

STATE OF LEGAL SAFETY OF FILIPINO JOURNALISTS

A STUDY BY THE NATIONAL UNION
OF JOURNALISTS OF THE PHILIPPINES



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I. Introduction

In the past years, attacks against journalists have increased. They have been intimidated, harassed, and threatened with violence, with incidents of such attacks even ending in killings. For simply doing their jobs, journalists have been relentlessly targeted, the risks to their lives and livelihood beginning from the very “moment they come out of [their] homes.”¹

Journalists play an important role in uncovering truths that hold power into account and ensuring that democratic institutions are preserved. Fulfilling this role, however, has sometimes prompted the mighty and the powerful, mostly politicians, to retaliate against journalists in ways that infringe upon constitutionally-guaranteed rights and freedoms. Such acts not only hamper journalists’ work, but also impair the public’s right to know and the country’s democratic values.

Among the most common retaliatory tactics employed by those in power to silence critics and journalists is the use of Strategic Lawsuits Against Public Participation (SLAPP), which is a “poisonous type of lawfare whereby individuals are prosecuted by states or litigated against by third parties with the specific intention of discouraging, intimidating, challenging, disrupting, or financially draining a defendant and ultimately silencing opposition, criticism, or dissent.”²

When used to silence critics, academics, think tanks, and journalists, among others, lawfare is said to be the “misuse of legal systems to thwart opponents...where [government] authorities have aggressively applied it against government critics.”³

¹ Ewing, H. & Grady R. (Directors). 2022. *Endangered*. Home Box Office (HBO).

²Holmes, S. (2022, July 13). *Weaponising the law against free expression*. Southeast Asia Globe. <https://southeastasiaglobe.com/weaponising-the-law-against-free-expression/>

³ *Id.*

Kosef and Schafer (2011)⁴, citing an article by Ronald Gilson (1994), revealed how SLAPPs have led to litigation that sought “not to vindicate a substantive legal right but rather to secure a business advantage by imposing costs on the opposing party.” Referring to anti-SLAPP measures, they noted:

First popularized in the early 1990s, these laws were originally aimed at stemming the rising tide of “strategic lawsuits against public participation” or “SLAPPs.” These SLAPP suits—often brought in the context of environmental and real estate disputes—were particularly problematic because they called on courts “to sanction presumptively constitutionally protected activity by targets.” This kind of retaliatory litigation began in earnest in the 1970s and coincided with an increase in the number of cases filed in federal court. **Around the same time, permissible discovery in federal courts was expanding rapidly, meaning that SLAPP suits were less about the merits and more about “trench warfare.”** (Emphasis ours)

In the context of journalism in the United States, SLAPPs have been used by public officials as early as the 1980s when newspapers were observed to face libel suits on an almost daily basis. “In one instance, the Chicago Times found itself defending twenty-four libel suits, including six by different members of the Chicago City Council.” Similarly, an editor at the New York Times said the company had “four to sixteen libel suits on hand” at any given time. While many of these lawsuits were brought by ordinary people, “editors and publishers claimed that most libel suits were initiated by public officials in malice and to ‘get even’ with the paper which has exposed them.”⁵

⁴ Koseff, J. & Schafer, M. (2022, July 5). *How states and congress can prepare for a looming threat to freedom of speech*.

<https://www.lawfareblog.com/how-states-and-congress-can-prepare-looming-threat-freedom-speech>

⁵ *Id.*

Aside from the United States, the concept of SLAPP also emerged in Canada, where the strategy was used by individuals to precipitately bring forth civil claims to advance private interests in the face of criticism, in the 1980s and has been an object of research and policymaking in North America. In a famous case decided by the New York Supreme Court in 1992, SLAPPs were defined as “suits without substantial merit that are brought by private interests to stop citizens from exercising their political rights or to punish them for having done so.”⁶

As seen, SLAPPs – a type of lawfare meant to intimidate and harass journalists – emerged decades ago and remains up to now to be a “growing concern for journalists and media organizations around the world,” according to Joel Simon, fellow of the Tow Center for Digital Journalism and formerly an executive director of the Committee to Protect Journalists, in a conference in 2022⁷.

Journalists in the European Union have also become more vulnerable to these types of lawsuits, which are “slapped onto journalists, media houses, human rights defenders, and other critics, to silence them, stop investigative research or squash political dissent.”⁸

In Brazil, it has been observed that it is not government officials who directly sue for high sums journalists who do critical reportage of the government, but “businessmen close to the government”, according to journalist Patrícia Campos Mello, Reporter-at-Large, Folha de São Paulo.⁹

⁶ *Gordon v. Marrone*, 155 Misc. 2d 726, 735-36 (N.Y. Supreme Ct. 1992) (quoting Pring, “SLAPPs,” 5-6).

⁷ Trust Conference on “legal trends hampering media freedom” at the United Kingdom last 26 October 2022 where Simon was a part of a panel.

⁸ Miyandazi, F. (2019, November). *How to stop SLAPPS - the intentional silencing of critical voices*. <https://www.ecpmf.eu/how-to-stop-slapps-the-intentional-silencing-of-critical-voices/>

⁹ Trust Conference on “legal trends hampering media freedom” at the United Kingdom last 26 October 2022 where Mello was a part of a panel.

These legal proceedings cause “severe financial damage” which drains the resources of journalists and newsrooms. To illustrate, a journalist who had been facing a SLAPP suit in Europe languished in protracted litigation as the complainant simply and purposefully did not “appear in court in order to prolong the hearing period and cause further financial ruin.”¹⁰

In the case of Maltese journalist Daphne Caruana Galiza, forty-seven libel lawsuits filed by companies, government officials, and individuals predicated her killing by a car bomb in 2017, showing how SLAPPs have been used as a “tool in a broader repressive arsenal”¹¹.

Verily, SLAPPs create a chilling effect and result in self-censorship on the part of journalists. They make journalists, editors, and publishers become hesitant or think twice before publishing stories of public interests. SLAPPs have become a leading threat to journalists and press freedom worldwide, and has even stifled critical reporting on organized crime and political corruption, a growing transnational threat.¹²

While these legal threats are financially devastating against the journalists, its effect is also “to mentally wear out and distress them” so as to make them stop producing public interest stories, according to Irene Khan, United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.¹³ “If journalists are not heard, society is missing out on important views, on their right to democracy,” said Khan.

SLAPPs and other types of lawfare waged against journalists continue to draw concern considering that journalism occupies a “special status” in a “functioning democracy”.¹⁴

¹⁰*Id.*

¹¹ Simon, J. & Lauria, C. (2022). Columbia Journalism Review. *A Nefarious and Hidden Threat to Journalists Rises*. <https://www.cjr.org/analysis/slapp-lawsuit-cadwalladr-ressa.php>

¹²*Id.*

¹³ Trust Conference on “legal trends hampering media freedom” at the United Kingdom last 26 October 2022 where Khan was a part of a panel.

¹⁴ Klefbom, J. (2022, June). *Facing SLAPP in Indonesia: A Human Rights Approach to Judicial Measures Silencing Journalists*. <https://lup.lub.lu.se/luur/download?func=downloadFile&recordId=9080668&fileId=9092006>

The legal threats against journalists have been “mounting and governments are becoming more sophisticated about how they use the law to attack press freedom and curtail the work of journalists,” said Simon.¹⁵ There is no precise data which would show how many journalists were hit with “crippling and frivolous lawsuits, because the practice, while growing, is largely hidden.”¹⁶

He added that a research conducted by his team at Columbia University showed a preliminary result identifying at least “14 categories of legal threats” against journalists which could be broadly broken into “defamation suits, sedition, libel” as well as the use of “national security laws, public security, laws around fake news and disinformation which [are] increasingly being weaponized as well.”

In Southeast Asia, the weaponization of laws has been largely used by the government to harass journalists and critics. These have been used mostly by repressive and authoritarian regimes to stifle dissent and to divert the public’s attention on critical issues such as corruption, failed and insufficient pandemic response, and evasion of accountability.

Holmes (2022) in a paper published by the Southeast Asia Globe wrote that the “weaponization of legal systems illustrates the ongoing shift towards an aggressive and invasive authority with little regard for rule of law. Without rule of law, systems of governance become established, triggering a steep descent into autocracy.”¹⁷

The same author pointed out that abusive governments have been using “arbitrary and underhanded tactics to eliminate opposition, silence criticism, and retain power”. However, these tactics have seen changes in recent years. They have become “increasingly sophisticated” as seen

¹⁵ *Id.*

¹⁶ Simon, J. & Lauria, C. (2022). *Columbia Journalism Review. A Nefarious and Hidden Threat to Journalists Rises.* <https://www.cjr.org/analysis/slapp-lawsuit-cadwalladr-ressa.php>

¹⁷ Holmes, S. (2022, July 13). *Weaponising the law against free expression.*

in how governments pass “intentionally ambiguous and poorly defined laws” and manipulate existing laws to attack free expression.

Singapore, for one, has reinforced its censorship powers with the addition of the overbroad Foreign Interference (Countermeasures) Act (FICA) in October 2021, which added to “extensive patterns of laws in [the Southeast Asian] region using national security as a pretext for suffocating dissent.”¹⁸

“The act also creates a criminal offense for electronic communications on behalf of a ‘foreign principal’ that diminishes public confidence in the government or is ‘directed towards a political end in Singapore.’ The ambiguity of the language in the law risks [criminalizing] expression of human rights defenders, journalists, academics, and socio-political analysts, academics, and socio-political analysts,” according to Holmes.

Cambodia’s National Internet Gateway, meanwhile, has been given increasing control over expressions and sentiments made digitally by anyone in the country where authorities are empowered to censor content deemed to “affect safety, national revenue, social order, dignity, culture, traditions and customs,” which are likely to encapsulate critical expression.

Holmes also observed laws crafted by governments in the Southeast Asian region governing digital space “which are being weaponized to corrode freedom of expression online through legislation such as Malaysia’s Communications and Multimedia Act and Thailand’s Computer Crimes Act.”

As seen, governments have been gradually weaponizing laws to stifle legitimate dissent and silent critics. Across the Southeast Asian region, journalists, who carry the responsibility to hold power into account, are the direct targets of this government lawfare.

¹⁸ *Id.*

Unlike SLAPPs in other countries, particularly those in North America, those faced by journalists in Southeast Asia are lawsuits that have been brought through criminal proceedings, which include the prospect of paying fines and possible jail time, as opposed to civil proceedings.¹⁹ Klefbom (2022) in his thesis noted how “the young democracies of the Southeast Asian region form one of the global hotspots for legal intimidation. Business companies and politicians take advantage of weak law enforcement and overbroad or vague defamation laws.”

In the Philippines, attacks against journalists through lawfare, including SLAPPs, have become more brazen. Such a form of attack is not something new in the country. In 1999, *The Manila Times*, the country’s oldest English newspaper, was sued by former President Joseph Estrada for its critical coverage of his administration. Estrada sued the paper for P101 million pesos over a story alleging government corruption in the awarding of a public works contract. The suit was dropped when the paper issued an apology. Another instance of a major attack against the press under the Estrada administration was the massive advertising boycott that he called against the largest newspaper, *The Philippine Daily Inquirer*, for its coverage of government scandals.²⁰

In recent years, however, these attacks have developed in the form of costly litigation that carry with it the threat of being jailed.

Gloria (2020), executive editor of online news site *Rappler*, which had been at the receiving end of a massive disinformation campaign and currently facing multiple lawsuits, said that the “Philippine press faced bigger challenges” under the administration of President Rodrigo Duterte as compared to previous administrations. She noted that it was “the first time that the power of presidency is used to mobilize practically an entire bureaucracy, and to invoke all legal principles there are, and the

¹⁹ Business & Human Rights Resource Center (2020) p. 1.

²⁰ Committee to Protect Journalists. (2000). *Attacks on the Press 1999: Philippines*. <https://cpj.org/2000/03/attacks-on-the-press-1999-philippines/>

Constitution and the Revised Penal Code, to first redefine the law.”²¹ This, according to her, was how those in power used the law and legal system and reflected their “understanding of the demands of democracy.”²²

Can Yeginsu, a legal expert on media freedom, said during a panel session at a conference in the United Kingdom²³ that the Philippine government was able to use “complex and confusing laws” to silence independent media. Among those laws which were increasingly weaponized were those related to foreign ownership and tax laws, which have been used for “collateral purposes to really put pressure on independent journalism in a place such as the Philippines,” said Yeginsu. This “new kind” of attack against journalists which weaponize regulatory laws in the country and are not seemingly directly related to the work of journalists, are meant to “obfuscate, raise suspicion, cast doubt on the integrity of the individuals that are being targeted.”

Yeginsu said that states are also pursuing this strategy because “investigations around tax, foreign ownership allegations, foreign agent laws are fairly complex areas.”

²¹ Pangu, J. (2020, February 22). *Media and lawfare: Journalists’ woke up to a storm’ under Duterte administration.* <https://www.rappler.com/moveph/252414-media-lawfare-journalists-under-attack-duterte-administration/>

²² *Id.*

²³ Trust Conference on “legal trends hampering media freedom” at the United Kingdom last 26 October 2022 where Yeginsu was a part of a panel.

Bona fide suits vs. trumped-up charges meant to harass journos

In 2020, Rappler's chief executive officer and founder Maria Ressa, together with former researcher Reynaldo Santos Jr. was convicted²⁴ of violating the Cybercrime Prevention Act of 2012. Ressa has been accused of several other crimes, such as the alleged commission of fraud, tax evasion, and violation of foreign ownership rules.

Rappler and Ressa had earned the ire of former President Rodrigo Duterte for their vocal criticism of his administration and his bloody drug war which, according to government figures, claimed the lives of 6,252 people during anti-drug operations from July 1, 2016 to May 31, 2022. Human Rights Watch said that "credible evidence" pointed to a higher figure as the government death toll did not include those killed by unidentified gunmen. The United Nations Office of the High Commissioner for Human Rights (OHCHR) said in a 2020 report that at least 8,663 individuals died in the context of the drug war.

The suits lodged against Rappler earned national and international condemnation, with organizations concerned about the "chilling effect" that rippled across the media community in the country. "This is brazenly politically motivated, and consistent with the authorities' threats and repeated targeting of Ressa and her team. Authorities should end this harassment, drop the charges and repeal this repressive law," Amnesty International said in a statement as it condemned the arrest of Ressa and Santos in 2019. "In a country where justice takes years to obtain, we see the charges against her being railroaded – and the law being used to relentlessly intimidate and harass journalists for doing their jobs as truth-tellers," the organization said.

The Committee on Protection of Journalists, meanwhile, said the "Philippine government's legal harassment of Rappler and Ressa has

²⁴ Prosecutors first filed libel charges against Ms. Ressa in 2017 after a businessman disputed an article that he said inaccurately linked him to a top-level judge and tied him to the drug world. Rappler reported that Wilfredo Keng, the businessman, had lent a sport utility vehicle to Judge Renato Corona and cited sources who claimed Mr. Keng was tied to illegal drugs, human trafficking and murder.

Gutierrez, J. & Stevenson, A. (2021, October 8). *Maria Ressa, Crusading Journalist, Is Convicted in Philippines Libel Case.* (<https://www.nytimes.com/2020/06/14/business/maria-ressa-verdict-philippines-rappler.html>).

now reached a critical and alarming juncture.” The National Union of Journalists of the Philippines, for its part, called the arrest “clearly manipulated” and was an act by Duterte’s administration to “shut Rappler down and intimidate the rest of the independent Philippine media.”

In 2020, Ressa and Santos were convicted by a Manila Regional Trial Court of cyber libel and they were each sentenced to six months and one day up to six years in jail and were ordered to pay P200,000 in moral damages and another P200,000 in exemplary damages to Wilfredo Keng, the complainant in the cyber libel case against Rappler.

Their conviction came with a defense anchored on a non-retroactive application of criminal laws as the 2012 investigative report in question was published four months before the enactment of the Cybercrime Prevention Act of 2012.

They also argued that online libel is not a new crime and that it is the very same libel punished by the Revised Penal Code of the Philippines in which criminal liability is extinguished within a period of one year. However, the complainant asserted that the prescriptive period for the crime violated by Ressa and Santos should be fixed based on the provisions of the Cybercrime Prevention Act, which is 15 years and not one year.

Last October 10, the Court of Appeals denied²⁵ Ressa and Santos’s motion for reconsideration, affirming its earlier decision which upheld their cyber libel conviction.

The CA, in its resolution, said that their “conviction of the accused-appellants for the crime of cyber libel punishable under the Cybercrime Law **is not geared towards the curtailment of the freedom of speech, or to produce and unseemingly chilling effect on the user of cyberspace that would possible hinder free speech.**” (Emphasis ours)

UN Special Rapporteur Khan slammed CA’s resolution, saying, “the [criminalization] of journalists for libel impedes public interest reporting

²⁵CA-G.R. CR No. 44991. People of the Philippines vs. Reynaldo Santos, Jr. and Maria A. Ressa. *Resolution*. (2022, October 10). <https://services.ca.judiciary.gov.ph/faces/pages/ResultInformation.xhtml>

and is incompatible with the right to freedom of expression. Criminal libel law has no place in a democratic country and should be repealed.” “I am also concerned that the 2012 Cybercrime Prevention Act is being applied retroactively in this case, as the *Rappler* article in question was published before this law was enacted. This is yet another example of the relentless attack against Maria Ressa for daring to speak truth to power,” said Khan.

HRW said that these “politically motivated charges”²⁶ against Rappler, Ressa and Santos contribute to a culture of fear, impunity, and chilling effect where journalists would just keep quiet, pull back and hesitate to do reports to hold power accountable for fear of being sued.

Stifling free speech or critical expression

According to the National Union of Journalists of the Philippines Safety Office, there are at least 66 criminal cases filed against journalists from 2016 until March 2023. They are facing complaints for allegedly violating the provisions of various criminal laws spanning Republic Act (RA) No. 10175 (An Act Defining Cybercrime, Providing For The Prevention, Investigation, Suppression And The Imposition Of Penalties Therefor And For Other Purposes); RA 10591 (Illegal Possession of Firearms and Ammunitions); and ordinary libel under the Revised Penal Code. A community journalist is also facing charges under RA 10168 (The Terrorism Financing Prevention and Suppression Act of 2012).

Before Duterte left office, legal measures which have been described as “draconian”²⁷ were enacted such as RA 11479 or the Anti-Terrorism Act of 2020 (ATA). The law, which was widely challenged by Philippine rights advocates, lawyers, journalists, and activists, had most of its provisions upheld with finality by the Supreme Court in April

²⁶ Conde, Carlos. (2021, December 10). *Killing of Journalists, Criminal Libel in the Philippines*. <https://www.hrw.org/news/2021/12/10/killing-journalist-criminal-libel-philippines>

²⁷ Reuters (2020). *Duterte’s ‘draconian’ anti-terror bill alarms activists in the Philippines*. <https://www.reuters.com/article/us-philippines-rights-idUSKBN2391QN>

2022. Only two provisions were struck down: Section 4 which would have made dissent or protest a crime if it had an intent to cause harm and Section 25 which referred to the designation of terrorist individuals, groups of persons, organizations, or associations by adopting a designation made by a foreign or supranational jurisdiction.²⁸

Journalists, whose functions involve serving as a watch-dog of the government, feared the enactment of the law as they could be easily arrested by authorities, and for simply being tagged and suspected as engaged in terrorist activities in the course of publishing reports, analyses, or opinions that may be critical of the government.

A media coalition, which included the NUJP, was among the petitioners who questioned the constitutionality of the ATA. The coalition argued that the law “may drive them to self-censorship due to fear of being labeled as terrorists.” Particularly, questioned Section 9 of the ATA by asserting: “As the law fails to provide a clear definition of terrorism and is vague about what constitutes acts of terrorism, Section 9 could make media practitioners vulnerable to wrongful charges and arrest, producing a chilling effect on all media practice.”²⁹ The Section is punishing anyone who are deemed by officials to have incited terrorism through “speeches, proclamations, writings, emblems, banners and other representations.”³⁰

HRW said the enactment of the ATA paves the way for the “systematic targeting” of critics of the government and those who speak out against it.³¹ With its enactment, the law gave the government vast powers to arrest and detain suspected terrorists without warrant

²⁸ Buan, L. (2022). Supreme Court upholds with finality most of anti-terror law. <https://www.rappler.com/nation/supreme-court-denies-with-finality-bid-void-anti-terror-law/>

²⁹ Patag, K. (2021). Philippine journalists: Anti-terrorism law will reduce country to unquestioning individuals. <https://www.philstar.com/headlines/2021/05/03/2095544/philippine-journalists-anti-terrorism-law-will-reduce-country-unquestioning-individuals>

³⁰Section 9 of Republic Act. No. 11479 also known as “An Act to Prevent, Prohibit and Penalize Terrorism, thereby Repealing Republic Act No. 9372, otherwise known as the “Human Security Act of 2020.”

³¹Gutierrez, J. (2020, July 3). *Duterte signs antiterrorism bill in Philippines despite widespread criticism*. [nytimes.com/2020/07/03/world/asia/duterte-antiterrorism-law-philippines.html](https://www.nytimes.com/2020/07/03/world/asia/duterte-antiterrorism-law-philippines.html)

alongside broad authority to designate individuals or groups as terrorist individuals or groups.

Meanwhile, while criminal statutes are arbitrarily invoked against journalists in the country to stifle dissent and critical expression, administrative and regulatory laws are likewise being used to harass the press.

Last June, the Securities and Exchange Commission (SEC) upheld its decision to shut down Rappler for its supposed “violation of constitutional and statutory restrictions on foreign ownership in mass media.” In 2018, the SEC, which is an administrative and regulatory agency charged with the supervision of the corporate sector, revoked Rappler’s operating license after noting that an investment by Omidyar Network, owned by the eBay founder Pierrer Omidyar, violated the Constitutional provision that prohibited foreign entities from owning domestic media organizations in the Philippines.

Rappler’s case with the SEC serves as an example of how the deployment of tax and foreign ownership laws in suits against media organizations have been used to silence journalists and their newsrooms with the added benefit of giving regulators plausible deniability that the clamp down on media organizations is not related to speech. .

“You get a sense of the way in which the law is being used for collateral purposes to put a pressure on independent journalism in a place such as the Philippines. The reason, I think, states are pursuing this strategy is because investigations around tax, foreign ownership, foreign agent laws – these are complex areas, they turn on the application of overbroad laws,” according to Yeginsu.

HRW described the use of state regulatory processes against Rappler as sinister to stifle critical media voices.³² “Throughout the six years of the Duterte administration, we have seen lawsuits and

³² Kine, P. (2018). Philippine Government Targets ‘Rappler’ for Closure. <https://www.hrw.org/news/2018/01/15/philippine-government-targets-rappler-closure>

regulatory processes used as tools to muzzle the press,” the NUJP also said in a statement in line with the SEC decision to shut down Rappler. Rights groups said that shutting down Rappler was believed to be an effort to silence Rappler, who has also been on the forefront of countering disinformation, and called it a “government vendetta.”³³

Another blow on press freedom in the country was the shutdown of television network, ABS-CBN, with former president Duterte himself saying that he “used presidential power” to make it possible³⁴. Notably, former Presidential Spokesperson Harry Roque defended the former president, saying that the latter valued press freedom and never filed a libel complaint against journalists who were critical of his administration.³⁵

Roque said that the former president believed in “free thinking, free speech, and he believes that government officials should not be onion-skinned.”

Duterte’s close aide and current Senator Christopher “Bong” Go said during a Senate hearing in 2020 that the former president was “hurt” when the network aired a video supposedly funded by the opposition which tarnished his reputation as former mayor of Davao city and presidential candidate.³⁶

ABS-CBN was the country’s largest television network that went off-air in May 2020 as its franchise to operate lapsed and a cease and desist order was issued by the National Telecommunication Commission (NTC). The Committee on Legislative Franchises of the House of Representative rejected the network’s application for a new franchise. Until now, the Philippine Congress has failed to act on the

³³ Sui-Lee Wee. (2022, June 29). *Philippines Orders Rappler to Shut Down*. <https://www.nytimes.com/2022/06/29/world/asia/philippines-rappler-shutdown.html>

³⁴ CNN Philippines. (2022, June 27). *Duterte admits using ‘presidential powers’ vs ABS-CBN*. <https://www.cnnphilippines.com/business/2022/6/27/Duterte-admits-using-presidential-powers-vs-ABS-CBN.html>

³⁵ Parrocha, A. (2020, June 15). *PRRD never filed libel case against any journalist: Palace*. <https://www.pna.gov.ph/articles/1105931>

³⁶ *Id.*

network's franchise renewal, even though the SEC and Bureau of Internal Revenue itself noted that the network had not violated any laws.

Another instance of abuse of regulatory authority was seen when the government blocked two news websites that were linked without basis to the New People's Army and the Communist Party of the Philippines, which has been designated by the Anti-Terrorism Council as alleged terrorist entities pursuant to the ATA. The NTC, the administrative agency tasked to oversee the country's telecommunications systems and infrastructures, blocked independent news sites *Bulatlat* and *Pinoy Weekly* following a request from former National Security Adviser Hermogenes Esperon Jr.

Esperon wrote NTC on June 6 requesting the latter to order the Philippine Internet Service Providers to block access to the websites, merely claiming that the two websites were linked to the terrorist groups, and used the ATA as basis.

The Integrated Bar of the Philippines (IBP) said that the arbitrary action of NTC in blocking the websites was "bereft of legal basis"³⁷ "This baseless order endangers not only the liberty of the press, but also the legitimate activities of human rights advocates and other progressive groups. The NTC's order silenced nuns, priests, and reporters. Are lawyers next? Will the IBP's website be shuttered for aiding those at the margins of society if some of them are tagged as 'affiliates'?" the IBP said.

Following the blocking of its website, the media organization reported a drop in the number of visitors to its website.

³⁷Integrated Bar of the Philippines. (2022, June 25). https://twitter.com/IntegratedBarPH/status/1540535978808311808?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1540535978808311808%7Ctwgr%5E7c30884e33e19630bf5b71baa09367b17a039646%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.rappler.com%2Fnation%2Fintegrated-bar-philippines-ntc-order-baseless-nsc-embarrass-duterte%2F

In August, the Quezon City regional trial court granted³⁸ Bulatlat's application for the issuance of a writ of preliminary injunction against the NTC's blocking order against Bulatlat, ruling that the website's publisher's right to free speech and of the freedom of the press were curtailed when access to its website was delimited. The injunction shall be effective until the merits of the complaint of Bulatlat for the nullification of the mentioned NTC memorandum are resolved.

On October 13, 2022, the same Court rejected the appeal by NTC and Esperon against the injunction issued. Aggrieved, former officials of the NSC, and former National Task Force to End Local Communist Armed Conflict undersecretary Lorraine Badoy red-tagged Bulatlat editor Ronalyn Olea, and tagged her as an "operatibong internet operator" for the Communist Party of the Philippines-New People's Army-National Democratic Front (CPP-NPA-NDF).

Olea, who also serves as a secretary-general of the NUJP, was on the forefront in the fight against the blocking order of the NTC and NSC. "The mischaracterization as well as the effects of that mischaracterization — in the case of Bulatlat and PinoyWeekly, of being blocked without even an opportunity to address the accusations by the National Security Council — show that red-tagging has actual effects and is part of government policy," the NUJP said in a statement.³⁹

Aside from how laws are being weaponized and the use of SLAPP to intimidate and silence journalists, the pernicious practice of red-tagging government critics, including journalists, has pervaded the media landscape in the Philippines. Civilian and military authorities have been observed to wantonly engage in the practice, which they deny conceptually, but which has been identified as sometimes predating the killings of activists, dissenters, and human rights defenders. The Commission on Human Rights in a report showed that human rights defenders who are killed, injured, illegally arrested, charged with

³⁸Clarín, A. (2022, August 11). *QC Court grants Bulatlat's plea vs blocking memo*. <https://www.bulatlat.com/2022/08/11/qc-court-grants-bulatlat-plea-vs-blocking-memo/>

³⁹ National Union of Journalists of the Philippines. (2022, October 13). (<https://www.facebook.com/nujphil/photos/a.10151325930050374/10166646364775374/>)

trumped-up cases, or otherwise put in harm's way had been red-tagged first.⁴⁰ Those who are unduly labeled, in the meantime, suffer through various forms of harassment and vilification.⁴¹

NUJP's database shows that there are at least 48 reported incidents of journalist red-tagging; 32 in Metro Manila; 8 Luzon; 1 Visayas, and 7 Mindanao during the period of June 30, 2016 to March 30, 2023.

As the government transitioned under President Ferdinand 'Bongbong' Marcos Jr.'s administration, critics feared that the culture of impunity and the harassment experienced by journalists and human rights defenders observed during the Duterte administration would continue or even worsen.

In Marcos' first eight months in office, the NUJP monitored 43 violations against free press, with two killed, six cyber libel and one libel cases have been filed, two arrested over cyber libel, 13 experienced surveillance and harassment, ten red-tagging, and one denial of access to cover Malacañang,⁴² and two other cases of denial of coverage by state forces and state officers.

Undeniably, the threats, harassment, and unlawful arrests of journalists in the Philippines, the shutdown of a major news organization sent a chilling effect on free speech⁴³ which can widely felt even under the new administration.

⁴⁰Commission on Human Rights. (2020, July). *Report on the situation of human rights defenders in the Philippines*. <http://chr.gov.ph/wp-content/uploads/2020/07/CHRP-2020-Report-on-the-Situation-of-Human-Rights-Defenders.pdf>

⁴¹ Commission on Human Rights. (2022, April 11). *Statement of the Commission on Human Rights on the attempt to trivialize and justify the dangers of red-tagging*. <https://chr.gov.ph/statement-of-the-commission-on-human-rights-on-the-attempt-to-trivialize-and-justify-the-dangers-of-red-tagging/#:~:text=The%20harms%20linked%20to%20red,enforced%20disappearance%2C%20and%20even%20killings>.

⁴² National Union of Journalists of the Philippines. (2022, October 7). *Marcos Jr: Administration's First 100 Days*. <https://twitter.com/nujp/status/1578185293319921664/photo/1>

⁴³<https://www.philstar.com/headlines/2022/04/13/2174334/philippine-journalists-continue-face-harassment-us-state-department-report>

Libel and cyber libel

While the laws which are being weaponized to stifle dissent and silence critics have evolved, the country's libel laws remain to be the most commonly used against journalists. And the most vulnerable against these laws being weaponized are community-based journalists who often tangle with local politicians.

Papioco (2021)⁴⁴ wrote that journalists working in local news outfits are easy targets as they are operating in the community. And since they are lesser known, the public backlash to attacks against them is also often subdued. For journalists in the provinces, who typically have a low-profile nationally, let alone internationally, threats frequently lead to serious harm.

Ultimately, trumped-up charges for libel and cyberlibel remained to have been weaponized against journalists for the purpose of intimidating and silencing them.

The crime of libel defined by the Revised Penal Code, traces its roots to the Spanish colonial regime. The old Spanish Penal Code penalized those "who by writing shall defame, abuse, or insult, and minister of the Crown, or other person in authority;" calumny, or "the false imputation of a crime"; and insult, which "consists of any statement or act which tends to bring another person into disrepute, discredit, or contempt."

In the past, libel had been punished because it tended "to provoke an immediate breach of the peace."⁴⁵ Modern views, however, justify libel

⁴⁴ Papioco, M. (2021). *Filipino journalists can only take risks equal to their protections*. The Lowy Institute. <https://www.loyyinstitute.org/the-interpreter/filipino-journalists-can-only-take-risks-equal-their-protections>

⁴⁵ Perfecto V. Fernandez, Freedom of the Press in the Philippines, 33 PHIL. L. J. 473, 486 (1958).

laws on the value of reputation⁴⁶. For this reason, those who harm another's reputation are penalized.⁴⁷

There is a loophole, however, and elected officials have methodically abused the filing of criminal charges of libel to harass and intimidate journalists who publish fair and critical reports about official functions and the implementation of policies. Instead of just only paying fines and damages, journalists facing these suits are at risk of possible jail time.

Based on NUJP monitoring, at least 50 journalists are facing libel and cyber libel charges from June 2016 to March 2023.

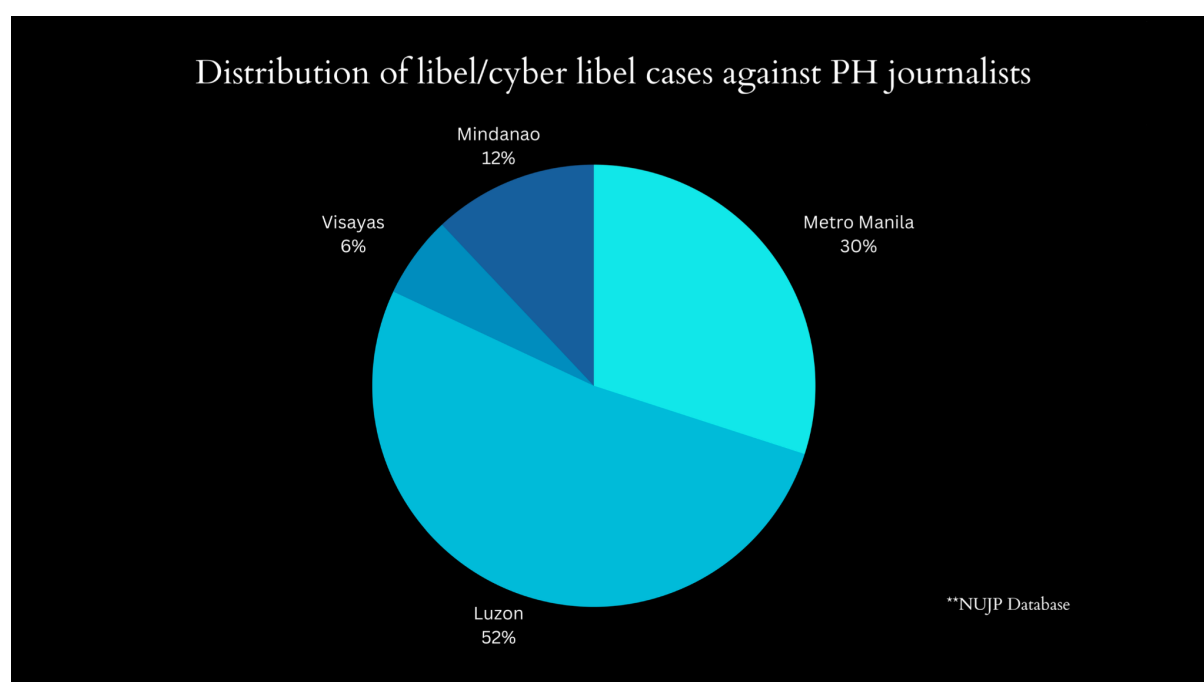


Figure 1. Distribution of libel/cyber libel cases against PH journalists from June 2016 to March 2023, according to the NUJP database.

More than half of these journalists are based in Luzon (with 52%), followed by those in Metro Manila (30%), while the others are based in Mindanao (12%) and in Visayas (6%).

⁴⁶ *Id.*

⁴⁷ Supreme Court of the Philippines. (2021, January 11). *Decision*. Tulfo vs People of the Philippines & Macasaet vs People of the Philippines. https://lawphil.net/judjuris/juri2021/jan2021/gr_187113_2021.html

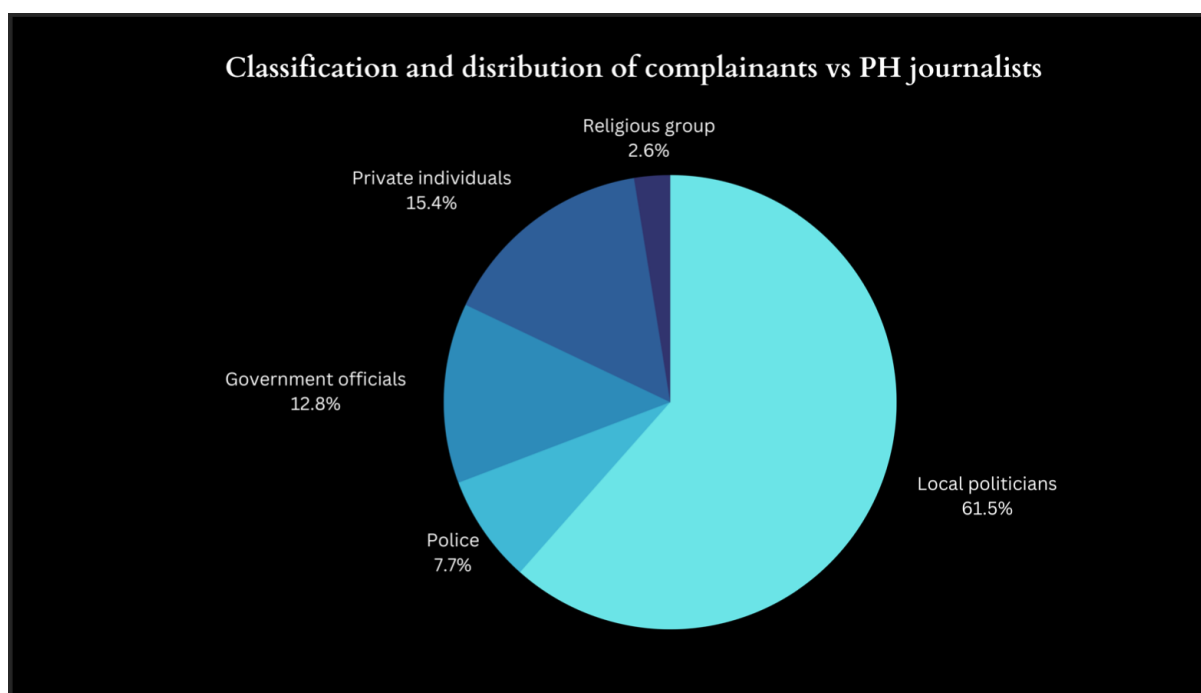


Figure 2. Classification and distribution of complainants vs PH journalists, according to the NUJP database.

More than the majority of the criminal cases monitored by the NUJP were filed by local politicians (61.5%), of whom 11 were mayors, seven (7) governors, three (3) representatives, two (2) village captains, and one (1) board member. Other complainants include government offices (12.8%); private Individuals (15.4%); police officers (7.7%); and religious group (2.6%).

The NUJP identified 15 cases filed against journalists for review by partner lawyers groups. Of the 15, eight cases are cyber libel (53.3%) and two others are ordinary libel (13).

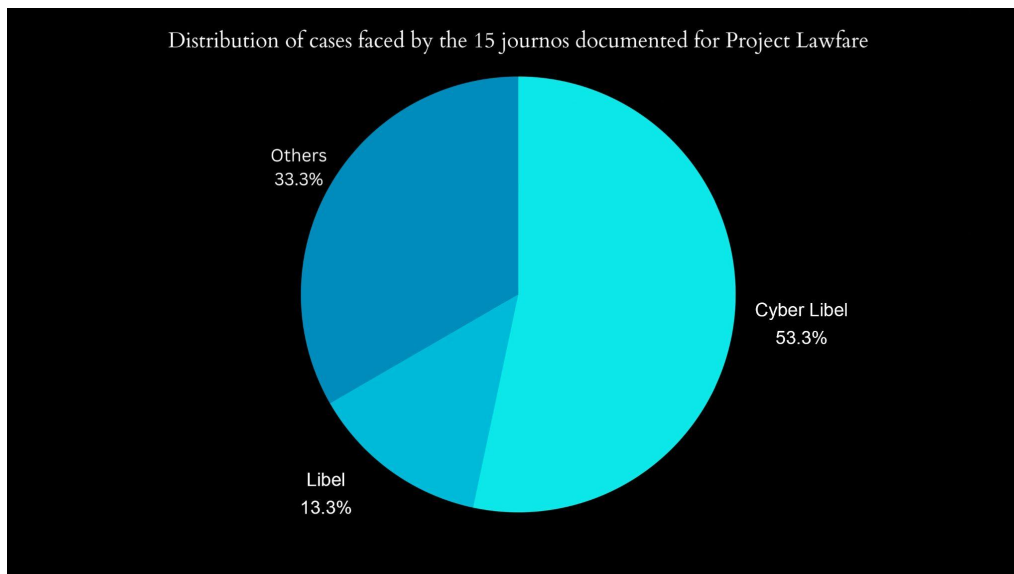


Figure 3. Distribution of select 15 cases fully documented by NUJP.

All of these libel cases were filed by government officials: four were filed by governors; three by mayors; one by a government committee; one by a cabinet secretary and; one by a police director. Journalists were charged not only over their published articles and news materials but also over social media posts airing criticisms about the performance of government officials.

Of the 10 cyber libel and libel cases, five have already been dismissed while five cases are still ongoing.

The documentation and study found out that five (5) of the 15 documented cases were dismissed with finality, or provisionally dismissed. All of the five cases had to undergo prosecution and trial proceedings for an average of 1.6 years before reaching dismissal. The 10 other cases remain pending in court for an average of 4.6 years now.

While the dismissal of cases is welcome, journalists who participated in the study lamented how the lawsuits burdened their work as journalists and how these affected their personal lives. A station manager of a local radio station, for instance, said that the case caused them too much stress and depleted the station's financial resources. Meanwhile, a journalist of a community paper in Northern Luzon

recalled how she dreaded Mondays as the court hearings on her case were held during that day. She added that the hearings consumed a lot of her time and energy. The case was filed by a police officer and she shared that she had to stop covering the police beat, noting that she has lost well-established connections. One journalist had to defer everything and postponed her move to another country to be with his family because she had to face the court cases against her filed by the local politician. While one journalist said that it was a “traumatic” experience for him to face at least 941 counts of cyber libel violation and because of this, he lost his source of livelihood because he could no longer focus.

Majority of those whose cases were documented by the NUJP also lamented how they were not able to properly defend themselves during the preliminary investigations at the prosecutor’s level because they belatedly received the notices to submit counter-affidavits and pieces of evidence, as required. A journalist said that the notices were not forwarded to their residential or home address which made them unaware that legal proceedings against them had commenced. One journalist based in Luzon noted that they were only notified that the preliminary investigation was about to be terminated a day before the final conference was set at the prosecutor’s office. While two of those who were documented in this study said that they were not notified of any proceedings conducted at all, hence their submission of counter-affidavits were deemed waived.

The journalists noted that they had to learn from someone they knew at the courts that a warrant for their arrest had already been issued sans any receipt of any notices for earlier proceedings. What was worse, a journalist was not aware that a warrant for his arrest was only issued until she went to visit a colleague who was detained at a local police station. She was arrested upon stepping foot at the station.

The chilling effect that these cases filed by local officials have affected other journalists working in the communities and even lawyers. In one case, a journalist said that none among their colleagues in the locality would want to report and inform the public about what was

happening with them for fear that they might be also targeted. While a journalist from Mindanao was not able to immediately find a lawyer within her hometown to represent her because the lawyers she asked for their legal services were afraid of retaliation upon knowing that the cases she was facing were filed by a local official. Luckily, she was able to help a lawyer before and when the journalist asked for his help, the lawyer accepted to represent the journalist although the latter was based four hours away from the court where the cases were heard.

Media repression has also worsened in the country with the widespread weaponization of the Cybercrime Prevention Act of 2012 (RA 10175). The law punishes libel as defined under Article 353 of the Revised Penal Code when committed using a computer system.

Specifically, Section 4 of RA 10175 punishes the “unlawful or prohibited acts of libel as defined in Article 355 of the Revised Penal Code, as amended, committed through a computer system or any other similar means which may be devised in the future.” Hence, online defamation features the same elements as traditional libel, but is meted with a much heavier penalty.

This is a harrowing scenario for every journalist and human rights defender in the country as there are opportunities for those in power to easily send their critics to jail.

A case in point was Rappler's Ressa and Santos's original maximum jail sentence of six years, an additional period of eight months was added by the Court of Appeals, extending their conviction to six years, eight months and 20 days.⁴⁸

⁴⁸“The appeal is denied. The decision of the Manila Regional Trial Court Branch 46 finding accused Reynaldo Santos Jr. and Maria Ressa guilty beyond reasonable doubt of violation of Section 4(c)4 of Republic Act 10175 otherwise known as the Cybercrime Prevention Act of 2012 is affirmed with modification insofar as accused are sentenced to suffer the indeterminate penalty of imprisonment ranging from six months and one day as minimum to six years and eight months and twenty days as maximum (Court of Appeals decision: <https://services.ca.judiciary.gov.ph/faces/pages/ResultInformation.xhtml>).

Other dangerous precedents laid down by the resolution of the Court of Appeals in affirming the conviction of Ressa and Santos, and denying their motion for reconsideration is the increased prescriptive period for filing cyber libel cases, the prospect of being punished for an online “republication”, and the widening of possible venues for filing libel and cyber libel cases.⁴⁹ Amnesty International raised that cyber libel has been “regularly used to intimidate and harass journalists who report on critical national issues during the time of Duterte.”⁵⁰ It also expressed alarm over how the law was applied retroactively in violation of basic human rights tenets.

Call to decriminalize libel/cyberlibel

Given the growing harassment in recent years against journalists and the sophisticated use of laws by those in power to clamp down on critics, groups have launched a united call for the decriminalization of libel.

The NUJP has been on the forefront of these calls, saying: “Our laws continue to be used more often than not to intimidate journalists than to seek redress.”

More than 80 international groups who are members of the #HoldTheLine Coalition also joined calls for the decriminalization of libel.

As early as 2012, the United Nations Committee on Human Rights (UN CHR) emphasized that the criminalization of libel in the Philippines

⁴⁹ *Id.*

⁵⁰ Amnesty International. (2022, July 8). *Media repression worsens as court affirms cyber libel conviction against Maria Ressa*. <https://www.amnesty.org.ph/2022/07/media-repression-worsens-as-court-affirms-cyber-libel-conviction-against-maria-ressa/>

was a violation of the country's obligations espoused under Article 19⁵¹ of the International Covenant of Civil and Political Rights (ICCPR).

The provision was invoked when Davao City radio broadcaster Alexander Adonis⁵² challenged a Philippine court's decision to imprison him for defamation, arguing that "criminalization of defamation is a disproportionate means of addressing the problem of unwarranted attacks on reputation because it discourages critical journalism and generates a chilling effect on freedom of expression."

He further argued that the sanction of imprisonment for libel fails to meet the standards of necessity and reasonableness laid down by Article 19, paragraph 3.

"Imprisonment is an unnecessary sanction given that other effective means are available for the protection of others' reputation," he argued before the UN CHR.

The UN-CHR⁵³, in considering the merits of the case, noted that "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."

⁵¹ 1. Everyone shall have the right to hold opinions without interference.

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

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

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

⁵²Center for Media Freedom and Responsibility. (2007, April 2). *Journalist receives four and a half year prison sentence for article on congressman's alleged love affair*. <https://ifex.org/journalist-receives-four-and-a-half-year-prison-sentence-for-article-on-congressman-alleged-love-affair/>

⁵³International Covenant on Civil and Political Rights. (2012, April 2012). *Adonis vs. The Philippines*. <http://hrlibrary.umn.edu/undocs/1815-2008.html>

The Committee noted that with regard to comments about public figures, as opposed to private individuals, “consideration should be given to avoid 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 [defense]. 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 most serious of cases and imprisonment is never an appropriate penalty,” the Committee said.

In the landmark case of *Disini vs. Secretary of Justice*⁵⁴, the Supreme Court said that the Committee, however, “did not actually enjoin the Philippines...to decriminalize libel.”

The decision added: “It simply suggested that defamation laws be crafted with care to ensure that they do not stifle freedom of expression. Indeed, the ICCPR states that although everyone should enjoy freedom of expression, its exercise carries with it special duties and responsibilities. Free speech is not absolute. It is subject to certain restrictions, as may be necessary and as may be provided by law.”

However, the law itself has persisted to be weaponized. Amid this, the Center for International Law (CenterLaw) echoed the call to decriminalize libel, saying in a Rappler report⁵⁵ that the number of junked cases implied that such law should be decriminalized. The Rappler report⁵⁶ showed data from the Department of Justice Office of Cybercrime that out of a total of 3,770 of libel cases filed as of May

⁵⁴ G.R. No. 203335

⁵⁵ Buan, L. (2022, July 20). *Decriminalize libel: PH junked one-third of cyber libel cases filed since 2012*.

<https://www.rappler.com/newsbreak/in-depth/decriminalize-philippines-junked-cyber-libel-cases-since-2012/>

⁵⁶ *Id.*

2022, about 30% of which or 1,131 cases have been dismissed. There are 1,317 pending in court, and 1,240 are stacked for preliminary investigation at the prosecutor's level.

CenterLaw said that considering that about a third of cases have been dismissed from the total number of cases filed since May 2022, it implied that a government has been wasting resources on cyber libel cases.

In a Supreme Court⁵⁷ a decision penned by Senior Associate Justice Marvic Leonen in 2021, he noted that the "constitutionality of criminalizing libel is doubtful." "The libel cases that have reached this Court in recent years generally involve notable personalities for parties, highlighting a propensity for the powerful and influential to use the advantages of criminal libel to critics," according to the ruling, penned by the magistrate.

The said Supreme Court ruling backed the decriminalization of libel, noting that "alternative legal remedies exist to address unwarranted attacks on a private person's reputation and credibility, such as the Civil Code chapter on Human Relations." The decision further emphasized that "civil actions for defamation are more consistent with our democratic values since they do not threaten the constitutional right to free speech, and avoid the unnecessary chilling effect on criticisms toward public officials."

Although the outlook remains grim and the tense situation between the government media grows, a house bill was refiled by the members of the progressive bloc in 19th Congress that would decriminalize libel in the wake of the Court of Appeal's affirmation of the cyber libel conviction of Ressa and Santos. A similar bill was filed by Sen. Risa Hontiveros in the Senate.

And if the government truly values press freedom and uphold the protection of the rights of journalists and the essential role they play in

⁵⁷*Decision. Tulfo vs People of the Philippines & Macasaet vs People of the Philippines.*

democracy, the bill would have already been made into law, after being first filed in the 14th Congress by Bayan Muna Representatives, and was refiled in the 15th and until the 18th Congresses.

The refiling of the Bill to decriminalize libel and to repeal several provisions of the Cybercrime Law was said to be an “obstinate yet hopeful stance that Congress will finally recognize the ever-growing need to protect press freedom and uphold the people’s democratic rights.”⁵⁸

II. COVID-19 pandemic coverage and the law’s weaponization

The role played by journalists in the society became even more highlighted during the pandemic, aside from keeping the public informed, they also had to fight disinformation⁵⁹ about the pandemic.

The United Nations Educational, Scientific and Cultural Organization (UNESCO) brief found out that “responses to the disinfodemic undermine legitimate freedom of expression - which is one of the best antidotes to false content” and made it as one of recommendations that the judiciary could pay special attention “to guaranteeing that international standards on freedom of expression and privacy are fully respected when reviewing cases concerning disinformation.”

Media outlets, in fighting what the World Health Organization described as ‘infodemic’, had seen violent, aggressive behavior towards their teams on the ground from people who believed that the virus is a hoax.⁶⁰ Infodemic is an overabundance of information – some accurate

⁵⁸Mendoza, J. (2022, July 16). *ACT rep refiles bill decriminalizing libel*.

<https://newsinfo.inquirer.net/1629127/act-rep-refiles-bill-decriminalizing-libel>

⁵⁹Posetti, J. & Bontcheva, K. (2020). *DISINFODEMIC: Dissecting responses to COVID-19 disinformation*. <https://en.unesco.org/covid19/disinfodemic/brief2>

⁶⁰United Nations Department of Global Communications. *COVID-19: An unprecedented news story for journalists*.

<https://www.un.org/en/coronavirus/covid-19-journalists-biggest-story-their-lifetime>

and some not – that makes it hard for people to find trustworthy sources and reliable guidance when they need it⁶¹

In another Unesco report⁶², the pandemic also posed a threat to freedom of expression and press freedom through “laws proposed to counter disinformation or ‘fake news’”. Such laws have put journalists at risk for criminal prosecution – often simply for raising criticisms or reflecting on policy debates.

Moreover, the people’s right to access information was also hampered as there was a suspension in some cases of the public right to request information.

While reporting in itself and giving the public a verified information during the COVID-19 pandemic was challenging and unprecedented, the health situation had posed an opportunity to attack journalists in the Philippines with the weaponization of a law—the Bayanihan to Heal As One Act (Republic Act No. 11469)—which was passed in 2020 in the middle of the pandemic. It sought to criminalize free speech under the guise of stopping the spread of false information.

The Bayanihan to Heal as One Act has been used at great lengths against journalists and has also been weaponized to “harass” and “silence” journalists who kept, despite immediate danger against their lives, reporting about the loopholes of the COVID-19 pandemic response of the government, particularly at the local level.

Since the law was passed in 2020, local politicians have used the Act to plainly harass community journalists for their critical reporting during the COVID-19 pandemic. During the pandemic, there was a trend of cases, particularly faced by local journalists, who tried to release stories to expose gaps, anomalies, and issues pertaining to the COVID-19 response of local officials.. In covering the pandemic,

⁶¹UNESCO. (2020). *Journalism, press freedom and COVID-19*.
<https://unesdoc.unesco.org/ark:/48223/pf0000373573>

⁶² *Id.*

journalists documented for this study said that they were “harassed and intimidated.” Two journalists agreed that it was as if the cases were filed against them to ultimately put doubts on the information they released during the COVID-19 pandemic,, to let the public question their credibility and integrity, and tag them as “purveyors of fake news.”

A journalist from Luzon said that after they released stories about the corruption and irregularities in the COVID-19 pandemic response, his newsroom experienced “animosity” as their operations were financially affected. But the ultimate effect of this was on the public’s right to know as the harassment resulted for the journalist and his newsroom to “lie-low” in publishing developmental stories and about the COVID-19 pandemic. They are now seldomly covering that locality because of the fear of reprisal from the government official who filed the suit against them.

Undeniably, the COVID-19 pandemic presented an information dilemma and press freedom conundrum in the Philippines. The pandemic endangered lives and presented an even greater disparity among people’s living conditions. It presented a suppression of vital information that could potentially spell the difference between life and death, and a new opportunity for those in power to weaponize the laws against journalists, critics, and the public who call on them for faster pandemic response and to be accountable for their official actions.

The trend observed during the pandemic was cited by Yeginsu⁶³ which was observed as among the patterns by which governments pushed for “vague laws” under the guise of suppressing disinformation to stifle the press.

While the purpose was aimed to counter false information about the pandemic and COVID-19 vaccines, the laws were used as a pretext to

⁶³ *Philippines becomes global case study of media repression.*
<https://www.rappler.com/nation/philippines-global-case-study-media-repression/>

“enact very vaguely worded, overboard legislation where the fear is that legislation is going to be deployed for collateral purposes.”⁶⁴

Despite growing global efforts to assert the role of journalists in democracies and to shed light on important issues particularly during the COVID-19 pandemic, journalists remain to be challenged with old and new ways and means to undermine their independence. From the use of SLAPPs which remain to be largely used at present, more ways have emerged for authoritarian governments to weaponize laws to harass journalists, shut down independent media outlets, silence dissent, and ultimately stifle freedom of expression. It is not simply their individual lives which are at stake when they are threatened for simply doing their jobs as what is greatly imperiled are cherished democracies and the public’s freedom of speech and expression.

Seven other cases reviewed by NUJP and lawyers organizations include two cases of illegal possession of firearms and explosives, one case of inciting to sedition coupled with unlawful use of publication, one case of kidnapping, and one incident of website blocking stemming from an order from the National Telecommunications Commission.

Except for the inciting to sedition and unlawful use of publication, the other cases reviewed for the study are linked to the counterinsurgency program of the Philippine government. Journalists and media outfits slapped with these criminal charges were red-tagged before they were arrested or before their websites were ordered blocked. The common denominator is that these media outfits reported about human rights violations perpetrated by state security forces.

⁶⁴ *Id.*

Analysis and Recommendations

These are some of the recommendations forwarded by the Integrated Bar of the Philippines, Centerlaw, National Union of Peoples Lawyers, IDEALS, and the Marawi State University Legal Aid and Human Rights Center to better respond to lawfare and other related threats targeting journalists.

Documentation and Quick Response

While the National Union of Journalists of the Philippines actively monitors and documents threats and attacks against journalists, the lawyers groups stressed the importance of specifically documenting the state abuses, or cases of state-sponsored harassment suits. This includes cases filed by, or attacks committed by, local government officials and military personnel as documented in a study done under the Project Lawfare. Cases should all be counted and analyzed through a centralized record of potential harassment suits filed against journalists.

This documentation, CenterLaw and IDEALS add, should be communicated with the network of human rights organizations not only in the country but also to international non-government organizations including the relevant United Nations and European Union agencies.

In addition to documentation, the MSU-LAHRC also recommended an intensive and rapid response mechanism with the presence of human rights lawyers as a means to mitigate the harms of such attacks, especially in cases of arrest.

In relation to this, the NUJP is in the process of refining its protocols for responding to attacks.

Legal Pushback

Lawyers groups encourage journalists to push back by filing counter charges against the perpetrators. For instance, administrative

suits against public officers can be filed with the Ombudsman for the harassment suit.

Civil suits could also be filed for either damage claims or for constitutional tort. Victims and their legal counsels should also study the possibility of filing suits for malicious prosecution.

Moreover, depending on the case, the Department of Justice must also be called to account under instances that trumped-up criminal charges were filed to restrain free speech and silence dissent, criticism, and protest.

Maria Ressa and alternative media outfits Altermidya, Bulatlat, Kodao and Pinoy Weekly filed separate administrative charges against NTF-ELCAC officials over red-tagging. As of this writing, no resolution has been reached.

Bulatlat also filed a civil case against the NTC and Esperon over the website blocking order. It remains pending with a local Quezon City court.

Legal Aid and Support

All lawyers organizations expressed that more initiatives should aim to strengthen capacities to provide pro bono legal services to journalists and human rights defenders. Groups underlined that competent and adequate legal assistance, coupled with the legal counsel's full grasp of defenses, should enhance the journalists' protection against the charges.

Lawyers should also realize the principle of non-association under the UN Principles on the Role of Lawyers in handling media-related cases, high-profile or not. Under such principle, lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions. The observance of such principle could address fear and prior intimidation of potential counsels to handle cases of journalists, especially against political figures and powerful families.

In fulfilling this, knowledge sharing between the media community and lawyers play a big role for future legal counsels to better understand the plight of journalists and media practitioners.

A legal defense fund that is ready to be utilized by journalists in need should also be in place, in order to mitigate exposure of journalists to further harm.

Campaigns and Legal Reforms

Moving forward, the collaboration between journalists and lawyers and other human rights defenders is important in pushing for legal reforms.

Decriminalize Libel. Lawyers groups recommend a strategic advocacy plan to decriminalize libel.

In its review notes, the IDEALS cites that the Philippines has ratified the International Covenant on Civil and Political Rights, and under which is a view that the penalty of imprisonment is not commensurate with the crime of libel. In the same purview, NUPL stresses that persons injured by defamatory publications are not without recourse once libel is removed from the country's penal statuses. They may still vindicate their rights and reputations by pursuing civil defamation cases under the Civil Code. NUPL then cites a Supreme Court's statement in *Tulfo v. People* in 2021:

In any event, alternative legal remedies exist to address unwarranted attacks on a private person's reputation and credibility, such as the Civil Code chapter on Human Relations. Civil actions for defamation are more consistent with our democratic values since they do not threaten the constitutional right to free speech and avoid the unnecessary chilling effect on criticisms toward public officials. The proper economic burden on complainants of civil

actions also reduces the possibility of using libel as a tool to harass or silence critics and dissenters.

Another related recommendation is to introduce special Rules of Court for libel cases which will recognize frivolous libel lawsuits as strategic litigation against public participation (SLAPP) in the same vein as how SLAPP suits are currently treated under the rules of environmental procedure.

Protective Writ. Another recommendation is for journalists and lawyers to file a petition for a protective writ and welfare services to address continuing anxiety and threat to security.

Repeal Anti-Terror Law. In their review notes on terrorism-related charges against journalists, lawyers groups reaffirmed their support for the call to repeal the country's anti-terrorism law. If total repeal is not possible, the law should be amended to put a deterrence against lawfare and for the respect to human rights.

IDEALS adds that the Anti-Terrorism Council should also have speedy and less stringent proceedings to receive complaints for lawfare using the Anti-Terrorism Act against journalists, human rights defenders, and activists with power command reversal of any acts.

In the immediate scene, an impact assessment and risk management in relation to the terrorism law should be conducted.

Intermediary Dispute Resolution. IBP notes that journalists, in active collaboration with lawyers and other sectors of society, should proactively seek to establish intermediary dispute resolution mechanisms to mitigate the filing of harassment suits against journalists. It might be worth exploring how to maximize the Press Councils (such as in Cebu, Iloilo, Cordillera, Davao, Cagayan de Oro, Batangas) to prevent filing of charges against journalists.

Meaningful Bail Reform. Groups must push for meaningful bail reform towards a more just and efficient criminal justice system.

CHR as Prosecutorial. IDEALS raised that the Constitution should be amended to enhance the mandate of the Commission on Human Rights beyond being merely an investigatory body, they ought to be prosecutorial as well.

The Constitution should also include constitutional court/s that will focus on settling judicial cases involving human rights violations.

Special Protection for Journalists. Journalists and lawyers should also push for the adoption of official state policy, national and local, affording journalists and HRDs a specially protected status.

Organizing proves to be one of the most effective ways to counter lawfare and other attacks against journalists. The local chapters mobilized fellow journalists to support colleagues facing legal attacks.

Journalists who participated in this study expressed their willingness to establish local chapters of NUJP to better safeguard the welfare of their fellow local journalists.