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UNDERSTANDING DEFAMATION LAWS IN ETHIOPIA

INTRODUCTION

When applied legitimately, defamation laws are intended to protect individuals against false statements that are harmful to their reputation. Yet both civil and criminal defamation laws have the potential to be misused to prevent open public debate. In Ethiopia, for many years, the application of defamation laws to mass media was relatively harsh, often resulting in the persecution of journalists. However, after the election of Prime Minister Abiy Ahmed in 2018, political changes and policy reforms promised a more liberal landscape for journalists, at least with respect to defamation.¹ Nonetheless, the ongoing civil unrest and COVID-19 pandemic have erased many of the gains made for journalists in recent years, with Ethiopia's terrorism law and its more recent law on hate speech containing vague language that could be used to prosecute outspoken journalists and impose heavy prison sentences.² As such, it remains critical for journalists to be aware of defamation laws and risks, both criminal and civil, as well as other relevant laws that may be weaponised against journalists to silence independent reporting.

This Guide provides journalists with a practical understanding of defamation laws and the steps they can take to mitigate defamation liability in Ethiopia. We aim to empower journalists to understand their legal rights and obligations so that they can continue to report on issues of vital public interest in an informed way.

- 1 New Era for Ethiopia's Journalists, Reporters Without Borders (Apr. 2, 2019), <https://rsf.org/en/new-era-ethiopia-s-journalists>; New Liberal Media Law in Ethiopia, International Media Support (Feb. 4, 2021), <https://www.mediasupport.org/news/new-liberal-media-law-in-ethiopia/>.
- 2 Ethiopia, Reporters Without Borders (2023), <https://rsf.org/en/country/ethiopia>.



Ethiopian legislators inside the Parliament Building in Addis Ababa. Reuters/ Tiksa Negeri

1. WHAT IS DEFAMATION?

A. WHAT IS CRIMINAL DEFAMATION?

Under Ethiopia’s Criminal Code, criminal defamation occurs when the defendant provides “an act, a fact or a conduct” about the victim to a third party with the intent to injure their honour or reputation.³ However, a person cannot be liable for criminal defamation if it is committed through media, which includes “news agencies and all organs established to provide news or programs or news and programs to the public via periodicals, broadcasting service, and online media”.⁴ It’s important to note that, books, social media, blogs, and photos, images and cartoons that are not part of a periodical are excluded from the definition of media.⁵ As such, journalists who utilise Twitter or other online means of communication may still be charged with criminal defamation.

B. WHAT IS CIVIL DEFAMATION?

Under Ethiopia’s Civil Code, civil defamation occurs when the defendant acts in a manner that renders the plaintiff “detestable, contemptible or ridiculous” and jeopardises their credit, reputation or future.⁶ However, defamation cannot result in civil liability if the statements are true, the defendant has a genuine and informed belief that the statements are true, the statements are made in the public interest, and the defendant does not intend for the statements to cause harm.⁷ Within this framework, journalists who report accurately should be afforded some level of protection from civil liability for defamation. However, it should be noted that an intent to injure is generally not required to establish civil defamation, and so a defence solely grounded in lack of intent alone will not protect journalists from being charged with civil defamation.⁸

3 Revised Criminal Code of the Federal Democratic Republic of Ethiopia (the “Criminal Code”), Art. 613(1).

4 Media Proclamation No. 1238/2021 (the “Media Proclamation”), Art. 84(1).

5 Criminal Code, Art. 2(1).

6 Civil Code of Ethiopia (the “Civil Code”), Art. 2044.

7 Media Proclamation Art. 84(4).

8 Civil Code, Art. 2045(1).



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2. IN WHAT INSTANCES CAN I BE SUED AND/OR PROSECUTED FOR DEFAMATION?

As explained above, there is a media exception to criminal defamation, but certain forms of online journalism (e.g., social media) may not be protected.⁹ With respect to civil defamation, there is an exception for true statements made in the public interest.¹⁰

Additionally, Ethiopia's Civil Code carves out four exceptions to civil defamation, which may further protect journalists who work in the country:

- Civil defamation is not committed if the defendant does not intend to make a statement about “any particular person” and cannot reasonably foresee the statement would harm a particular person (Article 2045(2)-(3)).
- Civil defamation is not committed if the defendant provides an “opinion on matters of public interest” and does not knowingly make false statements (Article 2046).
- Civil defamation is not committed if the defendant can prove the statement was true and was not solely intended to harm the victim (Article 2047).
- Civil defamation is not committed if the defendant makes the statements in a publication or did not make the statements with an intent to injure and submits a withdrawal and apology for said harmful statements (Article 2049(1)). Under this final exception, the withdrawal and apology must appear in the same publication as the defamatory statements (Article 2049(3)). If the defamatory statements appear in a periodical published at intervals of more than one week, then the victim can choose a different periodical for the withdrawal and apology (Article 2049(2)).

⁹ Media Proclamation Arts. 84(1), 2(1).

¹⁰ *Id.* at Art. 84(4).



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3. WHAT ARE THE POTENTIAL CONSEQUENCES OF BEING CONVICTED FOR DEFAMATION?

In general, the consequences for criminal defamation range from a fine to a maximum term of six months imprisonment.¹¹ However, if in making the statement the defendant has deliberate intent to ruin the reputation of the victim, the penalty is altered to a minimum term of three months imprisonment and a fine.¹² If the statements are false and the defendant made the statements while knowing that the statements were false, then the defendant has committed calumny, which is punishable by at least one month imprisonment and a fine.¹³ If the defendant makes the false statements negligently, then the sentence cannot be more than one year or a fine.¹⁴

The consequences of civil defamation is monetary damages, so long as the defamatory statements concern the commission of a crime, professional incompetence or dishonesty, business insolvency, contagious disease, or immorality.¹⁵ If the civil defamation has occurred via the “media,” then any moral compensation cannot exceed 300,000 Ethiopian Birr (approximately \$5,500 USD).¹⁶ As with the media exception to criminal liability, this limitation on damages for media may not apply to certain forms of online journalism (e.g., social media).¹⁷

¹¹ Criminal Code, Art. 613(1).

¹² *Id.* at Art. 613(3).

¹³ *Id.* at Art. 613(2).

¹⁴ *Id.* at Art. 613(4).

¹⁵ Civil Code, Art. 2109.

¹⁶ Media Proclamation No. 1238/2021, Art. 84(2).

¹⁷ *Id.* at Art. 2(1).



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4. WHAT IS THE PROCEDURE FOR INSTITUTING DEFAMATION?

C. WHO CAN COMPLAIN TO LAW ENFORCEMENT ABOUT CRIMINAL DEFAMATION?

Criminal defamation can proceed only “upon complaint” from “the injured party or his legal representative”.¹⁸ The complaint may be directed to the police or the prosecutor, but the prosecutor who receives the complaint will “forward it” to the police who have a duty to investigate.¹⁹ The obligation to investigate remains even where the complaint is “open to doubt.”²⁰

D. WHO DECIDES WHETHER TO PROSECUTE A JOURNALIST WITH CRIMINAL DEFAMATION? HOW DO THEY DECIDE ON WHETHER THEY CAN CHARGE A JOURNALIST?

Upon receiving the police report, the prosecutor may charge defamation or order further investigation. If the prosecutor decides to proceed with charging, they must do so within 15 days of receiving the police report.²¹ The prosecutor has a duty to press charges where they believe there are “sufficient grounds” to justify a conviction.²² Assuming “sufficient evidence,” the obligation to press charges may only be avoided where the accused cannot be located, the prosecution is barred by a limitation, the crime is subject to a pardon or amnesty,

¹⁸ Criminal Code, Arts. 212, 613.

¹⁹ Criminal Procedure Code of Ethiopia (the “Criminal Procedure”), Art. 16, 22(1).

²⁰ *Id.* at Art. 23.

²¹ *Id.* at Art. 109(1).

²² *Id.* at Art. 40(1).

or a relevant Minister instructs the prosecutor not to proceed due to public interest.²³ If the prosecutor concludes that there are insufficient grounds to justify a conviction for defamation, then they must authorise the alleged victim or their legal representative to pursue a “private prosecution,” in which case they have 15 days to file a complaint with the court to start this process.²⁴

As a matter of law, the prosecutor may withdraw charges (with the permission of the court) and the court will “attempt to reconcile the parties”.²⁵ However, in reality, the current climate of civil unrest renders prosecutors and courts unlikely to afford journalists these avenues of protection in the face of defamation charges.

E. WHAT SHOULD I DO IF I AM ARRESTED AND/OR CHARGED WITH CRIMINAL DEFAMATION?

Journalists who are arrested and/or charged with criminal defamation should attempt to contact their lawyers, employers, and respective consulates or embassies for immediate support. Journalists should also remain aware of their legal rights upon arrest or charge, and which protections they should assert if safe to do so. Under the Ethiopian Constitution, those arrested or charged with a crime have numerous protections, including the following:

- the right to be informed promptly, in a language they understand, of the reasons for their arrest and for any charge against them;
- the right to be brought before a court within 48 hours of their arrest;
- the right to remain silent;
- the right to be informed promptly, in a language they understand, that any statement they make may be used as evidence against them;
- the right to not be compelled to make confessions or admissions which could be used against them;
- the right to be released on bail;
- the right to be informed with detail of the charge brought against them and to be given the charge in writing; and
- the right to be represented by legal counsel of their choice.²⁶

Additionally, if a journalist has not been brought before a court within the prescribed time or provided reasons for their arrest, they may petition the court for their release.²⁷ Although the Ethiopian Constitution provides journalists with the right to be released on bail, under “exceptional circumstances prescribed by law, the court may deny bail or demand adequate guarantee for the conditional release of the arrested person”.²⁸ Accused journalists should seek immediate assistance, from attorneys, superiors, and diplomat that may be able to shed light on their situation.

²³ *Id.* at Art. 42.

²⁴ *Id.* at Arts. 44(1), 47,150

²⁵ *Id.* at Arts. 122(1), 151(2).

²⁶ Ethiopian Constitution, Art. 19(1)-(3), (5)-(6); *id.* at Art. 20(2), (5).

²⁷ *Id.* at Art. 19(4).

²⁸ *Id.* at Art. 19(6).

F. HOW DOES AN ALLEGED VICTIM SUE A JOURNALIST/ MEDIA OUTLET FOR CIVIL DEFAMATION? WHERE DOES AN AGGRIEVED PARTY FILE A CASE FOR DEFAMATION?

The alleged victim will need to file a suit, which can be done at the relevant court registry and by paying a court fee. The victim may choose any court to bring a suit, so long as the court has both personal (authority to rule on the parties) and material jurisdiction (authority to rule on the subject matter).²⁹ Generally, the court has personal jurisdiction if the defendant resides or conducts business in the location.³⁰ If the defendant is a foreigner with property in Ethiopia then local jurisdiction is established in the location of the property.³¹

Additionally, since a suit for defamation is a “wrong done to persons,” local jurisdiction may be established in a court of the place where the alleged defamation occurred.³² Material jurisdiction exists in either the state district courts, the state sub-regional courts, or the state intermediate appellate court, depending upon the level of controversy.³³

G. WHAT SHOULD I DO IF I AM SERVED WITH A CIVIL DEFAMATION SUIT? WHAT OPTIONS DO I HAVE IF I AM FOUND GUILTY? CAN I APPEAL?

If a journalist is served with a defamation suit, they can consider whether withdrawing the statement and issuing an apology is an option. This approach will allow the journalist to pursue the “justification” defence to civil defamation. The withdrawal and apology must be “immediate” and can be in the periodical of the journalist’s choice. The judge may require the defendant to make a public correction that is similar to the alleged defamation. In civil cases, the timeline to appeal is within 60 days.³⁴ If a journalist is found guilty of criminal defamation, the timeline to appeal is 15 days.³⁵



29 *Id.* at Arts. 9(1), 10(1).

30 *Id.* at Art. 19(1).

31 *Id.* at Art 20.

32 *Id.* at Art. 27(1).

33 *Id.* at Arts. 12(1), 13-14, 15(1).

34 Civil Code, Art. 323(2).

35 Criminal Procedure Art. 187.



5. WHAT DEFENCES ARE AVAILABLE?

Under Ethiopian Law, there are several defences to both criminal and civil defamation. Please note that these defences are not applicable to incitement and anti-terrorism laws that the Ethiopian government often uses to detain journalists for indefinite periods without bail or trial.³⁶

H. HOW CAN I DEFEND MYSELF IF I AM CHARGED WITH CRIMINAL DEFAMATION?

Criminal defamation in Ethiopia is referred to as an “injury against honour.”³⁷ There are instances when injury against honour is not punished. For instance, criminal law does not punish certain artistic, scientific, or investigative statements as injuries against honour. Specifically, “considered opinions and well-founded criticism, couched in proper and moderate terms, concerning personal aptitudes or artistic, literary, scientific, professional or social activities, creations or productions” are not punishable.³⁸ Similarly, criminal law does not penalise “averments, statements or comments” made “by a journalist or by any other person acting in good faith in the discharge of his duties,” so long as “the alleged facts are germane to and remain within the confines thereof” and “are not uttered with express intent to discredit.”³⁹

³⁶ See AP Calls for Release of Ethiopian Journalist in Detention, Associated Press (Mar. 11, 2022), <https://apnews.com/article/business-ethiopia-africa-journalism-media-9ab308546ccef1b5af3e0225fe9be11b>

³⁷ Criminal Code, Arts. 607, 612.

³⁸ *Id.* at Art. 612.

³⁹ *Id.*

There are also instances where there are defences available. For instance, the defendant may assert that the reported material was factually true or that they reasonably believed the material was true.⁴⁰ However, the defendant must also prove that they lacked the intent to harm the reputation of another or that they “acted in public interest” or with “a higher interest or moral aim”.⁴¹ Unfortunately, the mere lack of intent or presence of a public interest does not guarantee a defence.

I. HOW CAN I DEFEND MYSELF IF I AM CHARGED WITH CIVIL DEFAMATION?

Defences to civil defamation include:

- **Absence of intent to refer to a particular person:** Although the law does not recognise the lack of intent to injure as a defence, a journalist may assert that the alleged defamatory statements were not intended to refer to a particular person.⁴² So long as the journalist could not reasonably foresee harm to another, this defence applies.
- **Matters of public interest.** Under this defence, there is no civil defamation if the alleged defamatory statements were opinions on matters of public concern.⁴³ However, for this defence to apply the defendant cannot have made knowingly false statements against the plaintiff.
- **Truth of alleged facts.** Under this defence, there is no liability for civil defamation if the alleged defamatory statements are proven to be accurate, unless the defendant has acted solely with the intent to injure the plaintiff.⁴⁴
- **Immunity.** This defence provides that “no liability shall be incurred in respect of utterances made in parliamentary debates or in the course of legal proceedings”.⁴⁵ This defence is likely inapplicable to journalists because it only applies to members of parliament engaging in debates and lawyers and judges acting in the context of legal proceedings.
- **Justification.** This defence provides that the defendant may withdraw the alleged defamatory statement and apologise at the request of the plaintiff, as long as this occurs “immediately” and the defendant has not acted with the “intent to injure” the plaintiff or with “gross negligence”.⁴⁶ As explained above, the forum for the withdrawal and apology depends on the nature of the publication in which the alleged defamatory statement appeared.

40 *Id.* at Art. 614(2).

41 *Id.*

42 Civil Code, Art. 2045(1)-(2).

43 *Id.* at Art. 2046(1).

44 *Id.* at Art. 2047.

45 *Id.* at Art. 2048.

46 *Id.* at Art. 2049(1).

PRACTICAL STEPS JOURNALISTS CAN TAKE TO MITIGATE THE RISK OF DEFAMATION LIABILITY IN THEIR WORK

Summary

It is worth remembering that truth is a complete defence to a defamation action. There may be other limitations on publishing information, but to the extent that the information is and can be proved to be true, a defamation action will not be successful. A good rule of thumb is to only report what you are confident you can prove.

A rigorous focus on fair and accurate reporting at each stage, and verifying the truth of the matters reported will put you in the best possible position if faced with legal threats or claims. The suggestions below are intended to help you to think about practical means of achieving this. There are also other defences to a defamation claim which may be available to you depending on the jurisdiction, some of which are mentioned below.

Gathering Information

- Gather information early - as time passes and memories fade, information and sources can become less reliable.
- Use confidential sources with caution – if you are reliant solely on information from a confidential source in respect of certain allegations or statements in your reporting, be aware proving the truth may be more difficult.
- Do not make promises to confidential sources that are not within your power to keep.
- Be careful with legal advice. In particular, do not claim a (false) legal fact in order to get information from a source.
- Nondisclosure agreements are permissible and effective to protect journalists from disclosing their source. If you do not conclude such an agreement – expressly or impliedly – you are not contractually (although you may be ethically) obligated to protect sources and maintain confidentiality.
- If you anticipate needing releases, obtain them early.
- Use public records to your advantage. You can use them to verify information you received from other sources.
- If you choose to utilise audio or visual recording, always pause to consider whether you can record without permission, or whether permission is required. When in doubt, ask for consent.
- When putting something in writing, know that should you be sued, you may be required to disclose sources and means of obtaining information.
- Keep a good record of your notes, meetings, etc.
- Research carefully. Verify sources and double-check your facts to ensure accuracy. Generally, you may only adopt communications from authorities and recognized agencies without further verification where you clearly attribute the source of the information.

Drafting and Vetting the Article

- Familiarise yourself with defamation law in the countries you're working (see above). Be aware that there may be more restrictive laws in some countries – for example in some countries it is easier for a company to bring a defamation challenge than in others.
- Familiarise yourself and comply with your news organisation's ethics guidelines and policies.
- Use credible sources to verify the accuracy of any potentially defamatory statements.
- Ask yourself whether there are any statements directed to identifiable individual(s) or companies that could be reputationally damaging. Confirm accuracy, and if doubt remains, weigh the benefits of keeping the statement in versus taking it out.
- Make your reliance on trustworthy and non-confidential sources transparent (for example, by hyperlinking to or otherwise disclosing the relevant reports or public records).
- A cornerstone of responsible journalism is seeking comment from the subject(s) of the reporting you intend to publish, in particular where you intend to make allegations about them or their conduct – you should clearly put the substance of allegations to the subject in advance and invite their response.
- Ensure, especially where you are engaging in investigative reporting, the subjects of your reporting have sufficient time to respond and have enough information to respond adequately. You should not show them a draft of your intended reporting but you should be prepared to share the substance of the intended publication.
- Reflect the comment /response in the article (you may use your editorial discretion in doing so). Even noting "no comment" or source "did not respond to requests for information" will go a long way in showcasing the steps the journalist took to report factual information.
- Be precise with your language and the meaning you intend to convey. Avoid any ambiguity, over-exaggerations or speculations. To the extent that you've made any assumptions, disclose them clearly as such.
- Always reproduce quotations correctly and attribute them clearly.
- Consider exculpatory circumstances and avoid one-sided reporting. Reporting should be balanced and not create a distorted picture of reality.
- Do not spread mere rumours, whether about public or private matters. Report only when a minimum body of evidence is available and feel comfortable with saying you don't know, where applicable.
- Consider how litigious and risky the subjects of your reporting are, and plan accordingly. If it is someone with a history of litigious activity toward the press, engage your news organisation's legal/compliance team early.
- Consider whether you are making an assertion of fact or a potentially protected opinion. There must be sufficient evidence for a statement of fact. If there is any uncertainty or doubt, consider formulating it as an expression of opinion (based on true facts) or presenting it as an assumption.
- Beware of republication liability. If you take information from another medium for your reporting, you assume responsibility for its content. Always do your own research.

- Consider whether any available defences to defamation – for example truth, public interest reporting, qualified or absolute privilege, fair and accurate reports of certain proceedings – apply.
- There are several defences to a defamation action other than truth / justification, some of which may be particularly applicable to journalists – for example in some countries there is defence for reporting in the public interest. There may also be defences available where an article expresses an opinion and are written in public interest. However, these defences are not fool-proof and will usually involve satisfying a number of requirements. If you intend to rely on a defence, consult your legal team or research precedent to ensure that the defence is likely to be available.

After Publication

- Stay informed of any developments in the subject matter that might change, call into question, or shed new light on the published information. Originally permissible reporting may generally be kept in the online archive. You typically have no active duty to investigate or update the reporting. Only if an affected party raises a qualified complaint about the reporting, you may be required to add supplementary information or take reasonable precautions to prevent the reports from being found in search engines in name-related search queries (“right to be forgotten”).
- Consider whether to keep your notes and relevant communications and, if so, for how long – knowing the limitation period for defamation claims in the relevant jurisdiction may assist.
- Be willing to correct or retract your mistakes and issue an apology to the extent necessary for the justification/truth defence. You may be required to correct factual allegations that have subsequently proven to be incorrect and have a lasting effect on the personal rights of the person concerned. This is usually done via a supplement/correction in the next issue or on the website.

Please note that journalists must also remain cognisant of emerging trends in other areas of the law that place their wellbeing at risk, or which could create legal risk – such as applicable privacy laws.

ABOUT US

The Legal Network for Journalists at Risk (LNJAR)

The [Legal Network for Journalists at Risk](#) (LNJAR) was founded by the Committee to Protect Journalists, Media Defence and the Thomson Reuters Foundation to meet the growing need for legal support among independent journalists and media outlets. The LNJAR is a network of expert member organisations who have come together to create a single access-point to an ecosystem of legal support. Journalists facing legal attacks can contact any one of the member organisations individually, or [email the Network directly](#). LNJAR members will work together to combine the different support available, tailoring its response to each case. This ensures that member organisations make the best possible use of limited resources and avoid duplication when providing legal support. To strengthen the legal environment for media freedom, member organisations will also collaborate on capacity building initiatives and advocacy.

Committee to Protect Journalists

The Committee to Protect Journalists (CPJ) is an independent, non-profit organisation that promotes press freedom worldwide. We defend the right of journalists to report the news safely and without fear of reprisal. Every year, hundreds of journalists are attacked, imprisoned, or killed. For more than 40 years, CPJ has been there to defend them and fight for press freedom. With a team of more than 50 experts based around the world, CPJ documents and denounces press freedom violations, meets with heads of state and high-ranking officials, spearheads or advises on diplomatic efforts, and works with other organisations to ensure that justice prevails when journalists are jailed or murdered. CPJ also provides comprehensive, life-saving support to journalists around the world through up-to-date safety information and rapid response assistance.

Media Defence

Media Defence provides legal help to journalists, citizen journalists and independent media across the world, in the belief that a free press is essential in realising the right to freedom of expression. We support journalists who hold power to account by working to ensure the legal protection and defence of journalists and independent media so they can report on issues of public interest. We do this by providing assistance to journalists, citizen journalists and independent media through an emergency defence fund, by taking strategic cases to challenge unjust laws and protect freedom of expression, and through developing a worldwide network of partners and specialists to provide legal defence, which we support through grant making, training and information sharing. Since our founding in 2008, we have supported over 1,300 cases, helping hundreds of journalists in 117 countries. Our work has helped prevent over 350 years of detention for media workers and avoided over \$700m in damages. We have supported 40 partners and, thanks to our train-the-trainer program, have fostered specialist media defence expertise in over 300 lawyers.

Thomson Reuters Foundation

The Thomson Reuters Foundation is the corporate foundation of Thomson Reuters, the global news and information services company. The organization works to advance media freedom, raise awareness of human rights issues, and foster more inclusive economies. Through news, media development, free legal assistance, and convening initiatives, the Foundation combines its unique services to drive systemic change. Its mission is to inspire collective leadership, empowering people to shape free, fair, and informed societies. TrustLaw is the Thomson Reuters Foundation's global pro bono legal programme, connecting high-impact NGOs and social enterprises working to create social and environmental change with the best law firms and corporate legal teams to provide them with free legal assistance in order to produce ground-breaking legal research and offer innovative training courses worldwide.



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