



MEMORANDUM

on the

Defamation Bill of the Republic of the Maldives

London
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1. INTRODUCTION¹

This Memorandum analyses the proposed Maldives Defamation Bill in detail, providing recommendations for reform throughout. We understand that this is an official draft, drafted in part to implement the President's *Roadmap for the Reform Agenda*, which commits the government to introduce civil defamation laws by August 2006.² Our comments are based on an unofficial English translation of the Defamation Bill.³

ARTICLE 19 welcomes the Maldivian government's recent drive to develop as a democracy and to introduce reforms in Maldivian law and practice to conform to international human rights standards. In the *Roadmap for the Reform Agenda*, the President of the Maldives announced action on three fronts: constitutional reform; enacting relevant legislation; and establishing the necessary institutions. The President has also announced that the Maldives government would be ratifying the main UN human rights conventions, including the *International Covenant on Civil and Political Rights*. The Defamation Bill is part of the implementation of the second front, enacting relevant legislation.

We also welcome the evident attempts to draft more progressive defamation legislation and note a number of positive features in the Defamation Bill. These include placing the onus of proving bad faith on the plaintiff, reducing damages where an apology has been published, providing for a general defence of good faith, providing protection against liability for a range of innocent publishers and establishing a long list of other defences.

At the same time, ARTICLE 19 notes that there remain serious problems with the Bill. Although the Bill states as its purpose the establishment of a civil defamation regime, in fact it provides for imprisonment for defamation, a hallmark of criminal defamation laws. ARTICLE 19 has long been concerned over the use and abuse of criminal defamation laws and has for some time called for their abolition. Such laws and the penalties they impose exert a significant "chilling effect" on the right to freedom of expression.⁴ This effect is particularly damaging to journalists and other members of the media who face the risk of criminal prosecution for doing their job of informing the public in a timely fashion.

Given the criminal nature of the legislation, it is of particular concern that the Bill's definition of defamation is extremely broad, including the deceased and also questions of honour, in addition to reputation. The numerous provisions on defences, while undoubtedly designed to provide protection for free expression, are confusing, internally inconsistent, poorly drafted and fail to implement internationally accepted standards in this area. The Bill fails to provide

¹ ARTICLE 19 is an international human rights organisation which defends and promotes freedom of expression and freedom of information around the world. We believe that freedom of expression and access to information is not a luxury but a fundamental human right. The full enjoyment of this right is central to achieving the full enjoyment of individual freedoms and to the healthy functioning of democracy; and it is a potent force to pre-empt repression, war and conflict.

² President of the Maldives, *Roadmap to the Reform Agenda: Ushering in A Modern Democracy*, launched 27 March 2006, Section 2.7, action 2. Available at:

http://www.presidencymaldives.gov.mv/publications/Roadmap_for_the_Democratic_Reform_Agenda.pdf

³ ARTICLE 19 takes no responsibility for the accuracy of the translation or for comments based on mistaken or misleading translation.

⁴ See, for example, *Racihinov v. Bulgaria*, Application No. 47579/99, 20 April 2006, para. 50.

an unqualified defence for truthful statements and does not provide full protection for opinions.

If the Maldives government is serious in its intention to bring its legislation into line with international standards, it will need to revisit and amend the Defamation Bill. Our overarching recommendation is that the possibility of imprisonment for defamation be removed and replaced by appropriate provisions on civil compensation. An overview of our recommendations is provided below.

The detail of our analysis is contained in Section 4 of this Memorandum. Section 3 summarises the body of international law on freedom of expression and defamation that the analysis then draws on. These standards are encapsulated in the ARTICLE 19 publication, *Defining Defamation: Principles on Freedom of Expression and Protection of Reputations (Defining Defamation)*,⁵ which also informs the analysis. These principles, which draw on comparative constitutional law as well as European and UN human rights jurisprudence, have attained significant international endorsement, including that of the three official mandates on freedom of expression: the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression.⁶

2. SUMMARY OF RECOMMENDATIONS

- Our principal recommendation is that the provisions relating to imprisonment for defamation in the Bill be removed altogether.
- The Bill should be amended to define defamation narrowly as a statement that negatively affects the reputation of an individual.
- The regime of defences should be substantially reworked to reflect the following:
 - There is an absolute defence of truth and, in cases involving statements on matters of public concern, the plaintiff bears the burden of proving falsity.
 - A broad “reasonable publication” defence should apply to statements relating to matters of public interest.
 - Statements of opinion and value judgments should either be absolutely protected or benefit from a very high degree of protection.
 - A wide range of statements of particular importance – such as statements in the Peoples’ Majlis – should receive absolute protection and consideration should be given to adding a new category of statements which receive protection where made in good faith – such as reports of crime.
- ISP providers should not be liable in defamation for the statements they host.
- The scope of liability for Internet publications should be narrowed to cases where there is a significant negative impact on the plaintiff’s reputation within the Maldives.
- The exception to certain Article 11 defences for offensive statements or statements which offend against Islam should be removed.
- A limitations period should be added to the Bill, for example of one year.
- A clear framework for civil sanctions should be provided for in the Defamation

⁵ (London: ARTICLE 19, July 2000). Available at: www.article19.org.

⁶ See their Joint Declaration of 30 November 2000. Available at:

<http://www.unhchr.ch/huricane/hurricane.nsf/view01/EFE58839B169CC09C12569AB002D02C0?opendocument>

3. INTERNATIONAL STANDARDS

3.1. The Importance of Freedom of Expression

Article 19 of the *Universal Declaration on Human Rights* (UDHR)⁷ guarantees the right to freedom of expression in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The UDHR, as a UN General Assembly resolution, is not directly binding on States. However, parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948.⁸

The *International Covenant on Civil and Political Rights* (ICCPR),⁹ a treaty ratified by 156 States, imposes formal legal obligations on State Parties to respect its provisions and elaborates on many of the rights included in the UDHR. Article 19 of the ICCPR guarantees the right to freedom of expression in terms very similar to those found in Article 19 of the UDHR:

1. Everyone shall have the right to freedom of opinion.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

Freedom of expression is also protected in all three regional human rights instruments, at Article 9 of the *African Charter on Human and Peoples' Rights*,¹⁰ Article 10 of the *European Convention on Human Rights*¹¹ and Article 13 of the *American Convention on Human Rights*.¹² The right to freedom of expression enjoys a prominent status in each of these regional conventions and, although these are not directly binding on the Maldives, judgments and decisions issued by courts under these regional mechanisms offer an authoritative interpretation of freedom of expression principles in various different contexts.

Freedom of expression is a key human right, in particular because of its fundamental role in underpinning democracy. At its very first session, in 1946, the UN General Assembly adopted Resolution 59(I) which states: "Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated."¹³ As the UN Human Rights Committee has said:

⁷ UN General Assembly Resolution 217A(III), adopted 10 December 1948.

⁸ See, for example, *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd Circuit).

⁹ UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force 23 March 1976.

¹⁰ Adopted 26 June 1981, in force 21 October 1986.

¹¹ Adopted 4 November 1950, in force 3 September 1953.

¹² Adopted 22 November 1969, in force 18 July 1978.

¹³ 14 December 1946.

The right to freedom of expression is of paramount importance in any democratic society.¹⁴

In stating his intention that the Maldives become a State Party to the ICCPR by December 2006, the President of the Maldives has recognised the importance of the human rights standards it upholds and Maldivian laws, particularly those being introduced currently, should be brought into line with these standards.

3.2. Restrictions on Freedom of Expression

The right to freedom of expression is among the rights that, under certain limited conditions, may be restricted. However, any limitations must remain within strictly defined parameters. Article 19(3) of the ICCPR lays down the conditions which any restriction on freedom of expression must meet:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

A similar formulation can be found in the European and Inter-American regional human rights treaties.¹⁵ This translates into a three-part test, according to which restrictions on freedom of expression are legitimate only if they (a) are provided by law; (b) pursue a legitimate aim; and (c) are “necessary in a democratic society.”

Each of these elements has specific legal meaning. The first requirement will be fulfilled only where the restriction is ‘provided by law’. This implies not only that the restriction is based in law, but also that the relevant law meets certain standards of clarity and accessibility. The European Court of Human Rights has elaborated on a similar requirement under the European Convention on Human Rights, namely that restrictions should be “prescribed by law”:

[A] norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given situation may entail.¹⁶

This is akin to the “void for vagueness” doctrine established by the US Supreme Court and which is also found in constitutional doctrine in other countries.¹⁷ The US Supreme Court has explained why loosely worded or vague laws may not be used to restrict freedom of expression:

Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy

¹⁴ *Tae-Hoon Park v. Republic of Korea*, 20 October 1998, Communication No. 628/1995, para. 10.3.

¹⁵ The African Charter has a different, rather weaker, formulation.

¹⁶ *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para. 49.

¹⁷ See, for example, the Canadian Charter of Rights and Freedoms, Section 1 and the Dutch Constitution, Article 13.

matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute “abut[s] upon sensitive areas of basic First Amendment freedoms,” it “operates to inhibit the exercise of [those] freedoms.” Uncertain meanings inevitably lead citizens to “‘steer far wider of the unlawful zone’ . . . than if the boundaries of the forbidden areas were clearly marked.” (references omitted).¹⁸

Laws that grant authorities excessively broad discretionary powers to limit expression also fail the requirement of “provided by law.” The European Court of Human Rights has stated that when a grant of discretion is made to a media regulatory body, “the scope of the discretion and the manner of its exercise [must be] indicated with sufficient clarity, having regard to the legitimate aim in question, to give the individual adequate protection against arbitrary interference.”¹⁹ The UN Human Rights Committee, the body of independent experts appointed under the ICCPR to monitor compliance with that treaty, has repeatedly expressed concern about excessive ministerial discretion.²⁰ National courts have expressed the same concern. For example, the South African Constitutional Court has warned in relation to the regulation of obscenity that:

It is incumbent upon the legislature to devise precise guidelines if it wishes to regulate sexually explicit material. Especially in light of the painfully fresh memory of the executive branch of government ruthlessly wielding its ill-checked powers to suppress political, cultural, and, indeed, sexual expression, there is a need to jealously guard the values of free expression embodied in the Constitution of our fledgling democracy.²¹

The second requirement relates to the legitimate aims listed in Article 19(3). To satisfy this part of the test, a restriction must truly pursue one of the legitimate aims; it is illegitimate to invoke a legitimate aim as an excuse to pursue a political or other illegitimate agenda.²² With regards to defamation laws, the only legitimate aim is to protect reputations.²³

The third requirement, that any restrictions should be “necessary”, is often essential to the assessment of alleged breaches of the right to freedom of expression. The word “necessary” means that there must be a “pressing social need” for the limitation.²⁴ The reasons given by the State to justify the limitation must be “relevant and sufficient”, the State should use the least restrictive means available and the limitation must be proportionate to the legitimate aim pursued.²⁵ The European Court of Human Rights has warned that one of the implications of this is that States should not use the criminal law to restrict freedom of expression unless this is truly necessary. In *Sener v. Turkey*, the Court stated that this principle applies even in situations involving armed conflict:

¹⁸ *Grayned v. City of Rockford*, 408 U.S. 104, pp. 108-9.

¹⁹ *Wingrove v. United Kingdom*, 25 November 1996, Application No. 17419/90, para. 40.

²⁰ This is particularly so in the context of media regulation. See, for example, its Concluding Observations on Kyrgyzstan, 24 July 2000, UN Doc. CCPR/CO/69/KGZ, para. 21 and its Concluding Observations on Lesotho, 8 April 1999, UN Doc. CCPR/C/79/Add.106, para. 23.

²¹ *Case & Anor. v. Minister of Safety and Security & Ors*, 1996 (5) BCLR 609 (Constitutional Court of South Africa), para. 63.

²² See Article 18 of the ECHR. See also *Benjamin and Others v. Minister of Information and Broadcasting*, 14 February 2(1), Privy Council Appeal No. 2 of 1999, (Judicial Committee of the Privy Council).

²³ *Defining Democracy*, Principle 2.

²⁴ See, for example, *Handyside v. the United Kingdom*, 7 December 1976, Application No. 5493/72, para. 48 (European Court of Human Rights).

²⁵ See, for example, *Lingens v. Austria*, 8 July 1986, Application No. 9815/82, paras. 39-40 (European Court of Human Rights).

[T]he dominant position which a government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries ... Contracting States cannot, with reference to the protection of territorial integrity or national security or the prevention of crime or disorder, restrict the right of the public to be informed of them by bringing the weight of the criminal law to bear on the media.²⁶

While States must act to protect their citizens from public order threats, their actions must be appropriate and without excess.²⁷ This implies that the relevant criminal offences should be narrowly defined and applied with due restraint, and that the criminal law should not be used if a civil law action suffices.²⁸

If the Maldivian government intends to become a State Party to the ICCPR and if it intends to reform the laws to promote democracy, the Defamation Bill, and other domestic legislation must meet the conditions of the three-part test described above.

4. ANALYSIS OF THE MALDIVES DEFAMATION BILL

This Section elaborates our concerns regarding the Maldives Defamation Bill (the Bill). It first discusses the problem of the criminal nature of the Bill, calling for it to be transformed into proper civil defamation legislation. Concerns about the scope of the Bill are then raised. The largest part of this Section deals with the question of defences. Although an attempt has clearly been made to ensure that the system of defences provided for in the Bill is robust, we recommend both simplifying and strengthening the defences. Finally, this Section addresses questions such as liability in defamation for Internet statements, the lack of a statute of limitations for defamation and the lack of a framework for civil sanctions.

4.1. Criminalising Defamation

As noted above, the Bill, although purporting to establish a civil defamation regime, in fact provides in effect for a criminal regime by providing for imprisonment for defamation, a sanction inextricably linked to the criminal law. In addition to this, Articles 5, 6, 11(a), 12(a), and 18(a) and (b) all contain language that is more commonly associated with criminal legislation than with civil legislation. The terms “prohibited,” “penalty,” “offence,” “charged,” “guilty,” and “sentencing” all connote the harshness of measures and sanctions found in criminal laws.

Criminal defamation provisions breach the guarantee of freedom of expression both because less restrictive means, such as the civil law, are adequate to redress the harm and because the sanctions they envisage are not proportionate to the harm done.

The European Court of Human Rights has never actually ruled out criminal defamation, and there are a small number of cases in which it has allowed criminal defamation convictions, but it clearly recognises that there are serious problems with criminal defamation. It has frequently reiterated the following statement, originally made in a defamation case:

²⁶ *Şener v. Turkey*, Application no. 26680/95, 18 July 2000, paras. 40, 42.

²⁷ See, for example, *Incal v. Turkey*, 18 May 1998, Application No. 22678/93, para. 54.

²⁸ See, for example, the European Court of Human Rights judgment in *Raichinov v. Bulgaria*, 20 April 2006, Application No. 47579/99, para. 50.

[T]he dominant position which the Government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries or the media.²⁹

The position taken within the UN and OSCE systems has been far more categorical. The UN Human Rights Committee, the body with responsibility for overseeing implementation of the ICCPR, has repeatedly expressed concern about the possibility of custodial sanctions for defamation.³⁰ The UN Special Rapporteur on Freedom of Opinion and Expression, appointed by the UN Commission on Human Rights, has called on States to repeal all criminal defamation laws in favour of civil defamation laws.³¹ Every year, the Commission on Human Rights, in its resolution on freedom of expression, notes its concern with “the abuse of legal provisions on criminal libel”.³² In their joint Declarations of November 1999, November 2000 and again in December 2002, the three special international mandates for promoting freedom of expression – the UN Special Rapporteur, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression – called on States to repeal their criminal defamation laws. The December 2002 Joint Declaration stated:

Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.³³

Recommendations:

- The provisions relating to imprisonment for defamation should be removed altogether from the Defamation Bill.
- The language identified above, which connotes criminal rather than civil legislation, should be amended.

4.2. The Scope of the Bill

Articles 1(a) and 2(a) define a defamatory statement as against “honour and reputation” and as “a statement made concerning such people [which] affects his/her honour or reputation; affects the honour or office of his/her business/ profession/ trade/ calling; causes that person to be shunned or avoided; lowers that person in estimation; exposes that person to hatred or contempt.”

This definition is excessively broad and reflects a purpose beyond that which is legitimate for defamation laws. Under international standards, the only legitimate purpose of a defamation law is to protect reputations.³⁴ Honour, however, is a subjective notion that goes well beyond the idea of reputation, which is the esteem in which other members of society hold a person. If restrictions on freedom of expression are based on subjective notions, they will inevitably fail

²⁹ *Castells v. Spain*, 23 April 1992, Application No. 11798/85, para 46.

³⁰ For example, in relation to Iceland and Jordan (1994), Tunisia and Morocco (1995), Mauritius (1996), Iraq (1997), Zimbabwe (1998), Cameroon, Mexico, Morocco, Norway and Romania (1999), Kyrgyzstan (2000), Azerbaijan, Guatemala and Croatia (2001), and Slovakia (2003).

³¹ See *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/2000/63, 18 January 2000, para. 52 and *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/2001/64, 26 January 2001.

³² See, for example, Resolution 2000/38, 20 April 2000, para. 3.

³³ Joint Declaration of 10 December 2002. Available at: <http://www.cidh.oas.org/Relatoria/English/PresRe102/JointDeclaration.htm>.

³⁴ *Defining Defamation*, Principle 2.

both the provided by law and legitimate aim prongs for restrictions on freedom of expression. It is not possible to foresee in advance whether a particular statement may affect an individual's subjective honour. Similarly, the Bill's protection of the honour of office, business, profession, trade and callings is inappropriate. The terms "office, business, profession, trade or calling" might provide for additional protections for those in public office, contrary to the clearly established rule under international law that under no circumstances should public officials be given additional protection under defamation laws.³⁵ The definition of defamation, for the reasons above, should be restricted to statements which negatively affect the reputation of an individual or body with standing to sue and be sued.³⁶ It is essential that the term 'negatively' be inserted in the statute in order to narrowly tailor the law specifically towards the purpose of protecting reputations from harm.

The Bill also defines a defamatory statement as one which "may be interpreted or conveys a defamatory message." The term "may be interpreted" defies the reasonable person standard under which defamatory statements should be judged and could embrace practically any statement. Rather, the standard should be whether a "reasonable person" would be likely to understand the statement as defamatory.

The proposed Defamation Bill is also too broad in relation to the categories of individuals for which it provides legal action. The law defines defamation as an offence against "a living or dead persons or such person's family member."³⁷ Deceased persons no longer have a reputational interest of their own and preventing criticism of the dead can have a chilling effect on historical research. This may be exacerbated out of 'respect' for the dead, so that any criticism of them, regardless of how legitimate it may be, is considered to be defamatory.

Recommendations:

- The Bill should be amended to define defamation narrowly as a statement that negatively affects the reputation of an individual, by tending to lower the esteem in which they are held within the community, or by exposing them to public ridicule or hatred.
- Only living persons should be eligible to sue in defamation.

4.3. Defences to Defamation

The draft Defamation Bill pays significant attention to defences to defamation, providing, in Section 3, for 7 articles of defences, occupying 3 pages, or nearly one-half of the entire Bill. While this effort is appreciated, at the same time, the resulting regime is extremely complex, potentially contradictory and, at least in some instances, clearly falls short of international standards. Well-drafted defences are essential to defamation laws and more attention needs to be paid, in the Defamation Bill, to the defences.

Articles 8 to 11 of the Bill set out a number of defences relating to statements made in official forums, such as the Peoples' Majlis, courts or pursuant to statutory provisions. Article 12 sets out a number of cases in which 'justifiable criticism' shall not be considered to be defamatory. For the most part, these relate to officials or to comment on public works, such as books or theatrical performances. Article 13 of the Bill provides for a defence of truth, but this defence

³⁵ See *Lingens v. Austria*, note 25.

³⁶ *Defining Defamation*, Principle 3.

³⁷ Article 2(a).

is conditional upon the intent to maintain social harmony. Article 14 sets out a number of circumstances in which good faith will be a defence to a defamatory statement.

International Standards

Truth as an Absolute Defence

Proof of the truth of any impugned statements should fully absolve defamation defendants of any liability in relation to an allegation of harm to reputation. This is recognised in many countries around the world and reflects the basic principle that no one has the right to defend a reputation they do not deserve. If the matter complained of is true, the plaintiff has no right to claim that it should not be publicised.

This is reflected in Principle 7(a) of *Defining Defamation*, which states: “In all cases, a finding that an impugned statement of fact is true shall absolve the defendant of any liability.”³⁸ The European Court of Human Rights has stated unequivocally that:

The inability to plead justification [is] a measure that [goes] beyond what [is] required to protect a person's reputation and rights.³⁹

Furthermore, a further requirement that the statement be in the public interest in some way is not legitimate. This came before the UK House of Lords in *Gleaves v. Deakin*, a case involving criminal defamation, which required not only proof of the truth of the statements, but also proof that publication was for the public benefit. As Lord Diplock stated: “This is to turn article 10 of the [European Convention on Human Rights] on its head ... article 10 requires that freedom of expression shall be untrammelled [unless interference] is necessary for the protection of the public interest.”⁴⁰

International and national courts have also held that a defendant in a defamation case should always be allowed to prove the truth of their statements. In *Castells v. Spain*, Castells, then a senator, had been charged with insulting the government in a magazine article about violence in the Basque Country. The Court ruled that the failure of the Spanish courts to allow Castells to prove the truth of his statements was a violation of his right to freedom of expression which could not be justified in a democratic society.⁴¹

Closely related to the question of the impact of proof of truth is the question of whether or not falsity should be presumed or, to put it another way, a question of where the burden of proof should lie; with the defendant to prove truth or with the plaintiff to prove falsity.

It seems clear that the heavy onus on the State to justify any restriction on freedom of expression dictates that it be presumed that a statement is true until and unless the contrary is shown. This rule should at least apply to statements relating to public officials, as well as other matters of legitimate public interest, given the importance of open debate about them.

A number of courts have adverted to the chilling effect of a requirement to prove truth for purposes of civil defamation law. For example, the House of Lords, holding that a local authority did not have a right to sue for damages for defamation, noted:

³⁸ *Ibid*

³⁹ *Colombani and others v. France*, 25 June 2002, Application No. 51279/99, para. 66.

⁴⁰ [1980] AC 477, p. 483.

⁴¹ *Castells v. Spain*, note 29, para. 48.

The threat of a civil action for defamation must inevitably have an inhibiting effect on freedom of speech. ... What has been described as 'the chilling effect' ... is very important. Quite often the facts which would justify a defamatory publication are known to be true, but admissible evidence capable of proving those facts is not available. This may prevent the publication of matters which it is very desirable to make public.⁴²

Similarly, in the leading *New York Times Co. v. Sullivan* case, decided by the U.S. Supreme Court in 1964, Justice Brennan held that a requirement that the defendant prove the truth of allegations relating to public officials breached the First Amendment guarantee of free speech, noting:

Under such a rule, would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in court or fear of the expense of having to do so.⁴³

As a result, courts and authoritative commentators have argued that the onus should be on the plaintiff to prove falsity, rather than on the defendant to prove truth, at least in the context of statements on matters of public interest. In the *New York Times Co. v. Sullivan* case, noted above, the U.S. Supreme Court held that, in relation to statements about public officials, the onus was on the plaintiff not only to prove that the statements were false, but also that they had been published in malice or with reckless disregard for the truth.⁴⁴

The three special international mandates for promoting freedom of expression, in their Joint Declaration of 2000, noted that, "the plaintiff should bear the burden of proving the falsity of any statements of fact on matters of public concern".⁴⁵ Similarly, *Defining Defamation* states:

In cases involving statements on matters of public concern, the plaintiff should bear the burden of proving the falsity of any statements or imputations of fact alleged to be defamatory.⁴⁶

Reasonable Publication

It is increasingly being recognised that defamation defendants should benefit from a defence of reasonable publication. The essence of a reasonable publication defence is that defendants should not be held liable for statements they make, even if those statements ultimately prove to be false, where the circumstances otherwise justify publication. A rule of strict liability for all false statements is particularly unfair for the media, which is under a duty to satisfy the public's right to know where matters of public concern are involved and often cannot wait until they are sure that every fact alleged is true before they publish or broadcast a story. Even the best journalists make honest mistakes and to leave them open to punishment for every false allegation would be to undermine the public interest in receiving timely information. The nature of the news media is such that stories have to be published when they are topical, particularly

⁴² *Derbyshire County Council v. Times Newspapers Ltd* [1993] 1 AllER 1011 (HL), pp. 1017-1018. Similarly, the US Supreme Court has stated: "Allowance of the defense of truth ... does not mean that only false speech will be deterred. ... Under such a rule, would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is, in fact, true, because of doubt whether it can be proved in court or fear of the expense of having to do so." *New York Times v. Sullivan, op cit.*, pp. 278-9.

⁴³ *New York Times Co. v. Sullivan*, 376 US 254, 279 (1964), p. 279.

⁴⁴ *Ibid.*, pp. 279-80.

⁴⁵ 30 November 2000. Available at:

<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/EF58839B169CC09C12569AB002D02C0?opendocument>

⁴⁶ Principle 7(b).

when they concern matters of public interest. In a case in which ARTICLE 19 intervened, the European Court held:

[N]ews is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest.⁴⁷

A more appropriate balance between the right to freedom of expression and reputations is to protect those who have acted reasonably in publishing a statement on a matter of public concern. For the media, acting in accordance with accepted professional standards should normally satisfy the reasonableness test. This has been confirmed by the European Court, which has stated that the press should be allowed to publish stories that are in the public interest subject to the proviso that “they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism.”⁴⁸

Applying these principles in the case of *Tromsø and Stensaas v. Norway*, the European Court of Human Rights placed great emphasis on the fact that the statements made in that case concerned a matter of great public interest which the plaintiff newspaper had covered overall in a balanced manner.⁴⁹ This follows the line taken by constitutional courts of various countries which have recognised the principle that, where the press have acted in accordance with professional guidelines, they should benefit from a defence of reasonable publication.⁵⁰

The ARTICLE 19 Principles summarise this defence as follows:

Even where a statement of fact on a matter of public concern has been shown to be false, defendants should benefit from a defence of reasonable publication. This defence is established if it is reasonable in all the circumstances for a person in the position of the defendant to have disseminated the material in the manner and form he or she did. In determining whether dissemination was reasonable in the circumstances of a particular case, the Court shall take into account the importance of freedom of expression with respect to matters of public concern and the right of the public to receive timely information relating to such matters.⁵¹

Justifiable Criticism

Statements of opinion and value judgments are different from statements of fact and this should be recognised by domestic defamation legislation. While factual statements may be considered in the light of their truth, value judgment and opinions may not be investigated in the same manner. The European Court of Human Rights has emphasized the distinction between value judgments and opinion and factual statements:

In its practice, the Court has distinguished between statements of fact and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfill and infringes freedom of opinion itself, which is a fundamental part of the right [to freedom of expression].⁵²

⁴⁷ *The Sunday Times v. the United Kingdom (No. 2)*, 24 October 1991, Application No. 13166/87, para. 51.

⁴⁸ *Bladet Tromsø and Stensaas v. Norway*, 20 May 1999, Application No. 21980/93, para. 65.

⁴⁹ *Ibid.*

⁵⁰ See, for example, *Reynolds v. Times Newspapers Ltd and others*, [1999] 4 All ER 609, p. 625 (House of Lords) and *National Media Ltd and Others v. Bogoshi*, [1999] LRC 616, p. 631 (Supreme Court of Appeal of South Africa).

⁵¹ *Defining Defamation*, Principle 9.

⁵² *Dichand and Others v. Austria*, 26 February 2002, Application No. 29271/95, para. 37-43.

Although human rights law does not go so far as to provide absolute protection to statements of opinion, requiring at least some basis in fact, in practice considerable leeway is allowed. For example, in the European Court of Human Rights case of *Dichand and others v. Austria*, the applicants had published an article alleging that a national politician who also practiced as a lawyer had proposed legislation in parliament in order to serve the needs of his private clients. The applicants were convicted of defamation by the domestic court and appealed to the European Court. The Court first stressed that the statement constituted a value judgment rather than a factual allegation. Furthermore, whilst acknowledging the absence of hard proof for the allegations, as well as the strong language used, the Court stressed that the discussion was on a matter of important public concern.⁵³ It recalled:

It is true that the applications, on a slim factual basis, published harsh criticism in strong, polemical language. However, it must be remembered that the right to freedom of expression also protects information or ideas that offend, shock, or disturb.⁵⁴

Similarly, in the case of *Unabhängige Initiative Informationsvielfalt v. Austria*, the Court expressed its concern that domestic courts had required journalists to supply factual proof beyond a reasonable doubt to support value judgements expressed by them, stating: “The degree of precision for establishing the well-foundedness of a criminal charge by a competent court can hardly be compared to that which ought to be observed by a journalist when expressing his opinion on a matter of public concern, in particular when expressing his opinion in the form of any value judgment.”⁵⁵ In a recent decision, the Court explained that value judgments need not be accompanied by the facts upon which the judgement is based, holding: “The necessity of a link between a value judgment and its supporting facts may vary from case to case in accordance with the specific circumstances.”⁵⁶ For example, where certain facts were widely known among the general public there was no need for a journalist basing an opinion on those facts to refer to them explicitly. Furthermore, value judgements may be based on rumours or stories circulating among the general public; they need not be supported by hard, scientific facts.⁵⁷

Reporting Authoritative Statements

It is now recognised that certain types of statements, and the reporting of them, need to be protected against defamation liability due to the importance of having people speak freely in certain contexts, such as at parliament and before courts. Principle 11 of *Defining Defamation* summarises the international standards in this area:

- (a) Certain types of statements should never attract liability under defamation law. At a minimum, these should include:
 - i. any statement made in the course of proceedings at legislative bodies, including by elected members both in open debate and in committees, and by witnesses called upon to give evidence to legislative committees;
 - ii. any statement made in the course of proceedings at local authorities, by members of those authorities;
 - iii. any statement made in the course of any stage of judicial proceedings (including interlocutory and pre-trial processes) by anyone directly involved in that proceeding

⁵³ *Ibid.*, para. 51.

⁵⁴ *Ibid.*, para. 52.

⁵⁵ 26 February 2002, Application No. 28525/95, para. 46.

⁵⁶ *Feldek v. Slovakia*, 12 July 2001, Application No. 29032/95, para. 86.

⁵⁷ *ThorgeirThorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88.

- (including judges, parties, witnesses, counsel and members of the jury) as long as the statement is in some way connected to that proceeding;
- iv. any statement made before a body with a formal mandate to investigate or inquire into human rights abuses, including a truth commission;
 - v. any document ordered to be published by a legislative body;
 - vi. a fair and accurate report of the material described in points (i) – (v) above; and
 - vii. a fair and accurate report of material where the official status of that material justifies the dissemination of that report, such as official documentation issued by a public inquiry, a foreign court or legislature or an international organisation.
- (b) Certain types of statements should be exempt from liability unless they can be shown to have been made with malice, in the sense of ill-will or spite. These should include statements made in the performance of a legal, moral or social duty or interest.

Application to the Maldives Defamation Bill

The Defamation Bill is clearly at odds with the standards relating to truth, noted above, in particular by allowing the defence of truth only where the statements also contribute to ‘social harmony’. While the Bill is very clear on the onus of proving an absence of good faith, which lies with the plaintiff, it is silent as to the onus of proof of truth.

Instead of a defence of reasonable publication, the Defamation Bill opts, in Article 14, for a defence of good faith. It tends to conflate the very different concepts of good faith with respect to the intended effect of the publication and good faith with respect to the accuracy or truth of the publication. Making a true but harmful statement about a politician may well lead to his or her downfall and may be intended to do so. This is perfectly legitimate; the very purpose of exposing corruption may be to remove someone from public office. However, bad faith as to the accuracy of the allegations may render a statement defamatory. Furthermore, although the list of instances in which good faith will constitute an offence is long, it in no way covers all instances in which the public interest in a good faith statement may be engaged.

Rather than provide protection to opinions as such, the Defamation Bill opts, in Article 12, to protect ‘justifiable criticism’. Once again, although the list of instances in which this defence will be engaged is long, it certainly fails to cover all public interest situations, let alone all expressions on opinion. Furthermore, in some cases, good faith is added as an additional requirement, so that the statement must not only be justifiable criticism but must also be made in good faith. This places too many restrictions on this defence.

A further problem with both the good faith and justifiable criticism defences in the Defamation Bill is their complexity and potentially contradictory elements. Clarity as regards defences is essential if journalists and others are to be able to rely on them in practice. The regime under the Bill is so complex that few journalists will feel confident about how courts will interpret these provisions. Indeed, a general criticism of the Bill is that it is not as well or clearly drafted as it might be. This is inherently a problem for a law restricting freedom of expression since poor drafting inevitably raises a possibility of abuse. For example, the definitions provision, Article 25, provides definitions of various terms that are not even used in the Bill, such as ‘news’ and ‘general circulation’.

As regards protected instances of publication, these are for the most part required to be in good faith. For instance, under Article 11(iv), it is not an offence to publish a report that has

been released by the government if this is done in ‘good faith.’ It is not appropriate to place this burden on the media if the government releases a report for publication. Reporting on such official matters, including what happens in the Peoples’ Majlis and the courts, should be absolutely protected, as long as the report is a fair and accurate reflection of the original statements. Furthermore, the list of protected statements is relatively modest compared to the list provided above and recognised in many countries. Finally, consideration should be given to protecting a wider range of statements, subject to good faith. For example, promoting openness in job interviews or in reporting on suspected crime to the police are a social interests that we should seek to protect. Such statements should be subject to defamation liability only if made in bad faith.

Recommendations:

- The Bill should be amended to provide for an absolute defence of truth. In cases involving statements on matters of public concern, the plaintiff should bear the burden of proving the falsity of any statements or imputations of fact alleged to be defamatory.
- Consideration should be given to replacing the present ‘good faith’ defence with a general “reasonable publication” defence in relation to statements on matters of public interest, in line with the international standards and principles outlined above.
- The Bill should provide absolute protection to statements of opinion and value judgments, in line with international standards and the principles outlined above, rather than just limited protection to ‘justified criticisms’ in certain specified circumstances.
- Consideration should be given to expanding on the statements which receive protection due to their official status and such statements should receive absolute, rather than conditional, protection. Furthermore, consideration should be given to adding a new category of protected statement which receive only conditional protection, subject to good faith, where there is a substantial social interest in the statement being made.

4.4. Miscellaneous

There are a few other either inclusions or omissions from the Bill that are matters of concern to ARTICLE 19. These are detailed below.

Internet liability

Under Article 22 of the Bill, Internet Service Providers (ISPs) are liable for material hosted by them. Furthermore, Internet publications are judged to be ‘published’ anew every time they are downloaded, and liability may ensue whenever material is downloaded in the Maldives, is targeted at the Maldives or concerns a citizen or resident of the Maldives, even if no one in the country has read it. These proposals would extend liability for defamation beyond acceptable international standards. *Defining Defamation* outlines the appropriate scope of liability for defamation laws suggesting:

Bodies whose sole function in relation to a particular statement is limited to providing technical access to the Internet, to transporting data across the Internet or to storing all or part of a website shall not be subject to any liability in relation to that statement unless, in the circumstances, they can be said to have adopted the relevant statement. Such bodies may,

however, be required to take appropriate action to prevent further publication of the statement, pursuant either to an interim or to a permanent injunction meeting the conditions, respectively, or Principle 16 or 17.⁵⁸

It should be recognised that ISPs differ from what are in some systems of defamation law known as publishers in a number of important respects. These include that they lack any direct link to the statements whose dissemination they facilitate and so cannot be expected to defend or to stand up for these statements where they may risk liability for doing so. If they are subjected to the same regime of liability as publishers, they are likely simply to remove any statement from the Internet as soon as anyone challenges it or threatens legal action, regardless of the legitimacy or quality of that challenge. In some countries, ISPs have been insulated from liability for defamatory statements, to prevent powerful individuals and/or corporations from effectively censoring the Internet simply by issuing challenges, as described above. We note that the Bill already recognises an analogous defence for innocent publishers and editors and strongly recommend that the same approach be taken for ISPs.

Similarly, the approach taken in Article 22(c), that Internet publications are judged to be published anew on every download, creates a serious problem. Under this rule, a single cached webpage could potentially attract liability for an unlimited period of time on an unlimited number of occasions. Such a claim would be impossible to defend and create a serious breach of the right to freedom of expression.

Finally, the scope of liability for Internet publications is seriously overbroad. While material targeted at Maldivians or read by Maldivians may legitimately be subject to local jurisdiction, there need to be threshold tests for this. The rule should capture only material specifically targeting readers in the Maldives and in fact read by a significant number of locals. Furthermore, subjecting statements to liability simply because they refer to a citizen or resident is not legitimate. There needs to be a more important connection with the country than that. In particular, harm to reputation must occur in the Maldives if jurisdiction is legitimately to be maintained there.

Religious libel

Article 11(a)(iii) of the Bill provides that the defence of publishing court proceedings with a view to informing the public does not operate so as to justify the publication of material that is offensive or that may create hatred against Islam. Quite apart from serious problems with the drafting of these provisions from a freedom of expression perspective,⁵⁹ they do not serve any legitimate interest in the context of defamation law.

This is so for three reasons. First, there is no reason why a defendant should be deprived of a defence in *defamation* just because statements are harmful to society in other ways. In other words, there is no logical link between this provision and the area of law dealt with by the Defamation Bill, namely defamation. Second, it is always open to courts to prohibit the publication of certain material relating to cases before them for legitimate reasons, such as protection of children or the fairness of the judicial process. Third, and perhaps most important, to the extent that this provision protects legitimate interests – and, as noted, they are problematical from a freedom of expression perspective – it should be enshrined in a law of general application (as it no doubt is under Maldivian law). Thus, incitement to religious

⁵⁸ Principle 12.

⁵⁹ International law protects offensive statements and it is only where statements can be shown to cause harm to a legitimate public or private interest that they may be banned. The standard for protection of religious statements is also clearly too low to meet international standards.

hatred should be a general criminal offence, quite apart from defamation law. In this case, even if the Article 11(a) defences are available to a charge of defamation, they cannot protect the defendant against a separate charge under a criminal law provision. In other words, this provision is quite unnecessary.

Limitations period

The Defamation Bill does not include a statute of limitations establishing a timeframe for bringing a defamation case. Thus, an individual is, technically, liable indefinitely for any defamatory publication or statement no matter how much time passes. This creates enormous potential for abuse and for endless, and frivolous, litigation. *Defining Defamation* recommends a one-year limitation period for defamation actions.⁶⁰

Sanctions

As noted above, at present, the Defamation Bill envisages criminal sanctions for defamatory statements. We have already recommended that these be removed. Instead, the Bill should establish a clear framework for the application of civil sanctions. We welcome the fact that the Bill recognises the mitigating effect on sanctions for publishing an apology, as well as various exemptions from liability. It would be preferable, however, if the Bill were to put in place a clear framework for civil sanctions, including rules relating to the size of damage awards and overall limits on the size of such awards. We note that under international law, excessive sanctions, on their own, have been held to breach the right to freedom of expression.⁶¹

Recommendations:

- The Bill should be amended so that those whose sole function in relation to a particular statement is limited to providing technical access to the Internet, to transporting data across the Internet, or to storing all or part of a website shall not be subject to any liability in relation to that statement unless, in the circumstances, they can be said to have adopted the relevant statement.
- The Bill should be amended so that there will be no multiple instances of liability regarding a single downloadable file.
- The scope of liability for Internet publications should be narrowed to cases where there is a significant negative impact on the reputation of the plaintiff within the Maldives.
- The exception to the defence provided for in Article 11(a)(iii) should be removed.
- A limitations period should be added to the Bill, for example of one year.
- A clear framework for civil sanctions should be provided for in the Defamation Bill, which ensures that any sanctions for defamation are proportionate to the harm done.

⁶⁰ See Principle 5(a).

⁶¹ See, for example, *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, Application No. 18139/91 (European Court of Human Rights).

ANNEX: DEFAMATION BILL

Defamation Bill

Section 1: Administrative Issues

Introduction and name	1. a) The purpose of this Bill is to legislate defamation as a civil offence and to establish a system of compensation for the plaintiff while determining legislative measures for freedom of expression and the right to the protection of the law against unlawful attacks on a person's honour and reputation. b) This instrument shall be cited as the "Defamation Bill".
Defamation	2. a) Matters that constitute as defamation of a living or dead person or such person's family member shall be where a statement made, concerning such people; affects his/her honour or reputation; affects the honour or office of his/her business / profession / trade / calling; causes that person to be shunned or avoided; lower that person in estimation; exposes that person to hatred or contempt. b) A defamation statement may be made in direct or indirect language or metaphorically.
Interpretation of making a defamatory statement	3. Defamatory statement means a statement made by a person using spoken words, written words, sounds, printed words, gesture, signs or bodily movement which portrays, may be interpreted or conveys a defamatory message.
Interpretation of publication of a defamatory statement	4. Publication of a defamatory statement using words or sounds shall constitute an instance of defamation where such a statement is made in the absence of the plaintiff. Publication of a defamatory statement using gestures, sign or bodily movement shall constitute an instance of defamation where it is directed to a person other than the plaintiff for him/her to view, feel or understand. In all other instances publication of a defamatory statement shall be where any person other than the plaintiff is able to see, read, understand or interpret a message shown, returned or sent.

Section 2: Publication of a defamatory statement

Prohibition of publication of defamatory statements	5.	It is prohibited to publish a defamatory statement unless under immunity or with permission or under a legislation that can pardon such an act.
Publication of defamatory statements	6.	Any person involved in the publication of a defamatory statement is committing an offence. The highest penalty for such a case is: <ul style="list-style-type: none"> a) 2 years jail sentence for a person who publishes a defamatory statement while he/she is aware that it is not a true statement. b) 1 year jail sentence in all other cases.
Legal action following defamation		Publication of a defamatory statement which is not legally sanctioned gives the defamed party the right to take legal action against the person who makes the defamatory statement.

Section 3: Instances where defence is applicable

Defence of Peoples' Majlis	8.	<ul style="list-style-type: none"> a) A Parliamentary Member of the Peoples' Majlis shall not have to bear any responsibility for a defamatory statement that he/she makes in the course of speaking at an official meeting of the Peoples' Majlis. c) Any person submitting a complaint to the Peoples' Majlis shall not have to bear any responsibility for a defamatory statement made in such a complaint.
Defence of Courts of Law	9.	No one shall have to bear any responsibility for a defamatory statement that he/she makes at a Court of Law or at an investigation conducted by the Peoples' Majlis or an investigation conducted under statutory provision or in an investigation conducted with the permission of the government.
Defence of investigation reports	10.	No person or party shall have to bear responsibility for a defamatory statement contained in a report published following an investigation conducted with statutory provision or the permission of the government.
Defence of public interest	11.	<ul style="list-style-type: none"> a) It shall not be an offence under this Bill to make or publish a defamatory statement in the following instances. <ul style="list-style-type: none"> i) Publication of events or proceedings of a Peoples' Majlis session or one of its Committees with the good faith of making the proceedings known to the general public.

- ii) Publication of a document issued by the Peoples' Majlis or published with its permission. Or publication of part of such a document with the good faith of informing the general public according to the initial publication.
 - iii) Publication of the proceedings of a Court of Law with the good faith of informing the general public. (This Bill does not permit the publication of information barred by any Court of Law, publication that is offensive at a social level or that may create hatred against the Islamic religion.)
 - iv) Publication, made in good faith of informing the general public, of a report or part of a report released following an investigation conducted with statutory provision or with the permission of the government.
 - v) Publication, made in good faith of informing the general public, of a notice, statement or report at the request of a government body.
 - vi) Publication, made in good faith of informing the general public, of the events of any general gathering.
- b) Publication of a defamatory statement shall be considered as having been made in good faith if the publisher had carried it out without any negative intention or purpose against the defamed party. In addition, it has to be within the general journalistic and information dissemination norms and line of justice.
- c) In the event that a publication, in a newspaper, of events of a public gathering contains defamation and should the owner or editor of the newspaper refuse to publish a statement by the defamed party in relation to the defamatory material or a statement to further elaborate on a matter stated in the paper or a statement contesting the publication; it shall be determine that the publication of the defamatory material was not actuated by good faith.

Justifiable criticism

12. a) It shall not be an offence under this Bill to state or publish a defamatory statement in the course of undertaking any of the below activities.
- i) Publication of material containing justifiable criticism regarding a matter permitted for publication, made in good faith of informing the general public, as stipulated in Article 11 of this Bill.
 - ii) Publication of material containing justifiable criticism regarding activities undertaken, openly or in a manner that the public could

see, by government employees in matters relating to the public or state.

- iii) Publication of material containing justifiable criticism regarding the manner a state employee performs his/her duties.
- iv) Publication of material containing justifiable criticism regarding proceedings of a civilian or criminal case concluded by a Court of Law or regarding issues in the court verdict. In additional publication of material containing justifiable criticism regarding the behaviour of a judge, witness, lawyer or Officer of Court.
- v) Publication of material containing justifiable criticism regarding a published book or literary piece or the author of such a document.
- vi) Publication of material containing justifiable criticism regarding a theatrical event or exhibition open for general public.
- vii) Publication of material containing justifiable criticism regarding entertainment or sports events or the organizers of such an event or its participants.
- viii) Publication of material containing justifiable criticism regarding an openly published material.

b) Criticism regarding a person, thing or event shall be considered as justifiable criticism or not based on the course of events.

Disclosure of truth

13. Publication of material or making a statement that constitutes defamation is permitted should it be based on truth; and should its publication or making such a statement be to maintain social harmony.

Publication made under instances of defence

14. a) It is permitted to publish a defamatory statement under the following instances.
- i) Making a defamatory statement in good faith by a person regarding another person, under his/her authority, in relation to an act committed by the latter. Such a statement has to be within the extent of his/her authority.
 - ii) Making a defamatory statement, in the event of seeking a redress to a wrongful action committed by a person, against the said person. In such a case, the person making the defamatory statement should be in an acceptable position to seek the redress and should work within the extent of such a position in good faith.

- iii) Publishing a defamatory matter in good faith in defence of self-interest or that of someone else's interest or that of public interest.
 - iv) Making a defamatory statement while responding to a question in good faith and while being of opinion that the questioner deserves to know the truth.
 - v) Making a defamatory statement while informing someone in good faith and while being of opinion that the recipient deserves to know the truth and factuality of the information.
 - vi) Making a defamatory statement in good faith while refuting a challenge by or at the request of the defamed party.
 - vii) Publishing a defamatory statement in good faith and in refuting or responding to another publication of the same defamatory statement.
 - viii) Making a defamatory statement while speaking in good faith at a public debate on a matter of public harmony. And such a statement should also be considered as justifiable criticism.
- b) Under this Article, publication of defamatory statements shall be considered as having been published in good faith should the publication be with regard to a matter permitted within statutory provisions. The publication's reference and means should also be within the given situation. The publisher should also not have any wrongful intention to attain a wrongful objective. In addition, the material considered as a defamatory statement should have been made in a situation where there is no evidence indicating it as untrue.

Section 4: Principles for legal proceedings in defamatory cases

- | | | |
|---|-----|--|
| Good faith | 15. | Where a defence in this Bill is applicable, then the onus of establishing that the act was not done in good faith lies with the defamed party. |
| Offer of apology in reducing the compensatory payment | 16. | Proposing or submitting an apology to the defamed party prior to legal proceedings against the publisher is a factor for reduction of the compensatory payment for damages that the publisher has to pay to the plaintiff. It shall also be a relevant factor if the publisher had offered an apology at the first available opportunity; should such an opportunity was not available prior to the legal proceedings. |
| Defence of good faith in | 17. | a) It is a defence of good faith in publications if the |

newspaper publications

publisher proves that there was no wrong intention or objective and that reasonable care was exercised in making the publication. In addition, if the publisher proves that an apology was published in the same newspaper at the first available opportunity before or after the legal proceedings by the defamed party. Or if an offer was made to publish an apology in a newspaper of the defamed party's preference; should the original newspaper was in between two publications with a lapse of more than a week. Where the publisher proves the above, it shall be a factor for reduction of the compensatory payment for damages that the publisher has to pay to the plaintiff.

Multiple publications as a single case

18. a) In cases where there are two or more publishers being charged on the same defamatory matter by the same defamed party, then two publishers may demand from the Court to combine these separate charges as a single charge under a single case number. Under such an arrangement all publishers shall be tried under the same case number and newly arising cases shall also fall under the same case number.
- b) Cases described in point (a) of this Article, shall receive individual sentencing as in the sentencing of separate cases where each party is proven as either guilty or not. However, the payment for damages payable to the plaintiff shall be paid together, in equal shares, by all the publishers.

Defence of newsagents and bookseller

19. Newsagents and booksellers shall not have to bear any responsibility for selling a newspaper or book which contains defamatory material while being unaware of such material.

Defence of employers

20. Defence of employers for defamatory publication shall be in cases where their employee sells a newspaper or book which contains defamatory material. Employers shall have this defence in cases where they have not authorized their employees to sell such newspapers or books and where they are unaware of the defamed material in it.

Editor's responsibility

21. a) It is acceptable defence if the owner, publisher or editor of a newspaper is able to prove that they had no involvement in the publication of defamatory material in their newspaper. For the purpose of this Article, the owner, publisher or editor shall not be held accountable for printing defamatory material by an editor or person who has been delegated general responsibility for running the paper. It shall be so in cases where the delegated authority does not specifically state authorization to print defamatory material and if

such authority was not withdrawn after receiving knowledge of such publication.

Defamation via internet

22. a) It is an offense on the part of the writer, owner or manager of the website or the hosting party for any defamatory publication on the internet website or internet newspaper.
- b) Under the following circumstances the Courts of Law of the Maldives shall have the power to process legal proceedings on matters mentioned in Article 22. (a) as cases of publication of defamatory material in the Maldives.
- i) Where defamatory material is downloaded or read in the Maldives; or
 - ii) Where the defamatory material is published on a website, internet newspaper or written via internet is targeted to Maldivians; or
 - iii) Where the defamed party is a Maldivian citizen or a foreign citizen resident in the Maldives.
- c) Internet publications shall be cited as a separate publication each time the defamatory material is downloaded or read by someone.

Section 5: General issues

Limitations of law

23. a) The overall situation shall be considered in determining if a statement is defamatory or not.
- b) The relevant articles of law shall be considered in determining if a statement may be inferred as defamatory material.

Defence of situation or public interest

24. The overall situation shall be considered in determining if the implied defamatory remark is relevant to a specific issue and if the main issue is of public interest or not.

Interpretation

25. Unless otherwise specified in this Law:
- “news” means daily newspapers, weekly newspapers, magazines, trade publications and other such material published via internet or in print, for the spread of information, news, opinions, advertisement, made available for general circulation at a price or freely and either registered or not in the Maldives.
- “general circulation” means making information, news, opinion or advertisement made available for more than 5 (five) people by means of displaying it, free distribution or sale.

“general gatherings” means lawful assembly or gatherings held in good faith for exchange of ideas on issues of public interest and gatherings held to support a person running for office. These include gatherings which are open for general public or with restrictions.

“book” means an item which has written or empty pages bound together with a cover page and which can be opened and closed. This includes CD, diskettes, writings and modern technological means of information relaying items and all those items which are not considered as newspapers.