

كسر القوالب Breaking the mold

#Breaking_The_Mold Arab Civil Society Actors and their Quest to Influence Policy-Making

Case Study #7

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INVOLVEMENT, STRATEGIES, AND CHALLENGES THAT FACED LEBANESE CIVIL SOCIETY ORGANIZATIONS IN PROTECTING DIGITAL AND ONLINE EXPRESSION IN LEBANON

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The involvement, strategies, and challenges that faced Lebanese civil society organizations in protecting digital and online expression in Lebanon

BACKGROUND

Traditional media outlets in the form of newspapers, radio stations, and TV stations have been the primary source of news and other information for generations and enjoy particular prominence in the Middle East. Yet, with the emergence of the internet in the last 30 years, the dominance of these media outlets has been waning in favor of digital and alternative media with less content restrictions and more diverse publications. According to a 2017 study, 79 percent of Lebanese go online at least once a day to get news or headlines (SKeyes, n.d.). The vast, open, and rapid flow of information via the internet has made social media a platform with a mostly unrestricted agenda, in contrast to the aforementioned outlets. In Lebanon, 75 percent of people believe that social media is an important source of information (SKeyes, n.d.). The Arab Spring has revealed the power of social media as a tool for citizens to express their opinions openly and issue calls for demonstrations to challenge governments (Vargas, 2012). Consequently, post-Arab Spring governments have intensified efforts to restrict freedom of expression on the digital space in a bid to restrict government opposition. Similarly, freedom of expression in Lebanon has also suffered its fair share of censorship and political deterrence. Projecting on the Lebanese arena, the crackdown on freedom of expression has been utilized by various and diverse politicians, civil servants, clerics and religious institutions to quell criticism. Regardless, the Lebanese traditional media¹ is known for its often direct or indirect ties with the political oligarchy. Dominant political affiliations have manifested their political authority through the media industry during the different eras of the Lebanese

contemporary history². Recent history in this case has been characterized by intimidations, murders and exiles of journalists, in addition to the shutting down of media institutions, while the current era continues to witness a crackdown on freedom of expression, particularly in the digital sphere. Varying between professional journalists, vocal activists, and outspoken citizens, 41 online freedom of expression-related detentions were recorded in 2018 alone, with 20 cases during the early months of 2019 alone (SMEX, 2019). An epitome of such instances is the case of Adam Chamseddine, a reporter at the Al-Jadeed broadcasting channel, versus the Lebanese State Security. On the grounds of posting a criticism on his personal Facebook account of the Lebanese State Security arresting a Syrian tattoo artist accused of 'bioterrorism', the reporter faced a military trial. Chamseddine was never subpoenaed properly pursuant to the Criminal Procedural Law by the Military Court; yet, he was convicted in absentia with three months in prison. Chamseddine eventually used his right to appeal the sentence in which the Military Court had to drop charges following a retrial³. According to Nizar Saghie (2019), the Legal Agenda's director and editor-in-chief, "Chamseddine showed exceptional gallantry (defending a person who has no power to defend himself) against an influential power that could be fairly described as villainous". Despite Lebanon's reputation as a beacon for freedom of speech in the region, civil society organizations (CSOs) such as ALEF, CLDH, SMEX, and SKeyes are working on archiving, aiding and advocating against infringements of freedom of expression, mainly those who have been on the basis of defamation, libel, and slander.

¹ Meaning the audio-visual and printed media outlets.

²(1) The pre-civil war, (2) civil war, (3) the Syrian mandate, (4) Post-Rafik Hariri assassination, and (5) the post-deadlock presidential era (The Lebanese political status quo was suffering from a -29month presidential deadlock due to political disputes. This was also followed by a cabinet formation deadlock.)

³ Adam Chamseddine. Personal interview.

THE EFFORTS OF CIVIL SOCIETY

CSOs in this domain share similar tactics and engage in information-sharing with one another on the latest news and developments. While these organizations share similarities, they also compete with each other. For instance, the Legal Agenda and SMEX have a joint bid in competition with SKeyes and the Maharat Foundation for funding from the EU⁴. CSOs believe that the lack of funding has restricted their role to monitoring cases and providing limited legal assistance to those affected. SKeyes director, Ayman Mhanna, claims that CSOs are doing the most they can, given the country's current state of affairs, but are not influential enough to challenge current policies.

The Samir Kassir Eyes Center (SKeyes), a core program within the Samir Kassir Foundation, aims to defend press and cultural freedom in the Middle East and promote freedom of expression (SKeyes, n.d.). SKeyes operates according to three pillars: protection, research and monitoring, and advocacy. They offer financial support to protect individuals and journalists under threat. The center also conducts research and publishes data on traditional and digital media in Lebanon such as their "Media Ownership Monitor" in collaboration with Reporters Without Borders⁵. Notably, SKeyes raises awareness by partnering with local CSOs, international universities, and other international networks and organizations. SKeyes partnered with the Maharat Foundation in drafting a new media law, namely Law 441/2010⁶ that was proposed in parliament by MP Ghassan Moukheiber. The center works with IFEX⁷ and Front Line Defenders⁸ among others, to improve visibility of Lebanese issues globally and seek international support such as funding and technical assistance⁹. The Samir Kassir Foundation claims to receive funding from at least five sources at once as to not establish dependency. Funders include the EU, Norwegian, Dutch, and French ministries of foreign affairs, and the Sigrid Rausing Trust.

Social Media Exchange (SMEX) is a prominent CSO that specializes in digital rights by conducting training, research, and advocacy on strategic communications and human rights related to the digital world. They receive their funding from the Friedrich Naumann Stiftung, the Al Jazeera Media Institute, UNESCO and Facebook, among others ("Funders, Partners, & Clients," 2018). SMEX emphasizes collaboration as a main tool for its work on freedom of expression through knowledge-sharing with other CSOs. It allows them to interact in a non-binding way that will allocate the right service for the right case; for example, by referring a person who needs legal assistance to a CSO most capable and able of providing that assistance¹⁰. Functional relationships are maintained with policy-makers such as MP Nadim Gemayel, head of the IT Committee in Parliament with whom they frequently discuss matters related to freedom of expression online. SMEX organizes events such as the Bread and Net conference¹¹, and maintains websites like Cyrilla¹² and Muhal, an online freedom of expression database launched in 2019.



Muhal aims to raise awareness by archiving and following up with freedom of expression cases as they occur. Website visitors can also report a case, which will be verified by the SMEX research team and added to the overall roster (SMEX, 2019).

Lebanese human rights watchdog ALEF is an NGO focusing on recent freedom of expression cases on social media. Similarly, ALEF's team of employees and volunteers advocate and monitor cases. Currently they are reviewing the Electronic Transactions and Personal Data Law that was endorsed by parliament in 2018. ALEF has held several discussions with Nadim Gemayel, former Minister of Justice Salim Jreissati, and Michel Moussa, the head of the human rights committee in parliament. Despite the government officials' openness to dialogue, the meetings did not bear any meaningful outcome. It has been made clear that the majority of policy-makers have little to no interest in partaking in genuine and inclusive policy discussions with CSOs, rendering these aforementioned relationships non-influential. The Lebanese Center for Human Rights (CLDH) operates through advocacy and by providing legal assistance to individuals. Similar to SKeyes, CLDH tries to leverage its relationship with international organizations to advise them on local developments. The majority of their funding is from international donors, such as the Embassy of Switzerland, the Embassy of Denmark, and the Open States Foundation.

Wadih Al Asmar, president of CLDH, was himself interrogated by the Cybercrime Bureau in August 2018 after he tweeted a joke about a religious figure. The interrogation lasted around six hours and attracted the support of activists who gathered outside the bureau to demand that authorities respect Al Asmar's right to freedom of expression (The Daily Star, 2018). During the interrogation Al Asmar cited Article 47 of the Criminal Code which allows the defendant to remain silent, and he denied requests to delete his tweet; a request often made by security services. According to Al Asmar, those who lack the legal and public support that he had are more likely to face longer detentions and perceived intimidation tactics during interrogations.

On August 18, 2018, several Lebanese human rights organizations wrote an open letter to the United Nations High Commissioner for Human Rights to inform their office of the rise in the number of activists and journalists being interrogated or arrested in Lebanon; the letter emphasizes that the violations often pertain to posts made on private social media accounts (The Daily Star, 2018).

⁴ Faten El Hajj. Personal interview.

⁵ The "Media Ownership Monitor" (MOM) has been developed as a mapping tool in order to create a publicly available, continuously updated database that lists owners of all relevant mass media outlets – press, radio, television, and online media. MOM also qualitatively assesses the market conditions and legal environment <http://lebanon.mom-rsf.org/en/about/faq/>

⁶ The law recognizes freedom of expression on traditional and nontraditional media outlets (like social media). It also abolishes: provisional arrests, the punishment of incarceration, interrogations at police departments, and being subpoenaed to police departments (in freedom of expression cases). It also grants the right to journalists/activists/citizens endorsing campaigns not to attend court trials in person but rather be represented by a lawyer.

⁷ A global network of more than 100 organizations, all connected by a shared commitment to defend and promote freedom of expression as a fundamental human right.

⁸ Front Line Defenders was founded in Dublin in 2001 with the specific aim of protecting human rights defenders at risk (HRDs), people who work, non-violently, for any or all of the rights enshrined in the Universal Declaration of Human Rights (UDHR).

⁹ Ayman Mhanna. Personal interview

¹⁰ Abed Kataya. Personal interview.

¹¹ Bread and Net is a conference on freedom of expression and digital rights in the Middle East and North Africa.

¹² Cyrilla is an online database compiling laws/decrees/precedents/judicial decision in Lebanon and in the wider Middle East and North Africa region regarding freedom of expression.

¹³ The law provides a holistic approach of electronic transactions and includes in its fifth chapter the protection of personal data, which include cases of personal data collection and the scope of application, in addition to the presence of penal provisions protecting this information.

¹⁴ George Ghali. Personal interview

¹⁵ The tweet was of a Facebook post made by comedian Charbel Khoury who was interrogated in July 2018.

¹⁶ Article 47 of the Lebanese Code of Criminal Procedure, states that "If [suspects] refuse to speak and remain silent, this must be mentioned in the official report. They must not be forced to speak or to be interrogated, under penalty of invalidity of their statements."

¹⁷ Wadih Al Asmar. Personal interview.

INFLUENCING FACTORS

A fundamental factor to consider when discussing cases related to freedom of expression is the nature of the Lebanese legal and political system. Implementation of laws in Lebanon is often selective and heavily influenced or expedited by political motives. It is often claimed that Lebanon's diverse religious and political makeup allowed it to remain relatively free compared to other countries in the region, since no single particular group could rule over the rest. However, political and religious sensitivities play a leading role in motivating individuals to file complaints on issues often related to freedom of expression¹⁸. Thus, the red lines for free speech in Lebanon are drawn primarily around the army, national symbols such as the president, political notables, and religion and religious figures¹⁹. These red lines make it increasingly difficult for CSOs to challenge authorities that often conflate the relationship between one's religious affiliation and one's political affiliation to draw on the popular support.

For those CSOs safeguarding freedom of expression, they will require the amendment of media, publication, civil, and criminal laws. Naming and shaming those officials implicated in suppressing the right of freedom of expression is another factor encouraged among some CSOs, such as ALEF and CLDH. Publicized arrests have made citizens more aware of incidents related to freedom of expression but have not gained the appropriate traction in framing the matter as a rights issue. To improve effectiveness, SKeyes added that CSOs should focus their attention on building relationships with big tech companies in order to gain expertise on algorithms that govern digital media and to work closely with judges to issue jurisprudence in freedom of expression-related cases. Internationally, the UN Special Rapporteur on the Right to Freedom of Opinion and Expression, David Kaye, wrote a letter urging the Lebanese government to repeal the criminal defamation law and to restrict the involvement of security services in expression-related cases (Hall, 2018).

Traditional media outlets, as a force of influence, remain divided. Despite increased coverage of arrested journalists, many traditional media channels have yet to develop this issue further, and consequently their coverage remains relatively minimal. This is seen as the result of the political class' indirect and direct control of the main traditional media outlets followed in the country and their ability to shape public opinion as a result²⁰. In fact, most cases are made public on social media and other digital platforms that do not necessarily follow conforming agendas. Despite available funding for digital rights and human rights issues, funding for freedom of expression remains a relatively fresh idea in Lebanon. In a positive step, CSOs have managed to convince donors of the significance of these issues. The EU began accepting bids for freedom of expression initiatives and is anticipated to grant funding between late 2019 and early 2020. Based on this development, SKeyes director, Ayman Mhanna, believes that CSOs will be better equipped in their struggle when funding becomes more accessible.

TRANSFORMATIVE MOMENTS

In 2009, the Parliamentary Committee on Information and Communications launched a workshop to restructure the Publications Law²¹ governing local media rules and regulations. The amendments that followed focused on three major reforms. The first reform grants media institutions more accessibility on the basis of 'notice and recognition' rather than the archaic licensing system. Second, banning provisional arrest in publication cases as part of providing more freedom of press. The third, and most important, relates to defining digital journalism in order to establish a legal framework (Halawi, 2018). Unfortunately, MP Hassan Fadlallah, the chair of the committee, mentioned that the legislative procedure requires that the draft law be studied by the Administration and Justice Committee before parliamentary voting. The draft law has been stalled for 10 years now due to the political brawl over the recent electoral law, as indicated by MP Fadlallah himself (Halawi, 2018). Another similar²² proposal was issued by former judge and current MP George Okais. Among the reforms suggested, one entails to clarify the status of the digital space by amending Article 209²³ from the Criminal Law (National News Agency, 2018). It is worthy to note that the newly passed Law No. 81/2019²⁴ has included the digital space as an addition to Article 209, resolving the ambiguity behind considering social media as a means of dissemination. As progressive as it sounds, giving the jurisdiction for courts over the digital space in freedom of expression cases gives the political authorities a legal grip on their crackdown (Mhanna, 2019).

Commentating on the Chamseddine case, the minister of defense, Elias Bou Saab, called for an adequate handling of freedom of expression cases especially when tried out in front of military courts as being an abnormal jurisdiction given by law (Beirut Observer, 2019). Following this, on March 12, 2019, MP Paula Yaacoubian proposed an amending law, the 'Adam Law'²⁵, in favor of free speech. The law entailed to restrict the jurisdiction of the military court over army personnel only (MP Paula Yaacoubian Official website, n.d.). Thus, abolishing, according to this proposal, trials of journalists in military courts.

The legislator has issued minor changes that legitimized the crackdown on freedom of expression via digital outlets, pursuant to the E-transactions and Digital Rights Law, by giving the authorities an enhanced political tool. Moreover, the legislator has yet to separate freedom of expression cases from military courts especially when it is related to cases of criticizing the military authority. Overall, policy-making remains vague, minor and even regressive.

¹⁸ Wadih Al Asmar. Personal interview.

¹⁹ Ayman Mhanna. Personal interview.

²⁰ Ayman Mhanna. Personal interview.

²¹ Issued in 1962, this law governs the jurisdiction of crimes related to publishing.

²² For example, the first reform also dictates halting the provisional arrest.

²³ This article in the Lebanese Criminal Law defines the means of dissemination.

²⁴ Issued under the name of E-transactions and Data Protection Law, this law gives a framework to the economy of e-commerce and amends multiple articles found in Lebanese criminal, civil, and trade codes. This law was criticized by many professionals as being a law that disrupts the insurance of justice since it amends various articles that might risk legislative invalidation.

²⁵ The law was coined on the basis of the Chamseddine trial.



POLICY OUTCOME

Despite relationships with government officials, CSOs have not been able to secure their desired policy change. The immediate goal of CSOs is to amend existing media laws, publication laws, civil and criminal laws, particularly to limit or abolish criminal laws related to slander, libel, and defamation. Ultimately, CSOs are seeking to reduce the number of arrests related to freedom of expression and the way this topic is addressed at the government, security, and public level.

LESSONS LEARNED

- Despite relationships with key policy-makers, CSOs have not been able to effect favorable policy reform due to the inherent restrictions of the Lebanese political context. On the contrary, policy-makers have enacted their own laws that further limit freedom of expression and digital journalism by incorporating the latter into the criminal code. Dealing with the political authority is the greatest challenge facing CSOs.
- CSOs have been hindered in their initiatives and work due to a lack of funding for freedom of expression-related initiatives, and are thus operating to their limit. Anticipated funding from the EU is expected to open the door for more international funding for CSOs operating in this domain that will improve their work as a result.
- The control of the major traditional media outlets by political groups, government actors, and their affiliates cannot be overlooked after observing the lack of significant media coverage of freedom of expression related cases. The lack of traditional media attention hinders CSOs' efforts to raise awareness and shape the public debate around the issue. As a result, most information related to freedom of expression cases are disseminated primarily on social media and other digital media platforms.

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BREAKING THE MOLD PROJECT

In mid- 2018, the “Civil Society Actors and Policymaking in the Arab World” program at IFI, with the support of Open Society Foundations, launched the second round of its extended research project “Arab Civil Society Actors and their Quest to Influence Policy-Making”. This project mapped and analyzed the attempts of Arab civil society, in all its orientations, structures, and differences, to influence public policy across a variety of domains. This research produced 92 case studies outlining the role of civil society in impacting political, social, economic, gender, educational, health-related, and environmental policies in ten Arab countries: Lebanon, Syria, Palestine, Jordan, Egypt, Morocco, Tunisia, Yemen, and the Arab Gulf.

Over two dozen researchers and research groups from the above countries participated in this project, which was conducted over a year and a half. The results were reviewed by an advisory committee for methodology to ensure alignment with the project’s goals, and were presented by the researchers in various themed sessions over the course of the two days.








THE CIVIL SOCIETY ACTORS AND POLICY-MAKING PROGRAM

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

THE ISSAM FARES INSTITUTE FOR PUBLIC POLICY AND INTERNATIONAL AFFAIRS AT THE AMERICAN UNIVERSITY OF BEIRUT

The Issam Fares Institute for Public Policy and International Affairs (IFI) at the American University of Beirut (AUB) is an independent, research-based, policy oriented institute. It aims to initiate and develop policy-relevant research in and about the Arab region. The Institute is committed to expanding and deepening knowledge production and to creating a space for the interdisciplinary exchange of ideas among researchers, civil society actors, and policy makers.

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