁰
201. There are other segments of the private sector where the line between public and private becomes blurred. For instance, Occupational Safety & Health Administration (OSHA) Whistleblower Protection Program enforces the whistleblower provisions of more than 20 whistleblower statutes protecting employees who report violations of various workplace environments. Rights afforded by these whistleblower protection laws include: worker participation in safety and health activities, reporting a work-related injury, illness or fatality, or reporting a violation of the statutes herein.⁴²¹ The Food Safety Modernization Act (FSMA)⁴²², passed in January of 2011 provides whistleblower protections for FDA employees against unfair termination and discrimination⁴²³, if said employee has provided information to their supervisor, the federal government, or the attorney general regarding any such violations of the act.

⁴¹⁷ Ibid.

⁴¹⁸ ‘Dodd-Frank Wall Street Reform and Consumer Protection Act’ U.S. Commodity Futures Trading Commission, 2005.

⁴¹⁹ *The World Law Group, Ltd*, 98-101.

⁴²⁰ Ibid.

⁴²¹ “The Whistleblower Protection Programs.” Occupational Safety & Health Administration (OSHA). U.S. Department of Labor, 2015.

⁴²² *Food Safety Modernization Act*, Public Law 111-353, (2011) §402

<http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm247548.htm#SEC402>

⁴²³ “Procedures for Handling Retaliation Complaints Under Section 402 of the FDA Food Safety Modernization Act” Occupational Safety & Health Administration (OSHA). U.S. Department of Labor.

https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=FEDERAL_REGISTER&p_id=24284

202. The Foreign Corrupt Practices Act (FCPA) prohibits the offer, making of payments, giving anything of value to any foreign official, political party or candidate as a way to obtain or maintain business when the offer, payment or gift is intended to influence a desired action.⁴²⁴

3. Official statements

203. Change.gov, President Obama's official campaign website, specifically mentions Obama's intention to protect whistleblowers: "Barack Obama will strengthen whistleblower laws to protect federal workers who expose waste, fraud, and abuse of authority in government. Obama will ensure that federal agencies expedite the process for reviewing whistleblower claims and whistleblowers have full access to courts and due process."⁴²⁵ Following the leak of NSA documents by Edward Snowden, President Obama addressed the nation and introduced his mass surveillance and intelligence signaling policy changes. According to Obama, "If any individual who objects to government policy can take it into their own hands to publicly disclose classified information, then we will not be able to keep our people safe, or conduct foreign policy."⁴²⁶

4. State practice

204. Despite the relatively strong protections the U.S. has in place for whistleblowers, the practice is still being criminalized in certain cases, mostly those related to national security. The recent prosecutions of Chelsea Manning, Edward Snowden, John Kiriakou, Jeffrey Sterling, Thomas Drake, et cetera, as well as the possibility that there is a grand jury convened regarding Julian Assange, attest to this fact. Further, the temporary threat of imprisonment levied against *New York Times* reporter James Risen is also significant. President Obama has been accused of the almost draconian punishment of whistleblowers. National security whistleblowers have received 10 times the amount of jail time than all previous presidents combined.⁴²⁷ In contrast, those who were publicly outed for ignoring whistleblowers and the signs of potential economic collapse were never prosecuted or held accountable.⁴²⁸

205. Journalists are also still being imprisoned unfairly, as can be seen in the recent cases of detainment in Ferguson, MO. Excessive police brutality was already a cause for concern among protesters and according to Reporters without Borders, at least 15 journalists were

⁴²⁴ "SEC Enforcement Actions: FCPA Cases." *The U.S. Securities and Exchange Commission*, 2015.

<http://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml>

⁴²⁵ "The Obama-Biden Plan." The Office of the President- Elect. *The Obama-Biden Transition Project*. The White House, 2009. http://change.gov/agenda/ethics_agenda/

⁴²⁶ Remarks by the President on Review of Signals Intelligence. *The White House, Office of the Press Secretary*. Department of Justice, Washington, DC, 2014. <https://www.whitehouse.gov/the-press-office/2014/01/17/remarks-president-review-signals-intelligence>

⁴²⁷ Rachel Blevins "Obama Has Sentenced Whistleblowers to 10x the Jail Time of All Prior U.S. Presidents Combined" *Ben Swann*. October 15, 2014. Accessed April 1, 2015. <http://benswann.com/obama-has-sentenced-whistleblowers-to-10x-the-jail-time-of-all-prior-u-s-presidents-combined/>

⁴²⁸ "Prosecuting Wall Street." *CBS News*. December 5, 2011. <http://www.cbsnews.com/news/prosecuting-wall-street/>

jailed in August of 2014 for merely covering the protests.⁴²⁹ One journalist even insisted that he and his crew were deliberately targeted with tear gas. This comes on the heels of the Human Rights Council, UNGA Resolution⁴³⁰ affirming the protection of journalists in instances of mass protest and armed conflict adopted in March of 2014.

206. In January 2011, President Obama issued an Executive Order⁴³¹ on improving the security of classified documents and preventing any future leaks. Section 6 of the Order creates the Insider Threat Task Force (ITTF), the task force will cooperate to ensure that there are proper monitoring mechanisms and safeguards within each government agency that handles classified information.⁴³²

5. Trends and analysis

207. It is evident that national security has been and continues to be the primary focus and threshold in regards to whistleblower protection. According to the 2014 Reporters Without Borders Report, there has been little improvement in practice under Barack Obama. Rather than pursuing journalists, the emphasis has been on going after their sources, but often using the journalist to identify them. While 2012 was in part the year of WikiLeaks founder Julian Assange, 2013 was marked by the National Security Agency computer specialist Edward Snowden, who exposed the mass surveillance methods developed by the US intelligence agencies.⁴³³ While compared to many countries around the world, the US is strong on paper, but in practice is not so much. The US as the leading international player in norms and institutions promoting equality, democracy and freedom suffered an enormous backlash internationally after the Snowden scandal where this image was shattered not only at the domestic level, but also at a global scale. The United States became a primary example of the power of the whistleblower in revealing state practices and exemplifying the limitations that a whistleblower where the right to access to access information can be neglected when it interferes with national security and foreign policy.

⁴²⁹ “Call for Punishment of Missouri Police Behind Crackdown on Journalists” Reporters Without Borders. August 22, 2014. <http://en.rsf.org/united-states-call-for-punishment-of-missouri-22-08-2014,46833.html>

⁴³⁰ United Nations General Assembly, Human Rights Council. (A/HRC/25/L.20) March 24, 2014. http://en.rsf.org/IMG/pdf/re_s_cdh_peaceful_protest_mars_2014_english.pdf

⁴³¹ Executive Order 13587 of October 7, 2011, Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information <https://www.whitehouse.gov/the-press-office/2011/10/07/executive-order-13587-structural-reforms-improve-security-classified-net>

⁴³² Aliya Sternstein. “Obama Administration Aims to Create ‘Insider Threat’ Job Specialty to Plug Leaks,” NextGov.com, December 22, 2014. <http://www.nextgov.com/cybersecurity/2014/12/administrations-plan-stopping-leaks-includes-boosting-insider-threat-teams/101763/>

⁴³³ Reporters Without Borders, 2014.

E. Venezuela

Venezuela		
Freedom House: Freedom in the World (2015)	5 – Partly Free	Same
Freedom House: Freedom of the Press (2014)	78 – Partly Free	↓ (2)
Freedom House: Freedom on the Net (2014)	56 – Not Free	↓ (3)
Reporters Without Borders: Press Freedom Index (2015)	#137	↓ (21)

1. Background

208. Venezuela is a federal presidential republic with 23 states. It has a unicameral legislature, the National Assembly that can grant the president power to rule by decree. Nicolás Maduro, Venezuela’s current president was recently granted this power. It is still too early to tell how this will affect certain freedoms, but it is safe to say it will not increase government transparency and respect for human rights. The Venezuelan government already had problems with transparency, plus it interpreted its Constitution only to benefit itself, jailing journalists for speaking out against the government despite the freedom of communication clause. Anonymity is explicitly prohibited under Article 57, which is sure to dissuade any type of whistleblower to come forward.⁴³⁴ Venezuela is classified as “Not Free” by the *Freedom in the World*⁴³⁵ index compiled by Freedom House and is marked as “transitioning with noticeable problems” by the *World Press Freedom Index* published by Reporters without Borders.⁴³⁶

209. Venezuela is a member of the following regional organizations: OPANAL, the Caribbean Development Bank (CDB), the IDB, the Inter-Parliamentary Union (IPU), the LAES, the Latin American Integration Association (LAIA), the OAS, the Permanent Court of Arbitration (PCA), the Rio Group (RG), Unión Latina, and finally the UNASUR.⁴³⁷ In addition, Venezuela is an observer of the Caribbean Community and Common Market (CARICOM) and the League of Arab States (LAS) as well as an associate of MERCOSUR. Venezuela is also one of the two member countries in Latin America of the Organization of the Petroleum Exporting Countries (OPEC).

210. The Venezuelan government has signed and ratified many Human Rights treaties including the CAT, the ICCPR, the CERD, the CRC, CEDAW, the ICESCR, and the CPRD. The Venezuelan government has not ratified the CED, and the CMW.⁴³⁸

2. Legislation

⁴³⁴ "Venezuelan Constitution." Venezuela-US.org. Accessed April 21, 2015. <http://venezuela-us.org/live/wp-content/uploads/2009/08/constitucioningles.pdf>.

⁴³⁵ "Freedom in the World 2015." Freedom House. Accessed April 21, 2015.

⁴³⁶ "2015 World Press Freedom Index." 2015 World Press Freedom Index. Accessed April 21, 2015.

⁴³⁷ Appendix B: International Organizations and Groups." Central Intelligence Agency. Accessed April 26, 2015. <https://www.cia.gov/library/publications/the-world-factbook/appendix/appendix-b.html>.

⁴³⁸ "Treaty Bodies Countries." UN Office of the High Commissioner for Human Rights. Accessed April 21, 2015. http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=VEN&Lang=EN

211. Venezuela does not have any specific whistleblower protections in place, but the constitution does explicitly prohibit media anonymity, which would discourage any whistleblower from coming forward. The constitution does allow for freedom of thought and dissemination of these thoughts, orally or in writing, as long as the person doing so takes full responsibility for the potential repercussions. War propaganda, religious intolerance, and discriminatory statements are not allowed, including those directed towards the government.

212. President Maduro was recently granted the power to rule by decree in direct response to U.S. sanctions. Maduro insisted that the sanctions threatened Venezuela in the “the area of freedom, equality, justice and international peace, independence, sovereignty, territorial integrity and national self-determination.”⁴³⁹ This new unchecked power will allow Maduro to create laws at his own discretion.

3. Official Statements

213. Official statements regarding the government’s protection of journalists and whistleblowers are practically non-existent.

4. State Practice

214. Recently, Caracas mayor and known opposition leader, Antonio Ledezma was arrested. Mr. Maduro accused him of treason, planning a coup, and for crimes against the government.⁴⁴⁰ This is not Maduro’s first arrest of an opposition leader; Leopoldo López was imprisoned last year on similar charges.⁴⁴¹

215. The Free Press and Society Institute (IPYS) compile all violations against the press into a Google map and break them down by state.⁴⁴² 2014 was the worst year of violations since 2002. There were 65 new violations of the freedom of expression as of March 2014, but since then the number has jumped to 341 as of March 2, 2015. The government took responsibility for 53% of these cases claiming that the stricter regulations on censorship were due to the increasingly aggressive nature of the protests that began in February 2014. They break down the violations further into subcategories. Attacks and acts of aggression against journalists make up roughly 45% of the reported cases. The second largest percentage is identified as “abuses of state power”, making up roughly 24% of the reported cases. This is a clear indicator of the government’s unwillingness to provide protections to journalists, especially in cases of mass protest.

⁴³⁹ Brianna Lee. "Venezuela-US Tensions: Maduro's Rule By Decree Powers Won't Change Much, Analysts Say." *International Business Times*. March 16, 2015. Accessed April 21, 2015. <http://www.ibtimes.com/venezuela-us-tensions-maduros-rule-decree-powers-wont-change-much-analysts-say-1848432>.

⁴⁴⁰ "Editorial: Venezuela and Cuba: Partners in Repression." *The Washington Post*. February 23, 2015. Accessed April 21, 2015. http://www.washingtonpost.com/opinions/venezuela-and-cuba-partners-in-repression/2015/02/23/445cb088-bb7a-11e4-b274-e5209a3bc9a9_story.html.

⁴⁴¹ "Persecución - Leopoldo López." Leopoldo Lopez. Accessed April 21, 2015. <http://www.leopoldolopez.com/persecucion/>.

⁴⁴² "Report IPYS Venezuela 2014: Disinformation and Opacity Condition Journalism." Instituto Prensa Y Sociedad. 2015. Accessed April 21, 2015. <http://ipys.org.ve/publicaciones/informe-anual-ipys-venezuela-2014-la-desinformacion-y-la-opacidad-condicionan-al-periodismo/>.

216. In 2011, the Office of the High Commissioner for Human Rights (OHCHR) initiated a Universal Periodic Review (UPR) of Venezuela.⁴⁴³ Among the recommendations was the call for unrestricted access to information, better protections for journalists, including for their physical integrity, and an amendment to the 2005 Penal Code plus the Law on Social Responsibility in Radio and Television.⁴⁴⁴ They maintained that these laws came with too many restrictions and contested basic human rights principles. The Venezuelan government rejected all 12 principles related to the right of Access to information and freedom of expression. The next UPR is scheduled for October of 2016; the country is currently undergoing the “National Consultation” phase that comes after the mid-term reporting from the 2011 UPR. The Special Rapporteur for Freedom of Opinion and Expression also requested country visits, but was denied in 2003, 2007, and 2011. Venezuela’s refusal to negotiate on international recommendations and pressure is certainly notable in these practices.

5. Trends and Analysis

217. The mass protests in 2014 due to growing food shortages in the country, which were spurred by its overdependence on oil, resulted in police brutality, unfair imprisonment, and illegal detentions. Several Latin American leaders at the recent SOA denounced the recently implemented sanctions by the U.S. government against key members of the Venezuelan government.⁴⁴⁵ With this regional support, Venezuela could potentially take other liberties in order to quell government dissidents accused of having Western sympathies. Venezuela is clearly trending downward in terms of preserving citizen protections, plus Maduro’s unchecked powers will surely create more opportunity for the government to crack down on its citizens and not be held accountable for its violations.

F. Regional Analysis

218. The OAS is the oldest known regional organization in the Americas. It was first established as the International Union of American Republics in 1890 and was formalized through the Charter of the OAS in 1985. The seventh meeting of the member states, the SOA, was recently held in April 2015. The Summit provided a space for country leaders to meet face to face and discuss issues concerning the region. Cuba was included for the first time since 1962, ending a 47-year ban on the country’s participation. In addition, the Inter-American Commission on Human Rights (IACHR) is an autonomous system through which specific human rights

⁴⁴³“Venezuela Urged to Improve Media Situation - Reporters Without Borders.” Reporters Without Borders. August 22, 2014. Accessed April 21, 2015. <http://en.rsf.org/venezuela-venezuela-urged-to-improve-media-04-08-2014,46751.html>.

⁴⁴⁴ United Nations General Assembly, Human Rights Council. “Bolivarian Republic of Venezuela.” UPR-Info.org. October 3-14 2011. Accessed April 21, 2015. http://www.uprinfo.org/sites/default/files/document/venezuela_bolivarian_republic_of/session_12__october_2011/a_hrcwg.612ven2e.pdf.

⁴⁴⁵ Lucas Koerner. “Regional Leaders Back Venezuela at Panama Summit as US Blocks Final Declaration.” Venezuela Analysis. April 13, 2015. Accessed April 21, 2015. <http://venezuelanalysis.com/news/11334>.

violations committed by member states can be addressed and prosecuted.⁴⁴⁶ These organizations can use regional influence and multilateral agreement to compel their fellow member states to change their behavior. The exclusion of Cuba is a perfect example.

219. One of the strongest limitations to advancing whistleblower protections is the role of the President. In the Americas, there is an overarching theme where the whistleblower is harshly punished if their accusation threatens the President’s reputation. For instance, the Argentinian and Brazilian Presidents have both been accused of acts of corruption by whistleblowers, yet they still enjoy executive immunity and their accusers have suffered deadly consequences. Similarly, the Presidents of Cuba and Venezuela have complete control over all media outlets; making it especially difficult for any anti-government sentiment to be publicized. Lastly, President Obama has been accused of handing out excessive punitive measures to those who have leaked government information, viewing them as threats to national security. Meanwhile, whistleblowers in the private and public sectors have largely been ignored.

VII. Country Reports: Middle East and North Africa

A. Egypt

<u>Egypt</u>		
Freedom House: Freedom in the World (2015)	5.5 – Not Free	Same
Freedom House: Freedom of the Press (2014)	68 – Not Free	Same
Freedom House: Freedom on the Net (2014)	60 – Not Free	Same
Reporters Without Borders: Press Freedom Index (2015)	#158	↑ (1)

1. Background

220. The Arab Republic of Egypt is a unitary semi-presidential republic led by President Abdel Fattah el-Sisi and Prime Minister Ibrahim Mahlab. President el-Sisi was elected into office in early 2014 after serving as the Minister of Defense and the First Deputy Prime Minister of Egypt.

221. Egypt experienced a revolution in February 2011 during the heart of the Arab Spring that eventually ousted its leader of 30 years, Hosni Mubarak. Following more than a year of violent conflict, Egypt had its first free presidential elections where Muslim Brotherhood candidate Mohammed Morsi took power. However, political instability continued and a little over a year later Morsi was removed. Army Chief Abdul Fattah al-Sisi won the following presidential election. With power changing hands four times in less than four years -- including acting President Adly Mansour in 2014 -- political instability and volatility threatened the power of each president. This

⁴⁴⁶ OAS: IACHR : What Is the IACHR?" OAS: IACHR: What Is the IACHR? Accessed April 26, 2015. <http://www.oas.org/en/iachr/mandate/what.asp>.

threat translated into drastic governance and security measures that fostered a great level of distrust between the people and the government, as well as between the different political groups.

2. Legislation

222. Currently, Egypt has no whistleblower protection laws, similar to much of the rest of the Middle East and North Africa. In fact, the laws go as far as to discourage whistleblowing. All whistleblowing reports require full personal details of the whistleblower. In addition, Egypt has laws that penalize people for cases of “false whistleblowing,” as decided by the state. According to Law 62/1975, any cases of false whistleblowing can be sentenced to a minimum six-month prison sentence.⁴⁴⁷

Between the prohibition of anonymity and high-risk threat of legal punishment, whistleblowing is strongly discouraged.

223. Although Egypt has no whistleblower protection laws, its constitution guarantees freedom of the press, publication and independence of all media outlets. But even these freedoms are frequently threatened by state practice. Egypt frequently practices “emergency laws” that threaten freedoms of expression, press and media.

224. In addition to the legislative gap, Egypt’s judiciary system also lacks anti-corruption initiatives. Similar to Israel, Egypt finds itself in a situation of political turmoil and instability. Because of the instability, the government has been overcompensating to portray its dominance. With the removal of the Muslim Brotherhood from power, journalists find themselves in a dangerous situation.

225. On the opposite side of the spectrum, many multi-national corporations in Egypt are implementing whistleblower protection laws.

3. Official statements

226. At this time there have been no official statements from the Egyptian government on whistleblower protections.

4. State practice

227. Egypt has been inconsistent in its state practices when it comes to the treatment of journalists. In 2014, 30 journalists were arrested arbitrarily on charges of supporting a terrorist organization.⁴⁴⁸ Yet, in February 2015, Egypt released two journalists on bail, Mohamed Fahmy and Baher Mohamed. The UN released a statement hoping that this is the beginning of a trend to protect freedom of expression and association.⁴⁴⁹

5. Trends and analysis

⁴⁴⁷ "Egypt – Whistleblowing Protection, Overview." Blueprint for Free Speech. March 24, 2014. Accessed March 30, 2015. <https://blueprintforfreespeech.net/document/egypt-overview>.

⁴⁴⁸ "World Press Freedom Index 2015." Reporters Without Borders.

⁴⁴⁹ "Welcoming Decision by Egypt to Release Journalists, Secretary-General Stresses Obligation to Protect Freedom of Expression." UN News Center. February 12, 2015. Accessed April 19, 2015.

<http://www.un.org/press/en/2015/sgsm16528.doc.htm>.

228. There is a large corruption problem at the root of the issue in Egypt. Today, there are several groups and organizations that have been successful at fighting corruption at the local level. With movements for improvement -- whistleblower laws in multi-national corporations and grassroots movements fighting corruption -- there is a window of opportunity. In a strategic plan using the grassroots and civil-society groups along with the international-level community, there may be a simultaneous top-down and bottom-up approach to fight the corruption in Egypt, and even instill whistleblower protections at the state level.

B. Israel

<u>Israel</u>		
Freedom House: Freedom in the World (2015)	1.5 – Free	Same
Freedom House: Freedom of the Press (2014)	30 – Free	Same
Freedom House: Freedom on the Net (2014)	No Data	No Data
Reporters Without Borders: Press Freedom Index (2015)	#101	↓ (5)

1. Background

229. The State of Israel is a unitary parliamentary republic lead by Prime Minister Benjamin Netanyahu and President Reuven Rivlin. Netanyahu has come to be known as a major player in the world arena, especially after the recent elections of March 2015 where he was reelected by a margin of four percent.

230. Within MENA, Israel ranks at the top of most reports and indices for world and press freedoms; however, that does not equate it to having acceptable freedoms. This year Freedom House reported a 17-point rise for Israel. It should be noted that much of that gain is attributed to the 20-point fall from the previous year.⁴⁵⁰ However, that does not mean journalists are sufficiently protected in this country.

231. The Israeli-Palestinian conflict has impacted this 8,000 square mile area for the past two centuries. With the conflict still active, security issues remain a top threat to all people, especially journalists. Israel has maintained a military occupation over the Palestinian territories. Yet, the area has seen violent attacks as recent as last year. Because security is such an issue and Israel has become an attractive place for journalists to report on, there have been many incidents of journalists' imprisonment and deaths.

2. Legislation

232. Israel has no formal written constitution, but its Basic Laws outline the formation of government, state institutions and civil rights of citizens.⁴⁵¹ Israeli Basic Law does not specifically address the issue of freedom of the press or protection of journalists, however there are some protections for freedom of the press. These rights are also

⁴⁵⁰ "Freedom of the Press 2014: Media Hits Decade Low." *Freedom House*. 2014.

⁴⁵¹ Carlo Gentile. "Israel - Media Landscape." European Journalism Centre (EJC). Accessed April 7, 2015. http://ejc.net/media_landscapes/israel.

stated in the principles laid out in Israel's Declaration of Independence. These freedoms and protections have some restrictions that are often cited against journalists, including hate speech, praise of violence, support for terrorist groups and organizations and call for the destruction of Israel. Under the 1948 Prevention of Terrorism Ordinance, expressions in favor of terrorist groups, as deemed by the state, can be punishable by law.

233. Although Israel has pluralistic media and some protection laws, many journalists and media outlets are facing military censorship, gag orders, and travel restrictions because of the ongoing conflict. Some journalists are even targeted simply due to their profession. Any type of investigative journalism is not welcome in Israel, especially when it comes to issues of national security.⁴⁵²

3. Official statements

234. The Supreme Court has affirmed that freedom of expression is necessary for human dignity. However, in practice it is not always upheld by the High Court. In April 2015, the High Court upheld the Anti-Boycott Law, which infringes on the freedom of expression in Israel.⁴⁵³

4. State practice

235. One of the most famous whistleblowers in Israel is Mordechai Vanunu. Vanunu was a radiation technician at the Negev Nuclear Research Center. The Center is used to develop and manufacture nuclear weapons. In 1985, Vanunu was fired for his political activism; a year later Vanunu spoke to a British reporter and gave extensive details of the facilities, and provided photos he was not supposed to have. With this information, the international community was able to better estimate Israel's nuclear capabilities. Vanunu was captured by Israeli intelligence agents and convicted of treason and espionage, and sentenced to 18 years in prison. He was released from prison in 2004 with strict restrictions that continue to require that he remain in place over ten years later. Vanunu is not permitted to speak to the press at any time. He cannot leave the country or come within 500 meters of an international border. Furthermore, he cannot enter a foreign consulate or embassy.⁴⁵⁴

5. Trends and analysis

236. Because Israel is an ongoing conflict area, journalists also face physical threats. In 2014, 16 journalists were killed in Operation Protective Edge. Israeli security forces have purposefully shot rubber bullets at Palestinian journalists.⁴⁵⁵ This type of abuse is common in a conflict area, despite Israel's protection laws. There seems to be a strong correlation between the intensity of violence in the Israeli-Palestinian conflict

⁴⁵² "World Press Freedom Index 2014." Reporters Without Borders.

⁴⁵³ "Editorial: Israel's High Court Takes Compromised Stand on Freedom of Expression." *Haaretz*. April 17, 2015. Accessed April 19, 2015. <http://www.haaretz.com/opinion/1.652292>.

⁴⁵⁴ Noam Sheizaf. "Israel Renews Restrictions on Nuclear Whistleblower Mordechai Vanunu." *+972 Magazine*. June 1, 2014. Accessed April 7, 2015. <http://972mag.com/israel-to-renew-restrictions-on-nuclear-whistleblower-mordechai-vanunu/91564/>.

⁴⁵⁵ "World Press Freedom Index 2015: Decline on All Fronts - Reporters Without Borders." Accessed March 30, 2015. <http://en.rsf.org/world-press-freedom-index-2015-12-02-2015,47573.html>.

and the levels of press and overall freedoms. As the conflict becomes more violent, freedoms decrease, and vice versa. As long as the conflict continues, the likelihood of press protection laws being upheld is dismal.

C. Saudi Arabia

<u>Saudi Arabia</u>		
Freedom House: Freedom in the World (2015)	7 – Not Free	Same
Freedom House: Freedom of the Press (2014)	83 – Not Free	Same
Freedom House: Freedom on the Net (2014)	73 – Not Free	↓ (3)
Reporters Without Borders: Press Freedom Index (2015)	#164	Same

1. Background

237. The Kingdom of Saudi Arabia is one of only six absolute monarchies in the world, meaning the monarch’s power is unconstrained by any substantive constitutional law. Since the formation of the kingdom in 1932, the Al-Saud family has remained in power to the present day. Saudi Arabia is ruled by King Salman bin Abdulaziz. He ascended to the throne in January of 2015 after the death of his half-brother.

238. Saudi Arabia is not considered free by any measurement in any index. Saudi Arabia has one of the most censored media environments in the world. In almost all the reports and indices, Saudi Arabia ranks at the bottom in overall freedom and press freedom. Saudi Arabia’s strict political laws and rigid punishments carry over into its views on the media and press.

239. Saudi Arabia plays a key role on the international stage. It is one of the major players in the Arab and Muslim world, especially since Saudi Arabia is considered to be the “home of Islam” with both Mecca and Medina within its borders. Saudi Arabia is also the world’s leading oil producer and sits on more than a quarter of the world’s oil reserves.

240. The Al-Saud family, for which the country is named, has a monopoly on all the power in the state. It does not permit the organization of political parties or groups in opposition to the government. Saudi Arabia is known for its human rights abuses and brutal punishments in the form of long prison sentences and lashings. In Saudi Arabia, defamation is considered a criminal offense and can be punishable by death, especially if involves “negative expression” towards Islam.

2. Legislation

241. Saudi Arabia has no whistleblower protection laws in place. In fact, whistleblowers are put in even more potential danger, since the state will not allow anonymous reporting. The law states that the identity of the whistleblower is necessary in order to investigate the claims. This, in addition to the terrorism law introduced in February 2014, discourages whistleblowing actions. The new terrorism law states that any speech that is critical of the government or society is considered to

be a criminal offense.⁴⁵⁶ However Saudi Arabia has stated in its constitution the freedom of mass media, information and communication as long as it does not “offend a man’s dignity.”⁴⁵⁷

242. Although its constitution claims certain freedoms, there is a true disconnect between the written constitution and state practice. All media in Saudi Arabia is censored by the government; it needs to be approved before it can air or be printed. Although press organizations are privately owned in Saudi Arabia, the editor-in-chief of each outlet is appointed by the government. Essentially, there is no room for any sort of whistleblowing activities in Saudi Arabia with the airtight censorship laws and government monitoring.

3. Official statements

243. The Saudi Arabian government has not released statements -- personal statements or press releases -- on freedom of expression, press or media.

4. State practice

244. Because Saudi Arabia has such a censored public media, there has been little in state practice. With such tight restrictions there have not been examples of whistleblowing or they have not been reported and publicized.

5. Trends and analysis

245. There is some hope for change. In December 2013, Mohammed Bin Abdullah Al-Shareef of Saudi Arabia’s National Anti-Corruption Commission suggested in a speech that there needed to be further reform on whistleblower protection in Saudi Arabia. Also, Saudi Arabia is a G20 member and in September 2014 released a report stating that the G20 countries are committed to put in place adequate measures to protect whistleblowers.⁴⁵⁸ Although Saudi Arabia ranks among the bottom of its G20 peers in whistleblower protections, there is the possibility of influence within this sphere. These are both good steps toward the achievement of whistleblower protections in Saudi Arabia, but there have been no policy proposals yet -- another example of the disconnect between statements and state practice.

D. Tunisia

<u>Tunisia</u>		
Freedom House: Freedom in the World (2015)	2 – Free	↑ (1)
Freedom House: Freedom of the Press (2014)	53 – Partly Free	Same
Freedom House: Freedom on the Net (2014)	39 – Partly Free	↑ (2)
Reporters Without Borders: Press Freedom Index (2015)	#126	↑ (7)

⁴⁵⁶ Wolfe et al.

⁴⁵⁷ Constitution of Saudi Arabia, Chapter 5, Rights and Principles, Article 39, accessed on April 5, 2015. http://www.law.yale.edu/rcw/rcw/jurisdictions/asw/saudiarabia/saudi_constitution.pdf.

⁴⁵⁸ Wolfe et al.

1. Background

246. Tunisia is a unitary unicameral, parliamentary republic. The country is led by Prime Minister Habib Essid and President Beji Caid Essebsi. Both Essid and Essebsi were recently elected -- Prime Minister Essid in February of 2015 and President Essebsi in December of 2014 after the Arab Spring.

247. The Arab Spring served as a vital turning point in the political trajectory of many Middle East and North Africa (MENA) countries, but especially in Tunisia. In fact, Tunisia was the initial spark that lit the Arab World on fire, so to speak. In 2010, with high unemployment and rigid political restrictions, the Tunisian people began to protest, and those protests only intensified after Mohamed Bouaziz's self-immolation after having his work wares taken from him by the government. This act served as a catalyst for the Tunisia Revolution and the larger Arab Spring. Approximately one month later, President Ben Ali stepped down after over 20 years of power. By the end of the year, Tunisia had parliamentary elections and a national assembly convened for the drafting of a new constitution. Now, just over three years later, Tunisia has risen to many political challenges.

248. In 2008, Tunisia ratified the United Nations Convention Against Corruption, which urges states to implement laws and institutions to provide protection against unjust treatment from corruption. Yet, Tunisia still has no whistleblower protection laws.⁴⁵⁹

2. Legislation

249. In January of 2014, legislators in Tunisia finished the third and final draft of Tunisia's new constitution. It is celebrated as one of the most liberal charters in the Arab world. However, in matters of freedoms of the press, the new constitution falls short. In Articles 31 and 32, "Freedom of opinion, thought, expression, information and publication shall be guaranteed. These Freedoms shall not be subject prior to censorship. The state guarantees the right to information and the right to access information and communication networks"⁴⁶⁰ These mandates are considered to be too broad by the international community.⁴⁶¹ Aside from these ambiguous guarantees on freedom of speech, opinion, and information, there are no other whistleblower protection laws in place in Tunisia, and most experts do not believe there will be such in the near future.⁴⁶²

250. With no legislation to protect whistleblowers, they face great risks in Tunisia. In the public sector, the Tunisian Code of Criminal Procedure states that a person is

⁴⁵⁹ Afef Abrougui. "Tunisians Vote for 'Whistleblower of the Year'" *Tunisia Live*. January 3, 2014. Accessed April 19, 2015. <http://www.tunisia-live.net/2014/01/03/tunisians-vote-for-whistleblower-of-the-year/>.

⁴⁶⁰ Constitution of Tunisia, Chapter 2, Rights and Freedoms, Articles 31-32, accessed on April 5, 2015. <http://www.venice.coe.int/files/Constitution%20TUN%20-%202027012014.pdf>.

⁴⁶¹ Shaimaa Abu Elkhair. "Tunisia constitutions needs stronger free press guarantees." Committee to Protect Journalists. January 16, 2014. <http://cpj.org/x/584b>

⁴⁶² "Tunisia – Whistleblowing Protection, Overview." Blueprint for Free Speech. Accessed March 30, 2015. <https://blueprintforfreespeech.net/document/tunisia-overview>.

required to report any offenses to the State prosecutor.⁴⁶³ Despite this article, there remains no protection for anyone who acts on this and, without any protection a person may face repression or retribution in the form of harassment, demotion, or loss of job.

251. The situation is a little better in the private sector for whistleblowers. Tunisia's Penal Code has a provision for protection for employees reporting cases of corruption. Yet there is still risk involved. Employees may face repercussions, whether official or unofficial.

3. Official statements

252. There have been no official statements on freedom of press, expression, or media from the Tunisian government.

4. State practice

253. In May of 2011, Samir Feriani, a high-ranking official in the Ministry of the Interior, was thrown in prison on charges of spreading false information to destabilize the public order and harming the external security of the state. He blew the whistle on corruption within the Ministry and published an article in two Tunisian newspapers. According to Feriani, loyalists of the previous president, Ben Ali, were destroying archived documents and erasing proof of things they had done.⁴⁶⁴ He remained in prison for nearly four months before being released and acquitted of both charges, finally in September of 2011.⁴⁶⁵

5. Trends and analysis

254. The combination of progressive politics and legislation on press freedoms and protections creates a problematic place for journalists in Tunisia. The authoritarian actions against the press have continued on from the time of Ben Ali. State media independence continues to be blocked and heads of TV and radio stations are frequently fired. Tunisia also has a close relationship with the European Union, which has been making great strides in strengthening journalist and whistleblower protections. Although Tunisia is improving, the fact remains whistleblowers and journalists face a great deal of threat in Tunisia without any protections provided for them.

E. Regional Analysis

255. The Middle East and North Africa (MENA) presents an interesting and dynamic view into the political and democratic evolution that has affected the freedoms in the region. The Arab Spring propelled the region into an era of political change. What used to be known as the least free region in the world was now bearing witness to the fall of decade-long leaders and dictators. As the people's movement gained strength

⁴⁶³ Ibid.

⁴⁶⁴ Asma Ghribi. "Tunisian Whistleblower Samir Feriani Acquitted of Major Charges." *Tunisia Live*. May 27, 2012. Accessed April 7, 2015. <http://www.tunisia-live.net/2012/03/27/tunisian-whistleblower-samir-feriani-acquitted-of-major-charges/>.

⁴⁶⁵ "Tunisia – Whistleblowing Protection, Overview." Blueprint for Free Speech. Accessed March 30, 2015. <https://blueprintforfreespeech.net/document/tunisia-overview>.

from country to country, there was an overwhelming outcry for their voice to be heard and for a system of good governance to serve and represent them. During the Arab Spring, many countries found themselves at a political and national crossroad.

256. Now four years later, these countries have developed—each in a unique manner. Yet, as a whole, MENA is still considered second to last in freedoms according to Freedom House.⁴⁶⁶ Only five percent of the region is considered free with two percent having press freedoms. In the most recent report released by Reporters Without Borders, MENA is ranked as the worst in terms of press freedoms for the third year in a row.⁴⁶⁷ According to both Freedom House and Reporters Without Borders, the world saw a universal downward trend in political and press freedoms in the year 2014, including many countries in MENA. However, there are still some countries that are improving, and although these countries are falling behind in whistleblower protection laws, the upward trends could be promising for years to come.
257. Although each country is unique, press freedoms and whistleblower protection laws are almost nonexistent. Where they are present they are typically not enforced. There are many factors hindering progress for greater press freedoms and protections. However, each of the case studies should not be deemed hopeless, as there is potential for growth.
258. Tunisia is still in the process of establishing a system of politics and has weak protection laws, but it has also proven that the people are able to make change happen in the country with enough grassroots support. The Israeli-Palestinian conflict has endangered many journalists in Israel, yet Israel does have the written law that could be built upon. Saudi Arabia has a clear disconnect between statements and state practices when it comes to press freedoms and protections, but as a major world player and G20 member there may be an opportunity for international influence. Finally, although Egypt faces a great deal of corruption at the state level, many local groups and multi-national businesses are working to implement whistleblower protection laws and decrease corruption.
259. Will these countries implement whistleblower protection laws in the near future? It appears unlikely. Even if they are implemented, will state practices follow suit? Also unlikely, but there are windows of opportunity to begin building a culture that can serve as a foundation for greater freedoms and protections in these countries.

⁴⁶⁶ "Middle East and North Africa." Freedom House. Accessed March 30, 2015.

<https://freedomhouse.org/regions/middle-east-and-north-africa#.VRrvNvnF-Sp>.

⁴⁶⁷ "World Press Freedom Index 2015: Decline on All Fronts." Reporters Without Borders.

VIII. Thematic and Specific Issues for the Special Rapporteur's Immediate Attention

A. Argentina

260. Continue progress on reshaping broadcasting laws in a similar way as the *Broadcasting Communication Services Law* (LSCA), adopted in 2009.
261. Immunity of members of the executive branch who can bypass any laws on acts of corruption.
262. Although public legislation encourages civil servants to report cases of corruption, there is no protection on confidentiality or recourse against retaliation.
263. Anonymity is allowed by public legislation but can be prohibited at the discretion of one's employer.
264. The suspicious death of prosecutor Alberto Nisman after accusing President Cristina Fernandez de Kirchner and other top government officials of plotting to conceal the role of Iranian suspects in the 1994 attack on a Jewish center in exchange for deals Iranian oil. Nisman's death still remains under investigation, as does Kirchner's alleged involvement.
265. Enact or create stronger whistleblower protection laws that can protect those who are already encouraged to report acts of protection.
266. Amend the current labor, constitutional, and data protection laws ("DPL") by incorporating whistleblower protections into their framework.
267. Increase governmental transparency in the intelligence sector by providing public oversight.
268. Revise immunity clause on members of the executive branch.

B. Australia

269. The current whistleblowing protections policy in place, the Public Interest Disclosure Act 2013, while progressive lacks not only a disclosure policy for the private sector, but also does not protect whistleblowers who externally report any kind of national security intelligence, operations, or information from the Australian Security Intelligence Organization.⁴⁶⁸ This makes it exceedingly difficult for any public sector employee to disclose any wrongdoing relating to national security in Australia.
270. In October 2014 Parliament passed a new controversial law, the National Security Legislation Amendment Bill No. 1 (2014), where journalists and public whistleblowers alike could face punishment, including up to 10 years imprisonment,

⁴⁶⁸ Wolfe et al, "Whistleblowing Protection laws in G20 countries: Australia", 24-25.

if they disclose information relating to “special intelligence operation” in the Australian Security Intelligence Operation.⁴⁶⁹

C. Bosnia and Herzegovina

271. In January 2014, legislation to protect state-level employee whistleblowers who report corruption was enacted into law, and another proposed law could specify certain government departments to fight corruption.
272. There is an uneven incorporation of anti-corruption and whistleblower/witness protection laws throughout all government levels. There remains little investigation and prosecution in cases involving corruption.
273. The 2000 Freedom to Access Information Act was successfully incorporated at the state level. However, its implementation throughout all government levels remains uneven.
274. Civil society is active in mobilizing for social and political change, e.g. the February 2014 protests. However, there remains a lack of political will to address protest demands.
275. Insufficient implementation of the Sejdic-Finci judgement has halted EU integration. The 2015 EU trade and economic pact may be a step to restart the process.
276. There is increased pressure on journalists and media: raid of Klix.ba, Feb. 2014 protests, new online speech law, and allegations of wiretapping.

D. Brazil

277. The *OECD Anti-Bribery Convention*, which Brazil has adopted, established legally binding standards to criminalize bribery.
278. Brazil’s public legislation on Whistleblowers is extremely limited beyond standard protections offered to witnesses in criminal cases.
279. Provide stronger protections for those encouraged to blow the whistle on corrupt practices.
280. Ensure that government officials who are accused of taking bribes are prosecuted under Foreign Corrupt Practices Act.
281. International pressure should be applied to deter the government from engaging in corrupt activity (Petrobras scandal).

⁴⁶⁹Blueprint for Free Speech, “Australia Overview”; Farrell, “Journalists and whistleblowers will go to jail under new national security laws.”; Reporters Without Borders. “Whistleblowers could face up to 10 years’ imprisonment in Australia”.

E. China

282. Monitor how the new SPP Rules are implemented and resourced. Pay particular attention to whether, or how, whistleblower cases are politicized. And pay attention to who is taken down by whistleblowing. Are these individuals from state owned enterprises (SOEs)? Are these individuals who resisted economic reforms? Are there any political officials? What space is whistleblowing being allowed to operate in?
283. Monitor how reforms in the petitioning system play out. As more and more cases are directed away from Beijing, and into local courts, are they resolved in a faster and more just manner? Or are they playing out as critics fear and giving corrupt local officials more power to blunt accusations of malfeasance?
284. Monitor the plight of high-profile journalists. How are they being treated? This is often a meaningful barometer for determining the political environment in China. The prominent journalist Gao Yu was just sentenced to seven years in prison for “leaking state secrets,” which indicates that the media and political environment continues to be tightened.⁴⁷⁰
285. Monitor the situation with Liu Xiaobo and whether his sentence is lightened. There is significant awareness of his case in the broader world and if pressure campaigns from abroad gather support, a move in the interest of public relations could lighten his sentence. Alternatively, international pressure could harden the Chinese government’s position.

F. Cuba

286. Constitutional protections for freedom of speech and press.
287. History of releasing political prisoners following negotiations, most recently with the normalization of relations with the U.S.
288. Recently allowed to participate in the Summit of Americas after being banned for 47 years.
289. All media is state-owned and run and can never be privatized under the current Constitution.
290. Constitutional protections must be in line with the best interests of the socialist State, those best interests are determined by the government.
291. Unfair imprisonment of freelance journalists and other political prisoners on made up or highly ambiguous charges such as “disrespect” and threat to the regime.

⁴⁷⁰ Committee to Protect Journalists, “Chinese Journalist Gao Yu Sentenced to Seven Years,” April 17, 2015, accessed April 25, 2015, <https://www.cpj.org/2015/04/chinese-journalist-gao-yu-sentenced-to-seven-years.php>

- 292. Continue the Human Rights Dialogue with the United States as part of the normalization of relations.
- 293. Allow the development of more critical newspapers and blogs, and allow these to be printed and distributed.
- 294. Continue inclusion of Cuba in the regional discourse through transnational alliances such as the OAS.
- 295. Negotiate the release of other political prisoners through non-governmental organizations, civil society and neighboring states, and ensure concrete charges are presented when making arrests.
- 296. Detention of freelance blogger, Angel Santiesteban Prats, who was arrested and mistreated in jail.

G. Egypt

- 297. With the false whistleblower laws and prohibition of anonymity, Egypt has discouraged whistleblowing practices across the country. However, there are some whistleblower laws and protections with some organizations, but they are mainly multi-national organizations.

H. Eritrea

- 298. Eritrea remains highly centralized and ranks consistently low on Reporters Without Borders and Freed House freedom indexes. The Popular Front for Democracy and Justice (PFDJ) in Eritrea, the only legal political party, maintains virtually absolute control over the country's political life and has become harshly authoritarian since the end of the war with Ethiopia in 2000. Based on an analysis of the political climate and austere leadership, the following recommendations have been proposed for the UN Special Rapporteur as areas for improvement:
 - 299. Encourage party pluralism to decrease the PFDJ's monopoly on power;
 - 300. Create an independent monitoring body charged with collecting statistics on whistleblowers or investigating complaints on whistleblower harassment;
 - 301. Encourage a drafted legislation that enumerates protections of journalist sources and whistleblower protections;
 - 302. Include anonymity provisions;
 - 303. Hold President Afwerki, the PFDJ and the military accountable for infringements on press freedom by encouraging the implementation of the constitution that was ratified in 1997;

304. Encourage government officials to open up broadcasting outlets to reduce the number of government controlled media sources.

I. India

305. Monitor how the “Whistle Blowers Protection Act, 2011” is implemented and resourced. Has there been an uptick in whistleblowing cases? Have whistleblowers indicated whether they felt safe during the process?

306. Monitor the situation with the Swiss whistleblower being asked to divulge more information about Indian entities holding HSBC accounts in Geneva. This situation could raise awareness for whistleblowing in general, leading to more whistleblowers in India.

307. Monitor the plight of journalists. Are liberal journalists who challenge government policies being harassed? Is the Modi government going after certain journalists? Are Hindu nationalist forces putting a chill on journalism generally?

J. Indonesia

308. Major agencies in charge of protected whistleblowers (the LPSK and KPK) are often underfunded often undermined by actions by the National Police when trying to protect victims and witnesses of crimes.

309. Many whistleblowers, including well known whistleblowers Wa Ode Nurhayati and Agus Condro, are convicted by the KPK due their involvement within the corruption cases they were disclosing information about. The high likelihood of whistleblowers being convicted creates disincentives for other officials to disclose information about corruption.

310. The LPSK are only able to protect witnesses as long as the Attorney General’s Office, KPK, the Law and Human Rights Ministry, and the National Police agree. This makes it exceedingly difficult for the LPSK to protect whistleblowers or reduce their imprisonment sentences.

311. The passing of the Law on Mass Organizations (*Ormas Law*) in June 2013 limits much of the freedoms of local NGOs and forbids foreign NGOs from activities that “disrupt the stability and integrity” of Indonesia or “disrupt diplomatic relations.”⁴⁷¹

312. Indonesia detained two French Journalists on charges of misusing their entry visas for journalistic purposes which could lead to 5 years imprisonment if tried.⁴⁷² Even though the journalists were returned to France after 11 weeks detained, some of their sources have been arrested and face charges of rebellion.⁴⁷³

⁴⁷¹ Freedom House, “2014 Freedom in the Press Report: Indonesia”.

⁴⁷² Reporters Without Borders. “Why Indonesia Should Release Two Detained French Journalists”.

⁴⁷³ Reporters Without Borders. “Two journalists back in France after 11 weeks in Indonesian jails”.

K. Israel

313. There have been several movements that have been calling for weaker restrictions on nuclear-whistleblower Mordechai Vanunu, who was released from prison over ten years ago. The government of Israel has not made any indication that it intends to follow these demands.

L. Mali

314. As Mali proceeds to pursue and sign peace accords with rebels in the north, it should be encouraged to pair these advances with efforts to curb corruption and reestablish positive relations with local media—many of which were discouraged by government restrictions to information and the mistreatment of journalists covering the post-coup conflict.
315. Mali is a poor country with an underdeveloped infrastructure and low levels of human capital. Ensuring the drafting and passing of legislation designed to broadly provide access to information should be viewed as a priority in nationwide development strategies. Although whistleblowing has yet to emerge as an issue or a strategy used to tackle corruption, the government should also be pressured to pass legislation protecting whistleblowers. The Special Rapporteur should continue to support regional efforts highlighting whistleblowing as an emerging issue in West Africa, as any momentum could translate into country-specific adoptions of whistleblower laws.
316. The Special Rapporteur should call on Malian leadership to restart domestic efforts, previously stalled after the 2012 coup, to train current and aspiring journalists in partnership with relevant INGO/NGOs. These efforts will help cultivate a more professional culture of journalism and diminish the tendency toward self-censorship.

M. Nigeria

317. Newly elected President Muhammadu Buhari ran a successful campaign on promises, in part, to address the problem of corruption. Pressure and support from international and domestic sources will be necessary to aid Buhari in countering congressional resistance from governmental officials long adverse to genuine reform. For the government to supplement the development and work of a growing web of civil society organizations against corruption, it should expand on minimal whistleblower protections outlined in the 2011 Freedom of Information Act and revive draft legislation specifically protecting whistleblowers. Whistleblower protections should be extended to private sector employees.
318. The government of Nigeria does not publically denounce the practice of whistleblowing, but has accused high-level whistleblowers of disclosing false information. Despite the image risk associated with public disclosures of information unflattering to leadership, the Nigerian government should be encouraged to

thoroughly and transparently—perhaps with the assistance of regional bodies or organizations—conduct investigations before condemning whistleblowers.

319. The Special Rapporteur should call upon Nigeria to translate its considerable regional influence into proactive leadership in forums such as ECOWAS. The development of stronger regional efforts to strengthen commitment to press freedom and to ensure access to information will assist in creating momentum to initiate domestic changes and improvements.

N. Russia

320. Government officials have called for increased anti-corruption legislation and whistleblower protection, but widespread corruption remains in all spheres with strong ties between public and private, limiting the will to change.
321. Few protections are present for private sector whistleblowers, but some corporations are implementing internal transparency within governance.
322. A lack of media and judicial independence remains, with increased pressure and attacks on lawyers, judges, and journalists, as well as a lack of prosecution for these crimes.
323. In January 2015, the government added a three-year sentence for imprisoned reporter Sergei Reznik, on reportedly fabricated charges in response to his articles criticizing corrupt authorities.
324. The government has not responded adequately to questions regarding military deaths in Ukraine.
325. In August 2014, Edward Snowden was granted an extended three-year Russian visa.

O. Saudi Arabia

326. With the strict censorship laws in Saudi Arabia and the slim likelihood of change, establishing whistleblower protections are most likely not within the near future for Saudi Arabia.

P. South Africa

327. With a robust civil society that effectively pushes back against government restrictions on media, South Africa is considered a national and global leader in freedom. However, an analysis of the country's political climate and a review of recently publicized events, namely corruption scandals and self-censorship reports from journalists, reveal a growing disconnect between legislation and state practice. Based on this analysis, the following recommendations have been proposed for the UN Special Rapporteur as areas for improvement:

328. Provide advice to government officials on best practices to deal with leaks that threatened national security, such as the leak of spy cables in February 2015;
329. Create an independent monitoring body charged with collecting statistics on whistleblowers or investigating complaints on whistleblower harassment;
330. Work with and encourage President Zuma to repeal the Apartheid Act and National Key Points Act, as these are the most threatening to journalists and whistleblowers.

Q. Tunisia

331. Tunisia is still in a stage of political transition, but with its new constitution being deemed the most liberal of the Arab World, an expansion of freedoms is not entirely out of reach. The international and regional community should monitor the development of Tunisia and try to influence policies during this transition period as a window of opportunity.

R. Turkmenistan

332. Publically mention the situation in Turkmenistan. Request that the government fully respect their constitution and media law.
333. Request periodic updates from the Cabinet of Ministers regarding implementation and progress.
334. Work with the OSCE, including their office in Ashgabat, to monitor progress locally, make contact with the local population, and forward requests for assistance to the SR's office.
335. Encourage states and companies doing business with Turkmenistan to respect human rights and foster a positive bureaucratic culture.

S. United Kingdom

336. Request that the British government improve the transparency of, and the process for, intercepting journalists' communications.
337. Request that the British government abide by Article 10 of the European Convention on Human Rights in their internal affairs.
338. Call for complaints made by civil society organizations related to national security whistleblowing.

T. United States

339. The Foreign Corrupt Practices Act (FCPA) prohibits the offer or making of payments or giving anything of value to any foreign official, political party or political candidate, or public international organization to obtain or maintain business when the offer, payment or gift is intended to influence a desired action.

340. Broad whistleblower legislation in certain cases (i.e.: 1917's The Espionage Act); vague, outdated, and poorly defined in terms of protection, what it does and whom it covers/protects.
341. Disparity between prosecution and punishments in areas of public and private sector whistleblowing versus those accused of threatening national security.
342. The seven-year court battle with *New York Times* reporter James Risen to reveal his source.
343. Exile of NSA contractor Edward Snowden.
344. Thirty-five year punishment of Chelsea Manning.
345. Fifteen journalists jailed and deliberately targeted in 2014 in situations of mass protest.
346. Adhere to the strong legislative protections already in place and especially apply them to instances of national security.
347. Address the discrepancies on whistleblower legislation and punishments between the public, private, and national security sector.
348. Revise existing whistleblower legislation as the Espionage Act of 1917 and elaborate on what it covers and whom it protects explicitly.

U. Venezuela

349. The Constitution explicitly prohibits censorship.
350. President Maduro's power to rule by decree means he can bypass legislature and constitution to implement laws unilaterally.
351. Constitution explicitly prohibits anonymity, which could create incentives for whistleblowers to come forward.
352. Refused country visits by UN Special Rapporteur for Freedom of Expression in 2003, 2007, and 2011.
353. Underwent a Universal Periodic Review in 2011. However, the Venezuelan government rejected all 12 proposals regarding the freedom of expression.
354. According to the Venezuelan run Freedom of the Press Institute (IPYS), unfair imprisonments of journalists have skyrocketed, almost quadrupling from March 2014 to present.

355. Allow country visits by the UN Special Rapporteur for Freedom of Expression, the UN Special Rapporteur should also keep requesting these.
356. Pay special attention to the recommendations on Freedom of Expression during the next Universal Periodic Review in 2016.
357. The National Assembly should revoke Maduro's current power to rule by decree.
358. Unfair arrest of Caracas mayor, Antonio Ledezma as a threat to the government.

Appendix: Categorization Tables by Region

Asia and Pacific

	Freedom House	Category	Reporters w/o Borders	Category	Overall Category
Afghanistan	Not Free (6)	Weak	128 (37.07)	Middle	Weak
Australia	Free (1)	Strong	28 (16.92)	Strong	Strong
Bangladesh	Partly Free (4)	Middle	146 (42.58)	Middle	Weak
Bhutan	Partly Free (3.5)	Middle	92 (30.73)	Middle	Middle
Brunei	Not Free (5.5)	Weak	117 (35.45)	Middle	Weak
Cambodia	Not Free (5.5)	Weak	144 (40.97)	Middle	Weak
China	Not Free (6.5)	Weak	175 (72.91)	Weak	Weak
Cook Islands	No Data	No Data	No Data	No Data	No Data
Fiji	Partly Free (3.5)	Middle	107 (35.57)	Middle	Middle
India	Free (2.5)	Strong	140 (40.34)	Middle	Middle
Indonesia	Partly Free (3)	Middle	132 (38.15)	Middle	Middle
Japan	Free (1)	Strong	59 (26.02)	Middle	Strong
Kiribati	Free (1)	Strong	No Data	No Data	No Data
Laos	Not Free (6.5)	Weak	171 (71.22)	Weak	Weak
Malaysia	Partly Free (4)	Middle	142 (42.73)	Middle	Middle
Maldives	Partly Free (4)	Middle	108 (33.11)	Middle	Middle
Marshall Islands	Free (1)	Strong	No Data	No Data	No Data
Micronesia	Free (1)	Strong	No Data	No Data	No Data
Mongolia	Free (1.5)	Strong	88 (30.3)	Middle	Middle
Myanmar	Not Free (6)	Weak	145 (41.43)	Middle	Weak
Nauru	Free (1.5)	Strong	No Data	No Data	No Data
Nepal	Partly Free (3.5)	Middle	120 (36.16)	Middle	Middle
New Zealand	Free (1)	Strong	9 (8.55)	Strong	Strong
Niue	No Data	No Data	No Data	No Data	No Data
North Korea	Not Free (7)	Weak	179 (81.96)	Weak	Weak
Pakistan	Partly Free (4.5)	Middle	158 (51.46)	Middle	Middle
Palau	Free (1)	Strong	No Data	No Data	No Data
Papua New Guinea	Partly Free (3.5)	Middle	44 (23.46)	Strong	Middle
Philippines	Partly Free (3)	Middle	149 (43.69)	Middle	Middle
Samoa	Free (2)	Strong	40 (22.02)	Strong	Strong
Singapore	Partly Free (4)	Middle	150 (44.29)	Middle	Middle
Solomon Islands	Partly Free (3)	Middle	No Data	No Data	No Data
South Korea	Free (2)	Strong	57 (25.66)	Middle	Strong
Sri Lanka	Partly Free (5)	Middle	165 (59.13)	Weak	Weak
Taiwan	Free (1.5)	Strong	50 (23.82)	Strong	Strong
Thailand	Not Free (5.5)	Weak	130 (37.94)	Middle	Middle
Timor Leste	Partly Free (3)	Middle	77 (29.04)	Middle	Middle
Tonga	Free (2)	Strong	63 (23.7)	Strong	Strong
Tuvalu	Free (1)	Strong	No Data	No Data	No Data
Vanuatu	Free (2)	Strong	No Data	No Data	No Data
Vietnam	Not Free (6)	Weak	174 (72.36)	Weak	Weak

Sub-Saharan Africa

	Freedom House	Category	Reporters w/o Borders	Category	Overall Category
Angola	Not Free (5.5)	Weak	124 (36.5)	Middle	Middle
Benin	Free (2)	Strong	75 (28.83)	Middle	Middle
Botswana	Free (2.5)	Strong	41(22.91)	Strong	Strong
Burkina Faso	Partly Free (4)	Middle	52 (24.45)	Strong	Strong
Burundi	Not Free (5.5)	Weak	142 (40.5)	Middle	Middle
Cameroon	Not Free (6)	Weak	131 (38.13)	Middle	Weak
Cape Verde	Free (1)	Strong	24 (14.32)	Strong	Strong
Central African Republic	Not Free (7)	Weak	109 (33.13)	Middle	Middle
Chad	Not Free (6.5)	Weak	139 (40.22)	Middle	Weak
Comoros	Partly Free (3.5)	Middle	53 (24.52)	Strong	Middle
Congo (Brazzaville)	Not Free (5.5)	Weak	82 (29.44)	Middle	Weak
Congo (DRC)	Not Free (6)	Weak	151 (44.64)	Middle	Weak
Cote d'Ivoire	Partly Free (4.5)	Middle	101 (31.63)	Middle	Middle
Djibouti	Not Free (5.5)	Weak	169 (70.34)	Weak	Weak
Equatorial Guinea	Not Free (7)	Weak	168 (67.95)	Weak	Weak
Eritrea	Not Free (7)	Weak	180 (84.63)	Weak	Weak
Ethiopia	Not Free (6)	Weak	143 (40.58)	Middle	Weak
Gabon	Not Free (5.5)	Weak	98 (31.32)	Middle	Middle
Gambia	Not Free (6)	Weak	155 (46.42)	Middle	Weak
Ghana	Free (1.5)	Strong	27 (16.29)	Strong	Strong
Guinea	Partly Free (5)	Middle	102 (31.67)	Middle	Middle
Guinea-Bissau	Partly Free (5)	Middle	86 (30.05)	Middle	Middle
Kenya	Partly Free (4)	Middle	90 (30.7)	Middle	Middle
Lesotho	Free (2.5)	Strong	74 (28.36)	Middle	Strong
Liberia	Partly Free (3.5)	Middle	89 (30.65)	Middle	Middle
Madagascar	Partly Free (4)	Middle	81 (29.38)	Middle	Middle
Malawi	Partly Free (3.5)	Middle	73 (28.29)	Middle	Middle
Mali	Partly Free (4.5)	Middle	122 (36.29)	Middle	Middle
Mauritania	Not Free (5.5)	Weak	60 (26.53)	Middle	Middle
Mauritius	Free (1.5)	Strong	70 (27.69)	Middle	Middle
Mozambique	Partly Free (3.5)	Middle	79 (29.26)	Middle	Middle
Namibia	Free (2)	Strong	22 (12.5)	Strong	Strong
Niger	Partly Free (3.5)	Middle	48 (23.59)	Strong	Strong
Nigeria	Partly Free (4.5)	Middle	112 (34.24)	Middle	Middle
Rwanda	Not Free (6)	Weak	162 (56.57)	Middle	Weak
Sao Tome and Principe	Free (2)	Strong	No Data	No Data	No Data
Senegal	Free (2)	Strong	62 (26.68)	Middle	Strong
Seychelles	No Data	Middle	103 (31.68)	Middle	No Data
Sierra Leone	Partly Free (3)	Middle	72 (28.23)	Middle	Middle
Somalia	Not Free (7)	Weak	176 (73.19)	Weak	Weak
South Africa	Free (2)	Strong	42 (23.19)	Strong	Strong
Sudan	Not Free (7)	Weak	172 (71.88)	Weak	Weak
South Sudan	Not Free (6.5)	Weak	119 (36.05)	Middle	Weak
Swaziland	Not Free (6)	Weak	156 (46.76)	Middle	Middle
Tanzania	Partly Free (3)	Middle	69 (27.3)	Middle	Middle
Togo	Partly Free (4)	Middle	76 (29)	Middle	Middle
Uganda	Not Free (5.5)	Weak	110 (33.29)	Middle	Weak
Western Sahara	No Data	No Data	No Data	No Data	No Data

Zambia	Partly Free (3.5)	Middle	93 (30.89)	Middle	Middle
Zimbabwe	Not Free (5.5)	Weak	135 (39.19)	Middle	Weak
Somaliland	Partly Free (4.5)	Middle	No Data	No Data	No Data

Europe/Eurasia

	Freedom House	Category	Reporters w/o Borders	Category	Overall Category
Albania	Partly Free (3)	Middle	85 (29.92)	Middle	Middle
Andorra	Free (1)	Strong	5 (6.82)	Strong	Strong
Armenia	Partly Free (4.5)	Middle	78 (29.07)	Middle	Middle
Austria	Free (1)	Strong	12 (10.01)	Strong	Strong
Azerbaijan	Not Free (6)	Weak	160 (52.87)	Middle	Weak
Belarus	Not Free (6.5)	Weak	157 (47.82)	Middle	Weak
Belgium	Free (1)	Strong	23 (12.8)	Strong	Strong
Bosnia & Herzegovina	Partly Free (3.5)	Middle	66 (26.86)	Middle	Middle
Bulgaria	Free (2)	Strong	100 (31.42)	Middle	Strong
Croatia	Free (1.5)	Strong	65 (26.82)	Middle	Strong
Czech Republic	Free (1)	Strong	13 (10.07)	Strong	Strong
Denmark	Free (1)	Strong	7 (7.43)	Strong	Strong
Estonia	Free (1)	Strong	11 (9.63)	Strong	Strong
Finland	Free (1)	Strong	1 (6.4)	Strong	Strong
France	Free (1)	Strong	39 (21.89)	Strong	Strong
Georgia	Partly Free (3)	Middle	84 (29.78)	Middle	Middle
Germany	Free (1)	Strong	14 (10.23)	Strong	Strong
Greece	Free (2)	Strong	99 (31.33)	Strong	Strong
Holy See	No Data	No Data	No Data	No Data	No Data
Hungary	Free (2)	Strong	64 (26.73)	Middle	Strong
Iceland	Free (1)	Strong	8 (8.5)	Strong	Strong
Ireland	Free (1)	Strong	16 (10.87)	Strong	Strong
Italy	Free (1)	Strong	49 (23.75)	Strong	Strong
Kazakhstan	Not Free (5.5)	Weak	161 (54.94)	Weak	Weak
Kyrgyzstan	Partly Free (5)	Middle	97 (31.24)	Middle	Middle
Latvia	Free (1)	Strong	37 (21.1)	Strong	Strong
Liechtenstein	Free (1)	Strong	6 (7.02)	Strong	Strong
Lithuania	Free (1)	Strong	32 (19.2)	Strong	Strong
Luxembourg	Free (1)	Strong	4 (6.7)	Strong	Strong
Macedonia	Partly Free (3.5)	Middle	123 (36.43)	Middle	Middle
Malta	Free (1)	Strong	51 (23.84)	Strong	Strong
Moldova	Partly Free (3)	Middle	56 (25.35)	Middle	Middle
Monaco	Free (1.5)	Strong	No Data	No Data	Strong
Montenegro	Free (2.5)	Strong	114 (34.78)	Middle	Middle
Netherlands	Free (1)	Strong	2 (6.46)	Strong	Strong
Norway	Free (1)	Strong	3 (6.52)	Strong	Strong
Poland	Free (1)	Strong	19 (11.03)	Strong	Strong
Portugal	Free (1)	Strong	30 (17.73)	Strong	Strong
Romania	Free (2)	Strong	45 (23.48)	Strong	Strong
Russia	Not Free (6)	Weak	148 (42.78)	Weak	Middle
Serbia	Free (2)	Strong	54 (25.05)	Strong	Strong
Slovakia	Free (1)	Strong	20 (11.39)	Strong	Strong
Slovenia	Free (1)	Strong	34 (20.38)	Strong	Strong
Spain	Free (1)	Strong	35 (20.63)	Strong	Strong

Sweden	Free (1)	Strong	10 (8.98)	Strong	Strong
Switzerland	Free (1)	Strong	15 (10.47)	Strong	Strong
Tajikistan	Not Free (6)	Weak	115 (34.86)	Middle	Weak
Turkey	Partly Free (3.5)	Middle	154 (45.87)	Middle	Middle
Turkmenistan	Not Free (7)	Weak	178 (80.81)	Weak	Weak
Ukraine	Partly Free (3)	Middle	127 (36.93)	Middle	Middle
United Kingdom	Free (1)	Strong	33 (19.93)	Strong	Strong
Uzbekistan	Not Free (7)	Weak	166 (61.01)	Weak	Weak

The Americas

	Freedom House	Category	Reporters w/o Borders	Category	Overall Category
Antigua & Barbuda	Free (2)	Strong	No Data	Strong	Strong
Argentina	Free (2)	Strong	55 (25.27)	Middle	Strong
Bahamas	Free (1)	Strong	No Data	No Data	Strong
Barbados	Free (1)	Strong	No Data	No Data	Strong
Belize	Free (1.5)	Strong	29 (17.05)	Strong	Strong
Bolivia	Partly Free (3)	Middle	94 (31.04)	Middle	Middle
Brazil	Free (2)	Strong	111 (34.03)	Middle	Middle
Canada	Free (1)	Strong	18 (10.99)	Strong	Strong
Chile	Free (1)	Strong	58 (25.8)	Middle	Strong
Colombia	Partly Free (3.5)	Middle	126 (36.68)	Middle	Middle
Costa Rica	Free (1)	Strong	21 (12.23)	Strong	Strong
Cuba	Not Free (6.5)	Weak	170 (70.92)	Weak	Weak
Dominica	Free (1)	Strong	No Data	No Data	Strong
Dominican Republic	Free (2.5)	Strong	68 (27.17)	Middle	Strong
Ecuador	Partly Free (3)	Middle	95 (31.16)	Middle	Middle
El Salvador	Free (2.5)	Strong	38 (21.57)	Middle	Strong
Grenada	Free (1.5)	Strong	No Data	No Data	Strong
Guatemala	Partly Free (3.5)	Middle	125 (36.61)	Middle	Middle
Guyana	Free (2.5)	Strong	67 (27.08)	Middle	Strong
Haiti	Free (2.5)	Strong	47 (23.53)	Strong	Strong
Honduras	Partly Free (4)	Middle	129 (37.14)	Middle	Middle
Jamaica	Free (2.5)	Strong	17 (10.9)	Strong	Strong
Mexico	Partly Free (3)	Middle	152 (45.04)	Middle	Middle
Nicaragua	Partly Free (3.5)	Middle	71 (37.14)	Middle	Middle
Panama	Free (2)	Strong	87 (30.2)	Middle	Strong
Paraguay	Partly Free (3)	Middle	105 (31.81)	Middle	Middle
Peru	Free (2.5)	Strong	104 (31.7)	Middle	Strong
St. Kitts and Nevis	Free (1)	Strong	N/A	No Data	Strong
St. Lucia	Free (1)	Strong	No Data	No Data	Strong
St. Vincent	Free (1)	Strong	No Data	No Data	Strong
Suriname	Partly Free (3)	Middle	31 (18.2)	Strong	Strong
Trinidad & Tobago	Free (2)	Strong	43 (23.28)	Strong	Strong
United States	Free (1)	Strong	46 (23.45)	Strong	Strong
Uruguay	Free (1)	Strong	28 (16.08)	Strong	Strong
Venezuela	Not Free (5)	Middle	116 (35.37)	Middle	Weak

Middle East and North Africa

	Freedom House	Category	Reporters w/o Borders	Category	Overall Category
Algeria	Not Free (5.5)	Weak	121 (36.26)	Middle	Weak
Bahrain	Not Free (6.5)	Weak	163 (58.26)	Weak	Weak
Egypt	Not Free (5.5)	Weak	159 (51.89)	Middle	Weak
Iran	Not Free (6)	Weak	173 (72.29)	Weak	Weak
Iraq	Not Free (6)	Weak	153 (45.44)	Middle	Weak
Israel	Free (1.5)	Strong	96 (31.19)	Middle	Middle
Jordan	Not Free (5.5)	Weak	141 (40.42)	Middle	Weak
Kuwait	Partly Free (5)	Middle	91 (30.71)	Middle	Middle
Lebanon	Partly Free (4.5)	Middle	106 (31.89)	Middle	Middle
Libya	Not Free (6)	Weak	137 (39.84)	Middle	Weak
Mauritania	Not Free (5.5)	Weak	70 (26.53)	Middle	Weak
Morocco	Partly Free (4.5)	Middle	136 (39.72)	Middle	Middle
Oman	Not Free (5.5)	Weak	134 (38.83)	Middle	Weak
Palestine	No Data	No Data	138 (40.11)	Middle	Middle
Qatar	Not Free (5.5)	Weak	113 (34.32)	Middle	Weak
Saudi Arabia	Not Free (7)	Weak	164 (58.3)	Weak	Weak
Syria	Not Free (7)	Weak	177 (77.04)	Weak	Weak
Tunisia	Free (2)	Strong	133 (38.69)	Middle	Middle
United Arab Emirates	Not Free (6)	Weak	118 (36.03)	Middle	Weak
Yemen	Not Free (6)	Weak	167 (67.26)	Weak	Weak