

A Guide to Criminal Defamation in Southeast Asia

ST
KILL
JOURNAL

TrustLaw



REUTERS/Erik de Castro



PROBE
MEDIA
FOUNDATION
INC.
communication for positive social change



Table of Contents

Acknowledgements	3
Disclaimer	5
Foreword	6
Introduction	7
Context	8
Objective	8
Format	9
Executive Summary	10
Cambodia	11
Laos	12
Malaysia	13
Myanmar	15
Philippines	16
Thailand	18
Vietnam	19
JURISDICTION PROFILES	22
Cambodia chapter	23
Laos chapter	33
Malaysia chapter	47
Myanmar chapter	58
Philippines chapter	75
Thailand chapter	109
Vietnam chapter	127

Acknowledgements

Probe Media Foundation Inc. (PMFI) and the Thomson Reuters Foundation, in collaboration with British Embassy Manila, would like to acknowledge and extend their gratitude to the legal teams of Aqran Vijandran, DFDL, and SyCip Salazar Hernandez & Gatmaitan who contributed their time and expertise on a pro bono basis to make this report possible.

Aqran Vijandran

Aqran Vijandran is a Kuala Lumpur-based law firm driven by three core values – responsiveness, excellence and dynamism – that shape every client interaction. Our multilingual team (English, French, German, Italian, Korean and Bahasa Malaysia) and EU qualified counsel make us one of Malaysia's most international practices, bridging cultures and legal systems for organisations operating locally and across borders.

We provide end to end advice in corporate and cross border transactions, data protection, dispute resolution (including arbitration on every continent), ESG compliance, employment, franchising and infrastructure projects. Guided by a 360degree, solutions oriented approach, we align legal strategy with our clients' commercial goals while maintaining competitive fees and uncompromising quality.

Committed to advancing the rule of law, we regularly devote time and resources to pro bono initiatives that support media freedom, sustainable development and broader access to justice.

DFDL

DFDL was established in 1994 by international partners who recognized the potential of South and Southeast Asia. From its origin in the heart of the Mekong, DFDL has expanded to 10 countries in the region including Bangladesh, Cambodia, Indonesia, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam.

Upholding the vision "One Region, One Firm," we deliver high-quality legal and tax services, specializing in corporate and commercial, energy, M&A, financing, and real estate. Our integrated cross-border knowledge and consistent regional standards make us a reliable partner for multinational companies, financial institutions, and governments. We provide streamlined, efficient assistance for complex multi-jurisdictional matters, ensuring seamless support for your cross-border strategy.

SyCip Salazar Hernandez and Gatmaitan

SyCip Salazar Hernandez & Gatmaitan (SyCipLaw) is one of the Philippines' leading full-service law firms. It has offices in Makati City, the country's business and financial center, as well as Cebu City, Davao

City, and the Subic Bay Freeport Zone. Now in its 80th year, the Firm continues to serve a broad range of clients in core areas of Philippine law, including corporate and commercial transactions, dispute resolution, banking and finance, taxation, employment, and intellectual property. As part of its long-standing commitment to public service, SyCipLaw acted as coordinating law firm and provided pro bono legal research in support of this legal study containing a comparative profile of the various criminal defamation regimes in Cambodia, Laos, Malaysia, Myanmar, the Philippines, Thailand, and Vietnam. The Firm remains committed to contributing to efforts that promote access to justice and legal literacy, particularly for historically underserved or marginalized sectors.

SyCipLaw's contribution to this study is for general information only and does not constitute legal advice. It is not a substitute for consulting qualified counsel on specific legal issues. SyCipLaw makes no warranties regarding the accuracy, completeness, or timeliness of the information and accepts no liability for any consequences arising from its use.

Probe Media Foundation Inc.

Probe Media Foundation Inc. (PMFI) is a non-stock, non-profit organization committed to improving the quality of media in the Philippines and Asia by training professional and aspiring media practitioners. PMFI believes in media and communications for positive social change. Their programs and projects use communications and media to promote social justice, democracy, child and youth development, and community capacity building. PMFI's programs focus on enhancing skills and building the capacity of media practitioners, spokespersons, and content creators in the Philippines and Asia to communicate messages that increase awareness, encourage public discourse, and influence decision-making on crucial development issues.

Thomson Reuters Foundation

The Thomson Reuters Foundation is the corporate foundation of Thomson Reuters, the global news and information services company. As an independent charity, registered in the UK and the USA, we leverage our media, legal and data-driven expertise to strengthen independent journalism, enable access to the law and promote responsible business. Through news, media development, free legal assistance and data intelligence, we aim to build free, fair and informed societies.

TrustLaw, an initiative of the Thomson Reuters Foundation, is the world's largest pro bono legal network. Working with leading law firms and corporate legal teams, we facilitate free legal support, ground-breaking legal research and resources for non-profits, independent media and social enterprises in over 190 countries. By spreading the practice of pro bono worldwide, TrustLaw wants to strengthen civil society and drive change. If you have ideas for resources we could develop or legal research projects that would be of assistance after reading this guide, please contact us. If you are a non-profit or social enterprise in need of legal support, you can find out more about the service here and join [TrustLaw](#) for free.



REUTERS/Claro Cortes

Disclaimer

This report is offered for information purposes only. It is not legal advice. Readers are urged to seek advice from qualified legal counsel in relation to their specific circumstances.

We intend the report's contents to be correct and up to date at the time of publication, but we do not guarantee their accuracy or completeness, particularly as circumstances may change after publication. Probe Media Foundation Inc., the legal teams of Aqran Vijandran, DFDL, and SyCip Salazar Hernandez & Gatmaitan and the Thomson Reuters Foundation, accept no liability or responsibility for actions taken or not taken or any losses arising from reliance on this report or any inaccuracies herein.

Aqran Vijandran, DFDL, and SyCip Salazar Hernandez & Gatmaitan, generously provided pro bono research to Probe Media Foundation Inc. However, the contents of this report should not be taken to reflect the views of the legal teams of Aqran Vijandran, DFDL, and SyCip Salazar Hernandez & Gatmaitan or the lawyers who contributed.

Foreword

Journalists and media practitioners play a vital role in upholding democracy by fostering an informed citizenry, shaping public discourse and holding power to account. However, this essential function is increasingly hindered by the weaponisation of laws, particularly defamation laws. In Southeast Asia, the misuse of existing laws has become more prevalent, with governments and powerful individuals leveraging them to silence critical voices and stifle investigative journalism. The severe penalties associated with these laws, including imprisonment and substantial fines, can have a profound chilling effect on free speech and undermine the environment necessary for a free press to thrive.

For over 40 years, the Thomson Reuters Foundation has supported independent media to produce world-class, accurate and impartial journalism. Through our combined journalism and legal expertise, we work to identify emerging threats to media freedom and pioneer innovative programs to address these challenges. This report aims to contribute to the media ecosystem's understanding of how defamation laws are being exploited to muzzle journalists, suppress open public debate, and shield powerful individuals from legitimate scrutiny.

This comprehensive report includes comparative research on existing criminal defamation legislation across seven Southeast Asian countries: the Philippines, Myanmar, Thailand, Cambodia, Laos, Malaysia, and Vietnam. This resource is designed to guide and support journalists and media outlets in their critical reporting, helping them navigate the complex legal landscape and protect their rights.

We are grateful for the collaborative effort that made this report possible, which was produced for the Probe Media Foundation Inc. (PMFI) and the Thomson Reuters Foundation, in collaboration with the British Embassy Manila, by a team of dedicated lawyers from leading law firms in Southeast Asia, including coordinating law firm, SyCip Salazar Hernandez and Gatmaitan, and Aqran Vijandran and DFDL. We extend our deepest appreciation to the lawyers who generously donated their time and expertise to make this report a reality.

We hope that this report will serve as a powerful tool in promoting press freedom, protecting journalists, and fostering a more open and democratic media landscape across Southeast Asia. By shedding light on the misuse of defamation laws and providing critical guidance, we aim to equip journalists and media outlets to continue their vital work without fear of reprisal, and to empower those fighting to protect strong, free and independent media.

Carolina Henriquez-Schmitz
Director, Access to Law,
Thomson Reuters Foundation



REUTERS/Jason Lee

Introduction

Context

Southeast Asia remains a region of concern for advocates of media and press freedom. Despite some progress in recent years, many countries in the region continue to struggle with serious challenges in building and maintaining a free and independent media landscape. The suppression of objective journalism weakens the fourth estate, leaves the public less informed, and erodes the ability to hold those in power accountable. The 2025 World Press Freedom Index, published by Reporters Without Borders, highlights these concerns: Cambodia (161st), Laos (150th), Malaysia (88th), Myanmar (169th), Philippines (116th), Thailand (85th), and Vietnam (173rd) all rank in the bottom half across the region, varying degrees of repression persists, with government crackdowns and restrictive laws undermining press freedom.

A troubling trend in the region is the weaponization of criminal and civil laws against journalists and media outlets. Criminal defamation laws have become tools leveraged by governments and powerful private actors to silence critics and suppress investigative journalism. These laws often carry severe penalties, including imprisonment and hefty fines, which discourages free speech and free press.

According to the Committee to Protect Journalists, criminal defamation laws are often used to target journalists who expose corruption, report on human rights abuses, or criticize government policies. In many cases, these laws are intentionally vague, allowing for broad interpretation and selective enforcement against perceived threats by those in power. The International Press Institute documented numerous instances where criminal defamation was used to silence journalists across the region.

In the Philippines, the cybercrime law has been used to file multiple libel cases against prominent journalist Maria Ressa and her news organization, Rappler. In Thailand, the criminal defamation law has been used in conjunction with the Computer Crimes Act to prosecute journalists and activists who criticize the government or powerful corporations. In Cambodia, defamation laws have been used to target opposition politicians and civil society activists. Meanwhile, in Myanmar, the free press landscape has dramatically worsened since the 2021 military coup, with scores of journalists facing arrest and media houses facing prosecution under various laws, including criminal defamation statutes.

Objective

As highlighted by an international human rights organization, criminal defamation laws are incompatible with international standards on freedom of expression and should be abolished in favor of civil remedies. Notably, Thomson Reuters Foundation surveyed criminal defamation laws and other laws criminalizing or restricting speech across 33 countries in the Americas¹. Building on that model, this

¹ Critics Are Not Criminals – Comparative Study of Criminal Defamation Laws in the Americas <https://www.trust.org/resource/critics-are-not-criminals-comparative-study-of-criminal-defamation-laws-in-the-americas/>

study aims to further understand criminal defamation laws in Southeast Asian countries, and their implications for press freedom in the region.

This study aims to inform journalists and other stakeholders and advocates of free speech, of the rights and remedies available to them across various jurisdictions. By examining legal frameworks, how they are applied, and their impact on journalism and free expression, we hope others will use this information for reform and better protection mechanisms for journalists and media organizations operating in these challenging environments.

This study will also serve as foundation for the economic research that is being conducted in parallel by the British Embassy, Manila, which seeks to explore the relationship between criminal defamation laws and foreign direct investment.

Format

This study aims to be a useful and practical resource for journalists, media organizations, and researchers across Southeast Asia. It is organized as follows:

- **Executive Summary:** The executive summary provides a high-level overview of each jurisdictional profile's framework. It highlights key features such as definitions, penalties, available remedies, and legal trends. Readers can expect concise summaries for a quick yet comprehensive grasp of the essentials.
- **Comparative Table:** This is followed by a comparative table which summarizes the similarities and distinctions in legal defamation frameworks across the region. This section is especially helpful for those looking to identify regional trends at a glance.
- **Jurisdictional Profiles:** The main body of the study contains the jurisdictional profiles, each presenting write-ups in a question-and-answer format. This structure allows readers to easily locate detailed information on key legal concepts, procedures, and remedies within each jurisdiction.
- **Annexes:** For readers seeking further detail on the research, statutory provisions, case law, and other legal references are compiled in the annexes.



REUTERS/Soe Zeya Tun

Executive Summary

Cambodia



Definition of Defamation

Defamation in Cambodia is defined as any allegation or slanderous charge that undermines the honor or reputation of a person or institution. It can take various forms, including spoken words, written words, drawings, or audio-visual communications intended for the public.



Applicable Penalties

The Criminal Code classifies defamation as a petty offense, punishable by a fine of between KHR100,000 (approx. USD25) and KHR10,000,000 (approx. USD2,500). However, the victim of defamation can also claim civil remedies under the Criminal Code and the Civil Code. Both the civil and criminal complaints can be filed together at the criminal court. If the defamation is committed by a media organization, victims of the defamation case may seek a court order to retract the defamatory article, obtain compensation, or both. The press that publishes a defamatory article may be fined up to KHR5,000,000 (approx. USD1,250).



Prescriptive Periods

According to the Criminal Procedure Code, defamation is considered a petty offense with a one-year statute of limitations. The countdown for this timeframe begins from the moment the alleged defamation occurred.



Available Remedies

In Cambodia, the rights of an accused in a criminal proceeding are protected by international and domestic laws, including the Universal Declaration of Human Rights, the International Convention on Civil and Political Rights, the Constitution, and the Criminal Procedure Code. The accused has the right to be informed of the charges, defend themselves with a lawyer, receive a fair and public trial, be present at trial, receive free interpretation during the hearing, and appeal their conviction to a higher court.

Cambodian law does not explicitly outline the defenses for criminal defamation cases. Additionally, since court decisions are not publicly available, it's unclear what defenses have been successful in the past. However, according to the Criminal Code, a person can be held criminally liable if an offense meets three key elements, including legality, action, and intention. To defend against a defamation charge, the accused may provide evidence to prove that the statement was not made publicly, the statement was true, or the statement did not specifically identify the plaintiff. In addition, the accused may argue that they did not intend to commit the offense.



Legal Trends

Cambodia's court decisions are not publicly available, making it challenging to pinpoint legal trends in defamation cases. However, news articles suggest that most defamation cases involve celebrities and politicians. The country has a history of cracking down on websites and social media platforms accused of defamation. A notable example is the revocation of Voice of Democracy's (VOD) license in 2023 for allegedly violating journalism ethics and harming the nation's reputation. Similarly, The Cambodia Daily, an English-language newspaper, ceased operations in 2017 following accusations of tax evasion and defamation.

Laos



Definition of Defamation

In the Lao PDR, defamation is not governed by a single, comprehensive regulation. Instead, it is addressed by several regulations that prohibit making false statements that harm another person's reputation or honor. These include:

- Penal Code (Nº 26/NA, 17 May 2017): Outlines criminal penalties for defamation.
- Civil Code (Nº 55/NA, 6 December 2018): Provides for civil remedies.
- Decree on Information Management on the Internet (Nº 327/Gov, 16 September 2014): Addresses defamation in the context of online information.
- Law on Preventing and Combating Cybercrime (Nº 61/NA, 15 July 2015) and Instruction on the Implementation of the Law on Preventing and Combating Cybercrime (Nº 254/MPT, 24 September 2018): Regulate defamatory acts in cyberspace.
- Law on Media (Nº 01/NA, 4 November 2016): Sets standards for media conduct, including prohibitions against defamation by media organizations and personnel.

Together, these laws and regulations form a framework that addresses defamation in various contexts, ensuring protection against reputational harm.



Applicable Penalties

Criminal defamation is punishable by three months to one year of imprisonment or by re-education without deprivation of liberty, along with a fine ranging from LAK1,000,000 (approx. USD45) to LAK5,000,000 (approx. USD225). Specific regulations may also impose measures such as re-education, warnings, fines, temporary suspension, or withdrawal of media activity operation licenses, press cards, or media specialist licenses.



Prescriptive Periods

The prescriptive period for criminal defamation in Lao PDR is seven years. This means that criminal proceedings for defamation must be initiated within seven years from the date the offense was committed.



Available Remedies

Remedies for damages to reputation or honor include rehabilitating reputation and honor through an apology, resolving misunderstandings through mass media, and paying damages.



Legal Trends

The 1989 version of the defamation laws in the penal code focused primarily on damage to reputation through slander, libel, or coarse behavior, with relatively low fines and imprisonment terms. The 2005 amendment increased the fines and introduced a clearer distinction between penalties such as re-education without imprisonment and actual imprisonment, offering more flexibility in the penalties imposed. The 2017 amendment significantly raised the fines for defamation, libel, and insults, and introduced a new category of humiliation, expanding the scope of the defamation laws to include additional acts that could damage an individual's dignity and reputation.

These amendments reflect the evolution of the defamation laws in Lao PDR, increasing penalties over time and expanding the laws to cover a wider range of actions that harm an individual's reputation and dignity.

Malaysia



Definition of Defamation

In Malaysia, defamation is defined as the act of making a false statement about another person, which injures their reputation. Halsbury's Laws of Malaysia on Defamation defines defamation as statements which tend to lower a person's reputation in the eyes of right-thinking members of society, to cause a person to be shunned or exposed to hatred, contempt, or ridicule; or to cast an imputation on him which is injurious to his office, profession, or trade. Defamation is regulated under both civil and criminal law. The Defamation Act 1957 governs civil defamation, while sections 499 and 500 of the Penal Code criminalizes defamatory statements made with intent to harm reputation.



Applicable Penalties

The penalties for criminal defamation are outlined in Section 500 of the Penal Code. A person found guilty of this offence is punishable by imprisonment up to two years, a fine, or both. The Penal Code does not specify a fixed amount for the fine under Section 500. The amount is left to the discretion of the court, depending on the facts of the case, the severity of the defamatory statement, and other relevant factors.



Prescriptive Periods

There is no prescriptive period for initiating prosecution in criminal defamation cases in Malaysia. In fact, there is generally no limitation period for criminal offenses.



Available Remedies

An accused in a criminal defamation case may seek to quash the charges if there are procedural irregularities or insufficient evidence to sustain the prosecution.

If the case proceeds, the accused can rely on exceptions under Section 499 of the Penal Code, which provide defenses such as truth in the public interest, where true statements made for the public good are not considered defamatory and fair comment on public matters, allowing opinions expressed in good faith on public figures or issues. Additionally, the general defenses under Chapter IV of the Penal Code may apply, including mistake of fact (acting under a false but honest belief) or accident (where harm was unintended).



Legal Trends

Criminal defamation cases under Section 499 of the Penal Code are rare, with no significant reported decisions in recent years. However, defamation-related charges under the Communications and Multimedia Act 1998 and other Penal Code provisions have been increasingly invoked, especially in politically sensitive or high-profile cases. The trend reflects a focus on online speech and criticism of public institutions or prominent individuals, highlighting the intersection of defamation laws with public order and digital content regulation.

Myanmar



Definition of defamation

Defamation in Myanmar is primarily governed by Sections 499 and 500 of the Myanmar Penal Code, which define defamation and prescribe penalties, respectively. Defamation occurs when someone, through spoken or written words, signs, or visible representations, makes or publishes a statement about another person with the intent to harm their reputation, or knows it is likely to cause harm. Section 66(d) of the Telecommunications Law and Section 34 (d) of the Electronic Transaction Law, criminalize defamatory acts committed via telecommunication networks or electronic means. Further, Section 25 (b) of the News Media Law criminalizes publishing or broadcasting content that may intentionally harm the reputation of an individual or organization, except in cases where the content serves the public interest. To constitute criminal defamation under Myanmar law, a statement must be false, harmful to reputation, communicated to a third party, made with intent or negligence, and cause reputational damage by lowering the subject's standing in society.



Applicable penalties

The penalties vary based on the relevant law. Under the Penal Code (Section 500), defamation, printing, or selling defamatory material carries a penalty of up to two years' imprisonment, a fine, or both. The Telecommunications Law (Section 66(d)) imposes up to two years' imprisonment, a fine not exceeding MMK 1,000,000, or both for defamation committed through electronic communication. Under the Electronic Transactions Law (Section 34), creating or distributing defamatory content using electronic technology results in a fine of MMK5,000,000 (approx. USD2,350) to MMK10,000,000 (approx. USD4,700) with imprisonment of one to three years if unpaid. The News Media Law (Section 25(b)) prescribes a fine ranging from MMK300,000 (approx. USD141) to MMK 1,000,000 (approx. USD470) for publishing or broadcasting content that harms an individual's or organization's reputation.



Prescriptive periods

There are no specified limitation periods under Myanmar's criminal defamation laws. Lawsuits for civil defamation must be filed within one year from the date the defamatory statement is published, spoken, or when its harmful effects are clearly felt.



Available remedies

In Myanmar, the remedies available to an accused in defamation cases depend on the circumstances and legal defenses raised. Under the Penal Code, the accused may invoke defenses provided in Section 499. If the complaint was improperly filed or lacks legal basis, the accused can seek dismissal of charges, particularly in cases under Section 66(d) of the Telecommunications Law. Bail or temporary release may also be granted if the accused is detained. If a valid defense is

successfully proven, such as the truth of the statement, the court may grant an acquittal, leading to case dismissal.



Legal Trends

Criminal defamation cases under Sections 499–502 of the Penal Code remain rare, with no notable reported decisions in recent years. However, the use of Section 66(d) of the Telecommunications Law has increased, particularly in politically sensitive cases. Since 2015, journalists, editors, and media organizations have frequently faced defamation charges for reporting on corruption and government misconduct, reflecting a growing trend in legal actions against the press.

Philippines



Definition of Defamation

Defamation is broadly characterized as a malicious imputation that dishonors or discredits an individual. Criminal defamation, as defined under the Revised Penal Code (“RPC”) of the Philippines, is categorized into three primary forms: libel, oral defamation (slander), and slander by deed. Article 355 of the RPC provides that libel refers to defamation through writing or other similar means, while Article 358 provides that slander pertains to oral defamation. Article 359 characterizes slander by deed as acts intended to disgrace a person. Additionally, cyber libel, introduced by the Cybercrime Prevention Act of 2012 (R.A. No. 10175) (“CPA”), addresses defamatory acts committed via electronic systems. For criminal defamation under the RPC (whether libel, oral defamation, or slander by deed), the essential elements which must be present are: (i) A malicious imputation; (ii) The imputation of a crime, vice, defect, or act causing dishonor, discredit, or contempt; (iii) Publication of the defamatory imputation; and (iv) Identification of the victim.



Applicable Penalties

The penalties for criminal defamation in the Philippines vary depending on the type of offense. Libel, when committed through writing, printing, or similar means, is punishable by prisión correccional in its minimum to medium periods or a fine ranging from PHP40,000 (approx. USD700) to PHP1,200,000 (approx. USD21,000), or both. For oral defamation, if serious and insulting in nature, the penalty is arresto mayor in its maximum period to prisión correccional in its minimum period; if not serious, it is penalized with arresto menor or a fine not exceeding PHP20,000 (approx. USD350). Slander by deed carries a penalty of arresto mayor in its maximum period to prisión correccional in its minimum period, or a fine ranging from PHP20,000 (approx. USD350) to PHP100,000 (approx. USD1750) for serious cases, and arresto menor or a fine not exceeding PHP20,000 (approx. USD350) for less serious cases. Cyber libel, under the CPA, is punished more severely with penalties one degree

higher than those for libel, ranging from prisión correccional in its maximum period to prisión mayor in its minimum period.



Prescriptive Periods

The prescriptive periods for criminal defamation offenses are as follows: libel and cyber libel prescribe one year, while oral defamation and slander by deed prescribe six months. For cyber libel under CPA, the one year prescriptive period begins from the discovery of the crime by the offended party, authorities, or their agents.



Available Remedies

The remedies available to an accused in the case of defamation, in general, include filing a counter-affidavit before the prosecutor, filing a motion to quash or motion to dismiss before the court, application for bail, demurrer to evidence, motion for new trial or motion for reconsideration, appeal, or petition for probation. The accused may also raise defenses such as (i) absence of an essential element of the crime; (ii) statements made against public officials in relation to the discharge of official duties; (iii) proof of truth; (iv) prescription of the crime; (v) absolutely privileged communication; (vi) privileged communications, and (vii) violation of constitutional rights.

Civil actions for defamation are also permissible as a civil wrongdoing (known as “quasi-delict” or “tort”) under the Civil Code and case law. This requires the plaintiff to establish that they have suffered personal damage or injury as a direct consequence of the defendant’s wrongful conduct. Such actions are prescribed four years.



Legal Trends

There are several notable developments in trends in defamation laws in the Philippines. Despite extensive legislative efforts from 2004 to 2022, including over 60 bills seeking the decriminalization of libel, no amendments to criminal defamation laws have been enacted as of December 2024.

A significant number of libel and cyberlibel cases involve local politicians as complainants. This accounts for 61% of cases monitored between 2016 and 2023, while journalists and media organizations are common defendants.

The latest ruling of the Supreme Court also clarified rules on cyber libel cases. The prescription period for cyber libel should be based on the RPC which sets the prescription period to one year.

Thailand



Definition of Defamation

Under Thai regulatory framework, defamation is addressed under both criminal and civil law as summarized below:

01. Criminal Defamation under the Thai Criminal Code involves making defamatory statements, whether true or false, about another person or deceased person to a third party, causing harm to the reputation of that person or the family of deceased person or leading them to be scorned or hated. If this offense is committed publicly by advertising through any means such as social media or newspaper, the offender shall be subject to increased criminal penalties in addition to criminal defamation. Additionally, if this offence is committed against Leaders, the offender shall be subjected to even harsher criminal penalties.
02. Civil Defamation under the Thai Civil and Commercial Code involves making a false defamatory statement that harms a person's reputation or livelihood. The offender shall be subjected to civil penalties by compensating the damages arising from this offence.



Applicable Penalties

For general criminal defamation, the penalties are imprisonment for a term not exceeding one year and/or a fine not exceeding THB20,000 (approx. USD587). For criminal defamation via Advertisement, the penalties are imprisonment for a term not exceeding two years and/or a fine not exceeding THB200,000 (approx. USD5,870).

Criminal defamation against leaders has higher penalties, with the imprisonment term ranging from 6 months to 15 years, and/or a fine ranging from THB10,000 (approx. USD296) to THB140,000 (approx. USD4,060), depending on the subject of defamation.



Prescriptive Periods

The prescriptive periods depend on the seriousness of the offence. Generally, the victim of criminal defamation and criminal defamation via advertisement must file a complaint within three months from the date they become aware of the offense and the offender's identity. For Criminal Defamation Against the King, Queen, Crown Prince, or Regent, the prescriptive period is 15 years from the date of the offense. For criminal defamation against the King, Queen, Consort, Crown Prince, or Head of a Foreign State or a Foreign Representative who has been appointed to the Royal Court, the prescriptive period is ten years from the date of the offense.



Available Remedies

Under the Thai regulatory framework, there are no specific remedies directly available to the accused in cases of criminal defamation. However, if a Thai court finds the accused not guilty and dismisses the complaint for wrongful criminal defamation, the accused may file a civil complaint in a Thai court seeking compensation for damages from the complainant in charge of tort, or file a criminal complaint against the complainant for filing a false criminal complaint.



Legal Trends

From 2020, criminal defamation lawsuits have become an increasingly significant issue in Thailand, particularly in the context of criminal defamation against the King, Queen, Crown Prince, or Regent and their application to critics of the monarchy.

However, after the year 2021, defamation cases involving journalists and media workers have become rarer.

Vietnam



Definition of Defamation

Vietnamese law lacks an explicit definition of “defamation.” However, Article 156 of the Criminal Code criminalizes acts analogous to defamation. These include fabricating or spreading false information that seriously insults someone’s dignity, honor, or legitimate rights and interests, or falsely reporting a crime to authorities. Civil protection for honor and dignity is addressed in Article 34 of the Civil Code, covering various forms of insult. The forms of defamation can be oral, written, or online. Serious defamation constitutes a criminal offense while less serious cases may face administrative sanctions.



Applicable Penalties

Penalties for criminal defamation under Article 156 of the Criminal Code vary based on severity and aggravating circumstances. These include fines ranging from VND10,000,000 – 50,000,000 (approx. USD400 – USD2,000), non-custodial reform (up to two years) and potentially imprisonment for terms ranging from three months – seven years). Aggravating factors, such as organized crime, abuse of power, or causing severe mental harm, increase the applicable penalties. In civil cases, remedies include public apologies, rectifications, and compensation for damages, but no criminal penalties are involved.



Prescriptive Periods

The statute of limitations for criminal defamation depends on the severity of the offense. The statute of limitations for criminal prosecution is five years for less serious offenses pursuant to Clauses 1 and 2 of Article 156 of the Criminal Code and ten years for serious offenses pursuant to Clause 3 of Article 156 of the Criminal Code.



Available Remedies

In criminal cases, the court may impose remedies such as compensation for damages, public apologies, and property confiscation, pursuant to Article 46 of the Criminal Code. These measures are applied at the court's discretion. Remedies in civil actions include public apologies, rectifications, and compensation for damages. Defendants in defamation cases can raise several affirmative defenses, including truth, lack of knowledge of the information's falsity, absence of intent to defame, lack of capacity to understand the consequences of their actions, justifiable force, urgent circumstances, or actions taken under direct orders.



Legal Trends

Information on specific defamation cases against journalists, media organizations, or activists remains limited in publicly available sources. While some such cases involving these groups exist, charges are often brought under broader statutes (such as violating press law or harming state interests) rather than by applying laws of defamation. No recent amendments to Article 156 have been noted as of January 2025.



COMPARATIVE TABLE FOR ALL JURISDICTIONS

	Cambodia	Lao PDR	Malaysia	Myanmar	Philippines	Thailand	Vietnam
Does defamation constitute a criminal offense?	YES	YES	YES	YES	YES	YES	YES
Does defamation constitute a civil offense?	NO Although defamation is not legally qualified as a civil offense, the victim may initiate both civil and criminal complaints with the criminal court.	YES	NO	YES	YES	YES	YES
Did the country explore or pass amendments to the criminal defamation law?	NO We are not aware of any plan to amend the criminal defamation law other than the amendment made in 2018 to include the offense related to royal insult.	YES	NO	NO	YES (explored but not passed)	YES (the latest amendment was done in 2017)	NO
Have there been criminal defamation cases filed against journalists in the last 5 years?	YES	UNKNOWN Access to court decisions, whether printed or not, is not readily available to the public.	No official reported decisions. Ongoing cases.	YES	YES At least 50 journalists with libel and cyberlibel cases.	YES	NO There are no documented criminal defamation cases against journalists



REUTERS/Andy Soloman

Jurisdiction profiles



REUTERS/Erik De Castro

Cambodia chapter



1. Defamation

Defamation is defined as any allegation or slanderous charge that undermines the honor or reputation of a person or an institution². Defamation may take several forms, including:

- (c) spoken words, by any means whatsoever, announced in a public place or in a public meeting;
- (d) written words or drawing by any means whatsoever, released or displayed to the public; and
- (e) any audio-visual communications intended for the public³.

The Criminal Code does not provide any guidance as to what qualifies as a “slanderous charge” or what would be regarded as “undermining the honor or the reputation of a person or an institution.”

Article 306 of the Criminal Code provides that defamation committed by means of media is subject to the provisions of the Press Law⁴.

1.1 Does defamation constitute a criminal offense?

Yes, defamation is considered a petty offense under the Criminal Code and the Press Law.

The Criminal Code classifies criminal offenses into three distinct types, including felony, misdemeanor and petty offenses. A felony is a serious offense punishable by life imprisonment or a prison term ranging from more than five years to 30 years⁵. A misdemeanor is a less severe offense with a prison term of six days to not more than five years. Both felonies and misdemeanors may also incur a monetary fine in addition to imprisonment. A petty offense is a minor fine and it is typically punishable with not more than six days imprisonment or only a monetary fine⁶.

The defamation that is committed by the means stated in Article 305 of the Criminal Code above is punishable by a fine of between KHR 100,000 (approx. USD 25) and KHR 10,000,000 (approx. USD 2,500)⁷.

Pursuant to the Press Law, a party who is the victim of defamation through media may seek a court order to: (1) have the article concerned retracted; (2) obtain compensation; or (3) obtain both (1) and (2) above. Under the Press Law, a fine of up to KHR 5,000,000 (approx. USD 1,250) is payable by the press which publishes a defaming article⁸.

Under the Criminal Code and the Press Law, it does not appear that imprisonment is permitted for a person found to have committed defamation.

| 2 Article 305 of Criminal Code.
 | 3 Article 305 of Criminal Code.
 | 4 Article 306 of the Criminal Code.
 | 5 Article 46 of the Criminal Code.
 | 6 Article 48 of the Criminal Code.
 | 7 Article 305 of Criminal Code.
 | 8 Article 10 of the Press Law.

1.2 Does defamation also constitute a civil offense?

Under Cambodian law, for a criminal offense, the victim may initiate a criminal claim together with a civil complaint to the criminal court⁹, however defamation is not legally qualified as a civil offense that could be pursued separately from criminal proceedings.

In addition to a claim for civil remedies under the Criminal Procedure Code, a victim of defamation may also rely upon the provision of the Civil Code for a general breach of the personal right to dignity through a civil claim, noting that such a claim would not necessarily be qualified as a ‘defamation’ claim under the Criminal Code. Pursuant to the Civil Code, personal rights include the right to life, body, health, freedom, name, dignity, privacy, and other rights relating to personal benefits or interests¹⁰. The Civil Code offers the right to seek damages against any person who intentionally or negligently infringes the (personal) rights of another in violation of law¹¹.

1.3 What are the differences in the essential elements of civil defamation and criminal defamation?

Cambodian law does not distinguish between civil defamation and criminal defamation. The Criminal Procedure Code only differentiates between the purposes of a civil complaint and a criminal complaint related to a criminal offense. A criminal action aims to examine the existence of an offense, to prove the guilt of an offender, and to punish the person according to the law, whereas a civil action is initiated to seek compensation for the victim of the offense and to allow victims to receive sufficient damages corresponding to the injuries they suffered.

The Criminal Code does not explicitly outline the elements of defamation as an offense other than the forms of defamation discussed in Section 1.1 above. However, as a general rule under the Criminal Code, a person can be held criminally liable if an offense meets three essential elements, including (1) principle of legality; (2) action; and (3) intention. As for the principle of legality, a conduct may give rise to criminal conviction only if it constituted an offense at the time it occurred¹². In relation to defamation as an offense, there must be evidence of a criminal action committed by the accused. As for the element of intention, the suspect must have demonstrably intended to commit the offense. However, in certain cases specified by law, recklessness, carelessness, negligence, or failure to fulfill a specific obligation can also lead to criminal liability¹³.

1.4 Penalties under relevant statutes governing civil defamation

Please refer to our response in 1.1 above.

| 9 Article 22 of the Cambodian Criminal Procedure Code.

| 10 Article 10 of the Civil Code.

| 11 Articles 13 and 743 of Civil Code.

| 12 Article 3 of the Criminal Code.

| 13 Article 4 of the Criminal Code.



REUTERS/Damir Sagol

2. Laws that cover criminal defamation¹⁴

Please refer to the Annex of the laws for Cambodia at the end of this chapter.

3. Elements of defamation

3.1 What are the essential elements of defamation under the laws of Cambodia?

Cambodian law does not provide any specific elements of defamation, except the forms of defamation under Article 305 of the Criminal Code, which we discussed in Section 1 above.

3.2 How have the courts considered external developments in their interpretation of the elements under the offense of criminal defamation, if at all?

Cambodia does not have a central repository of case law. The opinions and decisions of the Cambodian courts are usually not published or available to the public.

3.3 Are there similarities and adherence to international standards in the interpretation of these elements?

Cambodia does not have a central repository of case law. The opinions and decisions of the Cambodian courts are usually not published or available to the public.

4. Prescriptive period and penalties

4.1 What is the prescriptive period and the penalties under criminal defamation, if any?

Under the Criminal Procedure Code, the statute of limitation is one year for defamation which is a petty offense¹⁵. The duration of the statute of limitations commences from the time the offense was committed¹⁶.

Please refer to our response in Section 1.1 above regarding the applicable penalties.

4.2 What are the prescriptive periods set out by the criminal defamation laws in these countries?

Please refer to the discussion on the statute of limitation for a defamation case under the Criminal Procedure Code in Section 4.1 above.

¹⁴ See Annex of Laws.

¹⁵ Article 9 and 10 of the Criminal Procedure Code.

¹⁶ Article 11 of the Criminal Procedure Code.

4.3 Available examples or key case laws where the offense of criminal defamation was defined and/or punished:

As the decision of the Cambodian court are not published or available to public, this information cannot be provided.

5. Remedies

5.1 What remedy is available to an accused in the case of defamation?

In Cambodia, the rights of an accused in a criminal proceeding are protected by the Universal Declaration of Human Rights (“UDHR”), the International Convention on Civil and Political Rights (“ICCPR”) Constitution, and the Criminal Procedure Code. The following are some of the key rights:

- (a) **Right to be informed of the charges:** The accused has the right to be informed of the reason of the charges, the background of the case, and the type of offenses¹⁷;
- (b) **Right to defend oneself:** The accused has the right to defend themselves, either personally or through a lawyer¹⁸. If the accused cannot afford attorney services, the accused may request a lawyer from the bar association. In addition, the lawyer can also be appointed by the court based on the conditions of the accused¹⁹;
- (c) **Right to a fair and public trial:** The accused has the right to a fair and impartial trial, conducted in accordance with the law and international human rights standards²⁰. The accused person is also entitled to public trial unless such arrangement may affect national order and customs²¹;
- (d) **Right to be present at trial:** Although the Criminal Procedure Code permits the court to render a default judgment if the accused fails to appear at the hearing, it also provides the accused with the right to challenge the default judgment²²;
- (e) **Right to receive free interpretation during the hearing:** If the accused cannot understand the local language, he/she is entitled to free interpretation during the hearing²³; and
- (f) **Right to appeal:** The accused has the right to appeal their conviction and sentence to a higher court (appeal court) within one month from the date of issuance of the final judgment by the lower court²⁴.

¹⁷ Article 143 of the Criminal Procedure Code.

¹⁸ Article 48 of the Criminal Procedure Code.

¹⁹ Article 301 of the Criminal Procedure Code.

²⁰ Article 129(2) of the Constitution.

²¹ Article 316 of the Criminal Procedure Code.

²² Article 365 of the Criminal Procedure Code.

²³ Article 14(2)(f) of the ICCPR

²⁴ Article 381 and Article 382 of the Criminal Procedure Code.

5.2 Overview of the general remedies available to an accused wrongfully charged with criminal defamation, and details of the outcomes where these available remedies were invoked in each jurisdiction

If someone is wrongfully charged with criminal defamation, there are several remedies available to them. If the plaintiff fails to prove the charge or the accused has relevant evidence to justify that the statement was not made publicly, was true, or did not specify the plaintiff's name, the accused may request the prosecutor to dismiss the charge.

In addition, the accused may file a counter-complaint for defamation on the basis that the original complaint included or constituted the elements of defamation or is insulting. The accused may also pursue civil claims for damages.

The Criminal Code also imposes criminal liability for malicious denunciation. Malicious denunciation is the denunciation of a fact, which is known to be false and is liable to cause criminal or disciplinary sanctions, if it is sent to:

- (a) a competent authority to initiate action, including judges, judicial police officers, or an employer; or
- (b) any person having the power to refer it to the competent authority²⁵.

Malicious denunciation shall be punishable by imprisonment from one month to one year and a fine from KHR 100,000 (approx. USD 25) to KHR 2,000,000 (approx. USD 500)²⁶. Additional penalties may be imposed for this misdemeanor, including:

- (a) publication of sentencing decision for a period not exceeding two months;
- (b) publication of sentencing decision in the print media; and
- (c) broadcasting of sentencing decision by any audio-visual communication for a period not exceeding eight days²⁷.

If the accused has been wrongfully convicted by the prosecutor, there is no specific legal right to receive compensation from the government for such a wrongful conviction other than the right to claim for damages above. We are not aware of any precedent where the government has granted compensation to a person who wrongfully convicted or served a sentence. As noted above, the opinions and decisions of the Cambodian courts are usually not published or available to the public.

²⁵ Article 311 of the Criminal Code.

²⁶ Article 312 of the Criminal Code.

²⁷ Article 313 of the Criminal Code.

6. Defenses

6.1 What defenses may be raised if a case of criminal defamation has been filed against an individual or an organisation?

Cambodian law does not specify the type of defenses that the accused may use if a case of criminal defamation has been filed. Further, given that the opinions and decisions of the Cambodian courts are usually not published or available to the public, we cannot confirm the defences that accused persons or organizations have used historically, and which were deemed acceptable by the Cambodian court.

Notwithstanding the above, as discussed in Section 5.2 above, to defend against the charge, the accused must provide evidence to justify that the statement was not made publicly, that it was true, or that the statement did not specifically identify the plaintiff. Additionally, the accused may also argue about their intention, claiming that they did not intend to commit the offense.

6.2 Are there any exceptions to the offense of criminal defamation under existing laws?

There is no specific exemption provided under Cambodian law.



REUTERS/Samrang Pring

7. Amendments

7.1 Did the country explore or pass amendments to the criminal defamation law?

At the time of publication of this Guide there appear to be no plans to amend the criminal defamation law other than the amendment to the Criminal Code in 2018 to include the offense related to royal insult.

8. Summary

As the the opinions and decisions of the Cambodian courts are not published or available to the public, it was not possible for the lawyers working on this guide to provide a summary of:

- (a) Criminal defamation cases filed against journalists or media organizations or activists over the last 5 years
- (b) The prevailing circumstances, or charges of criminal defamation that have been pursued against journalists and media workers
- (c) The aspects of press freedoms and freedom of expression that would have been considered in these cases
- (d) Typically which parties institute suits for criminal defamation
- (e) Against whom the suits for criminal defamation are typically filed
- (f) The types of penalties imposed in cases of criminal defamation.

8.1 Overview of the general trends of suits prosecuted on the basis of criminal defamation

The general trends of defamation case based on the case laws cannot be confirmed since decision of the Cambodian court are not published or available to public. However, based on news articles and public domain information, most defamation cases seem to be related to celebrities and politicians.

9. Other notes

Cambodia has a history of challenging websites and social media platforms based on accusations of defamation. In 2023, the Cambodian government revoked the license of Voice of Democracy (VOD), one of Cambodia's media platforms, for allegedly violating journalism ethics and harming the nation's reputation. Similarly, The Cambodia Daily, an English-language newspaper, stopped operating in 2017 after being accused of tax evasion and defamation.

Annex of Citations (Cambodia)

No.	Legal Provision	Description
1.	Civil Code dated 8 December 2007	The Criminal Code was drafted with the assistance of France to define offenses, determine those who may be found guilty of committing them, set penalties, and determine how they shall be enforced. The code was amended in 2018 to include a new criminal offense related to royal insult. The Criminal Code provides the definition of defamation and sets out various forms of criminal defamation as discussed in Section 1.1 above.
2.	Code of Civil Procedures dated 17 July 2007	The Criminal Procedure Code aims at defining the rules to be strictly followed and applied in order to clearly determine the existence of any criminal offense. The Criminal Procedure Code is the result of almost 10-years of work by the Ministry of Justice and was prepared with assistance of the French government and based on the Cambodian constitution and human rights conventions.
3.	Civil Code dated 8 December 2007	The Cambodian Civil Code establishes the rules governing the application of civil law and protection of individual rights and interest, including the right to dignity. Tort provisions are also incorporated into the Civil Code, whereby an individual may claim damages for any tortious acts (including breach of individual rights).
4.	Code of Criminal Procedure dated 10 December 2012	The Civil Procedure Code was promulgated to establish the rules governing civil proceedings in Cambodia. They were drafted based on an amalgamation of French and Japanese principles with consideration of Cambodia customs and traditions.
5.	Law on the Rights and Freedom of Press dated 18 July 1995	The Press Law aims to ensure freedom of the press and publications, as well as granting rights to the victim to measure and receive compensation against defaming articles published by the press.



REUTERS

Laos chapter



1. Defamation

Article 44 of the Constitution of the Lao People's Democratic Republic (Nº 25/NA, 06 May 2003) (**Constitution**) guarantees Lao citizens the right to freedom of speech, press, and assembly. While this right is a fundamental constitutional guarantee, it is balanced by laws that protect individuals from false and damaging statements.

In the Lao PDR, defamation is not governed by a single, comprehensive regulation. Instead, it is addressed by several regulations that prohibit making false statements that harm another person's reputation or honor. These include the Penal Code (Nº 26/NA, 17 May 2017), which outlines criminal penalties for defamation, and the Civil Code (Nº 55/NA, 6 December 2018), which provides for civil remedies. Additionally, the Decree on Information Management on the Internet (Nº 327/Gov, 16 September 2014) addresses defamation in the context of online information. The Law on Preventing and Combating Cybercrime (Nº 61/NA, 15 July 2015) and the Instruction on the Implementation of the Law on Preventing and Combating Cybercrime (Nº 254/MPT, 24 September 2018) further regulate defamatory acts in cyberspace. The Law on Media (Nº 01/NA, 4 November 2016) sets standards for media conduct, including prohibitions against defamation by media organizations and personnel. Together, these laws and regulations form a framework that addresses defamation in various contexts, ensuring protection against reputational harm.

1.1 Does defamation constitute a criminal offense?

Yes. Each of the acts of libel²⁸, defamation²⁹, humiliation³⁰ and insults³¹ are classified as offenses³² under the Penal Code (Nº 26/NA, 17 May 2017) (**Penal Code**). These grounds are defined as follows:

- (a) **Defamation:** Any person severely damaging the honor of another person through written, oral or other means shall be punished by three months to one year of imprisonment or by re-education without deprivation of liberty and with a fine in amount of from LAK 1,000,000 (approx. USD 45) to LAK 5,000,000 (approx. USD 225).
- (b) **Libel:** Any person libeling another person through written, oral or other means resulting in severe damage to the other person's honor shall be punished by three months to one year of imprisonment or by re-education without deprivation of liberty and with a fine in amount of from LAK 1,000,000 to LAK 5,000,000.
- (c) **Humiliation:** Any person seriously infringing upon the dignity or honor of other persons shall be punished by public criticism or by re-education without deprivation of liberty or by three months to one year of imprisonment and shall be fined from LAK 1,000,000 to LAK 5,000,000.

| 28 Art. 205, Penal Code

| 29 Art. 205, Penal Code

| 30 Art. 206, Penal Code

| 31 Art. 207, Penal Code

| 32 Art. 11 Penal Code

- (d) **Insults:** Any person using indecent language (whether written or oral) or effecting indecent acts against another person to cause severe damage to the second person's honor shall be punished by three months to one year of imprisonment or by re-education without deprivation of liberty and shall be fined from LAK 1,000,000 to LAK 5,000,000.

1.2 Does defamation also constitute a civil offense?

Yes. Defamation can be subject to tortious claims under the Civil Code (Nº 55/NA, 6 December 2018) (**Civil Code**), which provides the following basis for tortious claims:

- (a) intentional or negligent action or omission of any person which breaches the laws and regulations³³;
- (b) unsolicited work conducted by a person for the benefits of another person without being assigned by such person³⁴; and
- (c) acquiring property or benefits of another person to be one's own without basis of law which causes a decrease in the property or benefits of the other person³⁵.

With respect to any intentional or negligent action or omission by a person that breaches laws and regulations, damages include harm to reputation or honor. Damage to reputation or honor occurs when a person is alleged, libeled, insulted, or has their personal information disclosed³⁶.

1.3 What are the differences in the essential elements of civil defamation and criminal defamation?

Civil defamation focuses on compensating the victim, while criminal defamation seeks to punish the wrongdoer and deter future offenses. Both forms of defamation are addressed under different legal frameworks in Lao PDR.

1.4 Penalties under relevant statutes governing civil defamation

Under the Civil Code, remedies for damages to reputation or honor include rehabilitating reputation and honor through an apology, resolving misunderstandings through mass media, and paying damages³⁷.

33 Art. 472, Civil Code

34 Art. 496, Civil Code

35 Art. 501, Civil Code

36 Art. 478, Civil Code

37 Art. 480, Civil Code.

2. Laws that cover criminal defamation³⁸

In addition to Section 1.1 above.

Content made available online will be subject to the following laws and regulations of the Lao PDR: (i) Decree on Information Management on the Internet (Nº 327/Gov, 16 September 2014) (**Internet Information Decree**); (ii) Law on Preventing and Combating Cybercrime (Nº 61/NA, 15 July 2015) (**Cybercrime Law**); and (iii) Instruction on the Implementation of the Law on Preventing and Combating Cybercrime (Nº 254/MPT, 24 September 2018) (**Cybercrime Instruction**).

The content prohibited from being disseminated online in the Lao PDR under the Internet Information Decree³⁹ includes content that:

- (a) falsifies, swindles, and convinces the people of the Lao PDR, and abroad, to attack the Lao People's Revolution Party, the Government of Lao PDR, or destroys the peace, independence, sovereignty, democracy, and prosperity of the Lao PDR;
- (b) Persuades and supports terrorist movements, crime, and causes trouble to society;
- (c) publicizes, distorts, and disseminates false propaganda to create discrimination against ethnic groups and against the nation;
- (d) disseminates pornography, edited photos (including digitally modified), and other photos that the laws of the Lao PDR have prohibited, or photos discrediting Lao tradition, infringes other's intellectual property, or services for buying or selling of sex;
- (e) reveals the nation's secrets, military secrets, or other secrets as specified in the laws and regulations of the Lao PDR;
- (f) disseminates false information and distorts facts for the purpose of discrediting the reputation, dignity, or rights of individuals, organizations, institutions, or departments; and
- (g) uses the names of individuals or organizations, or animations, photos, voices, videos, signatures, codes, credit cards, or personal documents of others to earn benefits, or for any other purposes without permission from the owner.

Restrictions under the Cybercrime Law and Cybercrime Instruction are mainly concerned with pornographic content, false data or information, threats to national security and peace, and the advertisement of illicit activity such as prostitution, drug trafficking, and drug usage⁴⁰.

³⁸ See Annex of Laws.

³⁹ Art. 10, Internet Information Decree

⁴⁰ Art. 13 & Art 14, Cybercrime Law



Violators of the Internet Information Decree will be warned, educated, penalized, fined, and subjected to civil or criminal charges depending on the severity of the case, or criminal punishment in accordance with the law ⁴¹.

Violators of the Cybercrime Law shall be subject to re-education, warning, disciplinary measures, fine, compensating for civil loss or criminal punishment based on the seriousness of the case as specified in the laws and regulations⁴².

Pursuant to the Law on Media (Nº 01/NA, 4 November 2016) (**Media Law**), media organizations and media personnel are prohibited from issuing news concealing the truth, attacking the honor of individuals, legal entities, and organizations⁴³.

Individuals, legal entities, or organizations can request the media to retract incorrect news. If the news is proven to be false and damaging, the media must retract it and issue an apology. If the media fails to do so appropriately, the affected parties can seek an explanation from the media management authorities or file a lawsuit. Media organizations must publish explanations from affected parties but can also provide their own views. If the media deems an explanation to contravene laws, they must provide written reasons to the relevant parties⁴⁴.

Violators of the Media Law will be subject to various measures, including re-education, warnings, fines, temporary suspension, withdrawal of media activity operation licenses, press cards, or media specialist licenses. They may also be liable for civil damages or face criminal procedures, depending on the severity of the case⁴⁵.

3. Elements of defamation

3.1 What are the essential elements of defamation under the laws of Laos?

Please refer to Section 1.1, 1.2, & 2 above.

Generally, the essential elements of an offense under the Penal Code are⁴⁶:

- (a) **Material Component:** This refers to the social relationship governed and prohibited by the Penal Code, and the consequences of committing the offense.
- (b) **Objective Component:** The objective element of an offense (*actus reus*) refers to the external factors or influences that affect the behavior of the offender, causing or persuading them deliberately or purposefully to commit the forbidden act. This includes the time, location, vehicle, equipment, circumstances, and means of committing the offense.

⁴¹ Art. 26, Internet Information Decree

⁴² Art. 57, Cybercrime Law

⁴³ Art. 66 & Art. 67, Media Law

⁴⁴ Art. 49, Media Law

⁴⁵ Art. 83, Media Law

⁴⁶ Art. 12, Penal Code

- (c) **Subjective Component:** This refers to the characteristics of the attitude and thought of the offender regarding their act of offense, as expressed externally through their real conduct or actions.
- (d) **Actor's Component:** This refers to a person subject to criminal liability, which shall be an individual or legal entity with consciousness, not being insane, and having reached the age of criminal responsibility, which is 15 years old.

For tortious claims for defamation under the Civil Code, the essential elements are:

- (a) **Violation:** An action or omission, whether intentional or negligent, by any person that breaches laws and regulations. The violator is liable to compensate for the damages unless the damages occurred due to self-defense, lawful duties, or the wrongful act of the injured person⁴⁷.
- (b) **Damage:** The damage must be certain, either having already occurred or certain to occur in the future. Potential future damages that may or may not occur are not considered certain.⁴⁸
- (c) **Causal Relationship:** Liability for compensation arises when there is a causal relationship between the action and the damage. This relationship is demonstrated by:
 1. The cause being necessary to lead to the damage;
 2. The cause occurring before the damage;
 3. The cause being the direct effect of the damage⁴⁹.
- (d) **Determination of Damage:** The type of damage is determined based on the request of the damaged person, an agreement between the damaged and the violator, or by the court. For damages to reputation and honor, this may include:
 1. Apology to rehabilitate reputation and honor;
 2. Resolving misunderstandings through mass media;
 3. Payment of damages⁵⁰.
- (e) **Calculation of Damages:** The calculation of damage fees should be consistent with the nature of the violation. If the damaged person was also involved in the violation, they may be partially liable for the damage. If they were fully responsible for the damage, they are solely liable. The calculation is based on actual damage incurred⁵¹.

47 Art. 472, Civil Code

48 Art. 473, Civil Code

49 Art. 474, Civil Code

50 Art. 478, Civil Code

51 Art. 481, Civil Code

3.2 How have the courts considered external developments in their interpretation of the elements under the offense of criminal defamation, if at all?

In Lao PDR, access to court decisions, whether printed or not, is not readily available to the public. As such, we are unable to provide a response to this question.

3.3 Are there similarities and adherence to international standards in the interpretation of these elements?

In Lao PDR, access to court decisions, whether printed or not, is not readily available to the public. As such, we are unable to provide a response to this question.

4. Prescriptive period and penalties

4.1 What is the prescriptive period and the penalties under criminal defamation, if any?

Criminal defamation is considered a ‘major offense’ under the Penal Code, punishable by re-education without deprivation of liberty or imprisonment for three (3) months to ten (10) years, and fines⁵². Article 31 of the Penal Code indicates that the prescriptive period for criminal defamation in Laos is seven years. This means that criminal proceedings for defamation must be initiated within seven years from the date the offense was committed.

Please refer to Section 1.1 above for the penalties applicable to criminal defamation.

4.2 What are the prescriptive periods set out by the criminal defamation laws in these countries?

Please refer to Section 4.1 above.

4.3 Examples or key case laws where the offense of criminal defamation was defined and/or punished

In Lao PDR, access to court decisions, whether printed or not, is not readily available to the public at the time of development of this report.

5. Remedies

5.1 What remedy is available to an accused in the case of defamation?

Under the Penal Code, any individual who intentionally makes a maliciously false statement or false allegation against another person, with the aim of initiating a criminal proceeding or causing the arrest of that person, is committing a serious offense. Such actions are punishable

⁵² Art. 13(2), Penal Code

by imprisonment for a term ranging from one to five years. Additionally, the offender may be fined an amount between LAK 5,000,000 (approx. USD 225) and LAK 10,000,000 (approx. USD 450). This provision aims to protect individuals from wrongful accusations and ensures that the legal system is not misused for personal vendettas or malicious purposes⁵³.

5.2 Overview of the general remedies available to an accused wrongfully charged with criminal defamation, and details of the outcomes where these available remedies were invoked in each jurisdiction

An accused person has the option to pursue a civil lawsuit against the individual who made the false accusation. Article 478 of the Civil Code addresses acts that harm a person's reputation or honor, including defamation, insult, or the unauthorized disclosure of personal information. It allows for remedies such as public apologies or media corrections to restore honor. Article 479 of the Civil Code defines "damage to spirit" as emotional harm, such as sadness, sorrow, and depression caused by false accusations. Under Articles 480(4) and (5) of the Civil Code, damages are categorized and compensated, including reparation for harm to reputation and honor through apologies, corrections, or other restorative measures. Additionally, compensation for emotional distress may include monetary payments or culturally significant remedies such as Baci ceremonies.



6. Defenses

6.1 What defenses may be raised if a case of criminal defamation has been filed against an individual or an organization?

The Penal Code does not provide any statutory defense for criminal defamation.

However, the Penal Code⁵⁴ provides that criminal proceedings cannot be initiated for offenses that are not considered dangerous to society unless the injured party files a complaint. This means that for certain minor offenses, the legal system requires the victim to take the initiative by lodging a complaint for any legal action to proceed. The specific offenses that fall under this category include:

- (a) **Physical Violence Between Close Relatives:** This includes minor physical altercations between family members that do not result in serious injury or disability. However, exceptions are made for violence against women, children, elderly persons over sixty, disabled persons, acts performed as a profession, or in cases of repeat offenses.
- (b) **Defamation and Insult:** This covers libel, slander, insults, and actions that outrage the body or reputation of deceased individuals.
- (c) **Adultery:** Acts of infidelity fall under this provision.
- (d) **Property Rights Infringements:** This includes minor violations of property rights among close relatives.
- (e) **Violation of Domicile and Privacy:** This pertains to unauthorized entry into someone's home or breaches of personal privacy.

If the injured party decides to withdraw their complaint, any ongoing criminal proceedings related to these offenses will be terminated. This provision ensures that minor disputes, especially those within families or involving personal matters, are resolved privately unless the victim seeks legal intervention.

6.2 Are there any exceptions to the offense of criminal defamation under existing laws?

The Penal Code⁵⁵ also outlines specific circumstances under which an offender's criminal liability may be reduced. These circumstances are considered mitigating factors that can lead to a lighter sentence. They include:

⁵⁴ Art. 41, Penal Code

⁵⁵ Art. 64, Penal Code

- (a) **Age:** If the offender is under eighteen or over sixty years old.
- (b) **Pregnancy and Nursing:** If the offender is a pregnant woman or a woman nursing a child under three years old.
- (c) **Excessive Legitimate Defense:** If the offender's actions exceeded the limits of legitimate self-defense.
- (d) **Emotional Shock:** If the offense was committed under strong emotional shock caused by an illegal act of the victim.
- (e) **State of Necessity:** If the offense exceeded the state of necessity.
- (f) **Minor Offense Under Duress:** If a minor offense was committed under force or threat.
- (g) **Voluntary Damage Prevention or Compensation:** If the offender acted to prevent damage from their offense or voluntarily compensated for the damage in good faith.
- (h) **Difficult Personal Situation:** If the offense was committed due to a difficult personal situation the offender or their family may have been under.
- (i) **Remorse and Cooperation:** If the offender expresses remorse, surrenders to officials, and acknowledges and reveals offenses committed by themselves and others.
- (j) **First Offense:** If it is the offender's first offense and it does not pose a serious danger to society.
- (k) **Merit Towards the Nation:** If the offender has shown merit towards the nation.

Additionally, the court may consider other relevant factors not explicitly listed above to reduce penal liabilities.

7. Amendments

7.1 Did the country explore or pass amendments to the criminal defamation law?

Yes, there have been two amendments since 1989.

7.2 What amendments have been made and when have they been made?

The penal code of the Lao PDR has undergone two amendments since its initial adoption in 1989. These amendments have significantly impacted the criminal defamation provisions within the law. Below are the provisions reflecting the amendments to criminal defamation under the penal code of the Lao PDR.

The Penal Code (Nº 29/Na, 23 December 1989)

Article 87 - Slander and Libel: Any individual causing a serious loss of reputation to another person, verbally, in writing, or by other means, is punishable by three months to one year of imprisonment, corrective measures without imprisonment, or a fine of LAK 5,000 (approx. USD 0.23) to LAK 10,000 (approx. USD 0.46). Any individual causing a serious loss of reputation to another person through untruthful slander, verbally, in writing, or by other means, is punishable by three months to one year of imprisonment or a fine of LAK 5,000 (approx. USD 0.23) to LAK 10,000 (approx. USD 0.46).

Article 88 - Invectives: Any individual who speaks, writes, or behaves coarsely toward another to seriously damage that person's reputation is punishable by three months to one year of imprisonment, corrective measures without imprisonment, or a fine of LAK 5,000 (approx. USD 0.23) to LAK 10,000 (approx. USD 0.46).

The Penal Code (Nº 12/NA, 9 November 2005)

Article 94 - Defamation and Libel: Any person severely damaging the honor of another person through written, oral, or other means shall be punished by three months to one year of imprisonment, re-education without deprivation of liberty, and a fine of LAK 50,000 (approx. USD 2.3) to LAK 300,000 (approx. USD 13.85). Any person libeling another through written, oral, or other means resulting in severe damage to the other person's honor shall be punished by three months to one year of imprisonment, re-education without deprivation of liberty, and a fine of LAK 50,000 (approx. USD 2.3) to LAK 300,000 (approx. USD 13.85).

Article 95 - Insults: Any person using indecent language (whether written or oral) or performs indecent acts against another person to cause severe damage to the second person's honor shall be punished by three months to one year of imprisonment, re-education without deprivation of liberty, and a fine of LAK 50,000 to LAK 300,000.

The Penal Code (Nº 26/NA, 17 May 2017)

Article 205 - Defamation and Libel: Any person who denigrates the dignity of another person by writing, verbally, or by other means, seriously damages the reputation of such person, shall be punishable by imprisonment from three months to one year, re-education without deprivation of liberty, and a fine of LAK 1,000,000 to LAK 5,000,000. Any person who libels another person by writing, verbally, or by other means of insults and without truth, seriously damages the reputation of such person, shall be punishable by imprisonment from three months to one year, re-education without deprivation of liberty, and a fine of LAK 1,000,000 to LAK 5,000,000.

Article 206 - Humiliation: Any person who humiliates the dignity or honor of another person, or humiliates another person, shall be punishable by public criticism, re-education without deprivation of liberty, or imprisonment from three months to one year, and a fine of LAK 1,000,000 to LAK 5,000,000.

Article 207 - Insults: Any person who uses rude or indecent language, whether written or verbal, or performs indecent acts against another person to cause severe damage to the dignity of such person shall be punishable by imprisonment from three months to one year , re-education without deprivation of liberty, and a fine of LAK 1,000,000 to LAK 5,000,000.

The 1989 version of the defamation laws in the penal code focused primarily on damage to reputation through slander, libel, or coarse behavior, with relatively low fines and imprisonment terms. The 2005 amendment increased the fines and introduced a clearer distinction between penalties such as re-education without imprisonment and actual imprisonment, offering more flexibility in the penalties imposed. The 2017 amendment significantly raised the fines for defamation, libel, and insults, and introduced a new category of humiliation, expanding the scope of the defamation laws to include additional acts that could damage an individual's dignity and reputation.

These amendments reflect the evolution of the defamation laws in Laos, increasing penalties over time and expanding the laws to cover a wider range of actions that harm an individual's reputation and dignity.

8. Summary

8.1 Summary of criminal defamation cases filed against journalists or media organizations or activists over the last 5 years

As the the opinions and decisions of the courts in Lao are not published or available to the public, it was not possible for the lawyers working on this guide to provide a summary of:

- (a) The general trends of suits prosecuted on the basis of criminal defamation
- (b) Frequency and the prevailing circumstances, under which charges of criminal defamation have been pursued against journalists and media workers
- (c) Rationale of the court's decision of press freedoms and freedoms of expression cases
- (d) Details of the parties typically instituting suits for criminal defamation
- (e) Details of the parties against whom suits on charges of criminal defamation are typically filed
- (f) The penalties imposed in each case.

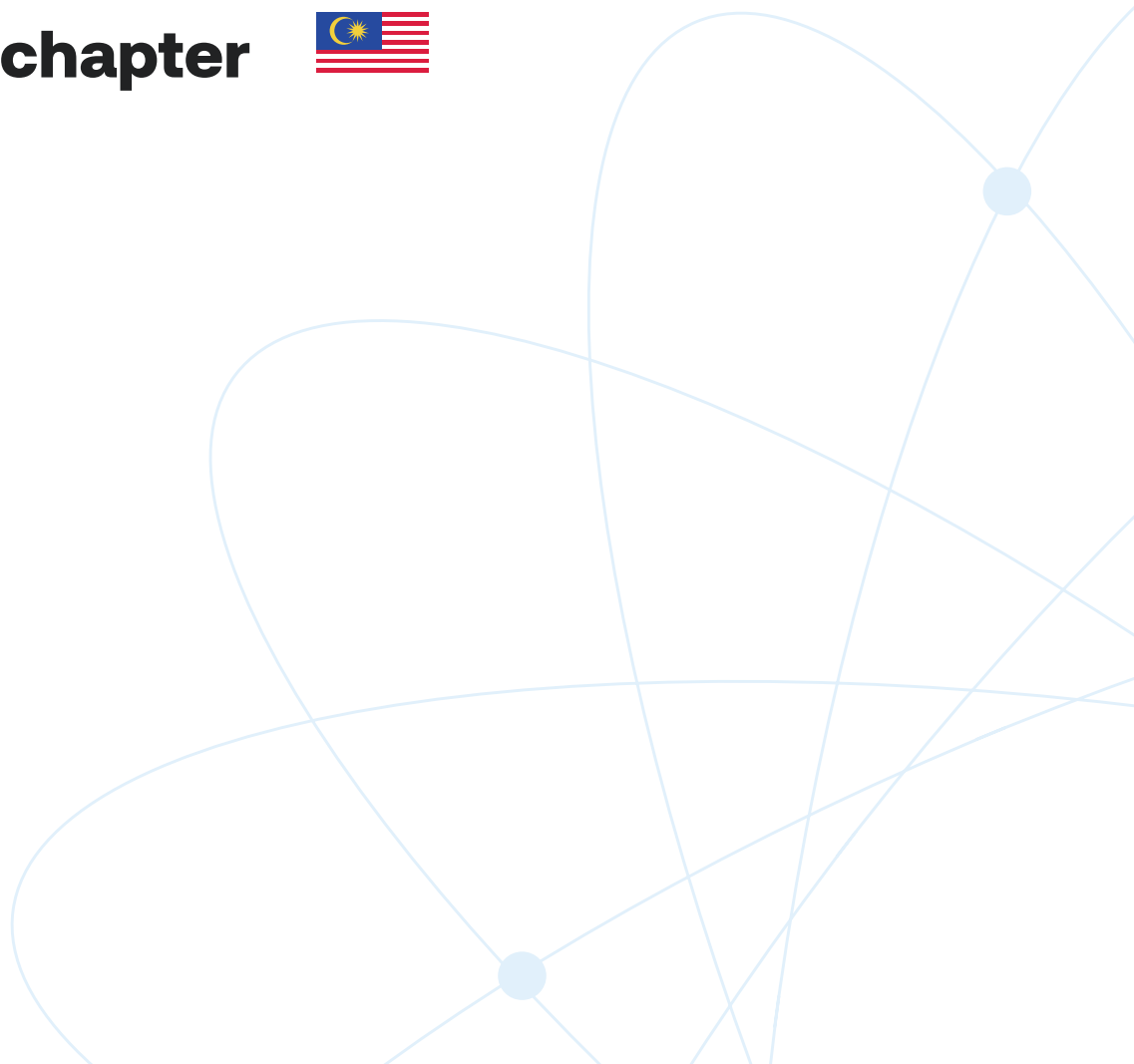
Annex of Citations (Laos)

No.	Legal Provision	Description
1.	The Penal Code (N° 26/NA, 17 May 2017)	Outlines criminal penalties for defamation.
2.	The Civil Code (N° 55/NA, 6 December 2018)	Provides a legal mechanism for individuals harmed by defamation or insults to seek redress and obtain civil remedies.
3.	The Decree on Information Management on the Internet (N° 327/Gov, 16 September 2014)	Addresses defamation in the context of online information.
4.	The Law on Preventing and Combating Cybercrime (N° 61/NA, 15 July 2015) and the Instruction on the Implementation of the Law on Preventing and Combating Cybercrime (N° 254/MPT, 24 September 2018)	Regulate defamatory acts in cyberspace.
5.	The Law on Media (N° 01/NA, 4 November 2016)	Sets standards for media conduct, including prohibitions against defamation by media organizations and personnel.



REUTERS/Bazuki Muhammad

Malaysia chapter



1. Defamation

In Malaysia, defamation is defined as the act of making a false statement about another person which injures their reputation. *Halsbury's Laws of Malaysia on Defamation* defines defamation as statements which tend to lower a person's reputation in the eyes of right-thinking members of society, to cause a person to be shunned or exposed to hatred, contempt, or ridicule, or to cast an imputation on him which is injurious to his office, profession, or trade.

The legal framework governing defamation includes both civil law (under the Defamation Act 1957 and common law principles) and criminal law (under sections 499 and 500 of the Penal Code).

Civil Defamation

Under civil law, defamation can be described as any statement—written, spoken, or otherwise communicated—that lowers the reputation of the plaintiff in the eyes of right-thinking members of society. The Defamation Act 1957 provides remedies for civil defamation, including damages and injunctions. The limitation period to initiate actions against alleged defamation is six years, and the cause of action accrues on the date of publication of the defamatory statement and not on the date the plaintiff first had knowledge of the defamatory statement.

Defamation in Malaysia is broadly categorized into libel (written or permanent form) and slander (spoken or temporary form).

Criminal Defamation

Under criminal law, defamation is defined under Section 499 of the Penal Code, where a person makes or publishes an imputation about another person with the intent to harm or with the knowledge that it is likely to harm their reputation. A person found guilty of this offense is punishable by imprisonment up to two years, a fine, or both.

With the rise of technology, online defamation is now a significant concern. This can fall under Section 499 of the Penal Code for intentional harm or under the Communications and Multimedia Act 1998 (Section 233) for improper use of network facilities. A person found guilty of this offense is punishable by imprisonment of up to one year, a fine of up to RM 50,000 (approx. USD 11,170), or both. Such person can also be liable to a further fine of RM 1,000 (approx. USD 223) for every day during which the offense is continued after conviction.

1.1 Does defamation constitute a criminal offense?

Yes, defamation constitutes a criminal offense in Malaysia. It is governed by Sections 499 and 500 of the Penal Code, which defines criminal defamation as making or publishing an imputation concerning another person with the intent to harm or knowing that it is likely to harm their reputation.

1.2 Does defamation also constitute a civil offense?

In Malaysia, defamation cannot constitute a civil offense as such. However, it can attract civil liabilities. This is governed by common law principles and codified in the Defamation Act 1957. A civil claim for defamation arises when a person's reputation is harmed by false statements made by another party.

1.3 What are the differences in the essential elements of civil defamation and criminal defamation?

Aspects	Civil Defamation	Criminal Defamation
Statute	Defamation Act 1957 and common law principles	Section 499 of the Penal Code
Essence	Protects a person's reputation from harm caused by defamatory statements made negligently or intentionally.	Criminalizes harm to reputation caused intentionally or knowingly through false imputations.
Intent	Intent to defame is not required; negligence or recklessness suffices.	Requires intent to harm or knowledge that harm is likely.

1.4 Penalties under relevant statutes governing civil defamation

Under civil law, there are no penal sanctions, but the remedies include:

- (a) **Damages:** Courts may award general damages (for harm to reputation) and, in some cases, punitive or aggravated damages.
- (b) **Injunctions:** The court may order an injunction to restrain further publication of defamatory statements.

2. Laws that cover criminal defamation⁵⁶

The offense of criminal defamation in Malaysia is governed by Sections 499 and 500 of the Penal Code, a statutory framework inherited from British colonial rule. It was first enacted as part of the Indian Penal Code of 1860, which was adapted into Malaysian law in the late 19th century under British administration. The British colonial administration sought to maintain public order and protect reputations in a hierarchical society where personal reputation and honor were highly valued.

On the other hand, the Communications and Multimedia Act 1998 was introduced by former Prime Minister Tun Dr. Mahathir Mohamad, reflecting the need to regulate an evolving digital economy.

3. Elements of defamation

3.1 What are the essential elements of defamation under the laws of Malaysia?

Before an accused person can be convicted of criminal defamation, the prosecution must prove beyond a reasonable doubt, the following elements:

- (a) the imputation in question consisted of words, spoken or intended to be read, or of signs;
- (b) the imputation concerned the complainant;
- (c) the imputation emanated from the accused;
- (d) the accused made or published it;
- (e) the accused intended thereby to harm the reputation of the complainant or that he knew or had reason to believe that it would do so.

In Ratanlal & Dhirajlal's *Law of Crimes* (25th Ed), a sample charge under the equivalent sections 499 and 500 of the Indian Penal Code reads as follows at page 2569:

I (name and office of magistrate, etc.) hereby charge you (name of accused) as follows:

That you, on or about the __ day of __ —, defamed AB, by making or publishing to CD a certain imputation concerning the said AB, to wit __ (state the defamatory matter), by means of spoken words (or writing or signs or visible representations), intending to harm, (or knowing or having reason to believe that such imputation would harm) the reputation of the said AB; and thereby committed an offense punishable under section 500 of the Indian Penal Code, and within my cognizance.

3.2 How have the courts considered external developments in their interpretation of the elements under the offense of criminal defamation, if at all?

As far as this research has shown, the courts have not considered any external developments.

3.3 Are there similarities and adherence to international standards in the interpretation of these elements?

Malaysia's interpretation of civil and criminal defamation aligns in some respects with international standards, particularly those observed in common law jurisdictions such as the United Kingdom (UK), Australia, and Singapore. However, there are also notable differences, particularly in the application of criminal defamation laws and restrictions on free speech.

Similarities

With respect to the elements of a civil defamation, Malaysian courts follow the common law framework, requiring proof of a defamatory statement, reference to the plaintiff, and publication to a third party, similar to UK, Australia, and India.

Further, Malaysia recognizes justification (truth), fair comment, and qualified privilege, which are also standard defenses in other common law countries as well.

Differences

However, it must be noted that many countries, such as the UK, the United States of America, and Canada, have abolished or significantly limited criminal defamation. By contrast, Malaysia still criminalizes defamation under Section 499 of the Penal Code, which has been criticized for potential misuse to suppress dissent.

Further, it is worth noting that Malaysia does not have a strong distinction between public figures and private individuals, meaning government officials or public figures can sue for defamation without needing to prove actual malice.

4. Prescriptive period and penalties

4.1 What is the prescriptive period and the penalties under criminal defamation, if any?

There is no prescriptive period for initiating prosecution in criminal defamation cases in Malaysia. In fact, there is generally no limitation period for criminal offenses.

The penalties for criminal defamation are outlined in Section 500 of the Penal Code. A person found guilty of this offense is punishable by imprisonment up to two years, a fine, or both.

4.2 What are the prescriptive periods set out by the criminal defamation laws in Malaysia?

None.

4.3 Examples or key case laws where the offense of criminal defamation was defined and/or punished

In ***Public Prosecutor v Mohamad bin Sabu* [2017] 10 MLJ 273**, the accused was the former Deputy President of the Pan-Malaysian Islamic Party ('PAS') and then the President of the *Parti Amanah Negara* ('Amanah'). In 2011, he made a public political speech at a kindergarten in Penang, which was subsequently televised and reported in the front page of an established newspaper, *Utusan Malaysia*. He was charged under sections 499 and 500 of the Penal Code. The Sessions Court judge acquitted the accused. The prosecution appealed to the High Court.

The High Court judge found that the charges were defective in substance and did not disclose any offense.

The High Court judge stated that the following elements must be proved beyond reasonable doubt:

- (a) the imputation in question consisted of words, spoken or intended to be read or of signs;
- (b) the imputation concerned the complainant;
- (c) the imputation emanated from the accused;
- (d) the accused made or published it;
- (e) the accused intended thereby to harm the reputation of the complainant or that he knew or had reason to believe that it would do so.

It was held that, generally, in an action against defamation; be it civil or criminal, the publication must be examined as a whole. The judge found that on the evidence, the prosecution's case was not made out. This was because the context of the impugned statements in the political speech of the accused did not concern the complainants and therefore the requirement in (b) above was not fulfilled.

5. Remedies

5.1 What remedy is available to an accused in the case of defamation?

If there are procedural irregularities or insufficient evidence to sustain the charge, the accused can apply to quash the charges.

Further, if the criminal prosecution proceeds, the accused can rely on the exceptions in Section 499 of the Penal Code, which will act as defenses for the charge of criminal defamation.

5.2 Overview of the general remedies available to an accused wrongfully charged with criminal defamation, and details of the outcomes where these available remedies were invoked in each jurisdiction.

For example, it is not defamation to:

- (a) Impute anything which is true concerning any person, if it is for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact;
- (b) Express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further;

- (c) Publish a substantially true report of the proceedings of a Court, or of any Legislative Assembly, or of the result of any such proceedings;
- (d) Make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good; and
- (e) Convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

Additionally, the accused may rely on some of the general defenses under Chapter IV of the Penal Code, including:

- (a) Mistake of fact (Section 79 of the Penal Code);
- (b) Accident in the doing of a lawful act (Section 80 of the Penal Code); and
- (c) Act of a person of unsound mind at the time of doing the act (Section 84 of the Penal Code).

If convicted, the accused can present mitigating factors to seek reduced penalties during sentencing, such as lack of malicious intent, first time offense, and public interest served.



6. Defenses

6.1 What defenses may be raised if a case of criminal defamation has been filed against an individual or an organization?

See Section 5.

6.2 Are there any exceptions to the offense of criminal defamation under existing laws?

See Section 5.

7. Amendments

7.1 Did the country explore or pass amendments to the criminal defamation law?

No, Malaysia has not explored or passed any amendments to Section 499 of the Penal Code.

7.2 What amendments have been made and when have they been made?

None.

8. Summary

8.1 Summary of criminal defamation cases filed against journalists, or media organizations, or activists over the last 5 years

There have been no reported decisions on criminal defamation cases in the past five years.

However, there is an ongoing case against Bersatu information committee member Badrul Hisham Shaharin on his alleged defamatory remarks in respect of His Majesty Sultan Ibrahim, King of Malaysia.

Further, in 2020:

- (a) Malaysian Crime Watch Task Force (MyWatch) chairperson R Sri Sanjeevan was charged under Section 233 of the Communications and Multimedia Act 1998 in relation to tweets deemed to be critical of the Royal Malaysia Police; and
- (b) Dian Abdullah, a blogger, was charged under Section 233 of the Communications and Multimedia Act 1998 and Section 505(b) of the Penal Code in relation to two blog posts concerning former Prime Minister Muhyiddin Yassin and Sultan Abdullah Sultan Ahmad Shah (the former King).

8.2 Overview of the general trends of suits prosecuted on the basis of criminal defamation

Criminal defamation cases under Section 499 of the Penal Code are rare, with no significant reported decisions in recent years. However, defamation-related charges under the Communications and Multimedia Act 1998 and other Penal Code provisions have been increasingly invoked, especially in politically sensitive or high-profile cases. The trend reflects a focus on online speech and criticism of public institutions or prominent individuals, highlighting the intersection of defamation laws with public order and digital content regulation.

8.3 How often, and under what prevailing circumstances, have charges of criminal defamation been pursued against journalists and media workers?

This is difficult to say as many cases may not be reported in legal journals. Hence, the only information available are news reports. From the cases mentioned in news reports, ordinarily charges for criminal defamation have been against individuals who are critical of the Government.

8.4 How have aspects of press freedoms and freedom of expression been considered in these cases?

Freedom of speech and expression is constitutionally guaranteed in Malaysia (Article 10(1) (a) of the Federal Constitution). However, these freedoms are subject to laws which may be made by Parliament “as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offense” (Article 10(2)(a) of the Federal Constitution).

Public Prosecutor v Mohamad bin Sabu [2017] 10 MLJ 273

In this case, Mohamad bin Sabu, a prominent political figure, was charged with criminal defamation under Section 499 of the Penal Code, punishable under Section 500. The charges arose from a political speech in which he allegedly defamed members of the Bukit Kepong police force by describing them as serving British colonial interests, while portraying Mat Indera and the attackers as independence fighters. His remarks were widely reported in Utusan Malaysia and televised on TV3, leading to complaints from individuals who viewed or read the reports.

The Sessions Court acquitted Mohamad bin Sabu, ruling that his remarks were made in the context of historical interpretation and did not meet the legal criteria for defamation. The Prosecution appealed, arguing that the judge had misdirected himself by failing to consider the full context and evidence presented. However, the High Court upheld the acquittal, finding that the charges were defective, the identity of the defamed persons was unclear, and that Mohamad bin Sabu’s statements did not personally target the complainants.

This case highlights how Malaysian courts approach freedom of expression in the context of criminal defamation, particularly in politically charged situations. Some key take-aways from this case are:

- (a) The case reflects judicial caution in criminalizing speech, particularly where it relates to historical interpretation and political critique.
- (b) While freedom of expression is not absolute, the courts demonstrated an awareness of the need to balance reputation protection with public interest discourse.
- (c) The burden of proof in criminal defamation cases remains high, as the prosecution failed to show that the speech was intended to harm the complainants.

Chong Chieng Jen v Government of State of Sarawak & Anor [2019] 3 MLJ 300

Contrary to the case of **Mohamad bin Sabu**, the Federal Court decision in **Chong Chieng Jen**, which was on civil defamation, severely curtails freedom of speech and expression.

The case revolved around whether a state government has the right to sue an individual for defamation. Chong Chieng Jen, a state assemblyman and Member of Parliament, alleged that RM 11 billion of Sarawak State Government funds were unaccounted for. He published his claims in newspapers, party leaflets, and online portals. The Sarawak State Government sued him for defamation, arguing that its reputation had been harmed.

The Federal Court rejected the Derbyshire principle, ruling that the Sarawak Government had the right to sue individuals for defamation. This conflicts with international standards, where democratically elected governments are generally expected to be subject to public scrutiny without suing critics. The ruling raises concerns about press freedom, as it opens the door for governments to sue journalists, media outlets, and critics.

8.5 Who are the parties typically instituting suits for criminal defamation?

In Malaysia, the power to institute, conduct or discontinue any criminal proceedings is vested in the Attorney General, who also has the duty to advise the Yang di-Pertuan Agong and the Federal Government on legal matters.

8.6 Who are the parties against whom suits on charges of criminal defamation are typically filed?

See 8.3.

8.7 If available, please highlight the penalties imposed in each case.

Not available.

Annex of Citations (Malaysia)

No.	Legal Provision	Description
1.	Halsbury's Laws of Malaysia on Defamation	Issued in 2018 (reissue)
2.	Penal Code	First enacted in 1936, applicable throughout Malaysia on 31st March 1976
3.	Defamation Act 1957 [Act 286]	Enacted and came into force in 1957
4.	Communications and Multimedia Act 1998 [Act 588]	Enacted in 1998 and came into force in 1999
5.	Ratanlal & Dhirajlal's Law of Crimes (25th Ed)	Published in 2002
6.	Public Prosecutor v Mohamad bin Sabu [2017] 10 MLJ 273	Judgment passed by the High Court of Malaya in 2017
7.	Federal Constitution	Came into force in 1957
8.	Chong Chieng Jen v Government of State of Sarawak & Anor [2019] 3 MLJ 300	Judgment passed by the Federal Court in 2019



REUTERS/Soe Zeya Tun

Myanmar chapter



1. Defamation

(a) Definition of Defamation

Section 499 of Penal Code defines defamation as follows:

Defamation occurs when someone, through spoken or written words, signs, or visible representations, makes or publishes a statement about another person with the intent to harm their reputation, or knowing it is likely to cause harm. Exceptions to this rule are outlined separately.

There are several explanations and exceptions listed under Section 499.

Explanations

Explanation 1: It can be considered defamation if something harmful is said about a deceased person, especially if it damages their reputation when they were alive and is intended to upset their family or close relatives.

Explanation 2: Defamation can also apply to a company, association, or group of people if something harmful is said about them.

Explanation 3: Even if a statement is made with intent to question or in irony, it can still be considered defamation if it harms someone's reputation.

Explanation 4: A statement harms a person's reputation if it makes others believe they have low morals or intelligence, damages their social standing or profession, hurts their financial standing, or suggests their health or appearance is in a disgusting or shameful condition.

Exceptions

Defamation is not committed if it falls within one of these exceptions.

First Exception: It is not defamation to say something true about a person if it is for the public good. Whether it is for the public good is a fact that must be determined.

Second Exception: It is not defamation to express a genuine opinion about a public servant's actions or character, as long as the opinion relates to their public duties.

Third Exception: It is not defamation to express a genuine opinion about someone's actions or character in relation to a public issue.

Fourth Exception: It is not defamation to report the truth about court proceedings or their outcome.

Fifth Exception: It is not defamation to express a genuine opinion about the outcome of a court case, or the actions of people involved in it, as long as the opinion relates to their conduct in the case.

Sixth Exception: It is not defamation to express a genuine opinion about the quality of a public performance or the character of its creator, based on the performance.

Seventh Exception: It is not defamation for someone with authority over another to criticize their conduct, as long as the criticism is related to matters within that authority.

Eighth Exception: It is not defamation to accuse someone in good faith before those with legal authority over them, regarding matters within that authority.

Ninth Exception: It is not defamation to make a statement about someone's character if it is done in good faith to protect the interests of the person making the statement, someone else, or the public.

Tenth Exception: It is not defamation to warn someone in good faith about another person, as long as the warning is intended to protect the person receiving it or the public good.

(b) Forms of Defamation under Myanmar Law

1. **Oral Defamation (Slander):** This involves spoken words or gestures that harm a person's reputation. For example, making false accusations about someone in public.

Legal basis: Section 499 covers oral defamation as "words" that impute something harmful to another's reputation.

2. **Written Defamation (Libel):** Written or printed statements (e.g., in newspapers, letters, or books) that damage someone's reputation.

Legal basis: Section 499 explicitly mentions "words either spoken or intended to be read, or by signs or visible representations," covering written defamation.

3. **Online Defamation:** Harmful imputations made online, such as through social media posts, or digital messaging platforms.

Legal Basis:

- Section 499 of the Penal Code applies, as it does not limit the method of communication.
- Section 66(d) of the Telecommunications Law criminalizes the use of a telecommunications network to defame another person.
- Section 34(d) of the Electronic Transaction Law criminalizes the creating, modifying or altering of information or distributing of information created, modified or altered

by electronic technology to be detrimental to the interest of or to lower the dignity of any organization or any person.

- 4. Defamation in the Media:** Media-related defamation occurs when false statements or content are published or broadcast, causing harm to an individual's or organization's reputation.

Legal Basis: Section 25(b) of the News Media Law criminalizes publishing or broadcasting content that may intentionally harm the reputation of an individual or organization, except in cases where the content serves the public interest.

The categories (iii) online defamation and (iv) media-related defamation can fall under the categories of (i) oral defamation (slander) or (ii) written defamation (libel), depending on the method of communication.

1.1 Does defamation constitute a criminal offense?

Yes, defamation is a criminal offense under Myanmar law as outlined in Sections 499 and 500 of the Penal Code, which provide penalties for harming a person's reputation through false or malicious statements. Further, Section 66(d) of the Telecommunications Law extends criminal liability to defamation on online platforms.



1.2 Does defamation also constitute a civil offense?

Yes. Civil suits claiming compensation for defamation can also be instituted under the law of torts. Lawsuits for defamation must be filed within one year from the date the defamatory statement is published, spoken, or when its harmful effects are clearly felt, as outlined in the First Schedule of the Limitation Act.

In Myanmar, law of torts is not codified in a statute. Principles of torts such as nuisance, negligence, trespass, defamation retained from the British colonial era have been used by the courts in judicial decisions. The Burma Laws Act stipulates that, in the absence of a specific legal provision, a court must decide in accordance with the principles of justice, equity, and good conscience. Tort law in Myanmar thus draws on common law principles that have evolved through case law. Additionally, certain laws in Myanmar incorporate liabilities that resemble those found in tort law. For example, the Penal Code classifies acts such as assault and defamation as offenses and prescribes corresponding penalties. The Specific Relief Act provides for injunctions as a form of civil remedy, while the Contract Act addresses issues such as misrepresentation and the voidability of contracts arising from it, all of which overlap with the foundational principles of tort law.

1.3 What are the differences in the essential elements of civil defamation and criminal defamation?

The key differences between civil and criminal defamation lie in their purpose, intent, burden of proof, and outcomes.

Civil defamation	Criminal defamation
Civil defamation focuses on compensating the victim for damage to their reputation, even if the offender did not intend harm.	Criminal defamation, on the other hand, requires proof of malicious intent or knowledge that harm would occur and aims to punish the offender.
Civil defamation is based on common law principles and seeks monetary compensation.	Criminal defamation is defined under Sections 499 and 500 of the Penal Code and can result in fines, imprisonment, or both.
Civil cases only require proof of harm.	The burden of proof is higher in criminal cases, requiring evidence beyond a reasonable doubt.

1.4 Penalties under relevant statutes governing civil defamation

In Myanmar, civil defamation is not codified in any statute. Instead, it is governed by common law principles, allowing the victim to seek monetary compensation for damage to their reputation. The compensation amount depends on the extent of harm proven and is determined by the court on a case-by-case basis.

2. Laws that cover criminal defamation

Please see the Annex of the laws at the end of this chapter⁵⁷.

3. Elements of defamation

3.1 What are the essential elements of defamation under the laws of Myanmar?

Under the provisions of the Penal Code, the Telecommunications Law, Electronic Transactions Law and the News Media Law, the essential elements of defamation are as follows:

- (a) **False Statement:** A statement must be made that is false, as defamation hinges on the harm caused by false information.
- (b) **Harm to Reputation:** The statement must be such that it harms or is likely to harm the reputation of an individual or entity.
- (c) **Publication:** The defamatory statement must be communicated to a third party, whether orally, in writing, or through other forms of communication such as online platforms. This is the “publication” element, indicating the statement is made available to someone other than the person being defamed.
- (d) **Intent or Negligence:** The person making the defamatory statement must either have intended to harm the reputation of the target or acted negligently in doing so.
- (e) **Defamatory Content:** The content of the statement must damage the person’s reputation by making them appear untrustworthy, disrespectful, or unworthy in the eyes of others.

3.2 How have the courts considered external developments in their interpretation of the elements under the offense of criminal defamation, if at all?

Myanmar does not have a central repository of case laws from which we can gather information to this effect.

In published cases under Section 66(d) of the Telecommunications Law and Electronic Transactions Law involve statements made on digital platforms, courts have primarily focused on applying traditional elements of defamation rather than explicitly addressing the broader impact of these external developments.

Similarly, the Media Law provides limited protections for journalists and focuses on good faith reporting but does not appear to reflect significant considerations of how the evolving media landscape affects defamation claims. Although there are cases under the Media Law, it remains unclear whether Myanmar courts have considered external developments in interpreting defamation laws, as no official law reports explicitly address this aspect.

3.3 Are there similarities and adherence to international standards in the interpretation of these elements?

There are some similarities between Myanmar's defamation laws and international standards, particularly in terms of protecting reputations. For example, Section 499 of the Penal Code, focus on false statements and harm to reputation, aligning with international frameworks such as the International Covenant on Civil and Political Rights ("**ICCPR**") and European Convention on Human Rights ("**ECHR**"), which recognize the need to protect individuals from reputational harm.

However, Section 66(d) of the Telecommunications Law and provisions in the Media Law, may restrict certain forms of communication and public discourse.

Unlike jurisdictions that are parties to the ICCPR and ECHR, Myanmar has not ratified these conventions, and their provisions are not directly reflected into domestic legislation. As a result, Myanmar's legal framework does not fully incorporate international standards that balance defamation protection with proportionality and safeguards against excessive restrictions on communication.

Myanmar laws focus on false statements and harm to reputation but lack the proportionality and safeguards against excessive restrictions, which is a key part of international norms.

4. Prescriptive period and penalties

4.1 What is the prescriptive period and the penalties under criminal defamation, if any?

There are no prescribed limitation periods for criminal defamation under Myanmar laws.

(a) The penalties for criminal defamation under the Penal Code are as follows:

1. **Defamation:** Imprisonment for a term of up to two years, a fine, or both, as specified under Section 500 of the Penal Code.



2. Printing or engraving defamatory material: Imprisonment for a term of up to two years, a fine, or both, as specified under Section 501 of the Penal Code.

3. Sale of printed or engraved material containing defamatory content: Imprisonment for a term of up to two years, a fine, or both, as specified under Section 502 of the Penal Code.

- (b) The penalty for criminal defamation, upon conviction, under Section 66(d) of the Telecommunications Law is imprisonment up to two years or with fine not more than MMK 1,000,000 (approx. USD 476) or both.
- (c) The penalty, upon conviction, for creating, modifying, altering, or distributing information using electronic technology that is detrimental to the interests or dignity of any organization or person under Section 34 of the Electronic Transactions Law is a fine ranging from a minimum of MMK 5,000,000 (approx. USD 2,383) to a maximum of MMK 10,000,000 (approx. USD 4,776). If the fine is not paid, the penalty includes imprisonment ranging from a minimum of one year to a maximum of three years.
- (d) The penalty, upon conviction, for publishing or broadcasting content that may intentionally harm the reputation of an individual or organization under Section 25(b) of the News Media Law is a fine ranging from a minimum of MMK 300,000 (approx. USD 143) to a maximum of MMK 1,000,000 (approx. USD 476).

4.2 What are the prescriptive periods set out by the criminal defamation laws in Myanmar?

There are no specified limitation periods under Myanmar's criminal defamation laws.

4.3 Examples or key case laws where the offense of criminal defamation was defined and/or punished

There have been no notable reported criminal defamation cases in recent years where the offense of criminal defamation was explicitly defined and/or punished. However, the elements of criminal defamation, as outlined in the Penal Code, can be inferred from reported cases and judicial decisions related to defamation. These cases provide context for how criminal defamation is interpreted and applied by the courts in Myanmar. For instance, the following cases define key elements of defamation:

- (a) **Daw Yi vs. U Sit Kuu (Kha) Tan Gyi Su, 1959 Ma Ta Sa 297 (Hluttaw):** In this case, the judge commented on “publication” as one of the key elements of defamation. The judge clarified that a defamatory statement constitutes an offense if it is made known, published, or announced to someone other than the person being defamed.
- (b) **U Aung Phay vs. Government, 1938 Yangon Law Report 404:** In this case, the judge commented on “intent” as one of the key elements of defamation. The judge clarified that a defamatory statement constitutes an offense if the accused knows or has reason to believe, that the statement would harm the reputation of the person being defamed.

5. Remedies

5.1 What remedy is available to an accused in the case of defamation?

In defamation cases in Myanmar, the remedies available to an accused depend on the specific circumstances and the legal defenses raised. The following remedies may be available to an accused individual or organization facing defamation charges:

- (a) **Defenses under the Law:** The accused person can raise the defenses as provided under Section 499 of the Penal Code. For detailed information on these defenses, please refer to the response provided in question 6.1 below.
- (b) **Dismissal of Charges:** The accused can request the court to dismiss the complaint if it was filed improperly, such as by someone who is not the aggrieved party or without necessary legal procedures being followed. In cases where Section 66(d) of the Telecommunications Law is involved, the accused can challenge the validity of the charges on procedural grounds.

- (c) **Bail or Temporary Release:** In criminal defamation cases, if the accused is detained, they may apply for bail, which is granted by the laws.
- (d) **Acquittal:** If the accused can successfully substantiate any of the defenses, such as proving the truth of the statement, the court may acquit the individual or organization of the charges, leading to a dismissal of the case.

5.2 Overview of the general remedies available to an accused wrongfully charged with criminal defamation, and details of the outcomes where these available remedies were invoked in each jurisdiction

The outcomes of these remedies depend on the specific circumstances of each case. In some instances, an accused person may be acquitted after successfully invoking these defenses or remedies. In other cases, charges may be dismissed for procedural issues. However, the availability of remedies and their success often depend on the specifics of the legal system, case details, and court decisions. Information on specific outcomes of cases where these remedies were invoked is generally not easily accessible.

6. Defenses

6.1 What defenses may be raised if a case of criminal defamation has been filed against an individual or an organization?

Defenses may vary depending on the specifics of the case and the legal provisions under which the defamation charge is brought.

(a) **Demonstrating that the statement falls under one of the exceptions provided in the law:** In a criminal defamation case filed under Sections 499 – 502 of the Penal Code, the accused individual or organization may raise defenses provided in Section 499. While the complainant is responsible for proving that the statement was defamatory, the accused must demonstrate that the statement falls under one of the exceptions outlined in the law. If successfully substantiated, these defenses can result in the acquittal of the accused.

1. **Truth for Public Good:** The accused can argue that the statement was true and made for the benefit of the public. Truth alone is not always a defense, but if the statement serves a public good, it can be justified under this exception.
2. **Public Conduct of Officials:** Statements made in good faith about the conduct of a public servant in the discharge of their official duties are a valid defense. This ensures accountability for public officials.
3. **Fair Comment on Public Matters:** Comments on public questions or matters of public interest, such as criticism of public figures, organizations, or policies, are permissible if made in good faith and within reasonable limits.

4. **Opinion on Public Performances or Works:** Criticism of published books, performances, artworks, or any other works that are submitted to public judgment is protected, provided the criticism is fair and not malicious.
5. **Caution in Good Faith:** Statements made as a cautionary measure, in good faith, to protect the interests of another person or the public are exempt. For example, a warning about potential risks related to an individual or organization.
6. **Communication for Legal or Professional Obligations:** Statements made in good faith as part of a legal, professional, or social duty are defensible. For example, a lawyer making remarks in a court proceeding or a journalist reporting on verified information.
7. **Good Faith Reporting of Allegations:** If the accused can show that they were merely reporting allegations without malicious intent and with reasonable verification, they may use this as a defense.
8. **Lack of Malicious Intent:** The accused may argue that the statement was made without malice and was not intended to harm the reputation of the complainant.
9. **Privileged Communication:** Certain communications, such as those made in judicial proceedings, parliamentary discussions, or privileged legal advice, are protected under the law and cannot be the basis for defamation claims.
10. **Absence of Defamatory Content:** The accused can argue that the statement does not meet the legal criteria of defamation under Section 499 of the Penal Code, as it does not harm the complainant's reputation.

The court is obligated to consider whether the accused's statement falls within one of the exceptions provided in Section 499 of the Penal Code, based on the evidence, even if the accused simply maintains the defense that they did not make any defamatory statement against the plaintiff.

The exceptions provided in Section 499 of the Penal Code can also apply to the criminal defamation cases under Section 66 (d) of the Telecommunications and other laws.

- (b) Requesting the court to dismiss an improperly filed complaint:** A defamation complaint under Sections 499 - 502 must be filed by the aggrieved person, as per Section 198 of the Criminal Procedure Code. Therefore, the accused individual or organization can request the court to dismiss the complaint if it is filed by someone who is not the aggrieved party.

Similarly, defamation complaints under Section 80(b) and (c) require prior approval from the Ministry of Transport and Communications (MoTC), and the complaint must be filed by the aggrieved person or their authorized representative. The accused can request the court to dismiss the complaint if it lacks MoTC approval or is filed by someone who is neither the aggrieved person nor an authorized representative.

6.2 Exceptions to the offense of criminal defamation under existing laws

Please refer to 6.1

7. Amendments

7.1 Did the country explore or pass amendments to the criminal defamation law?

Over the years, Myanmar legislature has passed amendments of certain provisions of the Penal Code, Telecommunications Law and the Electronic Transactions Law, as noted below.

7.2 What amendments have been made and when have they been made?

The Penal Code was amended in 2019 and 2021, with the 2021 amendment specifically addressing state protections. However, there were no significant changes to the defamation provisions under Sections 499 and 500.

The Telecommunications Law 2013 was amended in 2017, particularly Section 66(d), expanding the scope of offenses related to defamation committed via telecommunication networks, including digital platforms.

The Electronic Transactions Law 2004 was amended in 2014, with a key change being the reduction of penalties for certain offenses.

In 2021, the Electronic Transactions Law 2004 was amended again. This amendment significantly increased penalties for violations and expanded state control over online platforms and electronic communications.

8. Summary

8.1 Summary of criminal defamation cases filed against journalists or media organizations or activists over the last 5 years

The details and facts of cases are generally not publicly accessible unless they involve reported cases published by the courts. The following cases are based on publicly available information and media reports:

- (a) Development Media Group (DMG) journalists Ma Hnin Nwe and Ko Nay Win San Case (2021):** In January 2021, Development Media Group (DMG) journalists Ma Hnin Nwe and Ko Nay Win San were charged under Section 66(d) of Myanmar's Telecommunications Law for reporting that military personnel had confiscated rice and used forced labor in Rakhine State. The charges were initiated by a Myanmar military officer.

In May 2021, the situation escalated when additional charges under Section 505(a) of the Penal Code, related to incitement, were filed, carrying more severe penalties. This change prevented the journalists from applying for bail.

As of January 2025, the charges remain unresolved, and the journalists continue to hide to avoid arrest. The charges are still pending with no public indication of resolution or dismissal.

(b) Ye Ni's Defamation Case (2020): In March 2020, a Myanmar court accepted a defamation case against Ye Ni, nearly a year after the military filed the lawsuit over The Irrawaddy's publication of online memoirs about the armed conflict in Rakhine State. Ye Ni was charged under Section 66(d) of the Telecommunications Law, which prohibits the use of telecom networks to defame individuals.

Other two notable defamation cases:

(a) Journalist Swe Win Case (2017): In 2017, journalist Swe Win was charged under Article 66(d) of the Telecommunications Law, which criminalizes online defamation. The charges stemmed from his Facebook posts criticizing U Wirathu, a nationalist Buddhist monk. Swe Win suggested that U Wirathu should be defrocked for violating monastic codes. This prompted a complaint from U Wirathu's follower, leading to Swe Win's arrest on July 30, 2017, at Yangon International Airport. He was detained overnight and released on bail the following day.

On July 2, 2019, the Maha Aung Myay Township Court in Mandalay dismissed the defamation case. However, the plaintiff appealed the decision, and on August 26, 2019, the Mandalay District Court agreed to hear the appeal, potentially reopening the case. Swe Win fled Myanmar with his family in 2019, and as of now, the charges remain pending with no indication of resolution or dismissal.

(b) Yangon Region Former Chief Minister U Phyo Min Thein Case (2016): In November 2016, former Yangon Region Chief Minister Phyo Min Thein filed a defamation lawsuit under Section 66(d) of the Telecommunications Law against Eleven Media Group's CEO, U Than Htut Aung, and chief editor, U Wai Phyo. The lawsuit followed an editorial by Than Htut Aung alleging that an unnamed minister accepted a \$100,000 Patek Philippe watch as a bribe. Although the editorial did not name anyone, it was widely believed to refer to Phyo Min Thein and businessman Maung Weik. Phyo Min Thein denied the claim, stating his watch was a less expensive Rolex bought by his wife.

(c) On November 11, 2016, Than Htut Aung and Wai Phyo were arrested and detained in Yangon's Insein Prison. Both were released on bail after several weeks. No public updates on the case have been reported since.

8.2 Overview of the general trends of suits prosecuted on the basis of criminal defamation

Criminal defamation cases under Sections 499 – 502 of the Penal Code are infrequent, with no notable reported decisions in recent years. However, charges related to defamation under Section 66(d) of the Telecommunications Law have been increasingly used, particularly in politically sensitive or high-profile cases. These charges are most often brought against journalists, editors, and media organizations for reporting on sensitive issues such as corruption and misconduct by government officials.

8.3 How often, and under what prevailing circumstances, have charges of criminal defamation been pursued against journalists and media workers?

Criminal defamation charges have been pursued against journalists and media workers in Myanmar under circumstances where reporting involves sensitive or controversial topics. These typically include allegations of misconduct, corruption, or other issues involving prominent individuals or institutions.

The frequency of such cases is influenced by the nature of the reporting, the context of the media landscape, and the legal framework, which allows for defamation claims under both the Penal Code and other laws, such as the Telecommunications Law. While cases involving journalists and media organizations are not uncommon, they tend to arise in high-profile or contentious scenarios, where published content has been perceived as damaging to reputations.

These circumstances highlight the importance of ensuring accurate and responsible reporting while being mindful of legal boundaries to minimize the risk of defamation claims.

8.4 How have aspects of press freedoms and freedom of expression been considered in these cases?

In criminal defamation cases in Myanmar, considerations of press freedoms and freedom of expression are generally not explicitly addressed. These cases primarily focus on determining whether the statements in question are defamatory under the relevant laws. While international principles emphasize balancing the protection of reputation with the rights to free speech and press freedom, Myanmar's legal framework does not currently incorporate explicit provisions or defenses specifically safeguarding journalistic activities or freedom of expression.

As a result, cases involving journalists and media organizations often hinge on legal interpretations of defamation, with less emphasis on the broader implications for press freedom. The absence of comprehensive legal protections for public interest reporting can leave media workers vulnerable to defamation charges, underscoring the importance of navigating these cases within the existing legal boundaries.

8.5 Who are the parties typically instituting suits for criminal defamation?

In criminal defamation cases, the parties typically institute suits are individuals or organizations who believe their reputation has been harmed by defamatory statements.

In recent years, individuals, organizations, and particularly government officials have frequently used Section 66(d) of the Telecommunications Law to pursue criminal defamation charges.

8.6 Who are the parties against whom suits on charges of criminal defamation are typically filed?

In criminal defamation cases, suits are typically filed against individuals or organizations that are believed to have made defamatory statements that harm the reputation of the complainant. These suits can be initiated by anyone who feels that their reputation has been damaged by false or malicious information, whether the statement was made in a public forum, private conversation, or through published content.

In many instances, the defendants in these cases are journalists, media organizations, or public figures who have made statements that others deem damaging.

8.7 If available, please highlight the penalties imposed in each case.

Not available.

9. Other notes

(a) Penal Code amendment in 2021

The 2021 amendments to the Penal Code expanded provisions under Section 505 and introduced Section 505-A, targeting actions deemed to undermine state security or public order. These changes criminalize spreading false news, causing fear among the public, or inciting offenses against government employees, with penalties of up to three years' imprisonment or fines. This amendment may not directly target journalists. However, they can indirectly impact journalists by limiting their ability to report on sensitive or critical topics involving the government or public order.

(b) Myanmar Official Secret Act 1923

The Official Secrets Act primarily focuses on safeguarding sensitive state information from unauthorized disclosure. It criminalizes acts such as sharing classified documents, entering restricted areas without permission, or aiding in the dissemination of confidential government materials. While not directly aimed at journalists, it has been used in cases where journalists have accessed or reported on matters deemed sensitive to national security.

(c) Printing and Publishing Law 2014

The Printing and Publishing Law does not directly impact journalists but regulates the media industry, which can indirectly affect journalists' work by imposing content restrictions and allowing government oversight over publishing activities.

Annex of Citations (Myanmar)

No.	Legal Provision	Description
1.	<p>Penal Code (Sections 499 and 500)</p> <p>Criminal defamation is defined and penalized under Sections 499 and 500 of the Penal Code.</p> <p>Section 499 specifies the acts that constitute defamation, including making false statements that harm another person's reputation.</p> <p>Section 500 provides the penalties for defamation, which may include imprisonment and fines.</p>	<p>The Penal Code was introduced in 1861 during British colonial rule and continues to be a fundamental part of Myanmar's legal system. It provides the legal framework for criminal law in Myanmar and remains in effect. The provisions on defamation were originally designed to protect individuals from false and malicious statements that could harm their reputation.</p>
2.	<p>Telecommunications Law (2013) (Section 66(d))</p> <p>Section 66(d) of the Telecommunications Law addresses defamation committed through telecommunications networks, including digital platforms. It criminalizes the use of telecommunications services to defame individuals or organizations, carrying penalties of imprisonment, fines, or both.</p>	<p>The Telecommunications Law was enacted in 2013 during President Thein Sein quasi-civilian government, following the liberalization of Myanmar telecommunications sector to foreign investment. This period marked Myanmar's transition from military to semi-civilian rule, accompanied by reforms in economic and digital sectors.</p>
3.	<p>Electronic Transactions Law (2004) Section 34(d)</p> <p>Section 34(d) of the Electronic Transactions Law addresses the modification or alteration of information that could harm an individual or organization's reputation, which could be relevant in cases of electronic defamation, even though it does not explicitly define defamation.</p>	<p>The Electronic Transactions Law was enacted in 2004, and has been amended in 2014 and 2021.</p> <p>2004 Enactment: The law was enacted by the State Peace and Development Council ("SPDC") to regulate electronic transactions, regarding data security and promote e-commerce.</p> <p>2014 Amendment: The law was amended during President Thein Sein quasi-civilian government. A key change was the reduction of penalties for certain offenses.</p> <p>2021 Amendment: The law was amended by the State Administrative Council. This amendment significantly increased penalties for violations and expanded state control over online platforms and electronic communications.</p>

4. News Media Law (2014) Section 9(g)

Section 9(g) prohibits media outlets from publishing or broadcasting content that intentionally harms a person's reputation unless it is in the public interest.

Violations may lead to administrative or legal action under the law.

The News Media Law was enacted in 2014 during the quasi-civilian government led by President Thein Sein. This period marked the beginning of democratization, with increased press independence but also retained state oversight, particularly to prevent defamation or harm to the government.



REUTERS/John Javellana

Philippines chapter



1. Defamation

Under Article 353 of the Revised Penal Code (“RPC”), a *libel* is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead. Note, however, that the Spanish text used the term “*defamacion*” which is translated as “*libel*” in the English text. Hence, “defamation” is the proper term for libel as used in Article 353⁵⁸.

There are three primary crimes which govern defamation: (i) libel; (ii) oral defamation or slander; and (iii) slander by deed.

If defamation is committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means, the crime committed is libel under Article 355 of the RPC.

On the other hand, if it is committed by oral means, the crime committed is *slander* or *oral defamation* under Article 358 of the RPC.

Finally, if it is committed by performing an act not considered as libel or slander, but shall nonetheless cast dishonor, discredit, or contempt upon another person, the crime is *slander by deed* under Article 359 of the RPC.

1.1 Does defamation constitute a criminal offense?

Yes. Under Philippine law, defamation is considered a criminal offense. (See discussion under 1)

1.2 Does defamation also constitute a civil offense?

Yes. Besides criminal liability, defamation also gives rise to civil liability for damages under the relevant provisions of the Civil Code of the Philippines.

The Civil Code recognizes the possibility of a civil action pursuant to Article 26, paragraph (4), to the effect that although it may not constitute a criminal offense, “vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition,” can give rise to a cause of action for damages. Civil action may be initiated consonant with Article 33, which provides that in cases of defamation, a civil complaint for damages, entirely separate and distinct from criminal cases, may be brought by the injured party.⁵⁹

⁵⁸ Luis B. Reyes, *The Revised Penal Code: Criminal Law, Book Two* (2021), Article 353.

⁵⁹ *MVRS Publications, Inc. v. Islamic Da’Wah Council of the Philippines, Inc.*, G.R. No. 135306, January 28, 2003.

1.3 Differences in the essential elements of civil defamation and criminal defamation

Civil actions are based on tort (or quasi-delict) liability under common law and require the plaintiff to establish that they have suffered personal damage or injury as a direct consequence of the defendant's wrongful conduct. It must be shown that the act complained of is vexatious or defamatory of, and as it pertains to, the claimant, thereby humiliating or besmirching the latter's dignity and honor.⁶⁰ A quasi-delict has the following elements: (a) the damage suffered by the plaintiff; (b) the act or omission of the defendant supposedly constituting fault or negligence; and (c) the causal connection between the act and the damage sustained by the plaintiff, or any proximate cause.⁶¹

Further, where the defamation is directed at a group or class, it is essential that the statement must be so sweeping or all-embracing as to apply to every individual in that group or class, or sufficiently specific so that each individual in the class or group can prove that the defamatory statement specifically pointed to them, so that they may bring the action separately.⁶²

For criminal defamation, there are four concurrent requisites: (a) the writing, utterance or acts must be defamatory; (b) it must be malicious; (c) it must be made publicly; and (d) the victim must be identifiable. In relation to this, an allegation is considered defamatory if it ascribes to a person the commission of a crime, the possession of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstances that tend to dishonor or discredit or hold the victim in contempt, or which tends to blacken the memory of one who is dead.⁶³

1.4 Penalties under relevant statutes governing civil defamation

The penalties for civil defamation are not predetermined and instead depend on the specific circumstances of each case. Courts may award various forms of damages in this regard, depending on the type and extent of damage suffered by the plaintiff.

2. Laws that cover criminal defamation⁶⁴

The RPC was enacted in 1930 during the American colonial period (1898-1946), when the Philippines was under American rule. This era incorporated a mix of Spanish and American influences in the legal system. The code itself reflects protections for reputations and a relatively restrictive view of freedom of expression, thus expressly prohibiting the three main forms of defamation (*libel*, *slander* or *oral defamation*, and *slander by deed*). (See discussion under 1).

⁶⁰ Id.

⁶¹ Andamo v. Intermediate Appellate Court, G.R. No. 74761, November 6, 1990.

⁶² Newsweek v. IAC, G.R. No. L-63559, May 30, 1986.

⁶³ Vasquez v. CA, G.R. No. 118971, September 15, 1999.

⁶⁴ See Annex of Laws.

More recently, Republic Act No. 10175, otherwise known as the Cybercrime Prevention Act of 2012, was enacted to address cybercrimes, including content-related offenses such as cyber libel. This recognizes the advancement of technology and digital communication platforms, alongside its potential to commit reputational harm. It specifically punishes acts of libel as defined under Article 355 of the RPC when committed through a computer system or any other similar means which may be devised in the future.

3. Elements of defamation

3.1 What are the essential elements of defamation under the laws of the Philippines?

For criminal defamation under the RPC (whether libel, oral defamation, or slander by deed), the essential elements which must be present are: (i) a malicious imputation; (ii) the imputation of a crime, vice, defect, or act causing dishonor, discredit, or contempt; (iii) publication of the defamatory imputation; and (iv) identification of the victim.

In determining whether a statement is defamatory, the words used are to be construed in their entirety and should be taken in their plain, natural, and ordinary meaning as they would naturally be understood by persons reading them, unless it appears that they were used and understood in another sense. Moreover, a charge is sufficient if the words are calculated to induce the hearers to suppose and understand that the person or persons against whom they were uttered were guilty of certain offenses, or are sufficient to impeach the honesty, virtue, or reputation, or to hold the person or persons up to public ridicule⁶⁵.

Malice is also an element of libel or defamation. It is said that there is malice when the author of the imputation is prompted by personal ill will or spite and speaks not in response to duty but merely to injure the reputation of the person who claims to have been defamed⁶⁶.

For a case for libel to prosper, there must be publicity. There is publicity when the defamatory statement is communicated to a third person. It is not required that the person defamed has read or heard about the libelous remark⁶⁷. In other words, it is the publication of the libelous remark which comprises the crime of libel. The same holds true even for slander by deed.

To satisfy the element of identifiability, it must be shown that at least a third person or a stranger was able to identify the offended party as the object of the defamatory statement. It is enough if by intrinsic reference the allusion is apparent or if the publication contains matters of description or reference to facts and circumstances from which others reading the article may know the person alluded to; or if the latter is pointed out by extraneous circumstances so that those knowing such person could and did understand that they were the persons referred to.⁶⁸

⁶⁵ Manila Bulletin Publishing Corporation v. Domingo, G.R. No. 170341, July 5, 2017.

⁶⁶ Alonzo v. CA, G.R. No. 110088, February 1, 1995.

⁶⁷ Manila Bulletin Publishing Corporation v. Domingo, G.R. No. 170341, July 5, 2017.

⁶⁸ *Id.*

3.2 How have the courts considered external developments in their interpretation of the elements under the offense of criminal defamation?

Philippine courts have consistently applied the elements of defamation in the adjudication of cases related to criminal defamation. However, judicial interpretation of these elements have been subject to development over time to adapt to contemporary times. Below are some instances where the Court has adapted its interpretation of these elements given external developments.

In ***Disini vs. Secretary of Justice***⁶⁹, the Supreme Court upheld the penalization of online libel but limited its scope and application. In interpreting the element of “publication”, it noted that only the original author of the defamatory online post could be held liable, and not those individuals who subsequently “like” or “share” the alleged defamatory post.

In ***GMA Network, Inc. v. Bustos***⁷⁰, a case involving defamatory statements made in a television broadcast, the Supreme Court emphasized that media coverage and commentary especially involving matters of public interest must be analyzed with due regard to the constitutional guarantees of free speech and press. While the statutory definition and requisites for defamation remain largely unchanged, there was an express recognition of privilege accorded to media practitioners that appreciate the evolving role of media in public information.

In ***Tulfo v. People***⁷¹, the Supreme Court considered statements made in a newspaper column and ultimately considered them defamatory. Nevertheless, it reflected an understanding of the watchdog function of the press, and the corresponding necessity of evaluating the surrounding circumstances behind the journalist’s statements. It reiterated that fair commentaries on matters of public interest are privileged and that in order that such discreditable imputation against a public official may be actionable, it must either be a false allegation of fact, or a comment based on a false supposition.

3.3 Are there similarities and adherence to international standards in the interpretation of these elements?

Philippine laws, as enshrined in the 1987 Philippine Constitution show some adherence with international standards and principles. The protection of freedom of speech under Article III, Section 4 of the Philippine Constitution aligns with international treaties such as the International Covenant on Civil and Political Rights. While these do not directly influence the established elements for defamation, this encourages courts to interpret them in a manner that does not unreasonably infringe upon freedom of expression. This includes, for instance, the importance of free commentary on matters of public interest, as well as applying stricter scrutiny when defamation claims involve public figures or employees. As such, the legal system seeks to strike a balance between protecting the reputation of individuals while still upholding freedoms that are similarly valued under the Philippine Constitution and other international human rights instruments.

⁶⁹ G.R. No. 203335, February 18, 2014.

⁷⁰ G.R. No. 146848, October 17, 2006.

⁷¹ G.R. No. 161032, September 16, 2008.



4. Prescriptive period and penalties

4.1 What is the prescriptive period and the penalties under criminal defamation, if any?

The penalty for libel committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means, is punishable by imprisonment with a duration ranging from six months to four years and two months⁷², or a fine ranging from Forty thousand pesos (PhP 40,000) to One million two hundred thousand pesos (PhP 1,200,000), or both, in addition to the civil action which may be brought by the offended party⁷³.

Oral defamation shall be punished by imprisonment from four months and one day⁷⁴ to two years and four months⁷⁵ if it is of a serious and insulting nature; otherwise, the penalty shall be between one to 30 days⁷⁶, or a fine not exceeding Twenty thousand pesos (PhP 20,000)⁷⁷.

The penalty for Slander by Deed shall be punishable with imprisonment from four months and one day⁷⁸ to two years and four months⁷⁹, or a fine ranging from Twenty thousand pesos (PhP 20,000) to One hundred thousand pesos (PhP 100,000). If said act is not of a serious nature, the penalty of imprisonment shall be one thousand pesos⁸⁰ or a fine not exceeding Twenty thousand pesos (PhP 20,000)⁸¹.

The penalty for cyber libel shall be one degree higher than that provided for libel, which is punishable with imprisonment from four years, two months, and one day⁸² to 8 years⁸³.

4.2 What are the prescriptive periods set out by the criminal defamation laws in these countries?

The crime of libel or other similar offenses shall prescribe in one (1) year and the crime of oral defamation and slander by deed shall prescribe in six (6) months from the day on which the crime is discovered by the offended party, the authorities, or their agents.⁸⁴ The prescriptive period for libel in relation to Republic Act No 10175 or cyber libel is one (1) year from the day

⁷² Prison correccional in its minimum period ranges from 6 months and 1 day to 2 years and 4 months. Prison correccional in its medium period ranges from 2 years, 4 months and 1 day to 4 years and 2 months.

⁷³ Revised Penal Code, Article 355.

⁷⁴ Arresto mayor in its maximum period ranges from 4 months and 1 day to 6 months.

⁷⁵ Prison correccional in its minimum period ranges from 6 months and 1 day to 2 years and 4 months.

⁷⁶ Arresto menor ranges from 1 to 30 days

⁷⁷ Revised Penal Code, Article 358.

⁷⁸ Arresto mayor in its maximum period ranges from 4 months and 1 day to 6 months.

⁷⁹ Prison correccional in its minimum period ranges from 6 months and 1 day to 2 years and 4 months.

⁸⁰ Arresto menor ranges from 1 to 30 days

⁸¹ Revised Penal Code, Article 359.

⁸² Prison correccional in its maximum period ranges from 4 years, 2 months and 1 day to 6 years.

⁸³ Prison mayor in its minimum period ranges from 6 years and 1 day to 8 years.

⁸⁴ Revised Penal Code, Article 90.

on which the crime is discovered by the offended party, the authorities, or their agents.⁸⁵

4.3 Examples or key case laws where the offense of criminal defamation was defined and/or punished

Defamation, which includes libel and slander, means the offense of injuring a person's character, fame or reputation through false and malicious statements. It is that which tends to injure reputation or to diminish the esteem, respect, good will or confidence in the plaintiff, or to excite derogatory feelings or opinions about the plaintiff. It is the publication of anything which is injurious to the good name or reputation of another or tends to bring them into disrepute. Defamation is an invasion of a relational interest since it involves the opinion which others in the community may have, or tend to have, of the plaintiff.⁸⁶

In ***Lopez y Aberasturi v People***⁸⁷, the court held that to determine “whether a statement is defamatory, the words used are to be construed in their entirety and should be taken in their plain, natural and ordinary meaning as they would naturally be understood by persons reading them, unless it appears that they were used and understood in another sense.” Moreover, “[a] charge is sufficient if the words are calculated to induce the hearers to suppose and understand that the person or persons against whom they were uttered were guilty of certain offenses or are sufficient to impeach the honesty, virtue or reputation or to hold the person or persons up to public ridicule.”

In ***De Leon v. People***⁸⁸, De Leon was convicted for slight oral defamation when he called a police officer a “walanghiya” (translates to “no shame”) and “mangogotong na pulis” (translates to “extortionist cop”) during a public altercation at a hearing related to their personal dispute. The Supreme Court considered the relationship of the parties as they were acquainted with each other, the timing of the utterance which was made during a hearing on the administrative case, and that the words taken as a whole were not uttered with evident intent to strike deep into the character of the police officer. The Supreme Court explained that:

“Oral Defamation or Slander is libel committed by oral (spoken) means, instead of in writing. It is defined as “the speaking of base and defamatory words which tend to prejudice another in his reputation, office, trade, business or means of livelihood.” The elements of oral defamation are: (i) there must be an imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, status or circumstances; (ii) made orally; (iii) publicly; (iv) and maliciously; (v) directed to a natural or juridical person, or one who is dead; (6) which tends to cause dishonor, discredit or contempt of the person defamed. Oral defamation may either be simple or grave. It becomes grave when it is of a serious and insulting nature.

⁸⁵ Causing v. People, G.R. No. 258524, October 11, 2023.

⁸⁶ G.R. No. 135306, January 28, 2003.

⁸⁷ G.R. No. 172203, February 14, 2011.

⁸⁸ De Leon v. People, G.R. No. 212623, January 11, 2016.

An allegation is considered defamatory if it ascribes to a person the commission of a crime, the possession of a vice or defect, real or imaginary or any act, omission, condition, status or circumstance which tends to dishonor or discredit or put him in contempt or which tends to blacken the memory of one who is dead. To determine whether a statement is defamatory, the words used in the statement must be construed in their entirety and should be taken in their plain, natural, and ordinary meaning as they would naturally be understood by persons reading them, unless it appears that they were used and understood in another sense. It must be stressed that words which are merely insulting are not actionable as libel or slander per se, and mere words of general abuse however opprobrious, ill-natured, or vexatious, whether written or spoken, do not constitute a basis for an action for defamation in the absence of an allegation for special damages. The fact that the language is offensive to the plaintiff does not make it actionable by itself.”

In this case, the Court agrees that the words uttered by De Leon were defamatory in nature. It is, however, of the view that, the same only constituted simple oral defamation.

Whether the offense committed is serious or slight oral defamation, depends not only upon the sense and grammatical meaning of the utterances but also upon the special circumstances of the case, like the social standing or the advanced age of the offended party.

“The gravity depends upon: (i) the expressions used; (ii) the personal relations of the accused and the offended party; and (iii) the special circumstances of the case, the antecedents or relationship between the offended party and the offender, which may tend to prove the intention of the offender at the time. In particular, it is a rule that uttering defamatory words in the heat of anger, with some provocation on the part of the offended party constitutes only a light felony.

In **U.S. v. Tolosa**⁸⁹, where a woman of violent temper hurled offensive and scurrilous epithets including words imputing unchastity against a respectable married lady and tending to injure the character of her young daughters, the Court ruled that the crime committed was grave slander. In **Balite v. People**⁹⁰, the accused was found guilty of grave oral defamation as the scurrilous words he imputed to the offended party constituted the crime of *estafa* (or swindling).

In some cases, the Court has declared that the defamatory utterances were not grave on the basis of the peculiar situations therein. In the case of **People v. Arcand**⁹¹, a priest called the offended party a gangster in the middle of the sermon. The Court affirmed the conviction of the accused for slight slander as there was no imputation of a crime, a vice or immorality. In **Pader v. People**⁹², the Court ruled that the crime committed was only slight oral defamation as it considered the expression, “*putang ina mo*,” (translates to “your mother is a whore”) as expression to convey anger or displeasure. Such utterance was found not seriously insulting

89 U.S. v. Tolosa, G.R. No. L-12696, November 19, 1917.

90 Balite v. People, G.R. No. L-21475, September 30, 1966.

91 Arcand v. People, G.R. No. 46336, September 29, 1939.

92 Pader v. People, G.R. No. 139157, February 8, 2000

considering that he was drunk when he uttered those words and his anger was instigated by what the private complainant did when the former's father died. Furthermore, in **Jamilano v. Court of Appeals**⁹³, where calling someone “yabang” (boastful or arrogant) was found not defamatory, the complainant's subsequent recourse to the law on oral defamation was not sustained by the Court⁹⁴.

The gravity of oral defamation depends not only (i) upon the expressions used;(ii) on the personal relations of the accused and the offended party; and (iii) the circumstances surrounding the case⁹⁵. The social standing and the position of the offended party are also taken into account⁹⁶.

Slander by deed is a crime against honor committed by performing any act which casts dishonor, discredit, or contempt upon another person. Whether a certain slanderous act constitutes slander by deed of a serious nature or not, depends on the social standing of the offended party, the circumstances under which the act was committed, the occasions, etc. It is libel committed by actions rather than words. In **Villanueva v. People**⁹⁷, the accused was found guilty of slight slander by deed when the accused pointed his dirty finger to the Vice-mayor. The court considered the circumstance that the complainant unjustly refused petitioner's application and threw a coke bottle at him which provoked the “poking of finger” incident.

In **Teodoro v. Court of Appeals**⁹⁸ the accused was found guilty of grave slander by deed when he slapped the complainant in extreme anger and rage. Here, a verbal exchange of words and tirades took place between the accused Secretary and the Complainant. One word led to another to the point where Carolina Tanco-Young, the Treasurer, either by implication or expressed domineering words, alluded to the accused as a “falsifier” which blinded the accused-appellant to extreme anger and rage, thus leading him to slap Tanco-Young — the alleged name caller.

Please see responses in 8.2 for other case samples.

| 93 Jamilano v. Court of Appeals, G.R. No. L-26059, October 31, 1969.

| 94 De Leon v. People, G.R. No. 212623, January 11, 2016.

| 95 People v. Jaring, G.R. No. 160351, April 10, 2006.

| 96 Reyes, Book Two, Article 358.

| 97 Villanueva v. People, G.R. No. 160351, April 10, 2006.

| 98 G.R. No. 103174, July 11, 1996.

5. Remedies

5.1 What remedy is available to an accused in the case of defamation?

Procedurally, other than the defenses enumerated under 6 below, the following are available remedies of an accused in a defamation case:

- (a) Filing of a Counter-Affidavit before the Prosecutor
- (b) File of a Motion to Quash or Motion to Dismiss before the Court
- (c) Application for Bail
- (d) Demurrer to Evidence
- (e) Motion for New Trial or Motion for Reconsideration
- (f) Appeal
- (g) Petition for Probation

5.2 Overview of the general remedies available to an accused wrongfully charged with criminal defamation, and details of the outcomes where these available remedies were invoked

(a) Filing of a Counter-Affidavit before the Prosecutor

In cases where a complaint has been filed with the Office of the Prosecutor, the respondent may file his counter-affidavit to refute the allegations against them. During the preliminary investigation, the prosecutor will assess whether there is sufficient ground to hold the respondent for trial. For instance, the respondent may produce exculpatory evidence to demonstrate that there is no sufficient ground to hold them for trial. The accused may also assert a lack of malice, or argue that the statements were not defamatory in nature. The counter-affidavit can also invoke defenses such as privileged communication, prescription, etc. This counter-affidavit allows the accused to challenge the validity of the complaint.

If the prosecutor finds probable cause to file a case against them, the respondent may file a motion for reconsideration. If his motion is denied, they may further file a petition for review before the Department of Justice and a motion for reconsideration if such is denied.

(b) File of a Motion to Quash or Motion to Dismiss before the Court

In cases where information has been filed against the accused, the accused may move to quash the same under the following grounds provided under the 2019 Rules of Court:

1. That the facts charged do not constitute an offense;
2. That the court trying the case has no jurisdiction over the offense charged;
3. That the court trying the case has no jurisdiction over the person of the accused;
4. That the officer who filed the information had no authority to do so;
5. That it does not conform substantially to the prescribed form
6. That more than one offense is charged except when a single punishment for various offenses is prescribed by law;
7. That the criminal action or liability has been extinguished;
8. That it contains averments which, if true, would constitute a legal excuse or justification; or
9. That the accused has been previously convicted or acquitted of the offense charged, or the case against them was dismissed or otherwise terminated without their express consent⁹⁹

A Motion to Dismiss may also be filed by the accused for violation of their right to due process and to speedy disposition of cases. For instance, an inordinate delay in the resolution and termination of a preliminary investigation will result in the dismissal of the case against the accused.

(c) Application for Bail

To ensure liberty during trial, the accused can apply for bail as a matter of right.

(d) Demurrer to Evidence

After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (i) on its own initiative after giving the prosecution the opportunity to be heard; or (ii) upon demurrer to evidence filed by the accused with or without leave of court¹⁰⁰.

(e) Motion for New Trial or Motion for Reconsideration

At any time before a judgment of conviction becomes final, the court may, on motion of the accused or at its own instance but with the consent of the accused, grant a new trial or reconsideration¹⁰¹.

The court shall grant a new trial on any of the following grounds: (i) The errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial; or (ii) The new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment¹⁰².

⁹⁹ Rules of Court, Rule 117, Section 3.

¹⁰⁰ Rules of Court, Rule 119, Section 23.

¹⁰¹ Id, Rule 121, Section 1.

¹⁰² Id, Rule 121, Section 2.

The court shall grant reconsideration on the ground of errors of law or fact in the judgment, which requires no further proceedings¹⁰³.

(f) Appeal

Once judgment has been rendered, the defendant may also appeal from a judgment or final order, unless they will be placed in double jeopardy¹⁰⁴.

(g) Petition for Probation

The court may, after it shall have convicted and sentenced the defendant for a probationable penalty and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best.¹⁰⁵



REUTERS/Eloisa Lopez

¹⁰³ Id, Rule 121, Section 3.

¹⁰⁴ Id, Rule 122, Section 1.

¹⁰⁵ R.A. No. 10707, Section 1.

6. Defenses

6.1 What defenses may be raised if a case of criminal defamation has been filed against an individual or an organization?

(a) Absence of an essential element of the crime

Article 361 of the RPC provides that in every criminal prosecution for libel, the truth may be given in evidence to the court and if it appears that the matter charged as libelous is true, and, moreover, that it was published with good motives and for justifiable ends, the defendants shall be acquitted. Proof of the truth of an imputation of an act or omission not constituting a crime shall not be admitted, unless the imputation shall have been made against Government employees with respect to facts related to the discharge of their official duties. In such cases if the defendant proves the truth of the imputation made by them, they shall be acquitted¹⁰⁶.

For an imputation to be libelous, the following requisites must be present: (i) it must be defamatory; (ii) it must be malicious; (iii) it must be given publicity; and (iv) the victim must be identifiable. Absent one of these elements, a case of libel will not prosper. (**Ogie Diaz v. People of the Philippines, G.R. No. 159787, May 25, 2007**)

In **MVRS Publications Inc., v. Islamic Da'wah Council of the Philippines**¹⁰⁷, Islamic Da'wah Council of the Philippines and individual Muslims filed a class suit for damages against MVRS Publications and others over a 1992 article in the tabloid *Bulgar*. The article falsely claimed Muslims worshipped pigs, offending their religious beliefs. The Supreme Court held that defamation, which includes libel and slander, means the offense of injuring a person's character, fame or reputation through false and malicious statements. It is that which tends to injure reputation or to diminish the esteem, respect, good will or confidence in the plaintiff or to excite derogatory feelings or opinions about the plaintiff. It is the publication of anything which is injurious to the good name or reputation of another or tends to bring him into disrepute. Defamation is an invasion of a relational interest since it involves the opinion which others in the community may have, or tend to have, of the plaintiff. It must be stressed that words which are merely insulting are not actionable as libel or slander per se, and mere words of general abuse however opprobrious, ill-natured, or vexatious, whether written or spoken, do not constitute a basis for an action for defamation in the absence of an allegation for special damages. The fact that the language is offensive to the plaintiff does not make it actionable by itself. Declarations made about a large class of people cannot be interpreted to advert to an identified or identifiable individual. Absent circumstances specifically pointing or alluding to a particular member of a class, no member of such class has a right of action.

¹⁰⁶ Revised Penal Code, Article 361.

¹⁰⁷ G.R. No. 135306, January 28, 2003.

Defamatory remarks directed at a class or group of persons in general language only, are not actionable by individuals composing the class or group unless the statements are sweeping; and it is very probable that even then no action would lie where the body is composed of so large a number of persons that common sense would tell those to whom the publication was made that there was room for persons connected with the body to pursue an upright and law abiding course and that it would be unreasonable and absurd to condemn all because of the actions of a part (**Tioco v. Yang Shu Wen, G.R. Nos. 9986 & 989, December 22, 1915**)¹⁰⁸.

(b) Statements against public officers when made in relation to their discharge of official duties, unless the prosecution established that they were uttered with actual malice¹⁰⁹.

Offensive imputations against public officers do not constitute defamation if these relate to their discharge of official duties unless the prosecution proves actual malice. Defamatory utterances are malicious when made with knowledge that they were false, or with reckless disregard as to its falsity. The court explained that “reckless disregard” is determined on a case-by-case basis. There is reckless disregard if the accused was found to have entertained serious doubts of the truth of the published statements, or if the statements were of a matter not determined to be a legitimate topic in the area. Errors or misstatements by themselves are insufficient to be considered reckless disregard, unless shown that the accused possessed a high degree of awareness of the falsity¹¹⁰. If the utterances are false, malicious, or unrelated to a public officer’s performance of his duties or irrelevant to matters of public interest involving public figures, the same may give rise to criminal and civil liability¹¹¹.

(c) Proof of Truth

Article 361 of the RPC provides that in every criminal prosecution for libel, the truth may be given in evidence to the court and if it appears that the matter charged as libelous is true, and, moreover, that it was published with good motives and for justifiable ends, the defendant shall be acquitted. Proof of the truth of an imputation of an act or omission not constituting a crime shall not be admitted, unless the imputation shall have been made against Government employees with respect to facts related to the discharge of their official duties. In such cases if the defendant proves the truth of the imputation made by them, they shall be acquitted.

Based on the above, proof of truth is a valid defense in defamation if it meets the following requisites: (i) It appears that the matters charged as libelous are true; (ii) It was published with good motives; and (iii) for justifiable ends. This is admissible in any of the following instances:

¹⁰⁸ Newsweek v. IAC, G.R. No. L063559, May 30, 1986.

¹⁰⁹ Labargan v. People, G.R. No. 246824, December 6, 2023.

¹¹⁰ Labargan v. People, G.R. No. 246824, December 6, 2023.

¹¹¹ Fermin v. People, G.R. No. 157643, March 28, 2008.

- i. When the act of omission imputed constitutes a crime regardless of whether the offended party is a private individual or a public officer;
- ii. When the offended party is a government employee, even if the act of omission imputed does not constitute a crime, provided it is related to the discharge of his official duties¹¹².

(d) Prescription of the crime

The crime of libel or other similar offenses shall prescribe in one (1) year and the crime of oral defamation and slander by deed shall prescribe in six (6) months¹¹³. The prescriptive period for libel in relation to Republic Act No 10175 or cyber libel is one (1) year from the day on which the crime is discovered by the offended party, the authorities, or their agents¹¹⁴.

(e) Absolutely Privileged Communication

Statements made during judicial proceedings—including pleadings, petitions, and motions—are considered absolutely privileged. This means no civil action for libel or slander may arise from such statements, regardless of their truth or intent, as long as they are pertinent and relevant to the case. This rule is grounded in public policy to ensure the free and unfettered administration of justice. However, this privilege does not apply to statements that are irrelevant to the subject matter of the proceedings¹¹⁵.

(f) Privileged Communication

Article 354 of the RPC provides that every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases:

- i. A private communication made by any person to another in the performance of any legal, moral or social duty; and
- ii. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.

However, libelous remarks or comments connected with the matter privileged under the provisions of Article 354, if made with malice, shall not exempt the author thereof nor the editor or managing editor of a newspaper from criminal liability¹¹⁶.

¹¹² Reyes, Book Two, Article 361.

¹¹³ Revised Penal Code, Article 90.

¹¹⁴ *Causing v. People*, G.R. No. 258524, October 11, 2023.

¹¹⁵ *Sison v. David*, G.R. No. L-11268, January 28, 1961.

¹¹⁶ Revised Penal Code, Article 362.

(g) Violation of Constitutional Rights

In a long line of cases, the Supreme Court has held that a dismissal on the ground of the denial of the accused's right to a speedy trial will have the effect of acquittal that would bar further prosecution of the accused for the same offense.¹¹⁷ In determining whether the accused has been deprived of their right to a speedy disposition of the case and to a speedy trial, four factors are considered: (i) length of delay; (ii) the reason for the delay; (iii) the defendant's assertion of his right; and (iv) prejudice to the defendant.¹¹⁸

6.2 Are there any exceptions to the offense of criminal defamation under existing laws?

Malicious intent is a necessary element to prove the presence of libel. Under Article 354, every defamatory imputation is presumed to be malicious, even if true, if no good intention and justifiable motive is shown. As an exception to the rule, the presumption of malice is done away with when the defamatory imputation qualifies as privileged communication¹¹⁹:

- (a) A private communication made by any person to another in the performance of any legal, moral or social duty; and
- (b) A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.

To qualify as privileged communication under Article 354(a) of the RPC above, the following requisites must concur:

- (a) The person who made the communication had a legal, moral, or social duty to make the communication, or at least, had an interest to protect, which interest may either be their own or of the one to whom it is made;
- (b) The communication is addressed to an officer or a board, or superior, having some interest or duty in the matter, and who has the power to furnish the protection sought; and
- (c) The statements in the communication are made in good faith and without malice.¹²⁰

To qualify as privileged communication under Article 354(b) of the RPC above, the following requisites must concur:

¹¹⁷ *Bonsubre v. Yerro*, G.R. No. 205952, February 11, 2015.
¹¹⁸ *Tan v. People*, G.R. No. 173637, April 29, 2009.
¹¹⁹ *Almendras, Jr. v. Almendras*, G.R. No. 179491, January 14, 2015.
¹²⁰ *Almendras, Jr. v. Almendras*, G.R. No. 179491, January 14, 2015.

- (a) That it is a fair and true report of any judicial, legislative, or other official proceedings which are not of confidential nature, or of any statement, report, or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions;
- (b) That it was made in good faith and
- (c) That it is without any comments or remarks¹²¹.

7. Amendments

7.1 Did the Philippines explore or pass amendments to the criminal defamation law?

Yes, from 2004 to 2012, Philippine legislators filed more than 60 bills seeking the decriminalization of libel or at least the abolition of imprisonment for the crime of libel. A total of 35 were submitted in the 15th Congress alone¹²².

In 2022, Senate Bill No. 1593, known as the Decriminalization of Libel Act, was introduced by Sen. Risa Hontiveros. The Bill seeks to repeal articles of the Revised Penal Code (RPC) referring to libel, as well as the Cybercrime Prevention Act of 2012.

In the Explanatory Note for Senate Bill No. 1593, it was highlighted that conversation regarding the decriminalization of libel in the Philippines has been a longstanding one. It also cited a Supreme Court case detailing that libel laws have been used as a weapon against the press and Filipino citizens, as follows:

“The conversation on whether or not libel should be decriminalized has been a longstanding one. The discussion has mostly revolved around the rights embodied in Article III, Section 4 of the Constitution which states that: “No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.”

According to Supreme Court Justice Marvic Leonen, libel laws originated from the government’s objective to protect itself from undue criticism, and then evolving to protect both the government and its citizens from malicious defamatory utterances. However, in recent years, libel laws have been used and abused by private parties to advance their various interests, and by public personalities to shield themselves from scrutiny, even on matters of public concern. The rise and prevalence of social media as a primary medium of communication has led to the further weaponization of libel laws against the press and active citizenship.

¹²¹ Reyes, Book Two, Article 354(2)

¹²² <https://www.rappler.com/voices/thought-leaders/analysis-decriminalizing-libel/>

In his dissenting opinion in the case of *Disini, et al. vs. Secretary of Justice* (GR No. 2033335), February 11, 2014, he opined that

“Libel law now is used not so much to prosecute but deter speech. What is charged as criminal libel may contain precious protected speech. There is very little to support the majority view that the law will not continue to have this effect on speech. It is time that we now go further and declare libel as provided in the Revised Penal Code and in the Cybercrime Prevention Act of 2012, as unconstitutional.

Further, the avalanche of cyber libel cases has only resulted in the clogging of our court dockets. The abundance of litigation spurred by scorned private citizens (from restaurants litigating against patrons who left unpleasant reviews, to homeowners disagreeing in Viber groups, to parents fighting with teachers on social media) all collectively contribute to the overburdening of both the executive and judicial branches, and the draining of their respective resources.

The National Prosecution Services and the courts of justice are now at the mercy of these private litigants who fail to think before they type, and the trigger-happy citizens who deem themselves entitled to pursue litigation for every minor inconvenience. The result is a penalty too harsh and absurd; to mandate imprisonment for something one has posted online. Hence the need to decriminalize libel. Worldwide, there has been a strong sentiment among the international community to decriminalize libel and this view is embodied under Article XIX, General Remarks number 47 of the International Covenant on Civil and Political Rights (ICCPR), of which the Philippines is a state party. It provides: “Defamation laws must be crafted with care to ensure that they comply with paragraph 3, and that they do not serve, in practice, to stifle freedom of expression. **State parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.** It is impermissible for a State party to indict a person for criminal defamation but then not to proceed to trial expeditiously – such a practice has a chilling effect that may unduly restrict the exercise of freedom of expression of the person concerned and others. (Underscoring supplied.)

As such, the immediate passage of this bill is earnestly sought.”

However, as of December 11, 2024, no law amending Philippine libel laws have been passed.

7.2 What amendments have been made and when have they been made?

As of December 11, 2024, no amendments have been made.



REUTERS/Eloisa Lopez

8. Summary

8.1 Summary of criminal defamation cases filed against journalists or media organizations or activists over the last 5 years

Based on a study commissioned by the National Union of Journalists of the Philippines, at least 50 journalists are facing libel and cyber libel charges from June 2016 to March 2023. More than half of these journalists are based in Luzon (with 52%), followed by those in Metro Manila (30%), while the others are based in Mindanao (12%) and in Visayas (6%).¹²³

Some of the most notable libel cases filed against journalists and media organizations are the libel cases filed against Maria Ressa, Editor in Chief of Rappler Inc., a news organization in the Philippines, and its reporters. In 2019, a libel complaint was filed against Maria Ressa and a Rappler reporter which was subsequently dismissed for lack of probable cause. In 2020, a former Benilde faculty member Ariel Pineda filed a libel case against Maria Ressa and a Rappler reporter. This was dismissed in 2021 after Pineda dropped the case. Further, in 2020, Maria Ressa along with a Rappler research-writer were found both guilty of cyber libel. The conviction stemmed from a 2012 article alleging that businessman Wilfredo Keng had links to illegal activities. The Court of Appeals upheld their conviction. The case is currently under review at the Supreme Court. In 2021, Energy Secretary Alfonso Cusi filed separate libel

¹²³ Coralles, C. (2023) Local politicians take lead in filing libel cases against journalists – NUJP study. Rappler. Available at <https://www.rappler.com/philippines/mindanao/local-politicians-libel-cyber-libel-cases-journalists-nujp-study/> (last accessed December 12, 2024).

complaints against seven media companies including Rappler. He withdrew the complaints in 2022. In 2022, 12 cyber libel cases were filed by members of Davao City-based preacher Apollo Quiboloy's Kingdom of Jesus Christ Church against Rappler, its journalists, and interviewees because of a series of investigative reports and videos published on the news website. These cyber libel complaints were dismissed separately, with the last set filed in Davao dismissed in June 2022¹²⁴.

8.2 Please help provide an overview of the general trends of suits prosecuted on the basis of criminal defamation.

In the Concurring and Dissenting Opinion of Justice Leonen in *Disini, Jr. v. Secretary of Justice*, a survey of constant efforts in jurisprudence to qualify libel has been provided to show that the general trend of suits prosecuted based on criminal defamation has accommodated free speech values. In his Dissent, Justice Leonen emphasized that the Constitution requires that the crime of libel should be struck down as infringing upon the guarantee of freedom of expression¹²⁵.

In *United States v. Bustos*, the Supreme Court held that to sustain a conviction under Act No. 277, which was the libel law during this time, there must be malice in fact when there are justifiable motives present in a case, stating:

“In an action for libel, suppose the defendant fails to prove that the injurious publication or communication was true. Can he relieve himself from liability by showing that it was published with “justifiable motives” whether such publication was true or false or even malicious? There is no malice in law when “justifiable motives” exist, and, in the absence of malice, there is no libel under the law. (*U.S. vs. Lerma, supra.*) But if there is malice in fact, justifiable motives can not exist. The law will not allow one person to injure another by an injurious publication, under the cloak of “good ends” or “justifiable motives,” when, as a matter of fact, the publication was made with a malicious intent. It is then a malicious defamation. The law punishes a malicious defamation and it was not intended to permit one to maliciously injure another under the garb of “justifiable motives.” When malice in fact is shown to exist the publisher can not be relieved from liability by a pretense of “justifiable motives.” Section 3 relieves the plaintiff from the necessity of proving malice simply when no justifiable motives are shown, but it does not relieve the defendant from liability under the guise of “justifiable motives” when malice actually is proved. The defense of “the truth” of the “injurious publication” (Section 4) and its character as a privileged communication (Section 9) means nothing more than the truth in one instance and the occasion of making it in the other together with proof of justifiable motive, rebuts the *prima facie* inference of malice in law and throws upon the plaintiff or the State, the onus of proving malice in fact. The publication of a malicious defamation, whether it be true or not, is clearly an offense under Act No. 277”¹²⁶. (emphasis omitted)

¹²⁴ Buan, L. (2019) LIST: Cases vs Maria Ressa, Rappler directors, staff since 2018. Rappler. Available at <https://www.rappler.com/philippines/223968-list-cases-filed-against-maria-ressa-rappler-reporters/> (last accessed December 12, 2024).

¹²⁵ G.R. No. 203335, February 18, 2014.

¹²⁶ G.R. No. L-12592, March 8, 1918.

The requirement of actual malice evolved further in the U.S. landmark case of *New York Times Co. v. Sullivan* which was the standard on libel subsequently adopted by Philippine courts. In the case, the actual malice requirement was required for cases of libel involving public officers. In resolving the issue of whether an action brought by a public official against critics of his official conduct abridges the freedom of speech and of the press that is guaranteed by the First and Fourteenth Amendments, the *New York Times* case required that actual malice should be proven when a case for defamation “includes matters of public concern, public men, and candidates for office.” Thus:

“Like insurrection, contempt, advocacy of unlawful acts, breach of the peace, obscenity, solicitation of legal business, and the various other formulae for the repression of expression that have been challenged in this Court, libel can claim no talismanic immunity from constitutional limitations. It must be measured by standards that satisfy the First Amendment.

The general proposition that freedom of expression upon public questions is secured by the First Amendment has long been settled by our decisions. The constitutional safeguard, we have said, “was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.” [*Roth v. United States*, 354 U.S. 476, 484].

The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system.

Injury to official reputation affords no more warrant for repressing speech that would otherwise be free than does factual error. Where judicial officers are involved, this Court has held that concern for the dignity and reputation of the courts does not justify the punishment as criminal contempt of criticism of the judge or his decision. *Bridges v. California*, 314 U.S. 252. This is true even though the utterance contains “half-truths” and “misinformation.” *Pennekamp v. Florida*, 328 U.S. 331, 342, 343, n. 5, 345. Such repression can be justified, if at all, only by a clear and present danger of the obstruction of justice. See also *Craig v. Harney*, 331 U.S. 367; *Wood v. Georgia*, 370 U.S. 375. If judges are to be treated as “men of fortitude, able to thrive in a hardy climate,” *Craig v. Harvey, supra*, 331 U.S. at 376, surely the same must be true of other government officials, such as elected city commissioners. Criticism of their official conduct does not lose its constitutional protection merely because it is effective criticism, and hence diminishes their official reputations. *Stromberg v. California*, 283 U.S. 359, 369¹²⁷.“ (emphasis omitted)

It was in the subsequent cases of *Ayer Productions Pty. Ltd and McElroy & McElroy Film Productions v. Hon. Ignacio M. Capulong*, later on affirmed in the case of *Borjal v. Court of Appeals*¹²⁸, which reflected that the Court indeed adopted the public figure doctrine in *New York Times v. Sullivan*. In *Ayer Productions*, the Supreme Court held that:

| 127 376 U.S. 254 (1964).

| 128 G.R. No. 126466, January 14, 1999.

A limited intrusion into a person's privacy has long been regarded as permissible where that person is a public figure and the information sought to be elicited from him or to be published about him constitutes that of a public character. Succinctly put, the right of privacy cannot be invoked to resist publication and dissemination of matters of public interest. The interest sought to be protected by the right of privacy is the right to be free from unwarranted publicity, from the wrongful publicizing of the private affairs and activities of an individual which are outside the realm of legitimate public concern.

Public figures were defined as:

A public figure has been defined as a person who, by his accomplishments, fame, or mode of living, or by adopting a profession or calling which gives the public a legitimate interest in his doings, his affairs, and his character, has become a 'public personage.' He is, in other words, a celebrity. Obviously to be included in this category are those who have achieved some degree of reputation by appearing before the public, as in the case of an actor, a professional baseball player, a pugilist, or any other entertainment. The list is, however, broader than this. It includes public officers, famous inventors and explorers, war heroes and even ordinary soldiers, an infant prodigy, and no less a personage than the Grand Exalted Ruler of a lodge. It includes, in short, anyone who has arrived at a position where public attention is focused upon him as a person.

Such public figures were held to have lost, to some extent at least, their right to privacy. Three reasons were given, more or less indiscriminately, in the decisions that they had sought publicity and consented to it, and so could not complain when they received it; that their personalities and their affairs has already public, and could no longer be regarded as their own private business; and that the press had a privilege, under the Constitution, to inform the public about those who have become legitimate matters of public interest. On one or another of these grounds, and sometimes all, it was held that there was no liability when they were given additional publicity as to matters legitimately within the scope of the public interest they had aroused.

The privilege of giving publicity to news, and other matters of public interest, was held to arise out of the desire and the right of the public to know what is going on in the world, and the freedom of the press and other agencies of information to tell it. "News" includes all events and items of information which are out of the ordinary hum-drum routine, and which have 'that indefinable quality of information which arouses public attention.' To a very great extent the press, with its experience or instinct as to what its readers will want, has succeeded in making its own definition of news, as a glance at any morning newspaper will sufficiently indicate. It includes homicide and other crimes, arrests and police raids, suicides, marriages and divorces, accidents, a death from the use of narcotics, a woman with a rare disease, the birth of a child to a twelve-year old girl, the reappearance of one supposed to have been murdered years ago, and undoubtedly many other similar matters of genuine, if more or less deplorable, popular appeal.

The privilege of enlightening the public was not, however, limited to the dissemination of news in the scene of current events. It extended also to information or education, or even entertainment and amusement, by books, articles, pictures, films and broadcasts

concerning interesting phases of human activity in general, as well as the reproduction of the public scene in newsreels and travelogues. In determining where to draw the line, the courts were invited to exercise a species of censorship over what the public may be permitted to read; and they were understandably liberal in allowing the benefit of the doubt¹²⁹. (Citations and emphasis omitted)

Again, the doctrine on public figures was reiterated in *Vasquez v. Court of Appeals*. In this case, the accused was charged with libel for allegedly defaming his barangay chairman in an article published in a newspaper. He allegedly caused the dishonor and discredit of the said public official through the malicious imputation that he was involved in other illegal activities. The Court acquitted the accused and ruled that:

“The question is whether from the fact that the statements were defamatory, malice can be presumed so that it was incumbent upon petitioner to overcome such presumption. Under Article 361 of the Revised Penal Code, if the defamatory statement is made against a public official with respect to the discharge of his official duties and functions and the truth of the allegation is shown, the accused will be entitled to an acquittal even though he does not prove that the imputation was published with good motives and for justifiable ends.

In denouncing the Barangay chairman in this case, petitioner and the other residents of the Tondo Foreshore Area were not only acting in their self-interest but engaging in the performance of a civic duty to see to it that public duty is discharged faithfully and well by those on whom such duty is incumbent. The recognition of this right and duty of every citizen in a democracy is inconsistent with any requirement placing on him the burden of proving that he acted with good motives and for justifiable ends.

For that matter, even if the defamatory statement is false, no liability can attach if it relates to official conduct, unless the public official concerned proves that the statement was made with actual malice — that is, with knowledge that it was false or with reckless disregard of whether it was false or not. This is the gist of the ruling in the landmark case of *New York Times v. Sullivan*, which this Court has cited with approval in several of its own decisions. This is the rule of “actual malice.”

A rule placing on the accused the burden of showing the truth of allegations of official misconduct and/or good motives and justifiable ends for making such allegations would not only be contrary to Article 361 of the Revised Penal Code. It would, above all, infringe on the constitutionally guaranteed freedom of expression. Such a rule would deter citizens from performing their duties as members of a self-governing community. Without free speech and assembly, discussions of our most abiding concerns as a nation would be stifled. As Justice Brandeis has said, “public discussion is a political duty” and the “greatest menace to freedom is an inert people”¹³⁰. (emphasis omitted, citations omitted)

| 129 G.R. No. 82380, 82398, April 29, 1988.

| 130 G.R. No. 118971, September 15, 1999.

Further, in *Guinguing v. Court of Appeals*, the Court dealt with an issue involving the publication of information on private complainant's criminal cases including photographs of him being arrested. Again, the Supreme Court emphasized that the libel law must be construed in light of the constitutional guarantee of freedom of expression, thus:

“[Article 354 of the Revised Penal Code]... as applied to public figures complaining of criminal libel, must be construed in light of the constitutional guarantee of free expression, and this Court's precedents upholding the standard of actual malice with the necessary implication that a statement regarding a public figure if true is not libelous. The provision itself allows for such leeway, accepting as a defense “good intention and justifiable motive.” The exercise of free expression, and its concordant assurance of commentary on public affairs and public figures, certainly qualify as “justifiable motive,” if not “good intention...”

...As averted earlier, the guarantee of free speech was enacted to protect not only polite speech, but even expression in its most unsophisticated form. Criminal libel stands as a necessary qualification to any absolutist interpretation of the free speech clause, if only because it prevents the proliferation of untruths which if unrefuted, would gain an undue influence in the public discourse. But in order to safeguard against fears that the public debate might be muted due to the reckless enforcement of libel laws, truth has been sanctioned as a defense, much more in the case when the statements in question address public issues or involve public figures¹³¹. (emphasis omitted, citations omitted)

Moreover, In *Villanueva v. Philippine Daily Inquirer, Inc.*, despite the respondents' false reporting, this court continued to apply the actual malice doctrine that evolved from *Ayer Productions*. Hence:

“A newspaper, especially one national in reach and coverage, should be free to report on events and developments in which the public has a legitimate interest with minimum fear of being hauled to court by one group or another on criminal or civil charges for malice or damages, *i.e.*, libel, so long as the newspaper respects and keeps within the standards of morality and civility prevailing within the general community¹³² .

According to Justice Leonen, with the evolution of jurisprudence to accommodate free speech values, the reenactment of the old text of libel should be considered unconstitutional. Articles 353, 354, and 355 of the Revised Penal Code — and by reference, Section 4(c)4 of the Cybercrime Act are now overbroad as it prescribes a definition and presumption that have been repeatedly struck down by this court for several decades, thus:

“A statute falls under the overbreadth doctrine when “a governmental purpose may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.” Section 4 (c) (4) of Rep. Act No. 10175 and Articles 353, 354, and 355 produce a chilling effect on speech by being fatally inconsistent with *Ayer*

| 131 G.R. No. 128959, September 30, 2005.

| 132 G.R. No. 164437, May 15, 2009.

Productions as well as by imposing criminal liability in addition to civil ones. Not only once, but several times, did this court uphold the freedom of speech and expression under Article III, Section 4 of the 1987 Constitution over an alleged infringement of privacy or defamation. This trend implies an evolving rejection of the criminal nature of libel and must be expressly recognized in view of this court's duty to uphold the guarantees under the Constitution.

The threat to freedom of speech and the public's participation in matters of general public interest is greater than any satisfaction from imprisonment of one who has allegedly "malicious[ly] input[ed] . . . a crime, or . . . or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or . . . blacken[ed] the memory of [the] dead." The law provides for other means of preventing abuse and unwarranted attacks on the reputation or credibility of a private person. Among others, this remedy is granted under the Chapter on Human Relations in the Civil Code, particularly Articles 19, 20, 21, and even 26. There is, thus, no cogent reason that a penal statute would overbroadly subsume the primordial right of freedom of speech provided for in the Constitution¹³³." (emphasis omitted, citations omitted)

Supreme Court cases after *Disini* have also followed the general trend of the High Court acquitting those who have been convicted of libel.

In *Tulfo v. People*, the Court acquitted the writer, publisher, and managing editor of the *Abante Tonite* column, "Shoot to Kill," which covered stories on the alleged anomalous dealings of Atty. Carlos "Ding" So of the Bureau of Customs. At issue are the Revised Penal Code provisions on libel vis-à-vis the constitutional guarantee of freedom of the press and statements involving public officers in the exercise of their official functions. In this case, the Court held that commentaries on matters of public affairs are protected by the Constitution, thus:

"The need to protect freedom of speech and of the press cannot be understated. These freedoms are the most pervasive and powerful vehicles informing the government of the opinions, needs, and grievances of the public. It is through these guarantees that the people are kept abreast of government affairs. Without these rights, no vigilant press would flourish. And without a vigilant press, the government's mistakes would go unnoticed, their abuses unexposed, and their wrongdoings uncorrected.

In this regard, journalists and the media enjoy a wide latitude of discretion in investigating, gathering, and reporting news pertinent to public affairs. Public affairs encompass a wide array of matters, including information on public officials' exercise of their official functions. Imbued with public interest, these officials are expected to execute their mandate in a manner consistent with law, morals, and public policy...

...Consistent with the right to deliver information on public matters, journalists and members of the press may at times write inaccurate articles. Nonetheless, liability should

133 G.R. Nos. 203335, 203299, 203306, 203359, 203378, 203391, 203407, 203440, 203453, 203454, 203469, 203501, 203509, 203515 & 203518, February 18, 2014.

attach only if it is proven that the article was written and published with knowledge that it was false or with reckless disregard for the truth...

...Commentaries on matters of public affairs are not always expected to conform with what is acceptable. More often, these commentaries will contain a degree of crudeness bordering on boorishness when they are directed against unscrupulous public officials. Even then, the Constitution remains steadfast in protecting these kinds of commentaries.

Besides, the constitutionality of criminalizing libel is doubtful. In libel, the kinds of speech actually deterred are more valuable than the State interest the law against libel protects. The libel cases that have reached this Court in recent years generally involve notable personalities for parties, highlighting a propensity for the powerful and influential to use the advantages of criminal libel to silence their critics.

In any event, alternative legal remedies exist to address unwarranted attacks on a private person's reputation and credibility, such as the Civil Code chapter on Human Relations. Civil actions for defamation are more consistent with our democratic values since they do not threaten the constitutional right to free speech and avoid the unnecessary chilling effect on criticisms toward public officials. The proper economic burden on complainants of civil actions also reduces the possibility of using libel as a tool to harass or silence critics and dissenters.

This Court is not unmindful of the far-reaching implications that our deliberation may bring journalists and members of the press actively engaged in disseminating news. We regard the vital role that the media plays in ensuring that the government and its officials remain true to their oath in carrying out their mandates in a manner prescribed by law.

Nevertheless, the constitutionally protected freedoms enjoyed by the press cannot be used as a shield to advance the malicious propagation of false information carried out by unscrupulous entities to injure another's reputation¹³⁴.

The Court, in ruling that the questioned article calling Juan Ponce Enrile "plunderer," looter," "possessor of ill-gotten wealth," and "Marcos crony," held that:

"This is not the first time that the Court has been asked to strike a balance between freedom of the press and the limits thereof in relation to libel. Indeed, as the Court, in *Borjal*, noted: Never in jurisprudential history has any freedom of man undergone radical doctrinal metamorphoses than his right to freely and openly express his views.

While the Court, once again, through this case, finds the scales of justice tilted in favor of the freedom of the press, the Court perceives nevertheless that the time is ripe to remind media practitioners of the importance of their adherence to the ethical standards demanded by their profession. The Court thus reiterates its reminder in *Borjal*:

We must however take this opportunity to likewise remind media practitioners of the high ethical standards attached to and demanded by their noble profession. The danger of an unbridled irrational exercise of the right of free speech and press, that is, in utter contempt of the rights of others and in willful disregard of the cumbersome responsibilities inherent in it, is the eventual self-destruction of the right and the regression of human society into a veritable Hobbesian state of nature where life is short, nasty and brutish. Therefore, to recognize that there can be no absolute “unrestraint” in speech is to truly comprehend the quintessence of freedom in the marketplace of social thought and action, genuine freedom being that which is limned by the freedom of others. If there is freedom of the press, ought there not also be freedom *from* the press? It is in this sense that *self-regulation* as distinguished from self-censorship becomes the ideal mean for, as Mr. Justice Frankfurter has warned, “[W]ithout a lively sense of responsibility, a free press may readily become a powerful instrument of injustice.”

Lest we be misconstrued, this is not to diminish nor constrict that space in which expression freely flourishes and operates. For we have always strongly maintained, as we do now, that freedom of expression is man’s birthright — constitutionally protected and guaranteed, and that it has become the singular role of the press to act as its “*defensor fidei*” in a democratic society such as ours. But it is also worth keeping in mind that *the press is the servant, not the master, of the citizenry, and its freedom does not carry with it an unrestricted hunting license to prey on the ordinary citizen.*

In this connection, the Court declares its continued recognition of the right of every citizen to enjoy a good name and reputation. The Court, however, is equally cognizant of the important role that the continuing guarantee of the freedom of the press serves to our nation.

As the words of Justice Malcolm, in the early case of *U.S. v. Bustos* remind us:

The interests of society and the maintenance of good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and an unjust accusation; the wound can be assuaged with the balm of a clear conscience. A public officer must not be too thin-skinned with reference to comment upon his official acts. Only thus can the intelligence and dignity of the individual be exalted. Of course, criticism does not authorize defamation. Nevertheless, as the individual is less than the State, so must expected criticism be born for the common good¹³⁵.

Similarly, in the more recent case of *Lastimosa v. People*, the Court, in acquitting a vocal critic against a Cebu governor, ruled that:

“At the outset, it bears emphasis that “the Court, in the course of its review of criminal cases elevated to it, still commences its analysis from the fundamental principle that the accused before it is presumed innocent.” This assumes further significance in

criminal prosecutions for libel as the Court needs to carefully tread the line between freedom of expression and of the press, on the one hand, and the power of the State to impose subsequent punishment on harmful speech, on the other. Thus, the Court would meticulously ensure first that all the elements of the crime are individually proven beyond reasonable doubt before arriving at a judgment of conviction. In this case, there is reasonable doubt in one of the elements, namely, the element that the person allegedly defamed must be identifiable in the subject writing¹³⁶.” (citations omitted)

Thus, the trend in jurisprudence regarding criminal defamation laws in the Philippines remains to be steadfastly tilted in favor of acquittals and non-convictions. The Supreme Court has also shown preference for the imposition of fines instead of imprisonment for convictions involving libel. In *People v. Soliman*¹³⁷, the Court held that for traditional libel, a fine can be imposed in *lieu* of imprisonment. As to libel, the Court found that upon dividing the maximum amount of the fine for traditional libel (PhP 1,200,000) into four parts, each degree amounts to PhP 300,000. As for online libel, the range of fine is from PhP 40,000 to PhP 1,500,000. However, the constitutionality of libel remains to be doubtful and subject to further scrutiny.



REUTERS/Eloisa Lopez

| 136 G.R. No. 233577, December 5, 2022.

| 137 G.R. No. 256700, April 25, 2023

8.3 How often, and under what prevailing circumstances, have charges of criminal defamation been pursued against journalists and media workers?

A study commissioned by the National Union of Journalists of the Philippines (NUJP) has shown that local politicians are at the forefront when it comes to filing criminal cases of libel and cyber libel against journalists in the country. The study, *State of Legal Safety of Filipino Journalists*, found that local politicians accounted for 61% of the cases monitored during the study's timeline from June 2016 to March 2023. Among these cases, 11 involved mayors, seven involved governors, three involved congressional representatives, two involved barangay chairpersons, and one involved a provincial board member¹³⁸. As for those which reach the Supreme Court, most of the charges against journalists and media workers involve articles involving public figures.

8.4 How have aspects of press freedoms and freedom of expression been considered in these cases?

The Supreme Court has discussed extensively the freedom of the press and the freedom of expression in libel cases. In *Tulfo v. People*¹³⁹, the Court had the occasion to discuss modern views on libel:

“Freedom of speech and of the press is a hard-fought right dating as far back as the Spanish regime. At that time, censorship had been legitimate, and such liberties were not only recurrent demands of propagandists, but leading causes for revolution.

Freedom of the press rests its philosophical basis within the larger scope of the right to free discussion and expression. Freedom of the press “is the sharpest weapon in the fight to keep government responsible and efficient. Without a vigilant press, the mistakes of every administration would go uncorrected and its abuses unexposed.”

“However, the freedoms of speech and of the press are not absolute, but subject to certain restrictions, such as laws against libel. The recognition of libel as a limitation is rooted in one’s right to protect their reputation from malicious attacks. “The right of a person to public esteem is as much a constitutional right as the possession of life, liberty or property.”

Modern views, however, justify libel laws on the value of reputation. History has shown several concepts of reputation that defamation laws seek to protect: reputation as property; reputation as honor; and reputation as dignity. The right to enjoy one’s reputation is ancient, long regarded as essential to human society and civilization, falling under personal security. For this reason, those who harm another’s reputation are penalized.

¹³⁸ Coralles, C. (2023) Local politicians take lead in filing libel cases against journalists – NUJP study. Rappler. Available at <https://www.rappler.com/philippines/mindanao/local-politicians-libel--cases-journalists-nujp-study/> (last accessed December 12, 2024).

¹³⁹ G.R. Nos. 187113 & 187230, January 11, 2021

There appears no real distinction between civil and criminal libels. Act No. 277 had once placed civil and criminal libel actions as separate and independent remedies even if based on the same acts, as they differed in the required sufficiency of evidence. This principle was no longer incorporated in the Revised Penal Code, which strengthened the notion that exemption from criminal liability means exemption from civil liability. Nevertheless, Article 33 of the Civil Code still provides:

ARTICLE 33: In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

As a rule, “when a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action.” Article 33 provides an exception in that it permits the institution of “a civil action for the recovery of damages that is entirely unrelated to the purely criminal aspect of the case.”

It must, however, be clarified that the terms defamation and fraud, as used in Article 33, should be interpreted in their ordinary sense, “because there are no specific provisions in the Revised Penal Code using these terms as means of offenses defined therein.”

How much one suffers from the damage to reputation cannot be accurately assessed, and courts must exercise sound discretion based on the circumstances of each case.

It is reiterated that the courts carefully tread the line between freedom of expression and of the press, on the one hand, and the power of the State to impose subsequent punishment on harmful speech

8.5 Who are the parties typically instituting suits for criminal defamation?

More than the majority of the criminal cases monitored by the National Union of Journalists of the Philippines were filed by local politicians (61.5%), of whom 11 were mayor seven (7) governors, three (3) representatives, two (2) village captains, and one (1) board member. Other complainants include government offices (12.8%); private Individuals (15.4%); police officers (7.7%) and religious groups (2.6%)¹⁴⁰.

140 Coralles, C. (2023) Local politicians take lead in filing libel cases against journalists – NUJP study. Rappler. Available at <https://www.rappler.com/philippines/mindanao/local-politicians-libel-cyber-libel-cases-journalists-nujp-study/> (last accessed December 12, 2024).

8.6 Who are the parties against whom suits on charges of criminal defamation are typically filed?

The cases that reached the Supreme Court in the last five years involve media organizations and/or journalists¹⁴¹ and private individuals¹⁴².

8.7 If available, please highlight the penalties imposed in each case.

Please see responses in 4.1 and 4.3

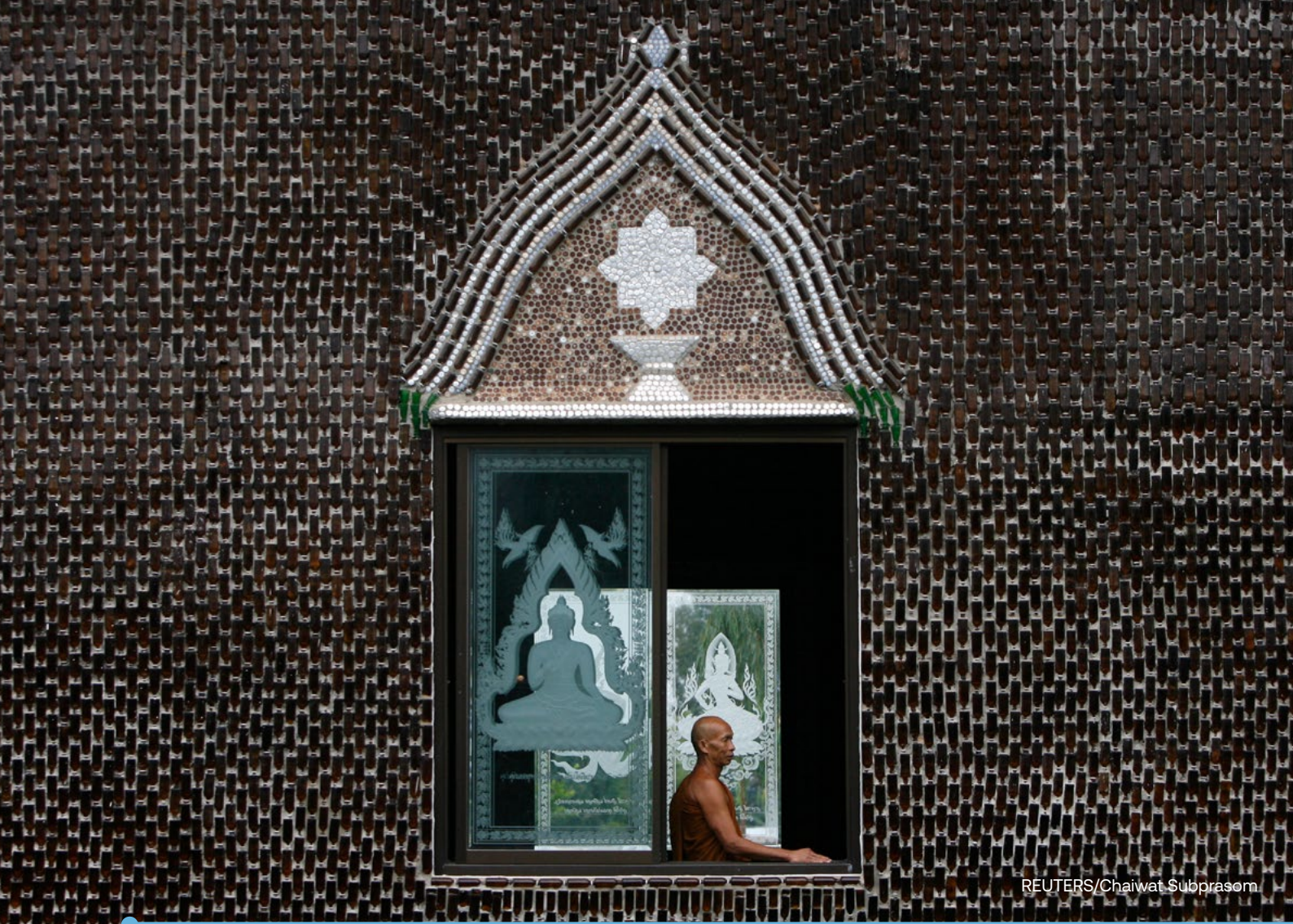
¹⁴¹ Mejorada v. People, G.R. No. 245850, June 10, 2019; Madrilejos v. Gatdula, G.R. No. 184389, September 24, 2019; Yap v. Regional Trial Court of Quezon City, G.R. No. 204015, January 23, 2019; Guy v. Tulfo, G.R. No. 213023, April 10, 2019; Tulfo v. People, G.R. Nos. 187113 & 187230, January 11, 202, Maglasang v. People, G.R. No. 248616, January 12, 2021; Tulfo v. People, G.R. No. 237620, April 28, 2021; Tieng v. Palacio-Alaras, G.R. Nos. 164845, 181732 & 185315, July 13, 2021; Suarez v. Ojeda, G.R. No. 232936, October 13, 2021; People v. Castillo, G.R. No. 250601, October 13, 2021; Yap v. Ibay, Jr., G.R. No. 227534, November 29, 2021;

¹⁴² People v. Ramoy, G.R. No. 212738, March 9, 2022; Lastimosa v. People, G.R. No. 233577, December 5, 2022; Orillo v. People, G.R. No. 206905, January 30, 2023; People v. Soliman, G.R. No. 256700, April 25, 2023; Causing v. People, G.R. No. 258524, October 11, 2023.

Annex of Citations (Philippines)

No.	Legal Provision	Description
1.	Republic Act No. 10951, Art. 355. Libel by means of writings or similar means. - A libel committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means, shall be punished by prisión correccional in its minimum and medium periods or a fine ranging from Forty thousand pesos (₱ 40,000) to One million two hundred thousand pesos (₱ 1,200,000), or both, in addition to the civil action which may be brought by the offended party.	These offenses were codified and penalized under the Revised Penal Code, enacted during the American colonial period in 1930.
2.	Republic Act No. 10951, Art. 356. Threatening to publish and offer to prevent such publication for a compensation. - The penalty of arresto mayor or a fine from Forty thousand pesos (₱ 40,000) to Four hundred thousand pesos (₱ 400,000), or both, shall be imposed upon any person who threatens another to publish a libel concerning him or the parents, spouse, child, or other member of the family of the latter, or upon anyone who shall offer to prevent the publication of such libel for a compensation or money consideration.	
3.	Republic Act No. 10951, Art. 358. Slander. - Oral defamation shall be punished by arresto mayor in its maximum period to prisión correccional in its minimum period if it is of a serious and insulting nature; otherwise the penalty shall be arresto menor or a fine not exceeding Twenty thousand pesos (₱ 20,000).	
4.	Republic Act No. 10951, Art. 359. Slander by deed. - The penalty of arresto mayor in its maximum period to prisión correccional in its minimum period or a fine ranging from Twenty thousand pesos (₱ 20,000) to One hundred thousand pesos (₱ 100,000) shall be imposed upon any person who shall perform any act not included and punished in this title, which shall cast dishonor, discredit or contempt upon another person. If said act is not of a serious nature. the penalty shall be arresto menor or a fine not exceeding Twenty thousand pesos (₱ 20,000).	

No.	Legal Provision	Description
5.	<p>Republic Act No. 10951, Art. 361. Proof of the truth - In every criminal prosecution for libel, the truth may be given in evidence to the court and if it appears that the matter charged as libelous is true, and, moreover, that it was published with good motives and for justifiable ends, the defendants shall be acquitted.</p> <p>Proof of the truth of an imputation of an act or omission not constituting a crime shall not be admitted, unless the imputation shall have been made against Government employees with respect to facts related to the discharge of their official duties.</p> <p>In such cases if the defendant proves the truth of the imputation made by him, he shall be acquitted.</p>	
6.	<p>Republic Act No. 10951, Art. 362. Libelous remarks. - Libelous remarks or comments connected with the matter privileged under the provisions of Article 354, if made with malice, shall not exempt the author thereof nor the editor or managing editor of a newspaper from criminal liability.</p>	
7.	<p>R.A. 10175 (Cybercrime Prevention Act of 2012), 4(c)(4) Libel — The unlawful or prohibited acts of libel as defined in Article 355 of the Revised Penal Code, as amended, committed through a computer system or any other similar means which may be devised in the future.</p>	<p>Enacted in 2012, the Cybercrime Prevention Act reflects the Philippines' response to the rise of internet usage and digital communication. It aims to address cybercrimes while aligning laws with the evolving digital landscape.</p>



Thailand chapter



1. Defamation

1.1 Does defamation constitute a criminal offense?

Yes, under Thai Criminal Code, any person committing the following acts shall be deemed to have committed criminal offense of defamation, whether the act is demonstrated through writing, typing, speech, or any other means and subject to criminal penalties:

(a) Defamation of a Living Person

Making a defamatory statement of another person to a third party in a manner likely to cause that person to lose their reputation, be scorned, or hated¹⁴³.

(b) Defamation of a Deceased Person

Making a defamatory statement of a deceased person to a third party, in a manner likely to cause the deceased person's father, mother, spouse, or children to lose their reputation, be scorned, or hated¹⁴⁴.

(Collectively referred to as **"Criminal Defamation"**)

In cases where Criminal Defamation is committed publicly by advertising through any means whether via documents, drawings, paintings, films, images, text displays, recordings, sound or video recordings, broadcasting, dissemination of images, public announcements, or advertisements. For example, posting a defamatory statement on social media or any online platforms (e.g., Facebook or Instagram), or through the publication of electronic newspapers or e-documents (**"Criminal Defamation via Advertisement"**), the offender shall be subject to increased criminal penalties¹⁴⁵.

Additionally, if the Criminal Defamation is committed against one of the following individuals, the offender shall be subject to a different criminal penalty with longer imprisonment terms and/or higher fines¹⁴⁶.

- (a) A king, queen, crown prince, or regent;
- (b) A king, queen, consort, crown prince, or head of a foreign state; and
- (c) A foreign representative who has been appointed to the royal court.

(Collectively referred these persons as **"Leaders"** and referred criminal defamation against these persons as **"Criminal Defamation Against Leaders"**)

¹⁴³ Section 326 of Thai Criminal Code

¹⁴⁴ Section 327 of Thai Criminal Code

¹⁴⁵ Section 328 of Thai Criminal Code

¹⁴⁶ Section 112, 133, and 134 of Thai Criminal Code

1.2 Does defamation also constitute a civil offense?

Yes, under Thai Civil and Commercial Code, any person who asserts or circulates a false statement, causing harm to another person's reputation, honor, path to prosperity or earning, shall be liable to pay compensation for any damages resulting from such actions. This applies even if the person did not know the statement was false but ought to have known¹⁴⁷ ("**Civil Defamation**").

1.3 What are the differences in the essential elements of civil defamation and criminal defamation?

(a) Difference in Act

Criminal Defamation arises solely from intentional acts. Therefore, any act committed without intent or through negligence does not constitute Criminal Defamation.

In contrast, Civil Defamation does not require intent. Acts committed without intention or through negligence may still constitute Civil Defamation.

(b) Difference in Statement

Criminal Defamation arises from making a defamatory statement, regardless of whether the statement is true or false.

In contrast, Civil Defamation arises solely from making a defamatory statement that is false, or a statement that the offender ought to have known to be false.

(c) Difference in Damages

Criminal Defamation arises from making a defamatory statement that causes another person to lose their reputation, be scorned, or hated.

In contrast, Civil Defamation arises not only from making a defamatory statement that causes harm to another person's reputation but also includes harm to their honor, livelihood, or the path to prosperity or earning.

1.4 Penalties under relevant statutes governing civil defamation

Any person who commits the offense of Civil Defamation shall be liable to pay compensation for any damage caused by the offense. This compensation shall be equivalent to the harm caused, including but not limited to loss of commercial credibility, missed opportunities to hold a position, damage to family reputation, impacts on professional career.

However, the forms and amount of compensation shall be determined by the Thai court based on the circumstances and severity of the offense¹⁴⁸.

¹⁴⁷ Section 423 of Thai Civil and Commercial Code

¹⁴⁸ Section 438 of Thai Civil and Commercial Code

2. Laws that cover criminal defamation¹⁴⁹

Under Thai regulatory framework, the Thai Criminal Code serves as the primary legal framework for criminal law in Thailand. It was first enacted in 2499 (1956) and became effective on 1 January 2500 (1957). This legislation consolidated various legal provisions under the previous criminal code named “Criminal Code of R.E. 127 (1908)” and its amendments into a single, comprehensive code, reforming outdated provisions to align with international standards and the change in Thailand’s governance from monarchy to democracy on 24 June 1932, ensuring a clearer, more just legal framework. To the present day, this code has undergone 29 amendments, with the latest version being revised by the Amendment to the Criminal Code Act (No. 29), B.E. 2565 (2022).

Specific provisions related to Criminal Defamation and Criminal Defamation via Advertisement are prescribed in Sections 326 to 333, while provisions related to Criminal Defamation Against Leaders are prescribed in Sections 112, 133, and 134 of this code.

3. Elements of defamation

3.1 What are the essential elements of defamation under the laws of Thailand?

According to the Thai Criminal Code, the essential elements of Criminal Defamation can be classified as follows:

(a) Defamation of a Living Person

1. Any person;
2. Making a defamatory statement;
3. Of another person;
4. To a third party;
5. In a manner likely to cause another person to lose their reputation, be scorned, or be hated; and
6. Intentionally.

(b) Defamation of a Deceased Person

1. Any person;
2. Making a defamatory statement;
3. Of deceased person;
4. To a third party;
5. In a manner likely to cause the deceased person’s father, mother, spouse, or children to lose their reputation, be scorned, or hated; and
6. Intentionally.

Note:

- (a) The offense of Criminal Defamation via Advertisement consists of the same element as those for Defamation of a Living Person and Defamation of a Deceased Person, with an additional element that the defamation statement must be made publicly through advertising by any means.
- (b) The offense of Criminal Defamation Against Leaders consists of the same elements as Defamation of a Living Person mentioned in this section, except for that the third element, “Of another person,” which is changed from any individual to Leaders.

3.2 How have the courts considered external developments in their interpretation of the elements under the offense of criminal defamation?

Under Thai regulatory framework, Thai courts have developed certain interpretative principles regarding criminal defamation, particularly through Supreme Court Judgement or Rulings. The following illustrates how the courts have interpreted and applied the elements of the offense of criminal defamation in their decisions:



Interpretation of Elements of Criminal Defamation for a Living Person and a Deceased Person

- (a) **Any person:** this refers to both natural persons and juristic persons;
- (b) **Making a defamatory statement:** a defamatory statement must be in manner that asserts or affirms facts related to the past or present (but not the future), as opposed to merely expressing an opinion. The statement may be made through any means, and it is irrelevant whether the facts presented are true or false. Defamation can occur regardless of whether the language used is vulgar or not;
- (c) **Of another person or deceased person:** the defamed party must be clearly identifiable in the defamatory statement;
- (d) **To a third party:** The defamatory statement must be communicated to a third party, which can be either a natural person or a juristic person capable of understanding the defamatory meaning of the statement. If the third party is not capable of understanding the defamatory statement (e.g. incompetent person and deaf person), the Criminal Defamation shall not be considered successfully committed;

In the case where such defamatory statement is made directly to the defamed party without the presence of a third party, the offender is still liable for criminal insult offense under Section 393 of the Thai Criminal Code, which has the penalty of imprisonment for a term of not exceeding 1 (one) month and/or a fine of not exceeding THB 10,000 (approx. USD 290);

- (e) **In a manner that likely to (i) cause that person to lose their reputation, be scorned, or be hated or (ii) cause the deceased person's father, mother, spouse, or children to lose their reputation, be scorned, or hated:** these manners are considered as attendant circumstances to the Criminal Defamation that must be present for the act to qualify as Criminal Defamation, though the offender is not required to be aware of this circumstance;
- (f) **Intentionally:** the offender or person making the defamatory statement must be aware that their actions constitute Criminal Defamation and must directly or indirectly intend for another person or the deceased person's father, mother, spouse, or children to lose their reputation, be scorned, or hated as a result of their actions.

Note:

- (a) An additional element of Criminal Defamation via Advertisement requires the defamatory statement to be made publicly to any person via any means. This means the statement must be disclosed to the general public via documents, drawings, paintings, films, images, text displays, recordings, sound or video recordings, broadcasting, dissemination of images, public announcements, or advertisements, rather than targeting a specific group or individual.

3.3 Are there similarities and adherence to international standards in the interpretation of these elements?

We understand that the elements of Criminal Defamation under the Thai Criminal Code are similar to the elements of defamation under the laws of the United Kingdom and many states in the USA. The elements consist of:

- (a) Publication of statement to a third-party;
- (b) The victim of the defamation must be identifiable;
- (c) The statement must have a negative impact on the victim's reputation; and
- (d) The accused must be at fault.

4. Prescriptive period and penalties

4.1 What is the prescriptive period and the penalties under criminal defamation?

Prescriptive period

Under Thai Criminal Code, the criminal charge for criminal defamation must be brought to court within the following prescriptive period:

- (a) **Criminal Defamation and Criminal Defamation via Advertisement:** the victim must file a complaint within three (3) months from the date they become aware of the offense and the offender's identity;
- (b) **Criminal Defamation Against the King, Queen, Crown Prince, or Regent:** 15 years from the date of the offense;
- (c) **Criminal Defamation Against the King, Queen, Consort, Crown Prince, or Head of a Foreign State:** 10 years from the date of the offense; and
- (d) **Criminal Defamation Against a Foreign Representative Who Has Been Appointed to the Royal Court:** 10 years from the date of the offense.

Failure to file the complaint within these prescriptive periods will result in the case being barred by prescription.

Penalty

- (a) **The Penalty of Criminal Defamation** is punishable by imprisonment for a term not exceeding 1 (one) year and/or a fine not exceeding THB 20,000 (approx. USD 587) or both.
- (b) **The Penalty of Criminal Defamation via Advertisement** is punishable by imprisonment for a term not exceeding 2 (two) years and/or a fine not exceeding THB 200,000 (approx. USD 5,870).

In addition, the Court may give order to seize and destroy the defamatory matter or any part thereof; or to publish the whole or part of the judgment in one or more newspapers once or several times at the expense of the accused as a remedy to the victim¹⁵⁰.

(c) The Penalty of Criminal Defamation Against Leaders

We have categorized the criminal penalties for Criminal Defamation Against Leaders based on the category of Leaders targeted by the offense, as outlined below:

1. **Criminal Defamation Against the King, Queen, Crown Prince, or Regent** is punishable by imprisonment for a term from 3 (three) to 15 (fifteen) years¹⁵¹;
2. **Criminal Defamation Against the King, Queen, Consort, Crown Prince, or Head of a Foreign State** is punishable by imprisonment for a term from 1 (one) to 7 (seven) years, and/or a fine ranging from THB 20,000 (approx. USD 580) to THB 140,000 (approx. USD 4,060)¹⁵²; and
3. **Criminal Defamation Against a Foreign Representative Who Has Been Appointed to the Royal Court** is punishable by imprisonment for a term from 6 (six) months to 5 (five) years, and/or a fine ranging from THB1 0,000 to THB 100,000¹⁵³.

4.2 What are the prescriptive periods set out by the criminal defamation laws in Thailand?

Please refer to the prescriptive periods for criminal defamation in section 4.1.

4.3 Examples or key case laws where the offense of criminal defamation was defined and/or punished

Examples of key cases where the offense of criminal defamation was defined and/or punished through Supreme Court Judgement or Rulings under the Thai regulatory framework, as follows:

Criminal Defamation: Defamation of a Living Person

- (a) Under Supreme Court Ruling No. 3073/2565, Criminal Defamation requires an act of imputing, meaning making an accusation or asserting harmful claims about another person to a third party in a manner likely to damage that person's reputation, subjecting them to contempt, or cause them to be hated. The defendant's statement, "You dog-blooded scum," involves the word "*blood*" (or *inherent nature*), which refers to characteristics inherent by birth. This could mean either good or bad traits, although it is often used with a negative connotation. However, it does not constitute an imputation of a defamatory nature against the complainant.

| 150 Section 332 of Thai Criminal Code

| 151 Section 112 of Thai Criminal Code

| 152 Section 133 of Thai Criminal Code

| 153 Section 134 of Thai Criminal Code

- (b) Under Supreme Court Ruling No. 5276/2562, the act of imputing someone to a third party in a manner likely to harm their reputation, subject them to contempt, or cause them to be hated constitutes the offense of Criminal Defamation under the Thai Criminal Code. For this offense to be established, the imputation must explicitly identify the individual being defamed, making it unequivocally clear who the subject of the imputation is. Alternatively, if the imputation does not directly name the individual, it must still sufficiently indicate a specific person so that the audience can reasonably understand who is being referred to.

Criminal Defamation: Defamation of a Deceased Person

Under Supreme Court Ruling No. 6031/2531, the first defendant wrote an article in a newspaper containing the statement: “Which party has members involved in international heroin trafficking, leading to the issue being resolved by taking their own life to leave this world?” This statement led readers to understand that it referred to Party P. and Mr. D., the plaintiff’s late husband. As such, the first defendant intended to impute the deceased by publishing statements in writing, which could potentially damage the reputation of the plaintiff, as the deceased’s wife, and their children, subjecting them to contempt or hatred from others. This was not an expression of opinion or statement made in good faith or fair criticism. Therefore, the first defendant was found guilty of Criminal Defamation via Advertisement.

Criminal Defamation Via Advertisement

Under Supreme Court Ruling No. 10839/2557, the defendant gave a statement to the press, which was widely reported in the newspapers throughout Lampang Province, claiming that the defendant had purchased a lottery ticket with the last three digits “966” for the draw on 1 November 2004, and won the prize, but the co-plaintiff refused to pay the prize money. This statement was found false and constituted a defamatory statement against the co-plaintiff, with the intent to damage their reputation, subject them to contempt, or cause hatred. When the defendant agreed to be interviewed by newspaper reporters, they were fully aware that the reporters, as professional mass media practitioners, might disseminate the information to the public. Furthermore, the statements made by the defendant pertained to winning a lottery prize and not receiving the money, a matter of interest to the public as it concerns the hope of many who purchase lottery tickets. The defendant could reasonably foresee that the reporters would publish the statements in the newspaper as per their interview. Once the newspapers published the statements, aligning with the defendant’s intention, the defendant’s actions were found to amount to defamation by means of publication, constituting a Criminal Defamation via Advertisement under Thai Criminal Code.

Criminal Defamation Against Leaders

Under Supreme Court Ruling No. 2354/2531, the defendant’s public statements, though possibly made without malicious intent, were deemed offensive and defamatory towards the Thai monarchy, violating the dignity and honor of the royal family. The court emphasized that, regardless of the truth of the remarks, the monarchy’s esteemed position in Thai society necessitates legal protection against such insults. While the defendant’s efforts to retract the statements and seek forgiveness were recognized as mitigating factors, the court upheld the legal stance that defamatory actions toward the monarchy must be penalized to maintain societal respect for the royal institution.

5. Remedies

5.1 What remedy is available to an accused in the case of defamation?

Under the Thai regulatory framework, there are no specific remedies directly available to the accused in cases of criminal defamation. However, if a Thai court finds the accused not guilty and dismisses the complaint for wrongful criminal defamation, the accused may pursue general remedies by legal proceeding in Thai court as follows:

Filing a Civil Complaint

- (a) The accused may file a civil complaint in a Thai court seeking compensation for damages from the complainant in charge of tort. To succeed, the accused must demonstrate that¹⁵⁴:
 1. The lawsuit was filed in bad faith or with malicious intent; or
 2. The lawsuit was brought without a legitimate aim to achieve a fair outcome, thereby abusing the right to access the court.

Filing a Criminal Complaint

- (b) The accused may also file a criminal complaint against the complainant for filing a false criminal complaint¹⁵⁵.

5.2 Overview of the general remedies available to an accused wrongfully charged with criminal defamation, and details of the outcomes where these available remedies were invoked

Under Thai regulatory framework, the accused may seek general remedies from being wrongfully charged with criminal defamation through the legal proceeding in Thai court as mentioned in section 5.1.

Please note that the outcomes of these general remedies pursued through legal proceedings in Thai courts may take one of the two following forms:

- (a) **Conviction of the Complainant:** the Thai court may find the complainant guilty and impose appropriate penalties.
- (b) **Dismissal of the Case:** the Thai court may dismiss the case if it determines that the complainant is not guilty.

¹⁵⁴ Section 420 or 423 of the Thai Civil and Commercial Code and Supreme Court Ruling No. 2994/2558

¹⁵⁵ Section 175 of the Thai Criminal Code

6. Defenses

6.1 What defenses may be raised if a case of criminal defamation has been filed against an individual or an organization?

The accused of Criminal Defamation, Criminal Defamation via Advertisement, or Criminal Defamation against Leaders may raise a defense in a Thai court by arguing that their actions lack the necessary elements as specified in section 3.1 above to qualify as such offenses. Alternatively, if their actions comprise of all elements that qualify as defamation, the accused may rely on the defenses outlined in section 6.2 below.

6.2 Are there any exceptions to the offense of criminal defamation under existing laws?

Yes, under Thai Criminal Code, there are defenses under Sections 329 – 331, which the accused may rely on as follows:

(a) Good Faith Expression of Opinion

Any person who makes a statement or expresses an opinion in good faith in the following circumstances **shall not be guilty of Criminal Defamation**¹⁵⁶.

1. For justice, to defend oneself or protect one's legitimate interests in accordance with righteousness;
2. In the capacity of an official performing their duties;
3. To fairly criticize a person or a matter that is generally accepted by the public; or
4. To report news fairly about matters publicly disclosed in court or at a meeting.

(b) In the Course of Legal Proceedings

The parties and their attorneys who express an opinion or statement in the course of legal proceedings for the benefits of their case, **shall not be guilty of Criminal Defamation**¹⁵⁷.

(c) True Statement

In the case of Criminal Defamation and Criminal Defamation via Advertisement, if the accused can prove that the defamatory statement is true, **the accused shall be exempted from criminal penalties**. However, the accused may not rely on this defense if the defamatory statement concerns a private matter, and such averment would not be beneficial to the public.¹⁵⁸

| 156 Section 329 of the Thai Criminal Code

| 157 Section 331 of the Thai Criminal Code

| 158 Section 330 of the Thai Criminal Code



7. Amendments

7.1 Did Thailand explore or pass amendments to the criminal defamation law?

Yes, according to the amendments specified in Thai Criminal Code (Codified Version)¹⁵⁹, there have been three amendments to the provisions regarding criminal defamation under Thai Criminal Code, as detailed below:

- (a) An amendment to the provision of Criminal Defamation Against the King, Queen, Crown Prince, or Regent was made in 2519 (1976) through the Order of the National Administrative Reform Council No. 41 dated 21 October 2519 (1976);
- (b) An amendment to the provision of Criminal Defamation and Criminal Defamation via Advertisement was made in 1992 through the Amendment to the Criminal Code Act (No. 11), B.E. 2535 (1992); and
- (c) An amendment to provisions of the Criminal Defamation Against the King, Queen, Consort, Crown Prince, or Head of a Foreign State and Criminal Defamation Against a Foreign Representative Who Has Been Appointed to the Royal Court was made in 2017 through the Amendment to the Criminal Code Act (No. 26), B.E. 2560 (2017).

7.2 What amendments have been made and when have they been made?

(a) Amendment to Criminal Defamation and Criminal Defamation via Advertisement

In 1992, an amendment was made to adjust the fine penalties imposed on those committing Criminal Defamation and Criminal Defamation via Advertisement under provisions of the Thai Criminal Code. This amendment aimed to align the penalties with the current circumstances at that time, as detailed below:

1. The amendment has been made to increase the fine penalties of Criminal Defamation from a fine not exceeding THB 2,000 (approx. USD 59) to a fine not exceeding THB 20,000 (approx. USD 587) while the imprisonment term remains unchanged.
2. The amendment has been made to increase the fine penalties of Criminal Defamation via Advertisement from a fine not exceeding THB 4,000 (approx. USD 117) to THB 200,000 (approx. USD 5,870) while the imprisonment term remains unchanged.

(b) Amendment to Criminal Defamation Against Leaders

1. In 1976, an amendment was made to increase the imprisonment penalties for Criminal Defamation Against the King, Queen, Crown Prince, or Regent from not over 7 (seven) years to imprisonment from 3 (three) to 15 (fifteen) years.
2. In 2017, an amendment was made to adjust the fine penalties of Criminal Defamation Against Leaders as detailed below:
 - I. The amendment has been made to increase the criminal penalties of Criminal Defamation Against the King, Queen, Consort, Crown Prince, or Head of a Foreign State from a fine ranging from THB 2,000 (approx. USD 58) to THB14,000 (approx. USD 406) to a fine ranging from THB 20,000 (approx. USD580) to THB 140,000 (approx. USD 4,060) while the imprisonment term remains unchanged.
 - II. The amendment has been made to increase the criminal penalties of Criminal Defamation Against a Foreign Representative Who Has Been Appointed to the Royal Court from a fine ranging from THB 1,000 (approx. USD 29) to THB 10,000 (approx. USD 290) to a fine ranging from THB 10,000 (approx. USD 290) to THB 100,000 (approx. USD 2900) while the imprisonment term remains unchanged.

8. Summary

8.1 Summary of criminal defamation cases filed against journalists or media organizations or activists over the last 5 years

Please find summary of key criminal defamation cases filed against journalists, media organizations, or activists over the past 5 (five) years, as detailed below:

- (a) In 2021, a reporter from news agency named “the Nation” was sued by Myanmar Pongpipat Company Limited, a Thai mining company operating in Myanmar, for Criminal Defamation via Advertisement. The lawsuit stemmed from the Nation’s news report titled “Myanmar court orders Thai mining company to pay THB 2.4 million to villagers in Tanintharyi due to environmental damage caused by tin mine,” which was posted on the GreenNews website¹⁶⁰.

As of 21 October 2024, the Court of Appeal Region 7 rendered the judgement to uphold the dismissal of this defamation case against the reporter, affirming the lower court’s finding that the defendant acted in good faith while reporting environmental news based on factual information from a court judgment. The court ruled that the journalist’s actions constituted fair reporting and criticism, as align with the exceptions to the offense of criminal defamation on (i) fairly criticize a person or a matter that is generally accepted by the public and (ii) to fairly report news about matters publicly disclosed in court¹⁶¹.

- (b) In 2021, a political activist was sued by a public attorney for Criminal Defamation Against the King, Queen, Crown Prince, or Regent after posting a message with the image “Emerald Buddha X Sirivannavari Bangkok”. The image featured His Majesty King Maha Vajiralongkorn performing the ritual of changing the winter attire of the Emerald Buddha, but the image was altered to depict the Emerald Buddha wearing a purple evening gown instead of the winter regalia. Additionally, a dog with a purple bow was shown sitting beside the Emerald Buddha¹⁶².

As of 28 June 2023, the Criminal Court convicted the reporter of Criminal Defamation Against the King, Queen, Crown Prince, or Regent, sentencing her to 3 (three) years in prison. However, due to her guilty plea, the sentence was reduced by half, resulting in a sentence of 1 (one) year and 6 (six) months in prison.

Subsequently, after 18 August 2024, under the Royal Decree on Amnesty B.E. 2567 (2024), the reporter became eligible for amnesty. This was because she had already served at least one-third of her sentence, which qualified her for the pardon. She was released after serving a total of 519 days in prison, or more than 1 (one) year and 5 (five) months¹⁶³.

- (c) In 2019, a reporter from news agency named “Voice TV” was sued by Dhammakaset Company Limited for Criminal Defamation and Criminal Defamation via Advertisement. The case arose from the reporter using their personal Twitter account to retweet a news article about a labor court verdict, adding the comment “case of using slave labor”¹⁶⁴.

As of 9 August 2022, the Supreme Court rendered a judgment to dismiss the case of Criminal Defamation and Criminal Defamation via Advertisement filed against reporters. The Supreme Court recognized that, as journalists, the reporter had a duty to report

160 <https://waymagazine.org/pratch-rujivanarom-interview/>

161 <https://prachatai.com/journal/2024/10/t11235>

162 <https://database.thr2014.com/public/case/1906/lawsuit/681/>

163 <https://thematter.co/brief/235017/235017>

164 <https://www.ilaw.or.th/articles/case/23906>

on issues directly related to forced labor. Acting as members of the public with the right to scrutinize, critique, and express opinions in good faith for the public interest, the defendants' actions were deemed lawful. The Supreme Court held that the reporter's fair criticism of the plaintiff fell within the scope of lawful actions typically undertaken by members of the public. This aligns with the exception to defamation offenses, which permit any individual to fairly criticize a person or a matter that is generally accepted by the public, as specified in section 6.2¹⁶⁵.

8.2 Overview of the general trends of suits prosecuted on the basis of criminal defamation

From 2020, criminal defamation lawsuits have become an increasingly significant issue in Thailand, particularly in the context of Criminal Defamation Against the King, Queen, Crown Prince, or Regent and their application to critics of the monarchy.

According to data from the Human Rights Lawyers Center, political prosecutions in Thailand have surged, particularly since the "Youth Liberation" protests against the Thai government began in July 2020. A total of 1,956 individuals have faced prosecution in 1,302 cases, with 4,009 total prosecutions when repeated charges are taken into account. The most prevalent charge is Criminal Defamation Against the King, Queen, Crown Prince, or Regent, with at least 273 individuals charged in 306 separate cases. This troubling development highlights the increasing reliance on criminal defamation laws to stifle political opposition, limit free expression, and silence critical perspectives toward the government and monarchy.

Additionally, the scope of Criminal Defamation Against the King, Queen, Crown Prince, or Regent has been interpreted broadly, in a number of cases have been viewed as extending beyond the written provisions of the law. For example, this offense has been applied to include deceased monarchs.

8.3 How often, and under what prevailing circumstances, have charges of criminal defamation been pursued against journalists and media workers?

According to the summary of criminal defamation cases filed against journalists, media organizations, and activists in section 8.1, news, and publication, there were a few cases where journalists and media workers faced charges of Criminal Defamation via Advertisement before 2022. These charges often stem from defamatory statements disseminated through social media, publications, or articles on public websites, which have the potential to reach a wide audience rapidly, thereby causing harm to an individual's or an entity's reputation.

However, to the best of our knowledge, after the year 2021, such cases involving journalists and media workers have become rare. Instead, political activists have more frequently been the target of complaints filed under charges of Criminal Defamation Against the King, Queen, Crown Prince, or Regent.

8.4 How have aspects of press freedom and freedom of expression been considered in these cases?

The current Thai Constitution B.E. 2560 (2017) safeguards and acknowledge the freedoms of expression and the press, allowing journalists and media professionals to report and express opinions without interference¹⁶⁶. However, these freedoms come with the responsibility to report truthfully and ethically, ensuring that their work does not harm others or disrupt public order. As a result, journalists or media professionals may still face charges of Criminal Defamation or Criminal Defamation Via Advertisement if their statements unjustly damage someone's reputation and qualify as Criminal Defamation or Criminal Defamation Via Advertisement.

To support this freedom while maintain the responsibility of journalists and media professionals, the Thai Criminal Code provides exception for (i) any individuals who fairly criticize a person or matter generally accepted by the public to not be guilty of criminal defamation as specified in section 6.2 and (ii) any individual is exempt from punishment under criminal defamation if they can prove that their statements are true and serve the public interest as specified in section 6.1¹⁶⁷.

Given the result of Criminal Defamation cases filed against journalists, media organizations, or activists over the past five years, as outlined in section 8.1, the Thai courts have consistently upheld the principles of press freedom and freedom of expression. As a result, many Criminal Defamation charges against journalists and media professionals have been dismissed.

8.5 Who are the parties typically instituting suits for criminal defamation?

Under Thai Criminal Procedure Code, the parties authorized to institute a lawsuit in charge of criminal defamation are (i) victim¹⁶⁸ (e.g. family of deceased person or defamed person from Criminal Defamation); and (ii) public attorney¹⁶⁹.

However, since Criminal Defamation against Leaders is considered a public offense, even if no victim initiates a lawsuit against the accused, any person can report the accused to the inquiry office to gather evidence of the offense. This allows the public attorney to file the lawsuit on behalf of the state. This differs from Criminal Defamation and Criminal Defamation via Advertisement, which are compoundable offenses. In these cases, if the victim does not initiate the offense, no one else can report the accused to the inquiry office to gather evidence for the public attorney to file the lawsuit on behalf of the state.

According to Supreme Court rulings related to criminal defamation, news and relevant publications, it is observed that in cases of Criminal Defamation and Criminal Defamation via Advertisement, the party that typically files a lawsuit against the accused is the victim themselves. In contrast, for Criminal Defamation Against Leaders, it is usually the public attorney who initiates legal action against the accused on behalf of the state.

¹⁶⁶ Section 34 and 35 of Thai Constitution B.E. 2560 (2017)

¹⁶⁷ <https://www.presscouncil.or.th/wp-content/uploads/2014/06/bb-9.pdf>

¹⁶⁸ Victim means a person who has suffered damage due to the commission of any wrongful act, including others who have the authority to act on their behalf as per Section 2(4) of the Criminal Procedure Code,

¹⁶⁹ Section 28 of Thai Criminal Procedure Code

8.6 Who are the parties against whom suits on charges of criminal defamation are typically filed?

According to data from the Human Rights Lawyers Center, news, and relevant publications covering the years 2020 to 2024, as mentioned in section 8.2, it is observed that the parties typically targeted by criminal defamation suits, or those most likely to be accused, are often political activists.

8.7 Penalties imposed in each case

Please refer to the underlined criminal penalties in summary of criminal defamation cases filed against journalists or media organizations or activists over the last 5 years in section 8.1.

9. Other notes

As the methods of delivering news or publications to the public by journalists and media professionals normally rely on digital platforms and computer systems, journalists and media professionals should be particularly vigilant about the potential criminal offenses that may arise from their actions in addition to the criminal defamation offenses under the Thai Criminal Code. The following offenses under Computer Crime Act B.E. 2560 (2017) (“**CCA**”) could also lead journalists and media professionals to criminal liability if they bring computer information with certain characteristics by either uploading or downloading it into the computer system as detailed below:

- (a) Any persons who fraudulently or by deceit, brings into the computer system any computer data that is distorted or falsified, either in whole or in part, or any false computer data in a manner that is likely to cause harm to the public, excluding offenses related to criminal defamation under the Thai Criminal Code.
- (b) Any person who brings any false computer data into the computer system in a manner that is likely to cause harm to national security, public safety, economic stability of the country, public infrastructure, or cause panic among the public.
- (c) Any person who brings any computer data into the computer system that constitutes an offense related to national security or terrorism under Thai Criminal Code.
- (d) Any person who brings any computer data of an obscene nature that the general public can access on the computer system¹⁷⁰.

Annex of Citations (Thailand)

No.	Legal Provision	Description
1.	Section 326 - 333 of the Thai Criminal Code	<p>The Thai Criminal Code was first enacted in 2499 (1956) and became effective on 1 January 2500 (1957), consolidating various legal provisions under the previous criminal code-named “Criminal Code of R.E. 127 (1908)” and its amendments into a single, comprehensive code, reforming outdated provisions to align with international standards, and the change in Thailand’s governance from a monarchy to democracy in 24 June 2475 (1932), ensuring a clearer, more just legal framework.</p> <p>Up to now, this code has undergone 29 amendments, with the latest version being revised by the Amendment to the Criminal Code Act (No. 29), B.E. 2565 (2022).</p>
2.	Section 423 of the Thai Civil and Commercial Code	<p>The Thai Civil and Commercial Code was first enacted in B.E. 2468 (1925) and became effective on 1 January 2468 (1925). This new code replaced the previous version, the Civil and Commercial Code B.E. 2466 (1923), and was designed to reform outdated provisions, making them more comprehensive and used for purpose of cancellation of treaties that the Kingdom of Siam (now Thailand) had made with foreign countries, which had previously put Siam at a disadvantage in terms of extraterritorial rights and judicial independence.</p> <p>Up to now, this code has undergone 24 amendments, with the latest version being revised by the Amendment to the Civil Code Act (No. 24), B.E. 2567(2024).</p>



Vietnam chapter



1. Defamation

Vietnamese laws and regulations are silent on the definition of defamation. However, defamation is analogous to legal provisions governing “insults to another person” and “slander or libel” as regulated under the Criminal Code and other relevant laws and regulations. In summary, the honor, dignity and prestige of an individual is inviolable and protected by law as stated in the Constitution and the Civil Code. These individual protections may be used as the basis for claims against publishers of unsubstantiated allegations or information.

1.1 Does defamation constitute a criminal offense?

Yes, it does. Although there is no clear definition of defamation under the Criminal Code and its implementing legal documents, under Article 156 of the Criminal Code, the following acts which are analogous to defamation are considered a criminal offense:

- (a) fabricating or spreading information clearly known to be untrue in order to seriously insult another person’s dignity, honor, or cause damage to another person’s lawful rights and interests; or
- (b) fabricating information that another person committed a crime and reporting that person to the authorities.

1.2 Does defamation also constitute a civil offense?

Yes, it does. Although there is no clear definition of defamation under the Civil Code and its implementing legal documents, the right to protection of honor, dignity and prestige is protected by Article 34 of the Civil Code, which provides that:

- (a) The honor, dignity and prestige of an individual is inviolable and protected by law.
- (b) An individual has the right to request that a court reject any piece of information adversely affecting their honor, dignity, and prestige. The honor, dignity, and prestige of a deceased person shall also be protected at the request of their spouse or grown children, or their parent if they have no spouse or child, unless otherwise prescribed by law.
- (c) If information adversely affecting the honor, dignity, and prestige of a person is posted through mass media, then that information shall be removed or rectified by the same medium. If the information is held by an agency, organization, or individual, such entity is required to cancel or delete it.
- (d) If it is impossible to identify the person publishing the information adversely affecting the honor, dignity, and prestige of a person, then the affected person has the right to request a court to declare that such piece of information is incorrect.

- (e) The person receiving the information adversely affecting their honor, dignity and prestige not only has the right to request rejection of such piece of information but also has the right to require the person distributing such information to issue a public apology, rectification, and compensation.

1.3 What are the differences in the essential elements of civil defamation and criminal defamation?

All types of defamation can be subject to civil action, but only serious defamation is considered a criminal offense. Less-serious defamation may be subject to administrative sanctions.

The scope of defamation includes all types of insults of another person's honor and dignity, which are subject to civil actions under the right to protection of honor, dignity, and prestige. For criminal offenses, insults of another person's honor and dignity may be categorized into different criminal acts, including "slander" under Article 156 of the Criminal Code. Other acts of insults of another person's honor and dignity may be punished in accordance with Article 155 of the Criminal Code for "insults to another person". Article 117 of the Criminal Code also prohibits "making, possessing [or] spreading information, materials [or] items for the purpose of opposing the State of the Socialist Republic of Vietnam".

There are differences between civil procedure and criminal procedure, in terms of the competent authorities, proceedings, and legal consequences, etc. of defamatory acts. Civil procedure will apply to a claim between a private plaintiff and a defendant, while criminal procedure applies between an accused and the competent authorities (the court, the procuracy, etc.) acting on behalf of the State.

In addition to civil and criminal procedures, administrative procedures may apply to defamation. Administrative procedure, in principle, is also a relationship between the infringer and the State. Based on the nature and level of seriousness of the defamation, either administrative sanctions or criminal penalties could be applied. Civil remedies may also be sought independently, or in addition to administrative or criminal actions.

1.4 Penalties under relevant statutes governing civil defamation

There is no criminal penalty applicable to defamation under civil action. In a civil action, the following measures may be applied/ordered by the court to the relevant parties¹⁷¹:

- (a) Public apology;
- (b) Public rectification; and/or
- (c) Compensation for damages.

For administrative sanctions, monetary fines are the main sanction. The difference between compensation for damages in a civil action and monetary fines in an administrative action is that in a civil action, compensation would be paid to the victim, while monetary fines are paid to the State.

¹⁷¹ Article 34 of the Civil Code.

2. Laws that cover criminal defamation¹⁷²

Defamation is covered by the Criminal Code No. 100/2015/QH13 dated 27 November 2015, as amended by Law No. 12/2017/QH14 dated 20 June 2017 (“**the Criminal Code**”), and its implementing legal regulations.

In general, any fabrication of information or dissemination of false information to harm, hurt, distort, slander, or damage the prestige, honor and dignity of another person’s reputation, or infringement upon another person’s lawful rights and interests, or making, processing or spreading information, materials or items that contain distorted information about the People’s government, causing dismay among the people or psychological warfare for the purpose of opposing the State of the Socialist Republic of Vietnam may be a basis for criminal sanctions.

In particular, the most proximate criminal offense to defamation is Article 156 of the Criminal Code for slander, including the acts of (i) fabricating spreading information clearly known to be untrue in order to seriously insult another person’s dignity, honor or cause damage to another person’s lawful rights and interests or (ii) fabricating information that another person committed a crime and reporting that person to the authorities.

Defamation in a broader sense may also be covered by Article 155 of the Criminal Code prohibiting insults to another person. If the crime is committed with a purpose of opposing the People’s Government of Vietnam, then it may fall under Article 117 of the Criminal Code which prohibits “*making, possessing [or] spreading information, materials [or] items for the purpose of opposing the State of the Socialist Republic of Vietnam*”.

3. Elements of defamation

3.1 What are the essential elements of defamation under the laws of Vietnam?

The legal system of Vietnam establishes that the essential elements of a crime include: an objective aspect, a subjective aspect, along with an object and a subject of each crime.

Clause 1 of Article 156 of the Criminal Code of Vietnam provides that defamation includes the following offenses:

- (a) Fabricating or spreading information clearly known to be untrue in order to seriously insult another person’s dignity or honor, or cause damage to another person’s lawful rights and interests; or
- (b) Fabricating information that another person committed a crime and reporting that person to the authorities.

Accordingly, the essential elements of the offense of criminal defamation are as follows:

- (a) **An objective aspect:** The offender must either fabricate or spread information clearly known to be untrue, or fabricate information that another person committed a crime and reported that person to the authorities. Consequence is not an essential element of this crime.
- (b) **A subjective aspect:** The offender must commit this crime with direct intent. In particular, the offender must be fully aware that their behavior is dangerous to society and foresees the consequences of that behavior but still wants it to happen.
- (c) **An object:** In the case of defamation, the object of the crime is another person's dignity, honor, or lawful rights and interests. In particular, the offense must either seriously insult another person's dignity or honor, cause damage to another person's lawful rights and interests, or consist of falsely reporting that a person committed a crime to the competent authorities.
- (d) **A subject:** Any person with capacity and of legal age (16 or older) can commit (i.e., be the subject of) the crime of defamation.



REUTERS/Nguyen Huy Kham

3.2 How have the courts considered external developments in their interpretation of the elements under the offense of criminal defamation, if at all?

We have not found any official discussion in the public domain regarding the changes in Vietnamese courts' interpretation of the elements under the offense of criminal defamation.

We further note the following:

- (a) The Vietnamese legal system is not a common law system; therefore, precedents are generally only a non-binding secondary source of law, with statutes as the primary source. There are no legal documents providing further details on interpretation of Article 156 of the Criminal Code.
- (b) To date, the Judicial Council of the Supreme People's Court of Vietnam has selected and published precedents for various tried cases in the civil, criminal, administrative and labor fields; however, there is no published precedent related to the offense of criminal defamation. In addition, the Supreme People's Court of Vietnam has published certain resolutions and official letters interpreting the Criminal Code; however, there is no resolution/official letter related to Article 156.
- (c) We understand from a study of the Council of Europe Member States¹⁷³ that the international developments are that there are draft laws which have decriminalized defamation. We are not aware of any draft amendment or proposal to amend or remove Article 156 of the Criminal Code (the article on the offense of criminal defamation).

3.3 Are there similarities and adherence to international standards in the interpretation of these elements?

Based on the provisions on the offense of criminal defamation of certain European countries,¹⁷⁴ we understand that the essential elements of the offense of criminal defamation under Vietnamese law are similar to relevant provisions of such countries on criminal defamation (i.e., there is an act of fabricating information/spreading knowingly untrue information; there is serious damage to another person's dignity, honor or lawful rights and interests; and there is causal link between the offense and the damage).

¹⁷³ See <https://rm.coe.int/study-on-the-alignment-of-laws-and-practices-concerning-alignment-of-l/16804915c5>, pages 29 - 31, accessed for the last time on 22 November 2024.

¹⁷⁴ See <https://rm.coe.int/1680483b2d>, accessed for the last time on 22 November 2024.

4. Prescriptive period and penalties

4.1 What is the prescriptive period and the penalties under criminal defamation, if any?

Prescriptive period

Considering the severity of the penalties associated with the crime of slander under Article 156 of the Criminal Code, it is classified as follows:

- (a) Less serious offense:¹⁷⁵ Clauses 1 and 2 of Article 156 of the Criminal Code.
- (b) Serious offense:¹⁷⁶ Clause 3 of Article 156 of the Criminal Code.

The corresponding statutes of limitations for criminal prosecution are as follows:

- (a) Five (5)¹⁷⁷ years for criminal acts regulated by Clauses 1 and 2 of Article 156 of the Criminal Code.
- (b) Ten (10)¹⁷⁸ years for criminal acts regulated by Clause 3 of Article 156 of the Criminal Code.

Penalties

The penalties for criminal defamation are provided in Article 156 of the Criminal Code of Vietnam, as follows:

- (a) An individual who engages in any of the following actions shall be liable for a fine ranging from VND 10,000,000 (approx. USD400) to VND 50,000,000 (approx. USD2,000), non-custodial reform for up to two (2) years, or imprisonment for a term ranging from three (3) months to one (1) year:
 1. fabricating information or spreading information clearly known to be untrue in order to seriously insult another person's dignity, honor or cause damage to another person's lawful rights and interests; or
 2. fabricating information that another person committed a crime and reporting that person to the authorities.
- (b) If the offense is committed under any of the following aggravating circumstances, then the offender shall be subject to imprisonment for a term ranging from one (1) to three (3) years. The offense is committed:

| 175 Article 9.1 of the Criminal Code
 | 176 Article 9.2 of the Criminal Code
 | 177 Article 27.2.a of the Criminal Code
 | 178 Article 27.2.b of the Criminal Code

1. in an organized manner;
 2. by abusing one's position and power;
 3. against two or more individuals;
 4. against one's grandparents, parents, or those who teach, raise, care for, educate, or treat the offender;
 5. against a person performing official duties;
 6. using a computer network, telecommunications network, or electronic means to commit the offense;
 7. causing the victim to suffer from mental and behavioral disorders of the victim with a body injury rate from 31% to 60%; or
 8. falsely accusing another person of committing a very serious or especially serious crime.
- (c) If the offense is committed under any of the following aggravating circumstances, then the offender shall be liable to imprisonment for a term ranging from three (3) to seven (7) years:
1. for villainous motives;
 2. causing the victim to suffer from mental and behavioral disorders of the victim with a body injury rate from 61% or more; or
 3. causing the victim to commit suicide.
- (d) The offender may also be subject to a fine ranging from VND 10,000,000 (approx. USD400) to VND 50,000,000 (approx. USD2,000) and may be prohibited from holding certain positions, practicing certain professions, or engaging in certain activities for a period ranging from one (1) to five (5) years.

4.2 What are the prescriptive periods set out by the criminal defamation laws in these countries?

Refer to section 4.1.

4.3 Examples or key case laws where the offense of criminal defamation was defined and/or punished.

There is no precedent for the crime of slander, but the following are examples of the judgments and trial practices of the Court in Vietnam:

On 29 April 2022, at the headquarters of the People's Court of Thua Thien Hue province, the first instance public trial was held for criminal case No. 02/2022/TLST-HS dated 13 January 2022, based on the Decision to bring the case to trial No. 29/2022/QDXXST-HS dated 15 April 2022, against the accused Phan Van P. On 30 June 2021, due to frustration at not being accepted as a contributor of the Representative Office of the Vietnam Law Newspaper in Thua Thien Hue province, Phan Van P had the intention of revenge to discredit Mr. Nguyen Quang T - Head of the Office of the Vietnam Law Newspaper in Thua Thien Hue province and Mr. Truong Quoc T1, Mr. Truong Cong N. To carry out the intention, Phan Van P fabricated documents impersonating Mr. Nguyen Quang T, Truong Quoc T1 and Truong Cong N with fabricated and untrue content and sent them to the

Chairman of the Provincial People's Committee and the Director of the Provincial Police of the three provinces of Quang Binh, Quang Tri and Thua Thien Hue. The above-mentioned actions of Phan Van P offended the honor and reputation of the Central Region Office of the Vietnam Law Newspaper and the contributors and reporters of the Office. The Court, based on Point a, Clause 3, Article 156; Point s, Clauses 1 and 2, Article 51; Article 38; Article 54 of the Criminal Code, sentenced the accused Phan Van P to fifteen (15) months in prison for the crime of "slander". The term of execution of the sentence was calculated from the date of temporary detention on 22 July 2021.¹⁷⁹

5. Remedies

5.1 What remedy is available to an accused in the case of defamation?

There are no specific remedies prescribed for the acts prohibited by Article 156 of the Criminal Code on the crime of slander, but depending on the circumstances of the case, the Court may request the application of judicial measures prescribed in Article 46 of the Criminal Code, if appropriate. Accordingly, compensation for damages, including forcing a public apology, etc., may be applied.

5.2 Overview of the general remedies available to an accused wrongfully charged with criminal defamation, and details of the outcomes

Overview

Remedial measures in criminal law are referred to as judicial measures and regulated by Article 46 of the Criminal Code. In particular, judicial measures against individuals who commit crimes include:

- (a) confiscation of objects and money directly related to the crime;
- (b) return of property, repair, or compensation for damage; compelling a public apology; and/or
- (c) compulsory medical treatment.

Outcomes where these available remedies were invoked

The application of judicial measures in defamation trials is subject to the Court's discretion. Below is a summary of a defamation case where judicial measures were implemented, including a public apology and the confiscation of objects related to the crime.

On 12 May 2021, at the headquarters of the People's Court of Muong Ang district, Dien Bien province, the first instance public trial of criminal case No. 60/2021/TLST-HS, dated 16 April 2021, was conducted according to the Decision to bring the case to trial No. 61/2021/QDXXST-HS dated 29 April 2021.

Mr. Pham Ngoc H, an enforcement officer holding the position of Head of the Civil Judgment Enforcement Office of Muong Ang district, executed the decision to enforce against the house and land of the accused's parents, Mr. Vu The H and Ms. Trinh Thi H in Muong Ang village. On 17 November 2020, due to anger, Vu Vuong H sent a complaint accusing Mr. Pham Ngoc H of appropriating property to the People's Procuracy of Muong Ang district and to several individuals in Muong Ang district and TG district. All accusations and denunciations were found to be untrue. Regarding the accusation against Mr. H of appropriating his family's property, Vu Vuong H fabricated and slandered Mr. Pham Ngoc H, which was resolved in Conclusion No. 01/KL-CTHADS dated 31 March 2020, by the Head of the Civil Judgment Enforcement Department of Dien Bien province.

Therefore, the Court declared that the accused committed the crime of "slander". The Court applied Point e, h, Clause 2, Article 156; Point b, s, Clause 1, Clause 2, Article 51; and Article 54 of the Criminal Code to sentence Vu Vuong H to six (6) months in prison, with the term of imprisonment calculated from 25 January 2021.

As to judicial measures, the Court also applied Point b, Clause 1, Article 46 of the Criminal Code, accepting the voluntary public apology of the accused to the Director of the Civil Judgment Enforcement Department of Dien Bien province; Civil Judgment Enforcement Department of Dien Bien province; Civil Judgment Enforcement Sub-Department of MA district, Dien Bien province, and the accused personally before the Trial Council. This apology was to be broadcast three times on Dien Bien Provincial Radio and Television Station and Muong Ang District Radio and Television Station, Dien Bien province, once the judgment comes into effect.

In addition, the Court applied Point a, Clause 1, Article 47 of the Criminal Code; and Point a, Clause 2, Article 106 of the Criminal Code to confiscate and transfer to the State one used OPPO A3s mobile phone belonging to the accused Vu Vuong H.¹⁸⁰

6. Defenses

6.1 What defenses may be raised if a case of criminal defamation has been filed against an individual or an organisation?

Under the Criminal Code, there is no direct suggestion on the defenses which may be raised for a criminal defamation case. However, as discussed above, criminal defamation must contain essential elements. The burden of proof will be on the investigative agency and the procuracy, as determined by the court.

Therefore, in practice, some potential defenses which may be raised include:

- (a) the information is true;
- (b) the accused did not know that the information is untrue;
- (c) the accused did not have an intention to commit criminal defamation;

- (d) the offender was not at least 16 years old;¹⁸¹
- (e) the offender is considered to lack of criminal capacity (i.e., a person who is suffering from mental disease or another disease that causes him/her to lose his/her awareness or control of his/her behaviors.)¹⁸²

6.2 Are there any exceptions to the offense of criminal defamation under existing laws?

Exceptions under the laws to the offense of criminal defamation may include, if applicable:

- (a) unexpected events – under which a person who commits an act that results in harmful consequences to society, in cases where the consequences of that act cannot be foreseen or are not required to be foreseen;¹⁸³
- (b) a person who is lack of criminal capacity¹⁸⁴;
- (c) justifiable force;¹⁸⁵
- (d) urgent circumstances;¹⁸⁶ or
- (e) following orders of commanders or superiors.¹⁸⁷

7. Amendments

7.1 Did the Vietnam explore or pass amendments to the criminal defamation law?

As discussed in Section 3.2, we are not aware of any draft amendment or proposal to remove Article 156 of the Criminal Code.

7.2 What amendments have been made and when have they been made?

None at the time of publication of this Guide.

8. Summary

8.1 Summary of criminal defamation cases filed against journalists or media organisations or activists over the last 5 years

There have been no official precedents regarding criminal defamation cases specifically filed against journalists, media organizations, or activists in Vietnam over the past five years.

| 181 Article 12.1 of the Criminal Code
 | 182 Article 21 of the Criminal Code
 | 183 Article 20 of the Criminal Code
 | 184 Article 21 of the Criminal Code
 | 185 Article 22 of the Criminal Code
 | 186 Article 23 of the Criminal Code
 | 187 Article 26 of the Criminal Code

Public searches in the course of research for this Guide have not uncovered any documented criminal defamation cases involving these groups.

It is important to note that while there are criminal cases involving journalists and media organizations that are publicly available, these cases do not specifically cite defamation under Article 156 of the Criminal Code. Instead, some journalists have faced prosecution for fabricating false information that harms the dignity, honor, or legitimate rights of individuals or organizations associated with the State.

For instance, on 5 April 2022, Nguyen Hoai N, a former reporter for the Ho Chi Minh City Law Newspaper, was sentenced to three (3) years and six (6) months in prison for “*exploiting democratic freedoms to violate the interests of the State and the legal rights of organizations and individuals*” under Article 331 of the 2015 Criminal Code. His charges stemmed from his publication of articles on alleged corruption at the Vietnam Inland Waterway Administration, which were deemed defamatory and damaging to officials’ reputations.¹⁸⁸

As there have been no official precedents regarding criminal defamation cases specifically filed against journalists, media organizations, or activists in Vietnam over the past five years. Public searches in the course of research for this Guide have not uncovered any documented criminal defamation cases involving these groups. It was thus not possible for the lawyers working on this guide to provide a summary of:

- (a) The general trends of suits prosecuted on the basis of criminal defamation
- (b) Frequency and the prevailing circumstances, under which charges of criminal defamation have been pursued against journalists and media workers
- (c) Rationale of the court’s decision of press freedoms and freedoms of expression cases
- (d) Details of the parties typically instituting suits for criminal defamation
- (e) Details of the parties against whom suits on charges of criminal defamation are typically filed
- (f) The penalties imposed in each case.

9. Other notes

Journalists and press activities in Vietnam must follow Press Law No. 103/2016/QH13 dated 5 April 2016 and its relevant regulations, in addition to complying with the laws and regulations on defamation. Notably, posting and releasing information against Vietnam or distorting, defaming, slandering, or hurting the prestige of organizations, agencies, honor, and dignity of individuals are prohibited under this Law. Failure to comply with these laws and regulations may subject the journalists to administrative monetary fines,¹⁸⁹ civil liabilities and/or criminal penalties.

¹⁸⁸ <https://thuvienphapluat.vn/banan/ban-an/ban-an-ve-toi-loi-dung-cac-quyen-tu-do-dan-chu-xam-pham-loi-ich-cua-nha-nuoc-quyen-loi-ich-hop-ph-255434>

¹⁸⁹ Decree No. 119/2020/ND-CP

Annex of Citations (Vietnam)

No.	Legal Provision	Description
1.	Civil Code No. 91/2015/QH13 dated 24 November 2015 issued by the National Assembly of Vietnam	Effective from 1 January 2017
2.	Criminal Code No. 100/2015/QH13 dated 27 November 2015, as amended by Law No. 12/2017/QH14 dated 20 June 2017 issued by the National Assembly of Vietnam	Effective from 1 January 2018
3.	Press Law No. 103/2016/QH13 dated 05 April 2016 issued by the National Assembly of Vietnam	Effective from 1 January 2017
4.	Decree No. 119/2020/ND-CP on penalties for administrative violations in journalistic and publishing activities, as amended by Decree No. 14/2022/ND-CP dated 27 January 2022	Effective from 7 October 2020 with amended provisions being effective from 27 January 2022

The Thomson Reuters Foundation's global pro bono legal network, TrustLaw, works with leading law firms and corporate legal teams to facilitate free legal support, research and resources for civil society organisations, social enterprises and non-profit independent media around the globe.

For more information, visit www.trust.org.

TrustLaw



**Thomson Reuters
Foundation**