ARTICLE 19

Silencing Dissent: Defamation Laws and the Fight for Free Expression in Thailand

2024

Legal analysis

Executive summary

In this report, ARTICLE 19 provides a comprehensive analysis of the current state of defamation laws in Thailand, emphasising the urgent need for reform to protect freedom of expression and human rights. It highlights the ongoing challenges posed by criminal defamation laws, particularly the *lèse-majesté* provision, which criminalises criticism of the monarchy.

Building on a previous study from 2021 that called for the decriminalisation of defamation in Thailand, ARTICLE 19 notes that that despite international calls for reform, the situation has worsened, with over 25,000 criminal defamation cases filed since 2015, targeting journalists, activists, and whistleblowers.

In order to support the efforts of local activists and human rights defenders, ARTICLE 19 first outlines the legal framework governing defamation in Thailand, particularly focusing on the Criminal Code and the *lèse-majesté* law (Section 112). This law has been used to suppress dissent and silence critics, leading to a significant chilling effect on public discourse. The report notes that since a moratorium on its use ended in 2020, prosecutions have surged, particularly against pro-democracy activists.

Overall, ARTICLE 19 argues that Thailand's defamation laws violate international freedom of expression standards. We emphasise that criminal defamation is disproportionate and unnecessary and advocate for civil defamation laws as a more appropriate means of protecting reputation. We also address the issue of Strategic Lawsuits Against Public Participation (SLAPPs), which are used to intimidate and silence critics. We call for legal reforms to protect individuals from such lawsuits, referencing international efforts.

ARTICLE 19 believes that Thailand must undertake comprehensive reforms to align its defamation laws with international human rights standards. By decriminalising defamation, introducing changes to the civil law and addressing SLAPPs, Thailand can foster a more vibrant democracy and uphold its human rights obligations.

ARTICLE 19 hopes that this report will serve as a roadmap for achieving these essential reforms and urges the Thai government to protect freedom of expression and ensure accountability for abuses of the legal system.

Table of contents

Introduction

In the 2021 report *Truth Be Told: Criminal defamation in Thai Law and the Case for Reform*,[1] ARTICLE 19 highlighted the urgent need for Thailand to decriminalise defamation in order to protect freedom of expression and prevent the abuse of the criminal justice system. The report analysed criminal defamation provisions in Thai law, described troubling trends in prosecutions, and put forward concrete recommendations for reform.

Since the publication of the report three years ago, the state of protection of freedom of expression in Thailand remains dire. In November 2021, Thailand's Constitutional Court ruled that calls for the abolition of the *lèse-majesté* provision (which prohibits insult to the King, the Queen, the Heir-apparent, and the Regent) were an attempt to overthrow the democratic regime of government with the King as Head of State.[2] Then, on 31 January 2024, the Constitutional Court ruled that the opposition Move Forward Party's efforts to reform the *lèse-majesté* provision violated Thailand's Constitution and ordered Move Forward to stop all attempts at instituting the change.[3]

This regressive step demonstrates the Thai government's continued embrace of criminal defamation laws despite growing international consensus that such provisions are incompatible with human rights standards.

Moreover, the prosecution of activists, journalists, and human rights defenders under **criminal defamation** provisions have continued unabated. According to statistics provided by the Office of the Judiciary, over 25,000 criminal defamation cases have been filed with Thai courts since 2015, [4] with the number increasing each year. These prosecutions have targeted journalists, human rights defenders, and whistleblowers.[5]

For instance, in February 2024, Thai award-winning investigative journalist Dr. Chutima Sidasathian faced a trial for multiple criminal defamation lawsuits resulting from her work uncovering a community banking scandal implicating a local official in the misappropriation of microcredit funds. This fraud resulted in significant financial ruin and three suicides in the villages affected.[6]

Powerful companies and individuals continue to weaponise criminal defamation to silence criticism and avoid accountability for wrongdoing.[7] A 2023 study found that strategic lawsuits against public participation (SLAPPs), often based on criminal defamation charges, have exacerbated income inequality in Thailand by

[1] ARTICLE 19, Truth Be Told: Criminal defamation in Thai Law and the Case for Reform, March 2021.
[2] Constitutional Court Ruling No. 19/2564.
[3] Decision of the Constitutional Court of Thailand, 31 January 2024.
[4] ARTICLE 19, Thailand: Decriminalise defamation, 31 March 2021.
[5] ARTICLE 19, Submission to the Universal Periodic Review of Thailand.
[6] ARTICLE 19, Thailand: Drop all criminal defamation charges against Dr Chutima Sidasathian, 2 February 2024.
[7] ARTICLE 19, TRUTH BE TOLD, Criminal Defamation in Thai Law and the case for reform, March 2021, p. 12.

disproportionately targeting economically disadvantaged groups.[8]

Moreover, the notorious ***lèse-majesté* law**, which criminalises any perceived insult to the monarchy, continues to pose a grave threat to free expression. Section 112 of the Thai Criminal Code has been weaponised against those who criticize the monarchy, resulting in numerous prosecutions that stifle public discourse and dissent. This law not only restricts criticism of the monarchy but also extends to expression related to former monarchs and even comments on royal-affiliated businesses, creating a chilling effect on any form of political critique.

After a two-year moratorium on its use, the Attorney General's Office launched numerous prosecutions in response to 2020 pro-democracy protests, which also questioned the role of the monarchy.[9] Since then, over 270 activists have been charged under *lèse-majesté* provisions.[10] As of November 2023, 286 children and youth under 18 have been prosecuted under *lèse-majesté* or emergency provisions for their political participation in protests.[11] It has been used against those who criticise the provision in itself[12] and those who propose to amend it. This also includes the Move Forward Party (MFP), which pledged to reform *lèse-majesté* law. After winning a significant number of constituency seats in the 2023 general election, the Thai Constitutional Court dissolved the MFP under Section 92 of the Political Parties Act. In its verdict, the Constitutional Court ruled that the MFP intended to undermine the monarchy by campaigning to amend Section 112 of the Criminal Code.

Other attempts to repeal *lèse-majesté* provisions have cost activists their lives. Pro-democracy activist Netiporn 'Bung' Sanesangkhom died in detention after hunger striking to demand reform of the justice system and people were not imprisoned for holding dissenting options.[13] The prosecutions reflect a broader trend of escalating repression against dissent and criticism.

In light of these developments, ARTICLE 19 believes it is important to maintain pressure on the Thai government to fulfil its human rights obligations and reform defamation legislation.

In this report, we highlight which provisions of the Criminal Code, frequently used to target journalists, human rights defenders and political activists, should be repealed urgently. Since decriminalisation of protection of reputation should typically be accompanied by the reform of civil defamation laws, we examine how the legislation

[8] United Nations Development Programme Thailand, Laws and Measures Addressing Strategic Lawsuits Against Public Participation (SLAPPs) in the Context of Business and Human Rights, 2023.
[9] ARTICLE 19, Thailand: Sedition, lèse-majesté charges against protesters proliferate, 25 November 2021.
[10] THLR, November 2023: A total of 1,935 have been politically prosecuted in 1,262 cases, Thai Lawyers for Human Rights, 19 December. In conjunction with THLR, Prosecution of Children from a lawyers perspective, 20 September 2023.
[11] *Ibid.*
[12] ARTICLE 19, Breaking the Silence: Thailand's renewed use of lèse-majesté charges, March 2021, page 12.
[13] ARTICLE 19, Thailand: Hold authorities accountable for the death of Netiporn 'Bung' Sanesangkhom, 17 May 2024.

offering protection to reputation should be brought to compliance with international freedom of expression standards. Finally, we propose how the legislation should provide further protection against SLAPPs.

ARTICLE 19 believes that Thailand must join the global movement towards decriminalization of defamation and bring its legislation in line with international human rights standards. By undertaking comprehensive reforms, Thailand can uphold its commitment to human rights, foster a vibrant democracy, and create a more just and equitable society. This updated report aims to provide a roadmap for achieving these vital reforms.

Applicable international freedom of expression standards

The protection of the right to freedom of expression

The right to freedom of expression is protected by Article 19 of the Universal Declaration of Human Rights (UDHR)[14] and given legal force through Article 19 of the International Covenant on Civil and Political Rights (ICCPR).[15] As a State Party to the ICCPR since 1996,[16] Thailand has the obligation to respect, protect and fulfil the rights enshrined in the ICCPR, including the right to freedom of expression.

The scope of the right to freedom of expression is broad. The UN Human Rights Committee, which interprets the ICCPR, recognises it also the expression that may be regarded as deeply offensive.[17] It also recognises that the ICCPR places particularly *high value* upon political discourse, particularly in circumstances of public debate concerning public figures in the political domain and public institutions.[18]

Limitations on the right to freedom of expression

Under international human rights law, the right to freedom of expression is not an absolute right. However, it can only be restricted if certain conditions are met under the so-called 'three-part test.' Namely, any restriction must:

- **Be provided for by law:** It must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.[19] Ambiguous, vague, or overly broad restrictions on freedom of expression are therefore impermissible.

- **Pursue a legitimate aim**, enumerated in Article 19(3)(a) and (b) of the ICCPR as being limited to respect of the rights or reputations of others and protection of national security, public order, public health or morals. As such, it would be impermissible to prohibit expression or information solely on the basis that it casts a critical view of the government or the political social system espoused by the government.

[14] Although as a UN General Assembly resolution the UDHR is not strictly binding on states, many of its provisions are regarded as having acquired legal force as customary international law; see *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd circuit).
[15] International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, UN Doc. A/6316
[16] Thailand's accession to the ICCPR was on 29 October 1996.
[17] Human Rights Committee (HR Committee), General Comment No. 34, CCPR/C/GC/34, 12 September 2011, para 11.
[18] *Ibid.*, para 38.
[19] HR Committee, L*.J.M de Groot v. The Netherlands*, No. 578/1994, UN Doc. CCPR/C/54/D/578/1994 (1995).

- **Be necessary and proportionate**: Restrictions on expression must be specific to attaining that protective outcome and be the least intrusive means capable of achieving the same limited result.[20]

Freedom of expression and protection of the reputation

As noted earlier, freedom of expression may be limited to protect individual reputation. However, defamation laws, like all restrictions, must be proportionate to the harm done and not go beyond what is necessary in the particular circumstances.

International jurisprudence and comparative laws show that criminalising defamation is in and of itself a violation of the right to freedom of expression. Criminal law is designed to respond to serious threats to public order. The protection of one's reputation is not a matter a public order; as such, defamatory speech cannot be considered "a serious threat" that should be dealt with by means of criminal law. Civil defamation laws are adequate means to address the harms caused by defamatory statements.

The UN Human Rights Committee has been particularly concerned about the chilling effect which defamation sanctions can produce on engagement in debate on issues of public interest.[21] Its jurisprudence suggests a highly critical approach to criminalization of defamation. It has also actively recommended decriminalization of defamation in several countries[22] or endorsed decriminalisation of defamation and insult.[23]

The UN Special Rapporteur on Freedom of Opinion and Expression explicitly urged Governments to: (a) repeal criminal defamation laws in favour of civil laws; and (b) limit sanctions for defamation to ensure that they do not exert a chilling effect on freedom of opinion and expression and the right to information.[24] The Rapporteur noted that the subjective character of many defamation laws, their overly broad scope, and their application within criminal law have turned them into a powerful mechanisms to stifle investigative journalism and silence criticism.[25] The Special Rapporteur has

[20] HR Committee, *Velichkin v. Belarus*, No. 1022/2001, UN Doc. CCPR/C/85/D/1022/2001 (2005).
[21] Comment No 34, *op.cit.*, para 47.
[22] HR Committee, Concluding Observations on Uzbekistan, 24 March 2010, CCPR/C/ARG/CO/4; Concluding Observations on Cameroon, 28-29 August 2010, CCPR/C/CMR/CO/4; Concluding Observations on Tunisia, 28 March 2008, CCPR/C/TUN/CO/5, para 18; or Concluding Observations on the Former Yugslav Republic of Macedonia, 3 April 2008, CCPR/C/MKD/CO/2, para 6.
[23] HR Committee, Concluding Observations on the Former Yugslav Republic of Macedonia, 3 April 2008, CCPR/C/MKD/CO/2, para 6
[24] Report of the Special Rapporteur on Freedom of Opinion and Expression, E/CN.4/2001/64, 13 February 2001, para 47.
[25] Report of the Special Rapporteur on Freedom of Opinion and Expression, A/HRC/7/14, 28 February 2008, para 39.

taken an unequivocal position against imprisonment as a sanction against defamation: "penal sanctions, in particular imprisonment, should never be applied".[26]

International and comparative standards on the issue are encapsulated in the ARTICLE 19 publication Defining Defamation: Principles on Freedom of Expression and Protection of Reputation (the ARTICLE 19 Principles), a set of principles on how to balance the right to freedom of expression and the need to protect reputations.[27] These Principles have been endorsed by all three special international mandates dealing with freedom of expression, as well as a large number of other organisations and individuals.[28]

Protection against Strategic Lawsuits against Public Participation (SLAPPs)

The problem of SLAPPs has been increasingly recognised by international and regional human rights bodies.

For instance, in the 2022 Resolution on the safety of journalists — adopted by consensus at the Human Rights Council on 6 October 2022 — introduced new commitments on SLAPPs. It expressed concern about the rise in the use of these lawsuits to exercise pressure, intimidate, or exhaust the resources and morale of journalists, then called on governments to "take measures to protect journalists and media workers from strategic lawsuits against public participation, where appropriate, including by adopting laws and policies that prevent and/or alleviate such cases and provide support to victims.[29]

The need to adopt protection against SLAPPs has been recognised in the reports of the special mandates – in particular, the Special Rapporteurs on freedom of peaceful assembly and extrajudicial, summary, or arbitrary execution; [30] the Special Rapporteur

[26] Promotion and protection of the right to freedom of opinion and expression. E/CN.4/1999/64, 29 January 1999, para 28.
[27] ARTICLE 19, Defining Defamation: Principles on Freedom of Expression and Protection of Reputation, Revised, 2017.
[28] See the Joint Declaration of 30 November 2000.
[29] Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan, Reinforcing media freedom and the safety of journalists in the digital age, A/HRC/50/29, 20 April 2022; or the OSCE, Office of the Representative on Freedom of the Media, Legal Harassment and Abuse of the Judicial System Against the Media, Special Report, November 2021.
[30] UN HRC, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary execution on the proper management of assemblies, UN Doc.A/HRC/31/66, 4 February 2016, para 84.

on freedom of expression, [31] the OSCE Representative on Freedom of Media, [32] and the UN Working Group on Business and Human Rights.[33]

On a regional level, the European Union has implemented significant measures to protect individuals and organizations from SLAPPs through the Anti-SLAPP Directive, which entered into force on 6 May 2024.[34] The Directive represents a crucial step in the EU's efforts to combat the growing trend of abusive lawsuits aimed at silencing public participation. By establishing procedural safeguards and encouraging Member States to enact supportive legislation, the EU aims to create a safer environment for those engaged in public interest advocacy. The Council of Europe has also adopted a number of recommendations on SLAPPs, including in April 2024.[35]

Similar initiatives are being explored in other regions, most notable in the Inter-American system and in Africa.

[31] Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan, Reinforcing media freedom and the safety of journalists in the digital age, A/HRC/50/29, 20 April 2022.
[32] The OSCE, Office of the Representative on Freedom of the Media, Legal Harassment and Abuse of the Judicial System Against the Media, Special Report, November 2021
[33] UN Working Group on Business and Human Rights, Guidance on National Actions Plans on Business and Human Rights, 2016, p. 31.
[34] Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation'), PE/88/2023/REV/1.
[35] Recommendation CM/Rec(2024)2 on countering the use of strategic lawsuits against public participation (SLAPPs), 5 April 2024.

Analysis of the Thai legal framework

Our treatment of the Thai regime on protection of reputation falls into four main parts:

- First, we look at the restrictions on the right to freedom of expression in the Thai Constitution.

- Second, we outline our concerns with the selected criminal law provisions. In our view, criminal defamation cannot be justified both because it is disproportionate and because it is unnecessary, given that civil defamation laws provide adequate protection for reputations.

- Third, we look at civil law provisions and outline how they should be made consistent with international standards, including by providing protection against SLAPPs.

Constitutional protection of the right to freedom of expression

The Thai Constitution contains detailed provisions relating to freedom of expression, as well as freedom of the media. Some of the relevant provisions for the purposes of this report include:

- Section 34, which states, *inter alia,* that "a person shall enjoy the liberty to express opinions, make speeches, write, print, publicise and express by other means. The restriction of such liberty shall not be imposed, except by virtue of the provisions of law specifically enacted for the purpose of maintaining the security of the State, protecting the rights or liberties of other persons, maintaining public order or good morals, or protecting the health of the people."

- Section 35, which protects the media freedom.

Further, Section 32 provides the protection of "the rights of privacy, dignity, reputation and family" while stating that violating this right or "exploiting personal information" is not permitted, "except by virtue of a provision of law enacted only to the extent of necessity of public interest."

Finally, Section 26 of the Constitution stipulates, *inter alia*, that "the enactment of a law resulting in the restriction of rights or liberties of a person shall be in accordance with the conditions provided by the Constitution. In the case where the Constitution does not provide the conditions thereon, such law shall not be contrary to the rule of law, shall not unreasonably impose burden on or restrict the rights or liberties of a person and shall not affect the human dignity of a person, and the justification and necessity for the restriction of the rights and liberties shall also be specified."

ARTICLE 19 observes that the scope for restrictions on freedom of expression under the Thai Constitution is broader than what is permitted under international law in several ways:

- First, it is not clear that a requirement imposing restriction "by virtue of the provisions of law" (in Section 34) and the law imposing restriction not being "contrary to the rule of law, shall not unreasonably impose burden on or restrict the rights or liberties of a person" (Section 26) are as strict a requirement as 'provided by law', the standard in Article 19(3) of the ICCPR. 'Provided by law' implies not only that there is a law containing the restriction, but that it meets certain standards of precision and clarity.

- Second, the list of legitimate interests in Section 34 ("maintaining the security of the State, protecting the rights or liberties of other persons, maintaining public order or good morals, or protecting the health of the people") does not exactly correspond with Article 19(3) of the ICCPR. In particular, the ICCPR requires the restrictions to protect "national security." Here, we note that a restriction sought to be justified on the ground of "national security" is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.[36]

  We also recall that restrictions the ground of national security are not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest.[37]

- Third, "the extent of necessity of public interest" (Section 32) not imposing "unreasonable" burden (Section 26) do not imply such a rigorous standard as 'necessary', again as provided for in Article 19(3) of the ICCPR. 'Necessary' is clearly a high standard under international law and, although it does not mean indispensable, it must respond to a pressing need which cannot be protected by any measure which is less intrusive of freedom of expression.

ARTICLE 19 also notes that the scope of restrictions envisaged under Section 34 are different than those in Sections 32 and 26. We are not aware of how courts have assessed the relationship between these sections, if indeed this has arisen in the jurisprudence. It would be preferable if Section 26 were treated as a general limitation

[36] See ARTICLE 19, Johannesburg Principles on National Securing, Freedom of Expression and Access to Information, November 1996, Principle 2.a.
[37] *Ibid.*, Principle 2.b.

on restrictions on rights, applicable to all such restrictions, and Sections 34 and 32 were understood as further limiting restrictions specifically in the area of freedom of expression; however, they should be amended so their language explicitly corresponds the with ICCPR language.

ARTICLE 19's recommendation:

- The guarantee to protection of freedom of expression in the Constitution of Thailand should only permit restrictions on the right to freedom of expression which are provided by law, are necessary in a democratic society to protect a limited list of stated interests, and do not go beyond those permitted under international law.

Protection of reputation in the Thai criminal law

Criminal defamation

Articles 326-333 of the Thai Criminal Code establish the offence of criminal defamation. They provide for various penalties for this crime, including up to two years' imprisonment where the defamation is by means of publication or otherwise in permanent form.

ARTICLE 19 finds that these provisions do not comply with international freedom of expression standards.

As noted above, international human rights law recognises that freedom of expression may be limited to protect individual reputations; however, defamation laws must be proportionate to the harm done and not go beyond what is necessary in the particular circumstances. We observe that there are two main principled reasons why criminal defamation laws fail to meet the necessity part of the test for restrictions on freedom of expression:

- The first is that a criminal prohibition is a **disproportionate response** to the problem of harm to reputation as criminal prohibitions on defamation create a chilling effect on freedom of expression. The "chilling effect" refers to the fact that such restrictions affect expression well beyond the actual scope of the prohibition. Individuals will be deterred from publishing anything which risks even the slightest probability of falling foul of the rules, due to the extreme consequences their expression may entail.

- The second is that criminal defamation laws are **not the least restrictive means to achieve the legitimate aim of protecting reputations.** Civil law is sufficient to serve this goal and, being a less intrusive remedy, should be preferred over criminal law. As civil defamation laws are effective in appropriately redressing harm to reputation, there is no justification for criminal defamation laws. ARTICLE 19 notes that best evidence of the sufficiency of civil defamation laws in redressing harm to reputation comes from the growing number of jurisdictions

> which completely abolished criminal defamation laws, including countries like Jamaica, Ghana, Sri Lanka or Ukraine.

Further, as we outlined earlier, numerous international statements attest to the general illegitimacy of criminal defamation law as a restriction on freedom of expression and, in particular, the possibility of imprisonment for defamation. The ARTICLE 19 Principles, reflecting this clear international tendency, call for the complete repeal of criminal defamation laws.

ARTICLE 19 acknowledges that the Thai Criminal Code provides list of defences that the defendants can rely on in criminal defamation cases (Sections 329-331). These include, for instance, the defence of truth (Section 330), being an official in the exercise of one's functions (Section 329), expression in fair comment on persons or things subject to public criticism (Section 329), expression by way of fair report of open court proceedings (Section 329), and others. However, the availability of these defences does not negate the existence of criminal prohibitions of defamation in the first place.

Based on the foregoing, we recommend that the defamation provisions in the Criminal Code be repealed altogether. Until the criminal defamation laws remain in force, there should be a moratorium imposed on their use.

ARTICLE 19's recommendation:

- The criminal defamation regime should be repealed in its entirety.

Lèse-majesté

Section 112 of the Thai Criminal Code prohibits defaming, insulting or threating "the King, the Queen, the Heir-apparent or the Regent" with "imprisonment of three to fifteen years."

ARTICLE 19 reiterates that these provisions do not meet the above outlined international freedom of expression standards.

International human rights authorities – most notably the Human Rights Committee – have on numerous occasions expressed their concern that laws on *lèse-majesté* do not meet the standards of Article 19 paragraph 3 of the ICCPR. Significantly, the criticisms of the laws on *lèse-majesté* in Thailand have grown specifically.[38]

In General Comment No 34, the Human Rights Committee indicated concern that *lèse-majesté* laws provide for harsher penalties simply on the basis of the identity of the person claiming defamation:

> [T]he Committee expresses concern regarding laws on such matters as, *lese majesty*, desacato, disrespect for authority, disrespect for flags and symbols,

[38] See e.g. Report of the Working Group on the Universal Periodic Review, Thailand, A/HRC/19/8, 8 December 2011.

> defamation of the head of state and the protection of the honour of public officials, and laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned.[39]

Further, in its jurisprudence, the Human Rights Committee has held that there were violations of Article 19 of the ICCPR in the joint cases of a number of individuals who were directly charged with the offence of *lèse-majesté*.[40] Also, the UN Special Rapporteur on Freedom of Opinion and Freedom of Expression urged Thailand to urgently amend the laws on *lèse-majesté* on several occasions.[41]

Beyond these specific statements on laws on *lèse-majesté* and the law in Thailand in particular, international human rights authorities have emphasised that speech concerning public figures (including heads of state) attracts a high level of protection. Notably, in General Comment No 34, the Human Rights Committee:

> [O]bserved that in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high.[42] Thus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant.[43] Moreover, all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition.[44]

Significantly, the Committee goes on state that public interest should present a defence to defamation actions and in doing so affirms that speech concerning public figures which is of public interest enjoys the very highest protection. The Committee also warns against harsh penalties, recommends the decriminalisation of defamation and states that imprisonment is never an appropriate penalty. The Committee states:

> Defamation laws must be crafted with care to ensure that they comply with paragraph 3, and that they do not serve, in practice, to stifle freedom of expression... At least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice. In any event, a public interest in the subject matter of the criticism should be recognized as a defence. Care should be taken by States parties to avoid excessively punitive measures and penalties...States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the

[39] General Comment No 34, *op.cit.*, para 38.
[40] See e.g. Communication No 422-424/1990 Aduayom, Diasso and Doubou v Togo, Views adopted on 12 July 1996.
[41] See e.g. OHCHR Press Release, Thailand / Freedom of expression: UN expert recommends amendment of *lèse majesté laws*, 10 October 2011; or Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, Addendum, Summary of cases transmitted to Governments and replies received, A/HRC/17/27/Add.1, 27 May 2011 paras 2146-2150
[42] See communication No. 1180/2003, *Bodrozic v. Serbia and Montenegro*, Views adopted on 31 October 2005.
[43] *Ibid.*
[44] General Comment No 34, *op.cit.*, para 38.

> most serious of cases and imprisonment is never an appropriate penalty. It is impermissible for a State party to indict a person for criminal defamation but then not to proceed to trial expeditiously – such a practice has a chilling effect that may unduly restrict the exercise of freedom of expression of the person concerned and others.[45]

ARTICLE 19 notes that the *lèse-majesté* provision of the Criminal Code do not meet these recommendations and standards. Members of the Royal family, as representatives of the state, should tolerate more, not less, criticism than ordinary citizens.

Not only should defamation be decriminalised, but under no circumstances should legislation provide any special protection for public officials or public figures, whatever their status or rank.

ARTICLE 19's recommendation:

- Section 112 of the Criminal Code should be repealed in its entirety. In the interim, till the legal reform is adopted, there should be a moratorium imposed on the usage of these provisions. All charges under these provisions should be immediately dropped.

Sedition

'Sedition' essentially criminalises the conduct or speech inciting people to rebel against the authority of a state or monarch. Its basic purpose is to criminalise political violence. However, sedition laws are typically overbroad and used to stifle political speech in breach of the three-part test under international law.

The most serious defect of sedition laws is that they represent a disproportionately serious interference with democratic debate. Any benefits they may be deemed to bring in terms of protecting public order, which, as the analysis above makes clear, are slight, are far outweighed by the harm done to freedom of expression in its most important guise, namely as an underpinning of democracy.

ARTICLE 19 recalls that democracy involves continuous debate and participation by the public in society and politics, and necessarily entails that all views must be considered, including disagreeable sentiments. Freedom of expression is, in this regard, a bedrock of democracy. To achieve meaningful self-government, a people must have access to a free and open community of information, opinion and argument from which to derive the political intelligence necessary for informed democratic choice. Indeed, the notions of democracy and the freedom of expression have practically become synonymous.

[45] *Ibid.,* para 47.

In Thailand, the crime of sedition is specified in Section 116 of the Criminal Code, among Offences against internal security of the Kingdom. The offence, which may attract a sentence of up to seven years, is defined as making

> [A]n appearance to the public by words, writings or any other means which is not an act within the purpose of the Constitution or for expressing an honest opinion or criticism in order:
> 1. To bring about a change in the Laws of the Country or the Government by the use of force or violence;
> 2. To raise unrest and disaffection amongst the people in a manner likely to cause disturbance in the country; or
> 3. To cause the people to transgress the laws of the Country, shall be punished with imprisonment not exceeding seven years.

In ARTICLE 19's view, the provisions of Section 116 are fundamentally flawed and must be repealed. We highlight in particular the following concerns:

- The provisions do not meet the requirement of being **provided by law**: The formulation of this offence (e.g. "raise disaffection among people" or "cause disturbance") is incredibly vague, potentially criminalising mere expression of discontent with government policies. Vague provisions also fail to provide sufficient notice of exactly what conduct is prohibited. As a result, they exert an unacceptable chilling effect on freedom of expression as citizens steer well clear of the potential zone of application to avoid censure.

- The provisions do not pursue a **legitimate aim**: The guarantee of freedom of expression only permits restrictions on this fundamental right for the purpose of protecting certain aims, namely the rights or reputations of others, national security or public order (*ordre public*), or public health or morals. This part of the test is not sufficiently satisfied when restrictions on freedom of expression merely incidentally affect one of the legitimate aims listed. The measure in question must be primarily directed at that aim.

  Of these, only public order and security are relevant to the crime of sedition. It is fairly obvious that there is simply no proximate connection between "raise disaffection among people" and these important aims. This conclusion is supported by the jurisprudence of a number of courts around the world.[46]

- The provisions do not meet the requirement of **necessity and proportionality**: The necessity part of the test permits only restrictions on freedom of expression which are rationally connected to achieving the legitimate aim, which are not overbroad, including in the sense of there being a less intrusive way of achieving the same

[46] See, e.g. the Supreme Court of South West Africa (Namibia)*Free Press of Namibia (Pty) Ltd v. Cabinet for the Interim Government of South West Africa*, 1987(1) 614, p. 624; or The Nigerian High Cour, *State v. Ivory Trumpet Publishing Company Limited*, [1984] 5NCLR 736, p. 748

aim and which are proportionate, in the sense that the harm to freedom of expression is outweighed or justified by the benefits accrued.

As noted above, there is no rational connection between the aim of protecting public order and the crime of sedition. Shielding government from criticism is, in fact, more likely to undermine public order, properly understood, than to protect it. Furthermore, there exist a wide range of other laws, which are more carefully tailored to protecting public order and which are less open to political manipulation.

ARTICLE 19 also notes that while sedition provisions can be found on the statute book of a large number of common law countries as part of the colonial legacy of the British Empire, these provisions are now for the most part defunct or have been rescinded.

In summary, ARTICLE 19 believes that sedition prohibitions are both undemocratic and antiquated. As highlighted above, the Thai sedition provisions plainly fail to meet the requirements of international law for the protection of freedom of expression.

ARTICLE 19's recommendation:

- Sections 116 of the Thai Criminal Code should be repealed in its entirety.

Insult of public officials

Section 136 prohibits "insulting the official doing the act according to the function or having done the act according to the function," under the penalty of imprisonment "not out of one year or fined not out of twenty thousand Baht, or both."

ARTICLE 19 makes the following observations on these provisions:

- First, Section 136 does not correspond to the requirements of legality which mandates that the law in question is precisely formulated and foreseeable. In fact, its provisions are formulated very vaguely and broadly.

- Second, the provisions do not pursue the legitimate aim. They formulated in a way that protects against harm to someone's feelings rather than reputation. An important distinction can be drawn between laws whose purpose is genuinely to protect reputation (defined as the esteem in which other members of society hold the person), and those that aim to prevent harm to someone's feelings, regardless of whether the person's social standing has been diminished. The protection of feelings is not a legitimate aim for restrictions of the right to freedom of expression. We note that when criticising public officials and expressing opinions about them, strong words and harsh criticism are perhaps even to be expected, especially in matters of public controversy or public interest.

- The criminal sanctions are disproportionate. The assessment of the restrictions to freedom of expression in criminal law should therefore start from the premise

> that the existence of criminal liability *per se* in the domestic legislation is not justified. All instances of criminal penalties constitute disproportionate punishments for insult and should be abolished.

ARTICLE 19's recommendation:

- Section 136 of the Thai Criminal Code should be repealed.

Protection of reputation in the Thai civil law

The Thai Civil and Commercial Code (Civil Code) contains provisions on protection of reputation.

Under Section 423, a person is liable when

> [C]ontrary to the truth, asserts or circulates as a fact that which injurious to the reputation or the credit of another or his earnings or prosperity in any other manner, shall compensate the other for any damage arising therefrom, even if he does not know of its untruth, provided he ought to know it.
>
> A person who makes a communication the untruth of which is unknown to him, does not thereby render himself liable to make compensation, if he or the receiver of the communication has a rightful interest in it.

The Civil and Commercial Code sets no minimum or maximum compensation for an injured party, only stipulating that "anyone committing a wrongful act under the Civil Code must compensate the harm" (Sections 420 and 423). The mater of damages is left entirely to the discretion of the court.

According to the Thai Civil Procedure, the party who alleges a fact in support of his/her pleading has the burden of proof of such fact (Section 84 para 1).

ARTICLE 19 observes that the civil defamation law is less problematic than the criminal provisions. At the same time, the scope of these provisions needs to be clarified, in particular in relation to opinions, and the system of defences should be enhanced. We highlight the following issues:

Defence of truth

In all defamation cases, a finding that a statement of fact is true should absolve the defendant of all liability. ARTICLE 19 observed that under provisions of the second part of Section 423, truth is a defence in the defamation suit. Hence, the Thai law appears to be consistent with this principle.

However, several international standards deal with the question of the onus of proof (burden of proof) in relation to truth. Recognising the importance of maintaining an

"open public debate of matters of general or specific interest," the UN Special Rapporteur on Freedom of Opinion and Expression has stated

> [T]he onus of proof of all elements should be on those claiming to have been defamed rather than on the defendant.[47]

This principle has been endorsed by the three special international free special mandates, who state in their Joint Declaration of 2000 that

> [T]he plaintiff should bear the burden of proving the falsity of any statements of fact on matters of public concern.[48]

The ARTICLE 19 Principles on defamation also deal with the question of the burden of proof in Principle 10 of Defining Defamation:

> In all cases, a finding that an impugned statement of fact is substantially true shall absolve the defendant of any liability.
>
> In cases involving statements on matters of public concern, the plaintiff or claimant should bear the burden of proving the falsity of any statements or imputations of fact alleged to be defamatory.[49]

This approach has been adopted by a number of national courts.[50]

The need for this is particularly evident in the context of media reporting where in practice, proof of truth, according to the strict rules of evidence,

> [C]an prove exceedingly hard for a media defendant because of the journalistic practice of promising confidentiality to those who provide information…. Sources, even if not promised anonymity or confidentiality, may be unwilling to appear in court to testify against a plaintiff.[51]

The Thai Civil Procedure Code specifies general burden of proof in civil law cases. For the avoidance of any doubt, we believe that the law should make clear that the plaintiff should bear the burden of proof that the statement is false.

[47] *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/2000/63, 18 January 2000, para 52.
[48] Defining Defamation, *op.cit.*
[49] Joint Declaration of 30 November 2000.
[50] See e.g. the House of Lords, *Derbyshire County Council v. Times Newspapers Ltd* [1993] 1 All ER 1011 (HL), pp. 1017-1018; or the US Supreme Court, *New York Times v. Sullivan*, 376 US 254, 279 (1964), pp. 278-9.
[51] McGonagle, M., *Media Law, 2nd Edition* (Dublin: Thomson Round Hall, 2003), p. 82.

Defence of opinion

ARTICLE 19 observes that courts around the world, international and national, regularly distinguish between opinions and statements of fact, allowing far greater latitude in relation to the former.[52]

ARTICLE 19 takes the view that statements of opinion should never attract liability under defamation law.[53] At a minimum, such statements should benefit from enhanced defamation protection.

We also recall that the right to freedom of expression also protects information or ideas that offend, shock, or disturb.[54]

The Thai legislation does not appear to offer this defence. This is problematic as defamation law should distinguish clearly between expressions of opinion and expressions of fact and should provide that the former are not grounds for action under defamation legislation.

Defence of reasonable publication

ARTICLE 19 notes that it has been widely recognised that defamation laws which do not allow for any errors in relation to statements of fact, even if the author has acted in accordance with the highest professional standards, cannot be justified.[55]

A strict liability rule of this nature is particularly untenable for the media, which are under a duty to satisfy the public's right to know 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 expose them to punishment for every false allegation would be to undermine the public interest in receiving timely information. A more appropriate balance between the right to freedom of expression and reputations is to protect those who have acted reasonably, while allowing plaintiffs to sue those who have not.

The nature of the news media is such that stories have to be published when they are topical, particularly when they concern matters of public interest. As a result, an increasing number of jurisdictions are recognising a 'reasonableness' defence – or an analogous defence based on the ideas of 'due diligence' or 'good faith' – due to the harsh nature of the traditional rule according to which defendants are liable whenever they disseminate false statements or statements which they cannot prove to be true. This provides protection to those who have acted reasonably in publishing a statement

[52] See, e.g. the European Court of Human Rights, *Dichand and Others v. Austria*, 26 February 2002, App No. 29271/95, para. 42.

[53] Defining Defamation, *op.cit.*, Principle 10.

[54] *Dichland and Others, op.cit*., para 52.

[55] See e.g. the European Court, *Tromsø and Stensås v. Norway*, Report of 9 July 1998, App. No. 21980/93, para 80; the UK Judicial Committee of the Privy Council, *Hector v. Attorney-General of Antigua and Barbuda*, [1990] 2 AC 312, p. 318.

on a matter of public concern, while allowing plaintiffs to sue only those persons who have failed to meet a standard of reasonableness.[56]

Such defence should be also recognised in Thai civil law.

Exemption for certain categories of statements

ARTICLE 19 notes that certain kinds of statements should never attract liability for defamation.

Generally speaking, this is where it is in the public interest that people be able to speak freely without fear or concern that they may be liable for what they have said. This would apply, for example, to statements made in court, in the legislature and before various official bodies. Equally, fair and accurate reports of such statements, in newspapers and elsewhere, should be protected.[57]

Principle 11 of the ARTICLE 19 Principles details the types of statements which should attract such protection:

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 (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.

[56] Defining Defamation, *op.cit.*, Principle 12.

[57] See, e.g. the European Court of Human Rights. *A. v. the United Kingdom*, 17 December 2002, App. No. 35373/97 (members of the legislature should enjoy a high degree of protection for statements made in their official capacity); *Nikula v. Finland*, 21 March 2002, App. No. 31611/96 (statements made in the course of judicial proceedings should receive a high degree of protection); and *Tromsø and Stensås v. Norway*, *op.cit.* (media and others should be free to report, accurately and in good faith, official findings or official statements).

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.

Thai civil law should include such defences in civil defamation cases.

Pecuniary awards

ARTICLE 19 also recalls that under international freedom of expression standards, disproportionate awards of damages, even for statements found to be defamatory, breach the right to freedom of expression.[58]

Sanctions, like other forms of restriction on freedom of expression, must be "necessary"; that is, they should be proportionate so that their footprint on the right does not go beyond what is needed. Traditionally, the ordinary remedy for defamation has been financial compensation, but in several countries a culture of excessive awards has had a negative effect on the right to freedom of expression.

A variety of less intrusive but still effective alternative remedies exist, such as a court order to issue an apology or correction, or to publish the judgement finding the statement to be defamatory. Such alternative remedies are more speech friendly and should be prioritised.

ARTICLE 19 also highlights that where monetary awards are necessary to redress financial harm, Revised Defining Defamation Principles in Principle 19 state:

a) Pecuniary compensation should be awarded only where non-pecuniary remedies are insufficient to redress the harm caused by defamatory statements.

b) In assessing the quantum of pecuniary awards, the potential chilling effect of the award on freedom of expression should, among other things, be taken into account. Pecuniary awards should never be disproportionate to the harm done, and should take into account any non-pecuniary remedies, such as the publication of an apology or the exercise of a right of reply, and the level of compensation awarded for other civil wrongs. Pecuniary awards should also take into account the actual financial capacity of the defendant.

c) Compensation for actual financial loss, or material harm, caused by defamatory statements should be awarded only where that loss is specifically established.

d) The level of compensation which may be awarded for non-material harm to reputation – that is, harm that cannot be quantified in monetary terms – should be subject to a fixed ceiling, but there should be no statutory minimum level of compensation. The maximum should be applied only in the most serious cases.

[58] See e.g. the European Court, Tolstoy Miloslavsky v. the UK, App. No. 18139/91, 13 July 1995, para 35.

e) Pecuniary awards that go beyond compensating for harm to reputation should be highly exceptional measures, to be applied only where the plaintiff or claimant has proven that the defendant acted with knowledge of the falsity of the statement and with the specific intention of causing harm to the plaintiff or claimant.

In the light of these standards, ARTICLE 19 submits that the award of damages in defamation cases must always be assessed in the view of the proportionality.

ARTICLE 19's recommendations:

- Thai civil law should include a range of defences in defamation cases.
- Where an allegedly defamatory statement relates to a matter of public concern, the plaintiff should bear the burden of proving that the statement was false.
- The law should distinguish clearly between expressions of opinion and expressions of fact and should provide that the former are not grounds for action under defamation legislation. At a minimum, opinions should benefit from a high degree of protection against defamation actions.
- The law should recognise a defence of reasonable publication.
- The law should stipulate that certain categories of statements are always excluded from liability, as per ARTICLE 19's Defining Defamation Principles.
- Damages for defamation should always be proportionate to the harm done, and judges must take into account the importance of freedom of expression and the potentially chilling effect of the award. In assessing harm, the effect on reputation should not be remote or conjectural but rather real and tangible.
- Non-pecuniary remedies should be prioritised over pecuniary ones, and any voluntary remedies – such as a refutation or apology – should be taken into account as mitigating factors.

Safeguards against SLAPPs

Cases of strategic litigation against public participation (SLAPPs) in Thailand are predominantly characterized by the misuse of criminal defamation laws, but also civil defamation laws.

These cases are often wielded by powerful individuals or corporations against those who expose wrongdoing or engage in public criticism. For instance, cases have been reported where journalists faced hefty defamation claims for reporting on environmental issues related to mining companies, with demands for millions in damages. The legal repercussions can be severe, including lengthy court battles, financial strain, and potential imprisonment, which discourages individuals from speaking out.

The lack of public awareness regarding SLAPPs exacerbates the problem. Many journalists and activists are unaware of their rights and the legal protections available

to them. This ignorance can lead to self-censorship, where individuals refrain from reporting or speaking out due to fear of legal repercussions. Furthermore, the absence of robust support systems for individuals facing SLAPPs exacerbates their vulnerability, leaving many without the necessary resources to defend themselves effectively. Workshops and discussions among media workers have highlighted the urgent need for education on SLAPPs and the importance of robust legal defences for those targeted.[59]

The amendments to the Criminal Procedure Code, introduced in 2019, have included some protection against SLAPPs. Sections 161(1) and 165(2) allow courts to dismiss cases that are deemed to be filed with ill intent. There is little evidence that these provisions are actively used to counter SLAPPs. Reports indicate that even when these laws exist, they are often ignored, and courts continue to entertain frivolous lawsuits that serve to harass and intimidate individuals.

At the same time, ARTICLE 19 recalls that defamation should be fully decriminalised and protection to reputation should be only provided in the civil law.

We observe that Section 18 of the Civil Procedure Code allows courts to reject or return a pleading under civil law. Also, Section 24 allows parties to raise a question of law. The court has the power to issue an order "when it sees fit or upon request of either party" to consider a question of law "which, if decided in favour of such party, would make further trial of the case or further trial of some important issues of the case no longer required, or which could not be further elucidated even if the trial of important issues of the case is conducted".

However, it does not seem that these provisions are explicitly applicable in civil defamation cases. The anti-SLAPP provisions currently in place are primarily applicable to criminal cases initiated by private complainants, which means that civil cases or those brought by public prosecutors fall outside this protective umbrella. This gap in the law leaves many potential SLAPP victims without recourse, as they may face civil lawsuits that are equally damaging but not subject to the same early dismissal mechanisms.

We believe that Thai civil law should include comprehensive provisions against SLAPPs to prevent abuse of law and the civil judicial process to stifle the exercise of freedom of expression.

To this end, the Civil Procedure Code should include provisions that ensure that only viable and well-founded defamation claims are brought to trial. Where plaintiffs bring clearly unsubstantiated cases to exert a chilling effect on debates of public concern rather than to vindicate their reputations, defendants should have an effective remedy.[60] This remedy can take the form of a motion to dismiss the complaint, which

[59] See e.g. UNDP report, *op.cit.*, or ICJ, Thailand: Abusive lawsuits targeting journalists (SLAPPs) must be curtailed, 18 March 2022.
[60] ARTICLE 19, Defining Defamation, *op. cit.*, Principle 6, p. 15-16.

allows the Court upon its own motion to dismiss an abusive claim or the defendant to request the claim's dismissal from the Court based on targeting speech directly related to and arising from a matter of public concern.[61]

ARTICLE 19's recommendations:

- The legislation should ensure that, at minimum, that:
  - Defendants who believe that they are targeted by an abusive lawsuit against the exercise of the right to freedom of expression and public participation activities should be able to file a claim for dismissal of that claim at the earliest opportunity, along with an incidental claim for costs and damages.
  - A defendant should be able to move for dismissal if the defendant can show that a statement in question was made in connection with an official proceeding or about a matter of public interest.
  - Unless the claimant can prove that the claim has legal merits, that it is not manifestly unfounded, and that there are no elements indicative of an abuse of rights or of process laws, the motion shall be denied.
  - Claims for early dismissal should be examined as soon as possible, at the latest within 90 days from the filing of the motion, and be decided swiftly.
- Thai legislation should set reasonable and proportionate maximum amounts for awards for damages that may be claimed in cases that arise from the exercise of the right to freedom of expression and related public participation activities. A defendant's financial position should be considered in any imposition of financial penalties.
- Thai legislation should provide that defendants against whom a claim is asserted which arises from public participation on matters of public interest should have access to legal assistance free of charge. Further support should be granted for third-party interventions and trial monitoring of SLAPP cases. Successful defendants should always be able to claim all reasonable costs made in connection with the defence of a case, including lawyers' and expert witnesses' fees, as well as practical costs such as travel. Interim cost awards should be made if it is determined that without such an award, the defendant's financial situation would prevent them from effectively exercising the right of defence.
- The legislation should also expressly stipulate that claims regarding statements on a matter of public interest or in connection with official proceedings should not be brought more than six months after the statement was made or published (including its first publication online).

[61] See ARTICLE 19, How are courts responding to SLAPPs? Analysis of selected court decisions across the globe, Global Freedom of Expression, Columbia University; ARTICLE 19, SLAPPs against journalists across Europe, Media Freedom Rapid Response, March 2022; OHCHR, Info Note: SLAPPs and FoAA Rights; ARTICLE 19, Inter-American Commission: First ever hearing on SLAPPs in Latin America, 17 July 2023.

- The state should ensure that trainings are provided to judges and prosecutors at all relevant courts to aid them in recognising SLAPPs.

About ARTICLE 19

ARTICLE 19 advocates for the development of progressive standards on freedom of expression and freedom of information at the international and regional levels, and their implementation in domestic legal systems. We have produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation.

On the basis of these publications and ARTICLE 19's overall legal expertise, the organisation publishes a number of legal analyses each year, comments on legislative proposals as well as existing laws that affect the right to freedom of expression. This analytical work, carried out since 1998 as a means of supporting positive law reform efforts worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation. All of our analyses are available at http://www.article19.org/resources.php/legal.

If you would like to discuss this analysis further, or if you have a matter you would like to bring to the attention of the ARTICLE 19, you can contact us by e-mail at legal@article19.org.

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