



American Embassy



"Glob International" NGO

---

**ARE  
DEFAMATION  
AND INSULT  
CRIME?**

---

Ulaanbaatar 2008

**PREPARED BY:**

Kh.Naranjargal	A.Byambasuren
G.Davaakhuu	G.Sukhee
Sh.Sukhbaatar	J.Munkh-Ochir
B.Galaarid	J.Enkhbaatar
M.Batsuuri	Y.Zagdsuren
M.Altan-Ulzii	D.Urantsengel
S.Bayaraa	O.Altansukh
D.Ayush	Yu.Gereltuya
Z.Zorigtsaikhan	J.Altantsetseg
G.Bayartsetseg	T.Oyuntuya
M.Bayanjargal	O.Ragchaasuren
M.Bolormaa	T.Tserendulam
B.Doljinsuren	A.Otgonchimeg
N.Urantogtokh	Kh.Ainur
Ch.Otgontsetseg	I.Baigalmaa
Sh.Tsoodol	

Published by Globe International in the framework of the project “Protection the Journalists’ Confidential Sources and Repealing the Criminal Defamatory Legislation” funded by US Embassy in Ulaanbaatar, Mongolia.

# TITLE

<b>Foreword</b> .....	<b>4</b>
<b>Comparative study of Criminal law regulations related to defamation and insult</b> .....	<b>6</b>
One. Theory and methodology of the study.....	6
Two. Study.....	7
Three. Conclusion and Recommendations.....	23
<b>Accusations against media for slander and defamation</b> .....	<b>25</b>
<b>Perception of journalists on the provision of Slander and Defamation in the Criminal Code</b> .....	<b>30</b>

## Foreword

We are presenting the analysis and materials from the project which was funded by Embassy of United States “Protecting Journalists’ Confidential Sources and Repealing the Criminal Defamation Legislation”.

ARTICLE 19 is a human rights organization with a specific mandate and focus on the defense and promotion of freedom of expression and freedom of information worldwide. In June 2000 Article 19 produced principles “Defining defamation. Principles on Freedom of Expression and Protection of Reputation”.

### Principle 4: Criminal Defamation

- (a) All criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws. Steps should be taken, in those States which still have criminal defamation laws in place, to progressively implement this Principle.
- (b) As a practical matter, in recognition of the fact that in many States criminal defamation laws are the primary means of addressing unwarranted attacks on reputation, immediate steps should be taken to ensure that any criminal defamation laws still in force conform fully to the following conditions:
  - I. no-one should be convicted for criminal defamation unless the party claiming to be defamed proves, beyond a reasonable doubt, the presence of all the elements of the offence, as set out below;
  - II. the offence of criminal defamation shall not be made out unless it has been proven that the impugned statements are false, that they were made with actual knowledge of falsity, or recklessness as to whether or not they were false, and that they were made with a specific intention to cause harm to the party claiming to be defamed;

Three international experts on freedom of expression and the media meeting in London have condemned continuing attacks on journalists and the possible challenge to editorial independence posed by concentration of media ownership.

Ambeyi Ligabo, the Special Rapporteur on freedom of opinion and expression of the United Nations Commission on Human Rights; Freimut Duve, the Representative on freedom of the media of the Organization for Security and Cooperation in Europe, and Eduardo Bertoni, the Special Rapporteur on freedom of expression of the Organization of American States, met in London from 9 to 10 December to discuss challenges to freedom of speech and the media. In a declaration adopted at end of their meeting, the three condemned attacks on journalists and the impunity enjoyed by the perpetrators of such abuses.

The Joint Declaration has been approved by the UNESCO, human right experts, NGOs, journalist's organization representatives during the meeting in London December 1st.

Globe International is a nonprofit, tax-exempted NGO. From 1999 Globe International has been working on freedom of expression, information and the media. Above mentioned project on defamation article has been approved in 2002. In 2008 Globe International is trying to amend and make changes in the defamation article 110,111 based on contrast study and other relevant studies with other countries defamation articles. During the project Globe International conducted several round table meetings consisting lawyers, journalists and NGO representatives.

Nowadays, after UN joint declaration ten countries have amended or made changes in their defamation law, 9 countries have removed 20 penalties from defamation article. Why Mongolia can't be the 20th country?

This year is 60th anniversary of Universal Declaration of Human rights. Article 19 has confirmed the declaration of freedom of expression and freedom of information. We highly believe that Mongolia will pursue its duties and show to world how it is willing to make changes.

Address:	Sukhbaatar duureg-8, City Cultural Palase, Tower G, 3d floor, Ulaanbaatar- 210620A, P.O.Box-28, Mongolia
Tel:	(976- 11) 32 47 64 (976- 11) 32 46 27
Fax:	(976-11) 32 47 64
E-mail:	globe@magicnet.mn, globe@globeinter.org.mn
Web site:	www.globeinter.org.mn, www.monitoring.mn

---

# **Comparative study of Criminal law regulations related to defamation and insult**

Prepared by M.Batsuuri

## **One. Theory and methodology of the study**

### **Theoretical ground for the study**

Self expression and communication with others are inborn features of human being. Therefore limitations on free argumentation and ... lead to loss of this inborn feature and puts the human being into the uncertainty and danger. Freedom of expression exists independently from anyone and based on the freedom of thinking. Thus freedom of expression is safeguarded as a fundamental human right.

But the freedom of expression is not absolute and limited by rights, legitimate interests of others or by causes of national security. Especially person's reputation and dignity are basis for ... and value. Therefore reputation and dignity are among limitations on the freedom of expression.

Legal protection and limitations occur on the border line between freedom of expression on one side and right for reputation and dignity on the other side, and regulated by criminal, civil or administrative laws and regulations. Among those regulations criminal law has own specific protection and limitations.

### **Purpose of the study and outcome**

This study is aimed to determine if the defamation and insult are considered criminal offence in other countries, and if positive what charges are imposed and what instances are considered for removal of charges. This is done by the method of comparing legislations and regulations of other countries. Outcome of the study will be presented in the form of recommendations.

### **Methodology and objects of the study**

Main methodology of the study was comparative study of institutions. To be precise, comparison included regulations and specifics of defamation and insult crime in the criminal laws of other countries.

Legal sources of other countries that use court .... Were not .... And therefore considered as not ... for this study. Thus, criminal law .... Common law and of countries that are included in the socialist legal system. Law of countries represented by Anglo-American legal system were studied using precedent law.

---

## **Principles of the Article XI organization**

### **Principles on Criminal Defamation**

- (a) All criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws. Steps should be taken, in those States which still have criminal defamation laws in place, to progressively implement this Principle.
- (b) As a practical matter, in recognition of the fact that in many States criminal defamation laws are the primary means of addressing unwarranted attacks on reputation, immediate steps should be taken to ensure that any criminal defamation laws still in force conform fully to the following conditions:
  - I. no-one should be convicted for criminal defamation unless the party claiming to be defamed proves, beyond a reasonable doubt, the presence of all the elements of the offence, as set out below;
  - II. the offence of criminal defamation shall not be made out unless it has been proven that the impugned statements are false, that they were made with actual knowledge of falsity, or recklessness as to whether or not they were false, and that they were made with a specific intention to cause harm to the party claiming to be defamed;
  - III. public authorities, including police and public prosecutors, should take no part in the initiation or prosecution of criminal defamation cases, regardless of the status of the party claiming to have been defamed, even if he or she is a senior public official;
  - IV. prison sentences, suspended prison sentences, suspension of the right to express oneself through any particular form of media, or to practice journalism or any other profession, excessive fines and other harsh criminal penalties should never be available as a sanction for breach of defamation laws, no matter how egregious or blatant the defamatory statement.

## **Two. Study**

Following recommendations by international organizations some new and restored democracies excluded crimes of defamation and insult from their respective criminal laws. For instance, Bosnia-Herzegovina did it in 2002, Georgia – in 2004, Ghana – in 2001, Togo – in 2004, Sri Lanka – in 2002 and Ukraine – in 2001. We examined the rest of the countries and studied how the above crimes are defined in the legislation and for some countries we additionally did research of court practices.

---

## Maritime Law

### USA

US law is currently divided into federal and state laws. It creates difficulties for drawing conclusions from the unified law system. But the British precedent law that was adopted in US had great influence to current US law.

Until 1960-s defamation law was similar to that of other countries and had strict character, i.e. imposed strong limitations on free expression. But after March 1964 Supreme Court ruling on the New York Times Co. v. Sullivan case new precedent was established on defamation law.

### Canada

Because Canada was for long time under British control its law developed under strong influence of British law. And therefore precedent law prevails as a legal source. Canadian criminal law defines defamation as follows:

#### **DEFINITION / Mode of Expression.**

298. [1] A defamatory libel is matter published, without lawful justification or excuse, that is likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or that is designed to insult the person of or concerning whom it is published.

[2] A defamatory libel may be expressed directly or by insinuation or irony

[a] in words legibly marked upon any substance; or

[b] by any object signifying a defamatory libel otherwise than by words. [R.S., c.C-34, s.262.]

#### **PUBLISHING.**

299. [1] A person publishes a libel when he

[a] exhibits it in public;

[b] causes it to be read or seen; or

[c] shows or delivers it, or causes it to be shown or delivered, with intent that it should be read or seen by the person whom it defames or by any other person. [R.S., c.c-34, s.263.]

#### **PUNISHMENT OF LIBEL KNOWN TO BE FALSE.**

300. Every one who publishes a defamatory libel that he knows is false is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years. [R.S., c.C-34, s.264.]



---

## **PUNISHMENT FOR DEFAMATORY LIBEL.**

301. Every one who publishes a defamatory libel is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years. [R.S., c.C-34, s.265.]

Canadian courts uses 3 criteria for proving the actual defamation:

- [a] exhibits it in public;
- [b] causes it to be read or seen; or
- [c] shows or delivers it, or causes it to be shown or delivered, with intent that it should be read or seen by the person whom it defames or by any other person.

### **Australia**

Australia as a former British colony also inherited British law. This country exercises two levels of law – federal and state, and therefore while defamation is considered criminal offence in some states, in others it is not the case.

### **Civil and Criminal Actions**

A person whose reputation has been injured by the press may bring a civil action for defamation to clear his or her name. In addition, in most jurisdictions provision is made for criminal (deliberate) defamation that is punishable by fine or imprisonment. In some jurisdictions, statutes provide that anyone who maliciously publishes a libel may be fined and imprisoned for up to one year, or up to two years if the person knew the material was untrue. There do not appear to have been any convictions of a newspaper or journalist for criminal defamation in recent times.

Federal law provides for the civil action of injurious falsehood. Under this cause of action, a plaintiff must show that a written or oral statement about him was untrue, caused him actual monetary loss, and was actuated by malice. Due to the difficulty of proving malice, actions against the press for injurious falsehood are uncommon.

The common law in Australia had distinguished between libel and slander. Libel (written defamation) is actionable even without proof that the plaintiff suffered financial loss, while to establish slander a plaintiff had to show that he or she suffered actual monetary damage.

Under the uniform Defamation Act, the tort of slander was removed, leaving libel as the single cause of action.

The stated objects of the model uniform Defamation Act are:

- a. to enact provisions to promote uniform laws of defamation in Australia; and
- b. to ensure that the law of defamation does not place unreasonable limits on freedom of expression and, in particular, on the publication and discussion of matters of public interest and importance; and

- 
- c. to provide effective and fair remedies for persons whose reputations are harmed by the publication of defamatory matter; and
  - d. to promote speedy and non-litigious methods of resolving disputes about the publication of defamatory matter.

Whether a statement is defamatory involves determining what the statement means or “imputes”, and then assessing whether that meaning or imputation satisfies the definition of defamation. What the defendant intended his or her words to convey is generally irrelevant; rather, most courts will apply the meaning that the ordinary, reasonable person would draw from the material.

The uniform Defamation Act does not include a definition but is based on the common law approach that defamation concerns injury to reputation by: exposing a person to hatred, contempt or ridicule; or lowering a person’s estimation in the eyes of right minded observers; or making others shun or avoid a person.

### **Liability**

Any person takes part in, or authorises, the publication of defamatory material is liable to be sued for defamation. Thus in the case of a newspaper, the editor, writer, publisher, printer and proprietor are all potentially liable. “Innocent” distributors are not liable, but a distributor is not considered innocent if he or she knew, or should have known, that a document contained defamatory material. An action for defamation may be initiated anywhere the allegedly defamatory material was published. Publication is said to occur in each place where the material is read, downloaded from the Internet, seen or heard by a person other than the person defamed. Thus if a publication is read in more than one state or territory, the plaintiff may sue in the jurisdiction which offers the best advantages. National publications must constantly try not to run afoul of any of the eight different defamation laws operating in Australia.

An action for defamation may be initiated anywhere the allegedly defamatory material was published. Publication is said to occur in each place where the material is read, downloaded from the Internet, seen or heard by a person other than the person defamed. Thus if a publication is read in more than one state or territory, the plaintiff may sue in the jurisdiction which offers the best advantages. National publications must constantly try not to run afoul of any of the eight different defamation laws operating in Australia.

### **Defences**

Australian jurisdictions recognised a number of defences to defamation actions, since it is recognised that the importance of protecting an individual’s reputation must be balanced against the public interest in freedom of speech. The elements of the defences, and their availability, varied between jurisdictions.

---

The principal defences included justification (truth), fair comment, absolute privilege, qualified privilege, unintentional defamation, triviality and apology.

The uniform model Defamation Act picks up all these defences with some notable variations to what had existed in some jurisdictions.

Gone from defamation law in Queensland, Tasmania, ACT and NSW is the requirement for the truth (justification) defence to be qualified by a public interest or public benefit test. Truth alone is now a universal defence.

The Australian High Court by finding the freedom of discussion of government and political matters is implied in the Australian Constitution developed an extended qualified privilege defence to defamation on the basis that members of the public have an interest in receiving information on such matters and the media has a duty to disseminate information on such matters. The defence is conditional upon publication being reasonable in the circumstances. Whether publication was reasonable may depend on a number of factors, including whether a person about whom defamatory remarks were made was given an opportunity to respond, whether the publisher believed the matter to be true and what level of checking and verification was undertaken before publication.

This principle has been picked up in the new Defamation Acts.

Under the new laws, defences fall unto these headings: justification, contextual truth, absolute privilege, publication of public documents, fair report of proceedings of public concern, qualified privilege for provision of certain information, honest opinion, innocent dissemination and triviality.

### **Public Figures**

Neither in the common law nor in any of the codes were politicians or other public officials required to sustain a greater burden of proof concerning criticisms of their public functions than were private individuals. In practice, most defamation actions were brought by public figures (in large measure because of the high costs of litigation), and most concerned statements regarding public affairs.

To some extent, the new defences of qualified privilege and honest opinion protect newspapers against claims from public figures; nonetheless, public figures will continue to take offence and threaten action, and this undeniably must have some chilling impact on papers, especially the smaller regional ones which cannot so easily afford to defend, let alone lose, a libel suit.

### **Remedies and Costs**

The principal remedy available to a plaintiff who wins a defamation action is an award of damages.

---

The sums awarded by juries in defamation actions grew significantly during the 1990s and 2000s. In New South Wales. For instance, in 1989 the proprietor of a Sydney seafood restaurant was awarded A\$100,000 (US\$ 70,000) after a negative review by the food critic of The Sydney Morning Herald. Then in 2004 a freelance journalist was awarded a total of \$400,000 over an article in which he was accused of dishonestly giving readers the impression he had spoken to a swimming star at length for an article he wrote in another paper.

The new Defamation Acts cap damages awards at \$250,000, subject to annual review on the basis of inflation indexes.

The losing party normally must pay an assessed proportion of the other party's costs, which can be quite high. The cost of civil litigation is an important issue. Legal aid is not normally available for defamation or malicious falsehood, although contingency fees are allowed in some jurisdiction (meaning a legal team can take on a case on the basis that there is no fee or a reduced fee in the event the plaintiff loses).

Damages awards may have components other than compensation for hurt, suffering etc: aggravated damages, usually as a result of the conduct of the defendant during the case such as refusing to apologise, for example. Plaintiffs may also be awarded interest.

Unsuccessful plaintiffs may have to pay the significant costs of defendants.

## **European defamation laws and practices**

### **The European Convention on Human Rights**

#### **ARTICLE 10**

1. Everyone has the right to freedom of expression. this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Importance of the freedom of expression was confirmed in the *Handyside v. the United Kingdom*, (5493/72) [1976] ECHR 5 (7 December 1976)

Facts: The applicant is the publisher of the book "The Little Red Schoolbook" which urged young people at whom it was directed to take a liberal attitude in sexual matters.

---

A prosecution was brought against him based on the Obscene Publications Act 1959, as amended by the Obscene Publications Act 1964.

Complaints: The applicant claimed a violation of Article 10

Holding: The ECHR found a violation of Article 10.

Reasoning: The Court noted that freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for the development of every person: Freedom of expression applies] not only to “information” or “ideas” that are favorably received ... but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there can be no “democratic society.” This means ... that every “formality,” “condition,” “restriction” or “penalty” imposed in this sphere must be proportionate to the legitimate aim pursued.

### **Criminal Law of the Russian Federation**

Criminal Law of the Russian Federation was adopted on June 13, 1996 and includes following provisions regarding defamation and insult.

#### **Article 129. Slander**

1. Slander, that is the spreading of deliberately falsified information that denigrates the honour and dignity of another person or undermines his reputation, shall be punishable by a fine in the amount of 50 to 100 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of up to one month, or by compulsory works for a term of 120 to 180 hours, or by corrective labour for a term of up to one year, or by corrective labour for a term of up to one year.
2. Slander contained in a public speech or in a publicly performed work, and mass-media libel, shall be punishable by a fine in the amount of 100 to 200 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of one to two months, or by compulsory works for a term of 120 to 180 hours, or by corrective labour for a term of one year to two years, or by arrest for a term of three to six months.
3. Slander accusing a person of committing a grave or especially grave crime, shall be punishable by restraint of liberty for a term of up to three years, or by arrest for a term of four to six months, or by deprivation of liberty for a term of up to three years.

#### **Article 130. Insult**

1. Insult, that is the denigration of the honour and dignity of another person, expressed in indecent form, shall be punishable by a fine in the amount of 100 to 200 minimum wages, or in the amount of the wage or salary, or any other income

---

of the convicted person for a period of up to one month, or by compulsory works for a term of up to 120 hours, or by corrective labor for a term of up to six months.

2. Insult contained in a public speech, in a publicly performed work, or in mass media, shall be punishable by a fine in the amount of up to 200 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of up to two months, or by compulsory works for a term of up to 180 hours, or by corrective labor for a term of up to one year.

In the Russian Federation almost 4000 disputes related to media arise every year and the annual increase is 30%. And among them about 60% are complaints related to defamation cases. And 90% of defamation cases are

### **Criminal Code of Hungary**

Passed in 1978 Hungary's criminal code was changed according to democratic and rule of law principles emerged in 1990's.

### **Defamation**

BTK\_ENG.doc 52 18 August 2005

Section 179

- (1) The person who states or rumours a fact suitable for impairing honour, or uses an expression directly referring to such a fact, about somebody, before somebody else, commits a misdemeanour, and shall be punishable with imprisonment of up to one year, labour in the public interest, or fine.
- (2) The punishment shall be imprisonment of up to two years, if the defamation is committed
  - a) for a base reason or purpose,
  - b) before big publicity,
  - c) causing considerable injury of interest.

### **Slander**

Section 180

- (1) The person who, apart from the case of Section 179, uses an expression suitable for impairing honour or commits another act of such a type,
  - a) in connection with the job, performance of public mandate or in connection with the activity of public concern of the injured party,
  - b) before a great publicity shall be punishable for a misdemeanour with imprisonment of up to one year, labour in the public interest, or fine.
- (2) The person who commits slander with assault, shall be punishable in accordance with subsection (1).

---

Under the Hungarian law insult is included within the defamation. But insult is distinguished as libel and slander. Also determination of the truth is regulated.

### **Evidencing of Reality**

#### **Section 182**

- (1) The perpetrator may not be punished for the crimes defined in Sections 179 to 181, if the fact suitable for impairing the honour turns out to be true.
- (2) Evidencing of reality may take place, if the statement, rumouring of the fact or the use of an expression immediately referring thereto was justified by public interest or by the lawful interest of anybody.

Hungary is considered freedom of the press as its other neighbors Poland, Bulgaria and Lithuania and therefore number of journalist there convicted of criminal charges in defamation cases is lower than in the Russian Federation or Azerbaijan or Turkmenistan. Important decision was 1994 Constitutional ruling that defamation of public figure is not a crime.

### **German Criminal Law**

It is probably eldest criminal law in Europe. Adopted in 1896 it was used during Nazi time and still used today after being amended. Article 14 of this law deals with defamation and insult.

### **Chapter Fourteen Insult**

#### **Section 185 Insult**

Insult shall be punished with imprisonment for not more than one year or a fine and, if the insult is committed by means of violence, with imprisonment for not more than two years or a fine.

#### **Section 186 Malicious Gossip**

Whoever asserts or disseminates a fact in relation to another, which is capable of maligning him or disparaging him in the public opinion, shall, if this fact is not demonstrably true, be punished with imprisonment for not more than one year or a fine and, if the act was committed publicly or through the dissemination of writings (Section 11 subsection (3)), with imprisonment for not more than two years or a fine.

#### **Section 187 Defamation**

Whoever, against his better judgment, asserts or disseminates an untrue fact in relation to another, which maligns him or disparages him in the public opinion or is capable of endangering his credit, shall be punished with imprisonment for not more than two years or a fine, and, if the act was committed publicly, in a meeting or through dissemination of writings (Section 11 subsection (3)), with imprisonment for not more than five years or a fine.

---

### Section 188 Malicious Gossip and Defamation Against Persons in Political Life

- (1) If malicious gossip (Section 186) is committed publicly, in a meeting or through dissemination of writings (Section 11 subsection (3)) against a person involved in the political life of the people with a motive connected with the position of the insulted person in public life, and the act is capable of making his public work substantially more difficult, then the punishment shall be imprisonment from three months to five years.
- (2) A defamation (Section 187) under the same prerequisites shall be punished with imprisonment from six months to five years.

### Section 189 Disparagement of the Memory of Deceased Persons

Whoever disparages the memory of a deceased person shall be punished with imprisonment for not more than two years or a fine.

### Criminal Code of the Republic of Belarus

The law was adopted this year and below are provisions of the articles regarding defamation crime.

**Article 188.** Insulting of a Representative of the Powers Public insulting of a representative of the powers (authorities) in connection with the performance of duties imposed on him - shall be punishable with corrective labour for a term of up to one year or a fine.

**Article 188.1.** Insulting of a Militiaman, People's Guard, Serviceman or Another Person in Connection with Their Performance of Official Duties or of the Public Duty on the Protection of Public Order Insulting of a militiaman, people's guard, serviceman or another person in connection with their performance of official duties or of the public duty on the protection of public order - shall be punishable with corrective labour for a term of up to one year or a fine.

**Article 188.2.** Interference into Actions of a Militiaman When He Performs His Official Duties Influencing in whatever the form may be a militiaman with the purpose of preventing him from the execution of his official duties - shall be punishable with corrective labour for a term of up to one year or a fine. The same actions committed with the use of the official post - shall be punishable with the deprivation of freedom for a term of up to three years or corrective labour for a term of one to two years.

**Article 189.** Threat or Violence in Relation to an Official Person, Militiaman, People's Guard, Serviceman or Another Person in Connection with Their Performance of Official Duties or of the Public Duty A threat of killing, inflicting of severe bodily injuries or destruction of property by way of an arson or other socially dangerous method in relation to an official person, militiaman, people's guard, serviceman, public worker or another person, no less than to their close relations in connection with the performance



---

by the official person, militiaman, voluntary people's guard, serviceman, public worker or another person of the official or public activities or the performance of the public duty on the protection of public order - shall be punishable with the deprivation of freedom for a term of up to two years or corrective labour for the same term. Infliction of a light bodily injury, battery or committing of other violent actions in relation to persons specified in part one of this Article - shall be punishable with the deprivation of freedom for a term of up to three years or corrective labour for a term of one to two years.

**Article 189.1.** Encroachment on the Life of a Militiaman, People's Guard, Serviceman or Another Person, No Less than Encroachment on the Life of Their Close Relations Encroachment on the life of a militiaman, people's guard, serviceman or another person, no less than encroachment on the life of their close relations in connection with the performance by the militiaman, people's guard, serviceman or another person of their official duties of the public duty on the protection of public order - shall be punishable with the deprivation of freedom for a term of eight to fifteen years, or - in case of aggravating circumstances - with the deprivation of freedom for a term of ten to fifteen years or a death penalty.

Belarus defamation law is similar to former soviet regulations. It still contains provisions on the sentences such as correctional labor. In addition criminal charges are imposed after being tried by the administrative courts. It is common to punish journalist using the defamation law.

### **Penal Code of Norway**

Norway's law system although it belongs to continental law, court precedent and traditions play strong role. Below are provisions on defamation.

### **Chapter 23. Defamation**

**§ 246.** Any person who by word or deed unlawfully defames another person, or who is accessory thereto, shall be liable to fines or imprisonment for a term not exceeding six months.

**§ 247.** Any person who by word or deed behaves in a manner that is likely to harm another person's good name and reputation or to expose him to hatred, contempt, or loss of the confidence necessary for his position or business, or who is accessory thereto, shall be liable to fines or imprisonment for a term not exceeding one year. If the defamation is committed in print or in broadcasting or otherwise under especially aggravating circumstances, imprisonment for a term not exceeding two years may be imposed.

**§ 248.** If an offender under section 247 has acted against his better judgment, he shall be liable to imprisonment for a term not exceeding three years.

Under especially extenuating circumstances fines may be imposed.

---

## § 249.

1. No penalty pursuant to sections 246 and 247 shall be imposed if the allegation is proved to be true.
2. Even if the truth is proved as stated in subsection 1, the allegation is criminal if it is made without any respectable reason for doing so, or if it is otherwise unwarranted because of the form or manner in which it is made or for other reasons.
3. No penalty pursuant to sections 246 and 247 shall be on any person who is under a duty or obligation to express his opinion or who has expressed his opinion in legitimately taking care of his own or another's interests if it is established that he has shown proper care in all respects.
4. Evidence of the truth of an allegation may not be given
  - a) for a criminal act of which the accused has been acquitted by a final Norwegian or foreign judgment,
  - b) if the court unanimously finds that the allegation is undoubtedly unwarranted regardless of its truth and that refusal to admit such evidence is desirable in the interests of the aggrieved person. Admission of such evidence must never be refused if the prosecuting authority or the plaintiff has indicated in advance that a penalty pursuant to section 248 will be demanded or that only civil legal claims will be pursued.
5. When evidence of the truth of an allegation is not admitted, evidence concerning whether the person indicted (the defendant) believed in or had reason to believe in the truth of the allegation is also inadmissible.

Norway law does not distinguish between defamation and insult, but only stresses purpose and the media used. Also it provides regulations for circumstances when no criminal charges should be imposed.

In the court practice proof of direct harming effect is used. If not no criminal charges are imposed. Instead more monetary fines are used. Imprisonment sentence was not used since 1933.

### **Penal Code of Finland**

The law is in force since 1889 and Chapter 24 of the law deals with the defamation.

### **Chapter 24 - Offences against privacy, public peace and personal reputation**

#### **Section 9 - Defamation (531/2000)**

- (1) A person who

- 
- (1) spreads false information or a false insinuation of another person so that the act is conducive to causing damage or suffering to that person, or subjecting that person to contempt, or
  - (2) makes a derogatory comment on another otherwise than in a manner referred to in subparagraph (1) shall be sentenced for defamation to a fine or to imprisonment for at most six months.
  - (2) Criticism that is directed at a person's activities in politics, business, public office, public position, science, art or in a comparable public position and that does not obviously overstep the limits of propriety does not constitute defamation referred to in paragraph (1)(2).
  - (3) A sentence for defamation shall be imposed also on a person who spreads false information or a false insinuation on a deceased person, so that the act is conducive to causing suffering to a person to whom the deceased was particularly close.

### **Section 10 - Aggravated defamation (531/2000)**

- (1) If, in the defamation referred to in section 9(1),
  - (1) the offence is committed by using the mass media or otherwise by making the information or insinuation available to a large number of people, or
  - (2) great or long-lasting suffering or specifically and the defamation is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated defamation to a fine or to imprisonment for at most two years.

Penal Code of Finland does not consider insult as a separate crime and relieves a convict from the charges if considered personal opinion or criticism in public interests.

Court practice counts for about 550 criminal and civil cases related to defamation. In 510 cases criminal and civil charges were imposed. Highest sentence was 4.5 months detention, and most recently the country is likely to accept European Human Rights Court recommendation to exclude detention charge from defamation sentence.

### **Criminal Law of Sweden**

The Swedish Penal Code was adopted in 1962 and went into force January 1, 1965.

### **Defamation cases are regulated in the Chapter 5.**

#### **Chapter 5**

#### **On Defamation**

##### Section 1

A person who points out someone as being a criminal or as having a reprehensible way of living or otherwise furnishes information intended to cause exposure to the disrespect of others, shall be sentenced for defamation to a fine.

---

If he was duty-bound to express himself or if, considering the circumstances, the furnishing of information on the matter was defensible, or if he can show that the information was true or that he had reasonable grounds for it, no punishment shall be imposed.

#### Section 2

If the crime defined in Section 1 is regarded as gross, a fine or imprisonment for at most two years shall be imposed for gross defamation.

In assessing whether the crime is gross, special consideration shall be given to whether the information, because of its content or the scope of its dissemination or otherwise, was calculated to bring about serious damage.

#### Section 3

A person who vilifies another by an insulting epithet or accusation or by other infamous conduct towards him, shall be sentenced, if the act is not punishable under Section 1 or 2, for insulting behaviour to a fine.

If the crime is gross, a fine or imprisonment for at most six months shall be imposed.

Ds 1999:36 23

#### Section 4

Defamation of a deceased person shall result in liability under Section 1 or 2 if the act is offensive to the survivors or if, having regard to the time that has passed since the deceased was alive and other circumstances, the act can be regarded as disturbing the peace to which the deceased should be entitled.

#### Section 5

Crimes mentioned in Sections 1-3 may not be prosecuted by other than the injured party. If, however, the injured party notifies the crime for prosecution, and if for special reasons prosecution is considered necessary in the public interest, a prosecutor may prosecute for:

1. defamation and gross defamation,
2. insulting behaviour towards a person exercising, or for the exercise of, his or her duties in office,
3. insulting behaviour towards a person with allusion to his or her race, colour, national or ethnic origin or religious belief, or
4. insulting behaviour towards a person with allusion to his or her homosexual inclination. If defamation is directed against a deceased person, prosecution may be instituted by the surviving spouse, direct heir or heirs, father, mother or siblings and by a prosecutor if prosecution for special reasons is considered to be called for in the public interest.

---

If a crime mentioned in Sections 1-3 entails an outrage against the head of state of a foreign power who is at that time in Sweden, or against the representative of a foreign power in Sweden, and has thereby insulted the foreign power, the crime may be prosecuted by a public prosecutor notwithstanding the provisions of the first, paragraph. However, such prosecution may not be instituted without an order of the Government or a person authorized by the Government. (Law 1998:393)

Swedish defamation law provides exact provision about circumstances when criminal charges should be imposed and therefore can be considered as democratic.

## **Socialist law**

### **Criminal Code of Kazakhstan**

#### Article 129. Libel and Slander

1. Libel, that is the distribution of deliberately false information which is defaming to the honour and dignity or another person, or which undermines his reputation, - shall be punished by a fine in an amount from one hundred up to two hundred fifty monthly assessment indices, or in an amount of wages or other income of a given convict for a period up to two months, or by engagement in public works for a period from one hundred twenty up to one hundred eighty hours, or by correctional labour for a period up to one year.
2. Slander which is contained in a public speech, or in a publicly displayed work, or in mass information media, - shall be punished by a fine in an amount from two hundred up to five hundred monthly assessment indices, or in an amount of wages or other income of a given convict for a period from two to five months, or by engagement in public works for a period from one hundred eighty up to two hundred forty hours, or by correctional labour for a period from one year up to two years, or by restriction of freedom for a period up to two years, or detention under arrest for a period up to six months.
3. Slander combined with an accusation of a person in the commission of a grave or an especially grave corruption crime, - shall be punished by restriction of freedom for a period up to three years, or deprivation of freedom for the same period.

#### **Article 130. Insult**

1. An insult, that is the debasement of the honour and dignity of another person, expressed in an obscene form, - shall be punished by a fine up to one hundred monthly assessment indices, or in an amount of wages or other income of a given convict for a period up to one month, or by engagement in public works for a period up to one hundred twenty hours, or by correctional labour for a period up to six months.
2. An insult contained in a public speech, or in a publicly demonstrated work, or in the mass information media, - shall be punished by a fine from one hundred up to four

---

hundred monthly assessment indices, or in an amount of wages or other income of a given convict for a period from one to four months, or by engagement in public works for a period up to one hundred eighty hours, or by correctional labour for a period up to one year, or by restriction of freedom for the same period.

### **Criminal Code of the People's Republic of China**

#### **Article 129. Libel and Slander**

1. Libel, that is the distribution of deliberately false information which is defaming to the honor and dignity or another person, or which undermines his reputation, - shall be punished by a fine in an amount from fifty up to one hundred monthly wages or other income of a given convict or confiscation of income equal to one months salary or income, or by engagement in public works for a period from one hundred twenty up to one hundred eighty hours, or by correctional labor for a period up to one year.
2. Slander which is contained in a public speech, or in a publicly displayed work, or in mass information media, - shall be punished by a fine in an amount from one hundred up to two hundred monthly assessment indices, or in an amount of wages or other income of a given convict for a period 1-2 months, or by engagement in public works for a period from one hundred twenty up to one hundred eighty hours, or by correctional labour for a period form one year up to two years, or by restriction of freedom for a period 1-2 years, or detention under arrest for a period 3-6 months.
3. Slander combined with an accusation of a person in the commission of a grave or an especially grave corruption crime, - shall be punished by restriction of freedom for a period up to three years, or detention for the period 4-6 months or imprisonment for 1-3 years.

#### **Article 130. Insult**

1. An insult, that is the debasement of the honor and dignity of another person, expressed in an obscene form, - shall be punished by a fine of 100-200 monthly assessment indices, or in an amount of wages or other income of a given convict for a period of one month, or by engagement in public works for a period up to one hundred twenty hours, or by correctional labour for a period up to six months.
2. An insult contained in a public speech, or in a publicly demonstrated work, or in the mass information media, - shall be punished by a fine up to two hundred monthly assessment indices, or in an amount of wages or other income of a given convict for a period of two months, or by engagement in public works for a period up to one hundred eighty hours, or by correctional labour for a period up to one year.

### **Kyrgyz Criminal Law**

#### **Article 127. Defamation**

- 
1. Defamation, that is the distribution of deliberately false information which is defaming to the honor and dignity or another person, or which undermines his reputation, - shall be punished by a fine in an amount from fifty up to one hundred fifty assessment indices, or in an amount of wages or other income of a given convict.
  2. Defamation in mass information media, - shall be punished by a fine in an amount from one hundred up to one thousand of monthly minimum wages or other income of a given convict.
  3. Slander combined with an accusation of a person in the commission of a grave or an especially grave crime, - shall be punished by detention for a period of 3-6 months, or imprisonment for up to 3 years.

#### **Article 128. Insult**

1. An insult, that is the debasement of the honor and dignity of another person, expressed in an obscene form, - shall be punished by a fine in the amount of 20-50 minimum monthly wages or other income of a given convict.
2. An insult contained in mass information media, - shall be punished by a fine in the amount of 50-100 minimum monthly wages or other income of a given convict.

According to latest research Kazakhstan and Kyrgyz republic stepping back from the democratic principles towards authoritarian regimes and therefore those countries were included under the section of socialist law.

Socialist law still distinguishes between defamation and insult and unlike the continental law does not provide detailed regulations for non criminal charges. Common are cases of infliction of criminal charges for journalists and media outlets.

### **Three. Conclusion and Recommendations**

#### **Conclusion**

1. Criminal codes of about 20 countries were studied in the course of the study. Out of them defamation and insult crimes were eliminated from the criminal law in following countries: Bosnia-Herzegovina 2002, Georgia 2004, Ghana 2001, Togo 2004, Sri Lanka 2002, Ukraine 2001. Also 37 American States took out those provisions from their criminal codes.
2. In developed democracies even though defamation and insult are part of the criminal law certain criteria are imposed. For instance in USA, Canada, Australia, Norway, Finland the actual malice needs to be proved.
3. On the other hand in the above countries detailed regulations are in place that provide instances for non imposition of criminal charges for types of defamation and insult. Immunity is provided for court hearings, husband and wife. In other words nothing said in this circumstances can be found as criminal offence. Other

---

instances include pure opinion expressed as part of the professional duty such as by journalists in the media<sup>6</sup>

4. Law in the developed democracies provide monetary fines for defamation and insult offences. But imprisonment punishment is used when defamation involves serious crime allegations expressed publicly or heavy damage was caused in the result of the defamation. Average imprisonment term is 2 years, reaching up to 5 years in Germany and Canada. The court practice in this countries show that use of fines is dominating and imprisonment is used very rarely. In Australia imprisonment in the defamation case was used last time 50 years ago, in Norway in 1933, in Italy (although the country was not covered in this study) in 1950. European Human Rights Court demands refusal from imprisonment charges.
5. In non democracies defamation and insult is considered as criminal offence and provisions are almost the same without distinguishing between non criminal and criminal charges for certain types of defamation and insult. Thus allowing to use the criminal law broadly.
6. Choice for sanctions in the above countries is broad and include fines, detention, correction labor etc. Court practice was not studied in detail, but some evidence provide that imprisonment sentences are common.
7. In the case of Mongolian Criminal law provisions on defamation and insult are not defined properly as to distinguish between criminal and non criminal charges and imprisonment term is set up to 5 years, thus putting Mongolia in the group of non democracies.

### **Recommendations**

1. Based on tendencies and practices of criminal law and courts in highly developed and developing democracies, and recommendations provided by international organizations it is recommended to exclude defamation and insult from the Mongolian Criminal law.
2. If serious crime provisions to be kept the criminal law should provide following:
  - a. Criminal charges shall be imposed only in cases when defamation has a direct aim to discredit the person.
  - b. Include in the criminal law detailed explanation of relieving from the criminal charges, such as:
    - I. Members of the family
    - II. Expression of opinion, individual view
    - III. Exercise of professional duties
    - IV. Parties agreed
3. Refrain from imposing detention and imprisonment sentences for defamation cases.



---

## **Accusations against media for slander and defamation**

**Mongolian National University Law School,  
Ph.D candidate Shirchin Sukhbaatar**

According to the Criminal Code practiced in Mongolia presently the legal responsibilities are enforced in slander and defamation cases. The notion of slander and defamation is understood separately and the slander means the crime of spreading false information for the purpose to defame ones reputation, but the act of defamation emphasizes the public act of defamation of ones reputation via media or in public which leads to the non material damage.

The study of civil and criminal code practices of slander and defamation nature such as court decisions related to media and the related case registration and interrogation process shows that depending on how the complainant approached the case it is decided whether the case shall be processed by the civil or criminal codes. For example, the citizen chooses which code to apply and sue, civil or criminal and this situation created the saying “ If you want to see the misery of the other go for criminal, if you want to get money go for civil”.

The crime is classified as an act of violation of the criminal code, dangerous for the society regardless of the individual’s wish. Thus, the question how the act of slander and defamation related to the individual’s right and with less impact and less danger to the society shall be considered as crime and whether it shall continue to be included in the criminal code is essential and increasingly hot topic for today.

The crime statistics of Mongolia related to the slander and defamation in period between 1997-2004 shows in total 75 registered crimes, out of which after the interrogation in total 36 crimes were processed at court. If we take those crimes by years there were 5 crimes in 1997, 6 in 1998, 11 in 1999, 9 in 2000, 10 in 2001, 8 in 2002, 12 in 2003 and 14 in 2004.

Nationwide, in Mongolia, there were 69 cases ruled by court in period between 1995-1999 related to claims of information of defamation nature against individual’s reputation name and work. However, the number increased up to 140 in between 1998-1999 which were ruled by the civil code. Only in capital city Ulaanbaatar in period between 2000-2002 in total 83 people started processes at the court to revive their name, reputation and work reputation. These numbers have been increasing sustainably ever since.

The majority of claims at the court related to the slander and defamation are satisfied. The non material damages are satisfied by financial tools and thus some people in order to make money claim cases with and without grounds. This tendency is increasing.

---

In cases when the damage occurred to the name and reputation the claim can not be determined by numbers and thus the victim shall define and prove the amount of damage him/herself. The claimed amount is always higher than the amount determined by the court which leads to the need of special methodology and recommendations to calculate and estimate the non material damage.

Media is one of the pillars of the democratic transparent society and the main characteristic of media is to operate within the scope of human rights and legislations.

At present in Mongolia, the percentage of the violation of others' rights, release of information conflicting with the legal interests, name and reputation to public by media covers only a small percentage in the total number of violations and crimes nationwide. However, the number of claims against media is on increase which is decreasing the significance and role of free media. The above factor needs to be taken into consideration as weakening the power and influence of the fourth governance and as leading to dangerous consequences.

Open Society Forum of Mongolia did the research in November of 2001 on cases and disputes for the period of 3 years (1999-2001) on slander and defamation cases where media was involved.

From this study, according to the above 3 years period in the 6 district courts of the capital city in total 79 disputes related to slander and defamation of an individual, legal subject's name, reputation and work reputation were processed. In addition, 4 cases related to "... publication and other forms of release and distribution of slander" and thus in total 83 cases, disputes were solved.

From these 79 civil cases in 47 cases the court ruled the media guilty for slander and defamation. This is 59.9 percent of the total civil cases and in 29.1 percent or in 23 cases media accepted the fault and came to the agreement/conciliated.

It is a disturbing factor that in the mentioned 3 years period from the total civil cases of the same nature in 88.6 percent (70 civil cases) media was found to be guilty.

Criminal Code provision considering the slander and defamation as crime was used in several cases as a weapon by high officials in power to threaten media and its workers. These led to the limitation of human rights, in particular freedom of expression, publication and release freedom which are proved by the studies. One of the proves are the following facts: in total 75 cases were opened for the criminal code proceeding by the similar complaint in period between 1997-2004 nationwide and the related interrogations were done, however only 8 journalists received sentences from the court.

From which, 2 journalists /Khanddolgor, Erdenetuya/ were sentences to 3-6 months imprisonment, 6 journalists received other than imprisonment punishments for slander and defamation.

---

The majority of above mentioned cases were dismissed on interrogation and procurator processing stages.

There is one journalist who was sentenced to imprisonment by the Criminal Code and the sentence later was changed to the probationary sentence. In other words, there is not any journalist served the imprisonment sentence physically.

Two criminal cases were processed at the court of appeal; however the primary court ruling stayed the same.

In other forms of slander and defamation the subject who attacked the reputation and fame of others is responsible for the material damage and if the subject does not change its behavior and continues his/her activity then the bankruptcy of the subject, defamation and fine shall be considered as main punishments.

In the present practice the court rules the sentence defined in the law for the slander and defamation, but as for the non material damage advices to the victim to appeal to the civil court procedure. The reason for it the citizen has the right to claim the other party by the criminal code only in case of material damage as stated in the provision 115 of the Criminal code procedure and thus it is not possible to rule simultaneously the claim for the non-material damage occurred such as damage related to the name, reputation and feelings. Claimants are advised to sue again by the civil code procedure.

This is another reason for choosing or preferring to go through the civil code procedure rather than criminal code procedure in the dispute to avoid the waste of time.

In countries with civil democratic society these kinds of disputes are solved through the Civil Code procedures and thus it is time to make necessary amendments in the Criminal Code of Mongolia which goal is to establish a civil democratic society.

“ The purpose of the notion of innocence in the crime is securing ones reputation and fame and protecting from being falsely accused and punished.” For this purpose it is important to consider the legal subject to be innocent by separating ones internal belief and prejudice of the crime and being independent from the mental atmosphere, environment and tendency existing in the society in cases when the guilt is not proved or in other words regardless of whether there is potential of the guilt exists or not to certain level. The true nature of the notion is defined by the communication with suspects, defendant and a person being sued. The notion “ Human being is bearer of supreme characteristics, in other words the most valuable thing” can be considered as supreme form of legal culture based on the long historical development of human civilization’s. In other words, Ph.D in Law G. Zumberelkham noted in his work on “ Presumption of innocence in the interrogation and punishment legislation procedure of Mongolia” that “..... one of the important measures to define the level of perfection of the juridical culture is the practice of presumption of innocence” which one of the proves.

---

The freedom of media legally secured by the Constitution as one of values of democracy shall dismiss the state monopoly and authority and establish independent from the state media system. However, it is criticized and wronged that the provision of the Criminal Code stating that “ .. a journalist who released a false and defaming information via media shall be sentenced to imprisonment” adopted in 2002 in certain ways limits the journalist’s freedom and opens an opportunity for the state to influence the media.

The certain parties consider the punishment of journalists by the criminal code as the policy of limiting and squeezing the media freedom and it is considered that imprisonment of 2 journalists in Mongolia erased the country from the list of countries with media freedom.

When evaluating the above situation the following factors are of interest: the country’s criminal code provisions related to the slander and defamation do not confirm the right to deny the truth of information and do not clearly define the procedure of determining the damage and falsification of the information.

It is an internationally accepted standard when the rights of journalists and media to defend one selves by providing explanation based on the need to deliver the true information for the public interests and justice is fully acknowledged.

The provisions on slander and defamation of the Criminal Code are directed towards the protection of human rights, however there are attempts to abuse them against journalists who publish and release materials criticizing the authorities, officials and state organizations. These kinds of experiences are increasing in practice. The studies show that opportunities for any criticized persona, considering oneself to be slandered and defamed to approach police and procurator are broadening.

This is in conflict with the principles of critical journalisms responsible for investigating and revealing to the public any hidden, deep rooted materials and facts related to corruption, crime and violation of human rights according to the media duty and responsibility in the democratic society and this leads to the conclusion that the above creates the danger of limiting journalist’s professional rights.

As of legal context the notion of name, reputation and work reputation are related to the civil legal relation object and their legal protection principles are secured by provisions 21, 497, 511 and 27.6 part of the Civil Code.

According to the civil code anyone responsible for the slander and defamation of the citizen’s name, fame, reputation and particular work reputation and who is not able to prove otherwise shall be responsible to correct the false information and cover all the losses occurred according to the claimer’s requirements. However, the issue of legal protection of the reputation, name and work reputation is new in the country’s legal sector and is not studied in depth. In the process of implementation of the above civil

---

regulation the problems of theoretical and practical nature have been occurring up to now.

As the civil legal relation object the name, reputation and work reputation the issue of their protection shall be studied in depth and in detail from theoretical and practical point of view. This is the pressing matter.

The practice requires the essential need to make amendments in the Mongolian Criminal law and its related provisions by taking into account the following circumstances:

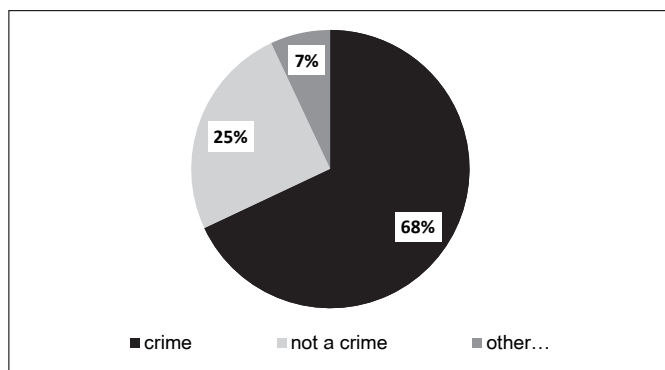
1. To refuse to open a criminal case process against anyone when slander and defamation accusations are vague, without complete materials to prove;
2. Do not consider the cases where the facts are not proved and reasons and underlying purposes such as whether the act of slander and defamation was intentional or non intentional are not determined as a crime.
3. Do not accept and receive claims from the third party which initiating the case against the slander and defamation on behalf of the second party, even though the slandered side is high official or in other words the government official.
4. Do not enforce imprisonment, termination of journalist's right, excess amount of fine or strict punishments and sentences of criminal code for subjects of slander and defamation case;
5. In addition to the above four principles there is a need to eliminate 110,111 provisions of special category of the Criminal code which is in power and fully practiced presently.

# Perception of journalists on the provision of Slander and Defamation in the Criminal Code

## A. Perception and understanding of slander and defamation

When asked about the perception and understanding of slander and defamation 68 percent /138/ of journalists consider it to be a crime, 25 percent as non-crime and 7 percent find it to be related to the journalist's violation of code of conduct, to be determined by the court and if it is found to be groundless than it is a crime.

Graphic 1. How do journalists perceive the slander and defamation?



72 percent of Ulaanbaatar journalists found it to be a crime, but only 42 percent of rural journalists consider it a crime. 22 percent of journalists who do not perceive it as a crime are from Ulaanbaatar and 43 percent are from rural area.

If we take journalists by the frequency of using the secret source 78 percent of journalists who constantly use the secret source /19 percent said no/ consider it a crime, 70 percent of journalists who frequently use it / 21 percent said no/ and 70 percent of journalists who use it rarely /23 percent said no/ also said it is a crime, however in comparison all journalists who do not use secret source consider it not a crime.

If we compare the same perception by work experience (in years) of journalists there is a tendency that the more experienced the journalists the perception of it being as a crime prevails. These two indicators have direct and positive growth tendency.

Table 1. How do journalists perceive slander and defamation by years of work experience?

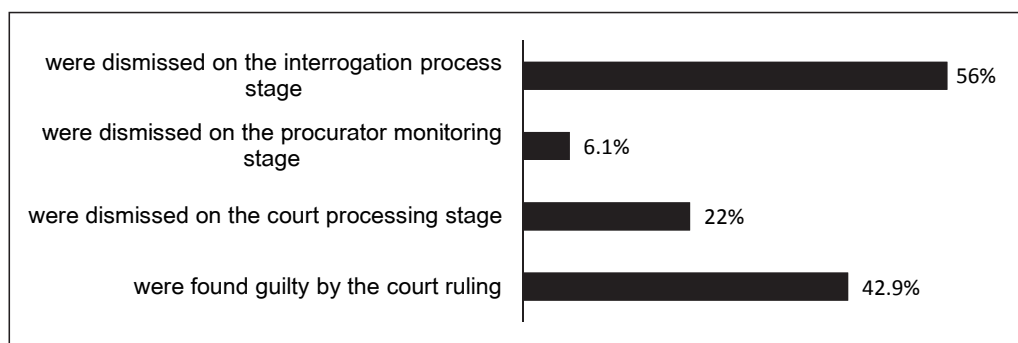
	A crime	Not a crime	Other ...
1 year	55.2	34.5	10.3
2-3 years	71.1	22.2	6.7
4-6 years	66.7	25.5	7.8
7-10 years	78.6	19.0	2.4
11-more years	63.9	25.0	11.1

## B. Criminal code pressure/influence

25 percent of journalists have had experiences with the provision on slander and defamation of the Criminal Code in their publications/programs. This is 25 percent in Ulaanbaatar and 27 percent in rural area. If we compare it by the level of usage of secret source 35 percent of journalists using it constantly, 38 percent of journalists' using it frequently and 13 percent of journalists using it rarely have faced the above provision to some extent, as for journalists who never use secret source; they have never had the above experience. These lead to the conclusion that the provision directly influence and is of a concern for journalists who use secret sources.

When clarified on the levels of the encounters with the provision it was discovered that common and wide spread practices were the dismissal of the case on the interrogation stage and the court decisions ruling journalists to be guilty.

Graphic 2. Levels and stages of encounter with the criminal code provision on slander and defamation by journalists.



In Ulaanbaatar it is common to have dismissals during interrogation stage and be found guilty by the court ruling, however in rural areas it is common to have dismissals on the interrogation stage.

Table 2. By location of journalists on what stages they encountered the slander and defamation provision of Criminal Code

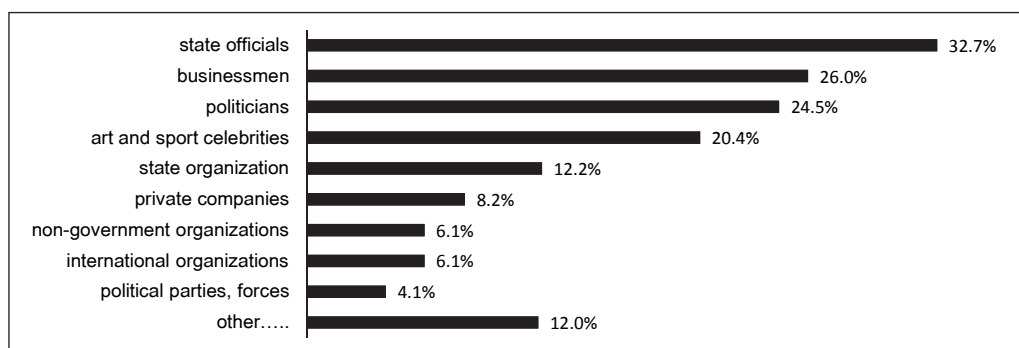
	Ulaanbaatar	Rural area
Dismissed on the interrogation stage	52.30%	83.30%
Dismissed on the procurator's monitoring stage	6.80%	0.00%
Dismissed by the court ruling stage	22.70%	16.70%
Found to be guilty by the court ruling stage	45.50%	20.00%

Journalists, are ruled guilty by the court, when asked about types of penalties 4 journalists or 18 percent were imprisoned (for 3-6 months) and 18 journalists or 82

percent paid fines. Out of total number of criminal cases ruled by the court in Ulaanbaatar 20 percent were sentenced to imprisonment, 80 percent paid fine, however in rural area 100 percent of journalists paid fine.

When required about the legal subjects who started the case/sued against the journalist 33 percent were state officials, 26 percent were politicians, 25 percent were businessmen and 20 percent were art and sport celebrities.

Graphic 3. Legal subject who sued the journalist for the criminal case



In the above indicator 67 percent of rural journalists were sued by politicians, however 32 percent of Ulaanbaatar journalists were sued by state officials.

Table 3. Legal subjects who sued journalists by the criminal code are shown below by the location

	Ulaanbaatar	Rural area
Politician	20.5%	66.7%
State official	31.8%	40.0%
Businessmen	25.0%	20.0%
Art and sport celebrities	20.5%	20.0%
Political parties and forces	4.5%	0.0%
State organization	9.1%	40.0%
Non government organizations	6.8%	0.0%
Private sector companies	9.1%	0.0%
International organizations	6.8%	0.0%
Other .....	11.4%	16.7%

If we compare the above indicator with the sentences received by the criminal code around 50 percent of state officials who sued journalists succeeded in imprisoning the



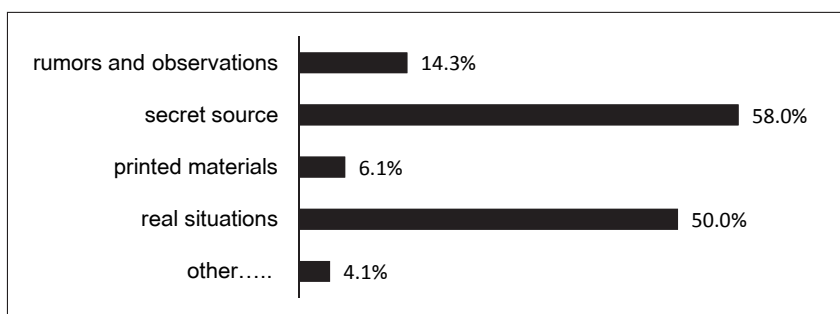
journalists and around 41 percent of art and sport celebrities achieved the sentence for the journalists to pay fine.

Table 4. Sentences ruled by the court by type of legal subjects who sued journalists by the criminal code

	<b>Imprisonment (3-6 months)</b>	<b>Fine</b>
Politician	25.0	22.2
State officials	50.0	0.0
Businessmen	0.0	29.4
Art and sport celebrities	0.0	41.2
Political parties and forces	0.0	5.9
State organizations	0.0	5.9
Non government organizations	25.0	0.0
Private sector companies	0.0	5.9
International organizations	0.0	5.9
Other .....	0.0	17.6

When required about the sources of publications/programs which were sued by the criminal provision on slander and defamation 58 percent of journalists relied on secret sources, 50 percent on real life situations and 14 percent prepared their publications/programs based on rumors and observations.

Graphic 4. Publication/program sources



Moreover, when compared the above indicator by the related court decisions 75 percent of journalists who received imprisonment based their publication/programs on secret sources and 25 percent based their stories on rumors and observations. However, the journalists who paid fine based their stories on secret sources and real situations.

Table 5. What were sources for the publications/programs and if received sentence from the court what were the penalties?

	<b>Imprisonment (3-6 months)</b>	<b>Fine</b>
Rumors and observations	25.0	23.5
Secret source	75.0	66.7
Real situations	0.0	41.2

When asked whether the secret sources were exposed in case of using them 14 percent or 2 journalists have revealed their secret sources. When compared the sentences and penalties received by the journalists who revealed their sources, they all ended up with paying fines. This means, that journalists revealed their secret sources in order to escape imprisonment and ease the sentence. As for the journalists who refused to reveal their secret sources 30 percent were imprisoned and 70 percent paid penalties.

### **B. Information secrecy under the pressure of Criminal Code.**

5 percent of journalists depending on the criminal code provision on slander and defamation are always fearful to deliver true and real information to public, 68 percent depending on the nature of publications/programs were fearful in some cases and 27 percent did not fear. In the responses of journalists there is not significant difference between Ulaanbaatar and rural journalists.

When compared journalists by their usage of secret sources, it is interesting to see that journalists who always use secret sources and who do not base their stories on secret sources both constantly fearful.

Table 6. Sources for publications/programs and if received sentences from the court what are the penalties?

	<b>Always</b>	<b>In some cases</b>	<b>No</b>
Always	11.5	73.1	15.4
In most cases	2.4	75.6	22.0
In few cases	3.4	63.2	33.3
Do not use/base on secret sources	25.0	37.5	37.5

When asked why and for what reasons they were fearful to deliver true information to the public they answered the following: fear to defame ones reputation; big pressure from officials; were threatened by imprisonment and arrest; fear to damage own life and health; locally everybody knows each other/ small community; high officials threaten by court and police; absence of the legal environment protecting the journalist's right; legal provisions are not clear, prohibited in the law and because legal provisions are strict

and thus law enforcement agencies mistreat and press journalists so they will accept the accusations.

**C. Whether the provision on slander and defamation of the Criminal code is beneficial for the society.**

When the existence of slander and defamation provision of Criminal code and its importance for the society was asked 33 percent of journalists found it to be beneficial for the society, 16 percent consider it not to be important and 51 percent had difficulty to clearly answer the question. If compare by location, 36 percent of Ulaanbaatar journalists considered it important and 12 percent of rural journalists did not find it to be important and beneficial for the society.

If we compare the above indicator by the level of usage of the secret source 50 percent of journalists who always use the secret source consider the provision of importance for the society and 20 percent of journalists who faced the criminal code provision on slander and defamation also found it to be important for the society.

Table 7. Level of secret source usage by journalists and their assessment of the provision on slander and defamation in the Criminal code.

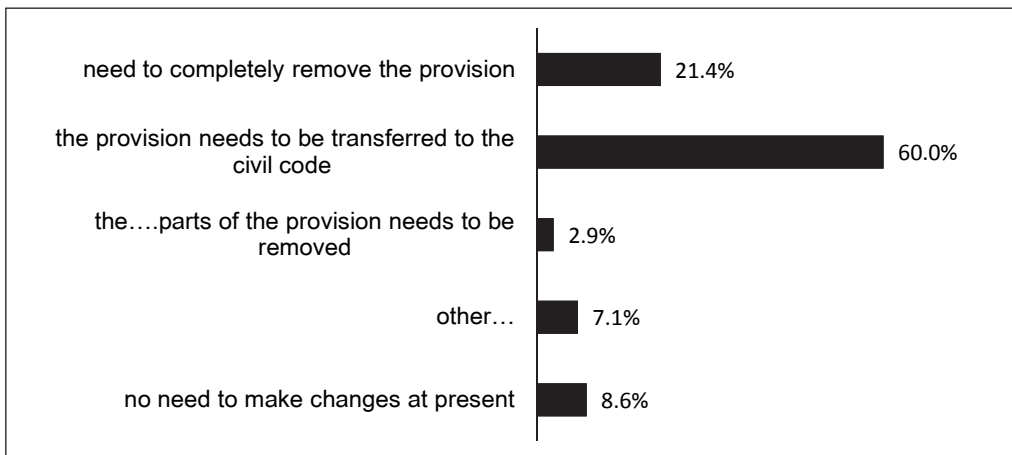
	Yes	Difficult to answer	No
Always	50.0	38.5	11.5
In most cases	31.7	50.0	18.3
In few cases	31.4	53.5	15.1
Do not base/use	12.5	75.0	12.5

The journalists who responded that provision is important explained their replies by the untouchable personal reputation, and because the absence of the provision will lead to the wide spread and chaotic groundless accusations and slander by journalists. They replied that based on the above the legal provision is important, in any cases there is should be the ethical side, if it is slander and defamation are determined then one should be responsible in the face of the law. The journalists stated that present existing legal provision on slander and defamation is not definite and thus injustice occurs commonly and emphasized the need to define and clarify the provision.

**C. Journalists opinion and suggestions on slander and defamation provision.**

To the question on how to make changes in the slander and defamation provision of the criminal code 133 journalists or 65 percent out of total journalists involved in the survey replied that have no idea. 60 percent out of rest of 70 journalists suggested to regulate the provision by Civil code, but 21 percent suggested to remove the provision completely.

Graphic 5. Journalists suggestions on how to regulate a provision on slander and defamation.



The majority of rural and Ulaanbaatar journalists have suggested to completely remove this provision of the criminal code, however 22 percent of Ulaanbaatar journalists suggested to transfer the provision completely to the civil code.

Table 8. Suggestions of journalists on the slander and defamation provision of the criminal code by location

	<b>Ulaanbaatar</b>	<b>Rural</b>
Need to completely remove the provision	5.6	19.2
Need to completely transfer the provision to the civil code	22.0	11.5
Need to remove part ..... of the provision	1.1	
Other ...	2.8	
No need to make changes at present	3.4	
Do not know	65.0	69.2