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# UNDERSTANDING DEFAMATION LAWS IN KENYA

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## INTRODUCTION

When applied legitimately, defamation laws are intended to protect individuals and businesses 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.

This Guide provides journalists with a practical understanding of defamation laws and the steps they can take to mitigate defamation liability in Kenya. This awareness will empower journalists to understand their legal rights and obligations and continue to report on issues of vital public interest. The Guide covers the scope of defamation law, the criminal and civil process of cases in courts, the defences against defamation, sanctions against defamation, and practical steps to mitigate defamation liability.



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## 1. SCOPE OF DEFAMATION

- **What is defamation?**

Defamation is broadly defined as a false statement that tarnishes, harms or damages a person's reputation. Defamation falls under [tort law](#) and includes both libel (written statements) and slander (oral or spoken statements). More specifically defamation means making a false statement that tends to harm a person's reputation or lower them in the eyes of members of society, expose them to public hatred, contempt or ridicule or cause them to be shunned or avoided.

Publication includes "...the print, writing, painting, effigy or other means by which the defamatory matter is conveyed to be so dealt with, either by exhibition, reading, recitation, description, delivery or otherwise, that the defamatory meaning thereof becomes known or is likely to become known to either the person defamed or any other person..."(section 196 of the [Penal Code](#)).

Publication is also defined to include "all written and printed matter, and any record, tape, wire, perforated roll, cinematograph film or other contrivance by means of which any words or ideas may be mechanically or electrically produced, reproduced, represented or conveyed, and everything containing any visible representation, or by its form, shape or in any manner capable of producing, reproducing, representing or conveying words or ideas and every copy and reproduction of a publication" (section 3 [Interpretation and General Provisions Act](#)).

- **What constitutes criminal and civil defamation?**

There are two key distinctions between criminal and civil defamation: i) the identity of the party bringing the claim; and ii) the applicable standard of proof required to prove the claim. In civil proceedings, the party claiming they were defamed will file a claim which must be proven on the balance of probabilities. In the case

of a criminal offence, the Office of [Director of Public Prosecutions](#) (ODPP) or a private prosecutor institutes the case and must establish the elements of the crime beyond reasonable doubt. This means that there is a higher evidence threshold in criminal cases as opposed to civil cases. Criminal cases are ordinarily punishable by a fine or imprisonment or both. On the other hand, civil defamation is usually punished through damages.

Although criminal defamation under section 194 of the Penal Code was declared unconstitutional by the High Court in 2017, the publication of false information which is likely to harm the reputation of a person is a criminal offence under section 23 of the [Computer Misuse and Cybercrimes Act](#) (the CMCA). There is no specific definition of civil defamation under Kenyan law. However, defamatory offences like slander and libel attract civil remedies under the [Defamation Act](#).

- ***In what instances can I be sued for civil defamation?***

You may be sued for civil defamation by any person or an entity (through their representatives such as company directors) who believe their reputation has been tarnished by your alleged defamatory statement.

For a person to successfully establish a claim against you for civil defamation, they must prove the following elements:

- a. that the statements complained of are defamatory in character. This means that it must be a false statement likely to harm a person's reputation;
- b. that the statements tend to harm their reputation, lower them in the eyes of members of society, expose them to public hatred, contempt or ridicule, or cause them to be shunned or avoided;
- c. that the statements refer to them or that they could be identified from the statements in question; and
- d. that the statements are communicated or published to someone other than the person complaining/suing (i.e., made public).

If the court finds that the statement complained of was defamatory, you will be found liable, unless you can defend the claim. Defences to defamation are highlighted at pages 10, 11 and 12 of this Guide.

- ***In what instances can I be prosecuted for false publication which is likely to discredit the reputation of a person under the CMCA?***

You may be charged/prosecuted if you knowingly publish false information which is likely to harm a person's reputation (section 23 [CMCA](#)).

For you to be convicted of the offence, the prosecutor must prove both criminal intent and the actual action of publishing false information by you. In other words, the prosecutor must prove beyond reasonable doubt that you knew the information in question was false and proceeded to publish it with the intention of harming a person's reputation.

- **Does the law criminalise hate speech?**

Hate speech is punishable by law under the [National Cohesion and Integration Act](#) (NCI Act). The Act highlights two main thresholds: the use or spread of content that is threatening, abusive or insulting, and the intent to stir up ethnic hatred. The NCI Act also covers other offences related to hate speech namely ethnic contempt and Incitement to violence.

Section 77 of the [Penal Code](#) also contains provisions that criminalize incitement to violence and disobedience of the law. Furthermore, the [Constitution of Kenya 2010](#) expressly prohibits hate speech (article 33).

Hate speech attracts a penalty of a fine of up to Ksh. 1,000,000 (approximately USD 10,000) or to an imprisonment term of up to 3 years, or to both (section 13 (2) NCI Act).

- **What are possible consequences for being convicted with publishing false information which is likely to discredit the reputation of others?**

A fine of up to Ksh. 5,000,000 (approximately USD 50,000) or an imprisonment term of up to 10 years, or both a fine and imprisonment (section 23 of the CMCA).

- **What are the possible consequences of being found liable for civil defamation?**

Where the civil claim is successfully established against you, the civil reliefs that can be entered against you include damages, injunctions, apology, or orders of retraction of defamatory statement(s).

- a. **Injunction:** When publication of a defamatory statement is threatened, the person about to be defamed is not obliged to wait for the act to occur. The person/entity can apply to a Court for an injunction to prevent the publication.
- b. **Damages:** If the defamatory statement has already been published and someone/an entity is successful in proving a defamation claim against a journalist, they are entitled to an award of damages as compensation for the harm to their dignity and reputation.

The award of damages in defamation cases is discretionary. The court may consider such factors as: the gravity of the libel; the medium in which it is published and the extent of circulation of the offending publication; any repetition; and the conduct of the defendant after publication and during trial, including whether there was an apology issued (para 24 [C A M v Royal Media Services Limited \[2013\] eKLR](#)).

- c. **Retraction and/or apology:** An apology given after a journalist received a complaint or during trial is a ground for mitigating the damages in a defamation case (section 16, [Defamation Act](#)). Where an apology is not given, the court may order the journalist to issue an apology, usually in equal measure to the size of the publication. A court may also order a retraction of the offending article, giving the same prominence as the defamatory article. In other instances, a court may grant damages in lieu of a retraction or apology, especially when significant time has passed between publication and when the orders are issued ([Lucy M Kambuni v Nation Media Group Limited \[2020\] eKLR](#)).

## CASE EXAMPLES

There are several practical examples in Kenya where a suit for defamation has been brought by one party against another. Some of the cases are highlighted below. Although not all the highlighted cases are against journalists/media outlets, the courts will apply similar principles to similar cases brought against journalists/media outlets.

### ***Publication of false information which is likely to discredit the reputation of a person***

Offences under the CMCA are prosecuted at the lower courts which are not courts of record. This means that the decisions/judgments of the courts are not publicly published. Additionally, the application of the offence of publishing false information which is likely to discredit the reputation of a person under the CMCA only came into effect in February 2020. In the circumstances, there is insufficient information on criminal cases which have been successfully prosecuted before the courts.

### ***Civil defamation***

#### ***[John Joseph Kamotho & 3 others v Nation Media Group Ltd & 2 others \[2005\] eKLR](#)***

The Nation Media Group broadcast a road accident involving the claimant's (Joseph Kamotho) sons. The claimant was aggrieved by the broadcast claiming that it was made in a manner likely to suggest that the claimant, being a senior government official, was undermining the rule of law when his sons were accused of breaking the law in the case involving a road accident. The court found that the broadcast was libellous, untrue in substance and clearly referred to the complainant, thus defamatory in nature in line with the Defamation Act, and that the Nation Media Group was liable to pay damages to the claimant.

#### ***[Safaricom v Porting Access Kenya Limited \[2011\] eKLR](#)***

Safaricom Limited sued Porting Access Kenya for sharing/repeating libelous statements that were made by a third party. The court agreed with Safaricom Limited and found that sharing another person's defamatory statements amounts to a re-publication of the defamatory statement and that every person is expected to verify information before publication, including in the event of a re-publication/reporting.

#### ***[Musikari Kombo v Royal Media Services Limited \[2018\] eKLR](#)***

Citizen TV erroneously linked the wife of a public official (Musikari Kombo) to corruption proceedings in a broadcast. The person involved in the corruption proceedings was not Kombo's wife. The court found that a person can be held liable for defamation if the defamatory statements in question concern a party by inference i.e., that the identity of the party can be inferred from the defamatory statements in question. On this basis, the court awarded damages to the appellant.

#### ***[Nelson Havi v Headlink Publishers Limited \[2018\] eKLR](#)***

Nelson Havi, a lawyer, sued Headlink Publishers claiming that they had published a libellous article about him. The publication allegedly painted the claimant as an advocate of questionable character who accepts bribes and wins cases on dubious grounds. Havi alleged that he had suffered damage from the publications. He also alleged the publications had caused him serious emotional distress. The court awarded damages to Havi, pointing out that the defendant was reckless and malicious and that the article was calculated to increase Headlink Publishers' profit. The court further indicated that the exemplary damages were meant to "punish the wrongdoer and act as deterrent from similar conduct in future".

### [CFC Stanbic Bank Limited v Consumers Federation of Kenya \[2019\] eKLR](#)

CFC Stanbic Bank sued the Consumers Federation of Kenya (COFEK) for a post it shared on its website, Facebook page and Twitter account. COFEK had published an article with various allegations regarding the bank lacking integrity in its dealings and that the bank had breached consumer rights and consumer regulations among other claims. COFEK relied on the defence of fair comment, reasoning that the publication was a republication of a letter from a member of the public and therefore the publication was in the public interest and amounted to fair comment. The court found that COFEK's article was defamatory and not 'fair comment' as provided for under section 15 of the [Defamation Act](#) because COFEK did not provide the court with the particulars facts on which the defence of fair comment was based.

## 2. PROCEDURE FOR LAUNCHING CRIMINAL CASES

- **Who can complain to law enforcement about the publication of false information which is likely to discredit the reputation of a person?**

Any person (legal or natural) who is aggrieved by information/statements which are likely to harm their reputation can complain to the police. The case may be reported to a police station so that the complaint is recorded in the Occurrence Book (OB). After recording, the complaint is issued a reference number (OB number) for investigation purposes. The police may then record statements from the complainant and witnesses (if any) and draft a charge. If the police are satisfied that a crime may have been committed, they may arrest the accused person and may detain or release them on reasonable bail terms pending further action. The police will then forward the file to the prosecution who will decide whether to file the matter in court or otherwise depending on the evidence presented. Upon making the prosecution decision, the prosecutor is at liberty to bring the case before the Magistrates' Court.

- **Who decides whether to prosecute a journalist for publication of false information which is likely to discredit the reputation of a person? How do they decide whether to charge a journalist?**

Criminal offences are prosecuted on behalf of the state by prosecutors from the Office of the Director of Public Prosecutions (ODPP). The prosecution decision for the offence under the CMCA is therefore made by a prosecutor from the ODPP.

In making prosecution decisions, prosecutors are guided by the 'Decision to Charge Guidelines' which are available on the [ODPP webpage](#).

In summary, when deciding whether or not to prosecute an offence, a prosecutor must satisfy themselves that the evidence presented is sufficient to prove the ingredients of an offence (criminal intent and criminal action). In the context of the CMCA, the criminal intent is the journalist's knowledge that the information in question was false or untrue, and the criminal action is that the journalist then proceeded to publish the information in question. Although there are other secondary considerations like public interest (more details in the ODPP Guidelines), the evidence to support these key ingredients of the offence is what informs a prosecutor's decision to prosecute or not.

- ***What should I do if I am arrested and/or charged with the publication of false information likely to discredit the reputation of a person?***

If you are arrested and/or charged, you are entitled to the rights of an arrested person that are provided under Article 49 of the [Constitution of Kenya, 2010](#).

As an arrested person you have the right:

- a. to be informed promptly, in language that you understand, the reason for the arrest, the right to remain silent, and the consequences of not remaining silent;
- b. to remain silent;
- c. to communicate with an advocate, and other persons whose assistance is necessary;
- d. not to be compelled to make any confession or admission that could be used as evidence against you;
- e. to be held separately from persons who are serving a sentence;
- f. to be brought before a court as soon as reasonably possible (within 24 hours of arrest or if 24 hours ends outside the ordinary court days, the next court day);
- g. at the first court appearance, to be charged or informed of the reason for the detention continuing, or to be released;
- h. to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

In line with Article 49(2) of the Constitution, you should not be remanded in custody for an offence which is punishable by a fine only or by imprisonment for not more than six months. It is recommended to instruct a lawyer to represent you, although self-representation is also an option that is available to you.

### 3. PROCEDURE FOR LAUNCHING CIVIL DEFAMATION CASES

- ***How does an aggrieved party sue a journalist/media outlet for defamation?***

A civil defamation claim is brought by an individual or corporation against a journalist/media outlet accused of publishing the defamatory statement complained of.

Defamation claims must be brought within 12 months of the date on which it is claimed that the libel or slander was committed.

Prior to formally instituting a civil suit, the person claiming defamation is required to issue a formal notice of the intention to bring a claim against the journalist/media outlet, in a letter known as a demand letter, to the journalist/media outlet that is being accused of defamation. The demand letter sets out a time within which the journalist/media outlet should give a formal response, failing which the claimant will proceed to file the claim in court.

Upon receipt of the demand letter, the journalist/media outlet may proceed to instruct a lawyer to respond to the letter. If the outcome of the demand letter is unsatisfactory, the claimant may then identify the suitable court to institute the claim and commence the civil claim.

- ***Where does an aggrieved party file a case of defamation?***

In line with the provisions of the [Magistrates' Courts Act](#), No. 26 of 2015, the Magistrates' Courts in Kenya have the jurisdiction to deal with civil claims which would attract damages of between Ksh. 5,000,000 (approximately USD 50,000) and Ksh. 20,000,000 (approximately USD 200,000). This jurisdiction is referred to as pecuniary jurisdiction.



The level of Magistrates Court which deals with particular claims depends on the amount sought in damages, since pecuniary jurisdiction varies within the different cadres of the Magistrates Court as illustrated below.

Court	Amount (in Kenya Shillings)
Resident Magistrate	Up to 5,000,000 (approximately \$50,000)
Senior Resident Magistrate	5,000,001 – 7,000,000 (approximately \$ 50,000- \$ 70,000)
Principal Magistrate	7,000,001 – 10,000,000 (approximately \$ 70,000-100,000)
Senior Principal Magistrate	10,000,001 – 15,000,000 (approximately \$100,000- 150,000)
Chief Magistrate	15,000,001 – 20,000,000 (approximately \$150,000-200,000)

The offence of publication of false information likely to discredit the reputation of another is prosecuted at the Magistrates' Courts.

Appeals from the Magistrates' Court decisions can be pursued at the High Court and subsequently at the Court of Appeal.

- ***What should I do if I am served with a defamation suit?***

If you are served with a defamation suit, under the [Civil Procedure Rules](#), you are required to respond to the matter (enter appearance in court), file your defence within 14 days of receiving the claim, serve your defence on the claimant/s within 14 days from the date of filing it and subsequently file proof that the documents were received by the claimant (affidavit of service) with the court.



## 4. DEFENCES TO DEFAMATION

- ***How can I defend myself if I am charged with the publication of false information which is likely to discredit the reputation of a person? What are the available defences and in what instances do I raise them?***

In a criminal case, the private prosecutor or the ODPP has the legal obligation to prove the charges against you beyond reasonable doubt (this higher degree of proof that is required essentially works in your favour).

When called to take plea, you have the option of 'guilty' or 'not guilty'. A plea of 'guilty' consequently means that the judicial officer proceeds to convict you and set out the sentencing terms (section 207 [Criminal Procedure Code](#) (CPC)).

If you plead 'not guilty', the court will hear the complainant and their witnesses and any other evidence. Your lawyer or yourself (if self-representing) may ask the witnesses questions based on the evidence they have provided (section 208 CPC). The court will then assess the evidence in support of the charge, the hearing, and the submissions/arguments of the prosecutor. If it appears to the court that a case has not been made out against you sufficiently, the court will dismiss the case and acquit you (section 210, CPC). However, if a sufficient case has been established against you, you will be required to make a defence. You may testify and bring any witnesses and any evidence to oppose the charge (section 211, CPC).

You can rely on the following defences:

### Truth

You can put up a defence of truth by asserting that the statements in question are true. It is not necessary for you to demonstrate that every allegation is true as long as some of the information can be shown to be true. The aim is to cast doubt on the charge against you with the intention of stopping the prosecution from proving it beyond reasonable doubt. You can raise this defence whenever it is available to you as a matter of fact.

### Honest opinion

You may argue that the statements in question were made as an honest opinion and not as statements of facts. Section 23 of the CMCA indicates that the criminal intent that needs to be established is that you knew the information to be false or untrue. In other words, the fact that you did not know that the statements were false would be a defence.

### Public interest

You may argue that the statement in question was or formed part of a statement on a matter of public interest or that you reasonably believed the information contained in the statement in question was a matter of public interest. Some of the points the High Court has considered in determining the defence of public interest (for example in [Joseph Njogu Kamunge v Charles Muriuki Gachari \[2016\] eKLR](#)) include:

- a. the seriousness of the allegation, i.e. if the allegation is not true what will be the level of misinformation to the public and what will be the corresponding harm to the individual;
- b. the nature of the information and the extent to which the subject-matter is a matter of public concern;
- c. the source of the information and whether it is reliable or motivated by malice and/or greed;
- d. whether suitable steps have been taken to verify the information;
- e. whether the allegation in a story has already been the subject of an investigation which commands respect;
- f. whether it is important that the story be published quickly;
- g. whether comment was sought from the claimant, or whether that was not necessary in the context of the story;
- h. if the article or story includes the gist of the claimant's version of events;
- i. whether the article or story is written in such a way as to amount to statements of fact, or whether it raises questions and is suggestive of the need for further investigation;
- j. the timing of the publication.

- ***How can I defend myself against a civil defamation case? What are the available defences and when can I raise them?***

The [Defamation Act](#) provides for defences that can be relied upon as follows:

### **Justification**

The defendant must prove that the allegations against the claimant are true in fact or substantially true. The defence is still applicable if the words which are not proven to be true do not significantly damage the reputation of the claimant considering the truth of the other statements proven (section 14, Defamation Act).

### **Absolute privilege**

Privilege refers to the right of journalists to cover court or parliamentary proceedings without the risk of incurring punishment or legal action for defamation (section 6, Defamation Act). The defence of absolute privilege can be relied upon with respect to material that is covered by absolute privilege e.g., a fair and accurate reporting of proceedings heard before a court of law is covered by absolute privilege.

## Qualified privilege

This defence applies to a wide range of occasions and reports where the journalist has a moral or social duty to report, and the reader/audience has an interest to receive the report (public interest). The report must be fair and accurate, and the defendant must prove that there was no malice in the publication (by showing that the publication was in good faith (section 7, Defamation Act).

## Fair comment

A defamatory statement that consists partly of allegations of fact and partly of expression of opinion, can be defended under the defence of fair comment i.e., it is not a requirement for you to prove that every part of the statement in question is a matter of fact for you to rely on the defence of fair comment (section 15, Defamation Act). Key elements of this defence are:

- a. the statement(s) in question must be a comment, not assertions of fact;
- b. the statement(s) in question must be based on provable facts set out or referred to in the publication;
- c. the statement(s) in question must be honestly believed.

The statement of opinion must be based on facts. So, for example, if one publishes 'in my opinion the Governor killed the wife' that could be defamatory if it is not based on facts. However, if a journalist publishes 'there is serious corruption going on in the Governor's office', the statement could benefit from the defence if there are related facts which could reasonably support that position.

## Constitutional defence

In addition to the above defences, the constitutional defence of freedom of expression is one that can also be relied upon. Article 33 of the [Constitution](#) says that every person has the right to freedom of expression, which includes the freedom to seek, receive or impart information or ideas. However, under Article 33(3), the Constitution says that "in the exercise of the right to freedom of expression, every person shall respect the rights and reputation of others".

- ***What options do I have if I am found liable for civil defamation or guilty of a criminal offence? Can I appeal?***

If you are found guilty of a criminal offence or liable for civil defamation, you have the right to appeal by filing a Notice to Appeal within 14 days from the date of the decision. The court issuing the decision will inform you of this right. You also have the right to apply for typed court proceedings to aid in your appeal.

Where you come across new and compelling evidence that supports your case after the court has made its decision (against you), you can ask for a retrial or a review of the court's decision without unreasonable delay.



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## 5. PRACTICAL STEPS TO MITIGATE DEFAMATION LIABILITY

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

In general, journalists in Kenya should be guided by the Code of [Conduct for the Practice of Journalism](#) as well as other regulations by the regulators in the sector such as the [Communication Authority of Kenya](#).

#### **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.

### ***Newsgathering***

- Gather information early - as time passes and memories fade, information and sources can become less reliable.
- Use confidential sources with caution – if you rely 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.
- Non-disclosure 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.
- Use public records to your advantage. You can use them to verify information you received from other sources.
- If you choose to use 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.
- 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 where you're working (see above). Be aware 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 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 you 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 say what 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 research yourself.
- 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 is written in the 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.*



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