



MASS MEDIA LAW 101

FOR FILIPINO JOURNALISTS



Practical Guide to Mass Media Law

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I. Introduction

This guide is intended to support media personnel in navigating through mass media law in the Philippines.

Media has played a significant part in Philippine history. It is steeped in a nationalist tradition, with roots in the propaganda movement that inspired and aided the 1896 Philippine revolution against the colonizer Spain. Through the years media has also grown into different other roles: objective chronicler of events, government watchdog, educator, entertainer. Needless to say, the “fourth estate” has a profound impact on society.

In its delivery of services, media is circumscribed by laws and regulations. It enjoys wide freedoms and rights – the right to gather and report the news, and the right to communicate with the public. In turn, it must provide complete reports and analyses that are founded on truth and fairness. It must understand court processes to be able to correctly and effectively inform the public and protect people’s rights.

This overview of legal processes and media laws is a critical tool for media practitioners on the field today. Most alarming recently, media has needed to know more about the law and engage with courts in order to defend itself and its members.

Efforts to muzzle the practice and the influence of media ranges from physical harm to psychological toll, and legal action or lawsuits against media organizations and personnel are not uncommon in the Philippines.

This guide, however, cannot be a substitute for a lawyer's advice based on specific facts. But familiarity with the law is part of the rigors of the jobs and of a frontline defense mechanism. This guide hopefully demystifies laws, the courts and its ivory towers, and the system to better respect, fulfil and protect the rights of all.

II. Media Situation

The Philippines remains as one of the most dangerous places for journalists, with the Committee to Protect Journalists ranking the country as seventh in its 2022 Global Impunity Index.¹

The CPJ reported that there were 14 unsolved killings from September 1, 2012, to August 31, 2022.

“Despite potential differences with how government agencies like the Philippine National Police classify cases, the lack of convictions adds to making journalism a dangerous profession in the Philippines,” it said.

There have been 23 journalists killed under the Duterte administration, although the numbers are up to debate since a government task force on media security has often taken the position that the deaths are not work-related and that “it doesn't necessarily mean that they were killed because they were journalists, like some groups are trying to project.”²

Three cases monitored since October 2021, when aspirants filed their certificates of candidacy, at least three journalists have been killed, may be illustrative of how these distinctions are done:

Audrey Estrada, a broadcaster in Lanao del Norte, was found dead in her house in March with 15 stab wounds.

In December, Pampanga-based journalist Jesus “Jess” Malabanan was shot by unidentified assailants inside their store in Calbayog City, Samar.

In October, broadcaster Orlando “Dondon” Dinoy was also shot and killed inside his rented apartment in Bansalan, Davao del Sur.

The Malabanan case was attributed to a land dispute, a conclusion disputed by colleagues he had helped in reporting on the “war on drugs”. Dinoy’s death was attributed to factors outside journalism work while there have been no updates on the Estrada case.

Under the Ferdinand Marcos Jr. administration, two journalists – Renato Blanco and Percy Mabasa – have been killed.³

For the past years, government regulatory processes, like the application for a franchise, have been used for retribution against media corporations, most notably against broadcast giant ABS-CBN, which saw its franchise expire and its application for a new one junked after a series of hearings where supposed tax deficiencies, unfair labor practices and even the doubt over whether ABS-CBN chairman emeritus Gabby Lopez was a Filipino citizen were brought up to justify taking one of the country’s biggest networks off the air.

In legislative hearings and in speeches, Duterte and his men acknowledged that there were other reasons that led to the shutdown of ABS-CBN, anger over campaign ads against him that had been aired in the 2016 campaign and anger over campaign ads of his that the network was not able to air due to scheduling conflicts.



The shutdown cost the jobs of at least 4,000 ABS-CBN staff, according to company disclosures. Layoffs from among contract workers have no doubt added to this number.

The shutdown of ABS-CBN happened while the country was grappling with the COVID-19 pandemic and when the public needed more sources of information to beat back panic and anxiety as well as a flood of disinformation about the virus.

The loss of ABS-CBN's regional stations have also hampered disaster preparedness and response in remote areas often only reached by radio DZMM, an ABS-CBN company.

The journalism community has seen similar attacks against Rappler, whose Securities and Exchange Commission registration is subject to legal proceedings over supposed foreign ownership and whose staff have been subjected to libel and cyber libel cases.

Those cases have been used as justification for the government's solicitor general to question a partnership between Rappler and the Commission on Elections for information dissemination and to help fight the spread of election-related disinformation.

Attacks continue

According to a tally maintained by NUJP and the Center for Media Freedom and Responsibility released in May 2022, there have been 281 recorded incidents⁴ of attacks and threats against the media since June 2016.

Cases of libel and cyber libel have also risen to 56, with many of those filed during the pandemic lockdowns.

In December 2021, Energy Secretary Alfonso Cusi and businessman Dennis Uy filed libel and cyberlibel complaints against at least 17 journalists for reporting on a graft complaint filed against them over the sale of shares in a gas project. Cusi and Uy claimed, incorrectly, that it was the journalists who were accusing them of graft over the since-abandoned sale.

In March 2022, followers of controversial pastor Apollo Quiboloy filed libel complaints against Rappler’s regional head Inday Espina-Varona, Mindanao bureau coordinator Herbie Gomez, and former researcher Vernise Tantuco and their interviewees over a series of investigative reports and videos published on the news website related to his trafficking cases in the US.

At least seven of those suits have been dismissed but there have been at least 16 complaints and 50 counts of cyber libel filed over the stories in Cagayan de Oro, Davao City, Panabo City and Ozamiz City.

Even if all of those complaints are eventually dismissed, newsrooms like Rappler need to devote time and resources to addressing the suits. That means time and resources that newsrooms could have otherwise devoted to more reporting.

In April 2022, Commission on Elections Commissioner Rey Bulay said in response to some groups casting doubt on the poll body that he was warning them that “we would not

hesitate to call upon the Armed Forces of the Philippines, which is now under Comelec control, to round you up and have you jailed.”

After his comments were roundly criticized, he hinted that reporting on what he said was libelous coverage and that the headlines were defamatory.

The increased use of legal complaints to harass and silence journalists since 2020 highlights the need to ramp up campaigns for decriminalization and, in the meantime, to increase the legal support that journalists receive to defend themselves against these cases.

Under the administration of Ferdinand Marcos Jr., the NUJP documented 38 incidents of press freedom violations from June 30, 2022 until December 21, 2022.

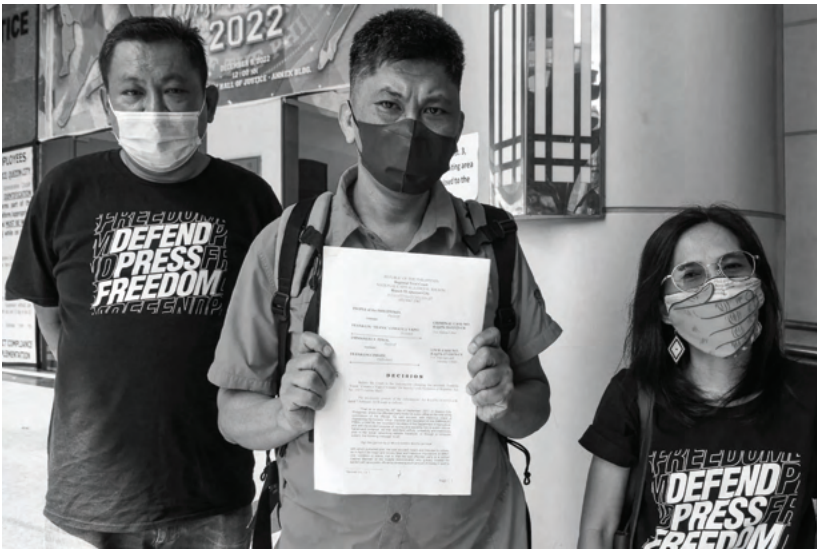
Baguio-based editor Frank Cimatú was convicted of cyber libel over a Facebook post critical of former Agriculture Secretary Manny Piñol.⁵

Despite the UN Human Rights Committee’s 2011 declaration that the criminal sanction for libel is excessive and incompatible with the International Covenant on Civil and Political Rights, in which the Philippines is a signatory, there have been no serious moves to decriminalize libel.

In fact, the Philippine government even enacted Cybercrime Prevention Act, which imposes harsher penalties for cyber libel.

Heightened red-tagging

Red-tagging, or the practice of labeling activists, journalists and human rights workers as armed combatants and supporters of the Communist Party of the Philippines and New People’s Army, has continued and has increased.



Baguio-based editor Frank Cimatú
Photo from Rappler.com

Among the most blatant were by Lt. Gen. Antonio Parlade Jr., since retired, who threatened Inquirer.net journalist Tetch Torres-Tupas in February 2021 with potential cases for reporting on a petition filed by two Aeta farmers arrested under the Anti-Terrorism Act who wanted to join an opposition to the law at the Supreme Court. Parlade claimed that her reporting was in support and sympathy for terrorists.

In response to criticism from NUJP and the journalism community, Parlade said he meant no harm. The Armed Forces of the Philippines said it would launch an investigation, not into Parlade's behavior, but to see if his accusations had basis.

But the threat of legal cases as well as the arrest and filing of cases against journalists under the pretext of anti-terrorism and anti-crime operations even before then.

Journalist Lady Ann Salem, editor of alternative media site Manila Today, was among those arrested in a series of raids on December 10, 2020, with police claiming she was part of a gun-running operation. The charges against her have been

dismissed and she has since been released from detention.

Frenchie Mae Cumpio, a Tacloban City journalist, was arrested on February 7, 2020 and is still in detention.

Cumpio was editor of the Eastern Vista news website and had been reporting on human rights issues and land disputes when she was arrested and charged with illegal possession of firearms.



She is now also facing a non-bailable case of terrorist financing under the Terrorism Financing Prevention and Suppression Act over money that was supposedly found during the arrest.

Despite repeated warnings from civil society and human rights groups, including the UN Human Rights Office, that the practice labeling criticism and dissent is dangerous, the practice has continued and has expanded, with red-tagging content now a common feature in shows and briefings by the National Task Force to End Local Communist Armed Conflict and in content by columnists close to the Duterte and incoming Marcos administration.

NUJP has itself been accused by Manila Times columnist Rigoberto Tiglao of being a communist front and, with recent

pronouncements by incoming Justice Secretary Jesus Crispin Remulla that media has been “weaponized” against the government and the country, it is likely that the practice of equating critical reporting with anti-government activity and terrorism will continue.

Cyber-attacks

Cyber-attacks, mostly in the form of distributed denial of service (DDOS), have been used against media outfits.

In 2021, the digital attacks on online media outfit Bulatlat, were traced by forensic experts to the Philippine Army, using the infrastructure provided by the Department of Science and Technology (DOST).⁶

The government’s own Computer Emergency Response Team confirmed this. Other alternative media organizations such as Altermidya, Kodao Productions and Northern Dispatch continued to be subjected to DDOS.

During the elections, dominant media outfits were also targeted by DDOS. Most of the incidents took place during or immediately after the presidential debates such as in the cases of ABS-CBN and CNN Philippines. Those engaged with fact-checking, including Rappler, Vera Files, PressOne. Ph, Philippine Star, and Mindanao Gold Star Daily were also attacked.

A report by Qurium identified Pinoy Vendetta as the culprit behind the DDOS. This group of hackers has been praised by Lorraine Badoy of the National Task Force to End the Local Communist Armed Conflict (NTF-ELCAC) as “computer geniuses.”⁷

Government response mechanisms



Representatives of the alternative media outfit subjected to cyber-attacks hold copies of their complaint at the steps of the Quezon City Hall of Justice on March 29, 2019. (Photo by Kodao Productions)

Red-tagged media outfits Bulatlat, Altermidya, Pinoy Weekly and Kodao Productions filed administrative charges against Parlade and Badoy before the Ombudsman in December 2020. As of this writing, the case is pending.

In July 2020, the same media outfits filed complaints with the Commission on Human Rights against several government officials over red-tagging and harassment. To date, there has been no development on the complaints.

The CHR-Cordillera Office, meanwhile, issued a favorable decision on the complaint filed by alternative news site Northern Dispatch against the Philippine National Police over red-tagging.⁸

The Duterte administration has frequently pointed to the creation of a Presidential Task Force on Media Security as proof of the government's commitment to keeping journalists safe from attacks despite many of those attacks also coming from the government and its officials.

In practice, the PTFoMS has often seemed to be more intent on defining away threats to journalists as not related to their work and equating legitimate concerns as attempts to discredit the government.

Apart from the Malabanan killing, the PTFoMS also downgraded the killing of John Michael Decano, a broadcast volunteer for Pasalingaya 88.1 FM in Sorsogon province, and referred to him as “not a media practitioner but a massage therapist and a beautician” despite the station acknowledging him as a news correspondent.⁹

In the case of a reported shooting attempt on Daily Tribune correspondent Aldwin Quitasol in Baguio City in March, the task force seemed more intent on playing down the threat and even theorized that what he thought was a gunshot was actually a motorcycle backfiring.

Although Quitasol was given the “benefit of the doubt” that someone actually tried to shoot him, the task force also warned against believing in gossip and maintained that there have been attempts to use the issue of press freedom and of media security to embarrass and discredit the government.

Statements like these suggest that the risks that journalists face are being defined and categorized away. Actions and statements that tend to minimize or play down attacks and threats against journalists make these attacks more likely and also make it more difficult for them to report.

III. Basic Legal Concepts

The Philippine legal system is a unique blend of customary usage, Roman civil law, Anglo-American common law systems, and Islamic law.¹⁰ Laws in the country are derived from local indigenous and religious practice, codified rules and ordinances, legal precedents (or jurisprudence), and may consider social standards as well.

Most of the public law, such as constitutional law and administrative law, is patterned after common law doctrines; private law, such as laws on persons and family relations and criminal law, follows the civil law tradition. The coexistence of different systems is a result of a colonial history and integration policy for minorities.

The main sources of Philippine law are:

1. **the Constitution** – the fundamental and supreme law of the land;
2. **Statutes** – acts of the legislative (Congress), municipal charters, municipal legislation (Sanggunian), court rules, administrative rules and orders, legislative rules and presidential/ executive issuances
3. **International law** – international principles or agreements with other states which have the same force of authority as statutes; and
4. **Jurisprudence** – decisions of the Supreme Court, as they establish an interpretation of law that is binding on all other courts

Constitution

The present constitution was made in 1986 after the ouster of the dictator Ferdinand Marcos. It is addressed against authoritarianism and expresses core Western democratic values. It established a unitary, republican government and provided for three co-equal branches of government: executive, legislative, and judicial.

The Philippine constitution guarantees the freedom of speech, expression, and of the press,¹¹ and the freedom of information¹². Since these definitions and practice of these freedoms are largely drawn from the American legal system, US jurisprudence has persuasive authority in the Philippines. Landmark decisions in the US may also be considered by Philippine courts.

The freedoms and rights related to mass media, as with any other right, are not absolute. They are subject to limitations such as national security, public order, criminal speech and conduct, and privacy regulations. The Philippine constitution explicitly recognizes the right to privacy of communications, especially of private individuals¹³.

Recognizing the significant role of media, ownership and management of mass media is limited to Filipino citizens, or to corporations, partnerships or associations wholly owned by Filipinos. In parallel, engagement in the advertising industry is limited to Filipino citizens, or to corporations or associations with at least seventy per cent (70%) of the capital owned by Filipinos.¹⁴

Statutes

There is no single law that applies to the media. Regulations are found in the various laws, including the Revised Penal Code¹⁵, special laws enacted by Congress, the Civil Code¹⁶, and executive and administrative issuances.

There is a copyright law generally protects the intellectual products of journalists and media practitioners.¹⁷ Under the press freedom law, reporters, editors, and publishers cannot be compelled to reveal the source of news or information¹⁸. National press freedom day¹⁹ is celebrated every August 30th, on the birth anniversary of the recognized father of Philippine journalism and Spanish resistance fighter, Marcelo H. del Pilar.

International law

Generally accepted principles of international law, for example, that a person has the right to life, liberty and due process, are binding in the Philippines. The Philippines is signatory to the Universal Declaration on Human Rights and the nine core international human rights multi-party instruments. The Philippines may also be bound to a treaty, a signed agreement between states, if it is considered self-executing or when it has been ratified by Congress.

The Philippines ratified the International Covenant on Civil and Political Rights (ICCPR) in 1986, where Article 19 guarantees protection to all forms of freedom of expression²⁰. Freedom of information is embraced within the same guarantee, as the freedom of expression includes the right to seek, receive, and impart information.

Jurisprudence

The Philippine constitution vests judicial power in the Supreme Court, and all other lower courts that may be established by law. The Supreme Court is the final interpreter and arbiter of law, and its decisions become part of law²¹.

Jurisprudence recognizes four aspects of freedom of the press: (1) freedom from prior restraint; (2) freedom from punishment subsequent to publication; (3) freedom of access to information; and (4) freedom of circulation.²²

The determination of whether there has been a violation or restraint of the freedom of speech and expression is adjudged on a case by case basis. Philippine courts must make a distinction between content-neutral regulation and content-based censorship. It can then, accordingly, apply the appropriate test or scrutiny.

Jurisprudence frowns upon content-based regulation, and is usually measured against the clear and present danger rule. Speech that leads to a substantial, serious, and imminent danger may be restrained when it would likely produce an evil the government should prevent.

IV. Legal Process

Judges decide disputes in adversarial proceedings. Lawyers appear before the “bench” or a neutral judge, to argue for a party. Recent efforts have been taken to also integrate aspects of the inquisitorial system, where a judge or a part of the court is actively involved in investigating the facts of the case.²³

Judges and justices are appointed by the President, which should be from a shortlist submitted by the Judicial and Bar Council.²⁴ The council includes representatives of different agencies and organizations, and was created to insulate the judiciary from political influence. However, the President can appoint half of its members.

The Philippine judicial system follows a hierarchy of courts:



1. An informal local system for arbitration or mediation of disputes;
2. Local and regional trial courts;
3. A national Court of Appeals;
4. One Supreme Court

The Shari’ah (Islamic law) court system has jurisdiction over personal and contractual relations among Muslim citizens in select provinces in Mindanao. There are special courts and administrative tribunals exercising quasi-judicial functions which can also seek recourse in the appellate courts, the Court of Appeals and the Supreme Court. Courts refer to the Rules of Court and other issuances of the Supreme Court for orderly proceedings.

There are three main types of action: criminal, civil, and special proceedings. Criminal actions are instituted by the state against a person who violated the laws of the Philippines. Civil actions are filed against a person or party who violated the right of another. Special proceedings seek to establish a status, right, or fact regarding a person.

	Penalty	Quantum of Evidence
Criminal	Imprisonment and/or damages	Proof beyond reasonable doubt
Civil	Fine, damages, restitution	Preponderance of evidence
Special Proceedings	Declaration of status or rights	Substantial evidence

Criminal justice system

The criminal justice system is composed of five pillars:

- a. law enforcement
- b. prosecution
- c. courts
- d. corrections
- e. community

All of these institutions play a key role in maintaining peace and order. Law enforcement (the police) effects the arrest of persons suspected of illegal conduct. The prosecution (justice department) determines probable cause, or a good

reason to believe that a crime was probably committed, and that a particular person was probably responsible. After the prosecution formally charges the person, the court decides after trial if a person is guilty of the crime or not. When a person is convicted, the corrections cluster takes custody and supervises the service of sentence.

The community can be a partner in policing, crime reduction, defense, and even dispensation of justice. Indeed, community institutions are the first line of defense against disorder and crime.

No person in the Philippines should be deprived of life, liberty, or property without due process of law²⁵, nor can they be subject to unreasonable searches and seizures.²⁶

As a rule, a person should only be arrested when there is a warrant issued by a court. In exceptional circumstances, warrantless arrests can be made, such as when a person is caught in the act of committing a crime (in flagrante delicto), or when he is a fugitive.

Likewise, a person's possessions may be searched or seized when there is a warrant issued by a court. Warrantless searches are valid only in certain circumstances, such as when there is consent, or when contraband was found in plain view. Evidence obtained in violation of these rules or illegally cannot be used in court for any purpose.

A person accused of a crime is presumed innocent until proven guilty beyond reasonable doubt. Every accused has to the right²⁷:

- To have speedy, impartial, and public trial
- To be informed of the nature and cause of the accusation
- To be heard himself and his counsel of choice
- To testify as a witness in his own behalf, or not to testify which shall not in any manner be prejudicial
- Not to testify against himself (right against self-incrimination)
- To meet witnesses against him face to face

- To compel the attendance of witnesses and or the production of evidence in his behalf through compulsory court processes
- To appeal in all cases allowed in the manner prescribed by law

Remedies when arrested

1. **Bail** – an accused may post money or property bond to secure temporary release, which is forfeited when the accused fails to show in court when required.
2. **Release on recognizance** – an accused financially unable to post bail may petition for release as guaranteed by a custodian.
3. **Release on humanitarian grounds** – an accused may ask the court for permission to be released on humanitarian grounds. He may also seek furloughs or short, temporary periods of release on exceptional grounds.
4. **Quashal of the warrant** – an accused may ask the court for the invalidation of the warrant of arrest according to specific grounds.
5. **Dismissal of the charges** – an accused may ask the court to dismiss the charges before arraignment if there were serious errors in the filing of the case and during trial if there are other grounds. After the presentation of prosecution evidence, an accused may ask the court through a demurrer to evidence to decide if the evidence against him/her is enough to prove reasonable doubt.

BASIC CRIMINAL PROCEDURE

POLICE INVESTIGATION

Law enforcement officials conduct an investigation on reports and complaints. The investigation on suspected illegal activity should identify and locate the suspect, and provide evidence about the guilt of the suspect.

A victim may also provide the same evidence directly with the prosecutor.

PROSECUTION INVESTIGATION

The prosecutor determines if there is probable cause: what crime has been committed, and who should be held accountable.

Ordinarily, a preliminary investigation is conducted and allows the suspect to respond to the charges in writing. But when a suspect has already been arrested (generally, without a warrant), a quicker process called an inquest is undertaken.

When the prosecutor finds probable cause to charge a person in court, the Information that contains the material charges is filed in court. When the court accepts the charges and affirms that there is probable cause, it issues a Warrant of Arrest.

ARRAIGNMENT

The court confronts the accused with the charges and asks the accused to plea if guilty or not

PRE-TRIAL

The parties outline their case, enumerate pieces of evidence, and identify witnesses



TRIAL

Parties appear before the court in adversarial proceedings; the court examines the evidence in formal

Presentation of prosecution evidence in chief

The prosecution proves that the accused is guilty beyond reasonable doubt. Most the evidence is presented through the oral testimony of witnesses under oath

Presentation of defense evidence in chief

The defense cast doubt over the guilt of the accused

After all evidence and affidavits have been presented and reviewed, both parties will be required to file a written memorandum summarizing their position. The case is then considered submitted for decision.

JUDGMENT

the court decides on the merits of the case, and will give a remedy or award damages to a party that successfully proves it.

BASIC CIVIL PROCEDURE

COMPLAINT

the claimant or plaintiff writes down facts and arguments against the act or omission of the respondent or defendant. Generally, the cause of action asserts that the defendant caused and owes plaintiff damages after loss or injury.

The complaint should be filed in the proper court: when it involves persons and personal interests, in the place where any of the parties reside; when it involves property, in the place where the property is located. After fees and docketing, the case will be raffled to a court. The summons must be properly served or notified upon the defendant to begin the case.

ANSWER AND REPLY

After being given a copy of the complaint, the defendant is required to file an answer. The plaintiff may opt to file a reply after.

CROSS CLAIM

A defendant may counter and ask for damages from a complainant.

INTERVENTION

Any other party whose rights and interests are affected by the case may ask permission from the court to join ongoing litigation.

PRE-TRIAL

the parties identify the admitted facts, the legal issues to be resolved, their respective evidence and witnesses, and trial dates. The court will also attempt to find a possible peaceful settlement.

TRIAL

Parties appear before the court in adversarial proceedings; the court examines the evidence in formal proceedings.

Presentation of plaintiff's evidence

A plaintiff establishes the cause of action and proves entitlement to restitution, reparation, or compensation. In some cases, the evidence may be presented in judicial affidavits and documents submitted, without further need for oral testimony.

Presentation of defendant's evidence

A defendant disproves the claim of plaintiff.

After all evidence and affidavits have been presented and reviewed, both parties will be required to file a written memorandum summarizing their position. The case is then considered submitted for decision.

JUDGMENT

The court decides on the merits of the case, and will give a remedy or award damages to a party that successfully proves it.



V. Laws that limit media rights and freedoms

A. Defamation

Defamation is a statement that injures a person's reputation. Libel is a type of defamatory speech that is written or published, expressed in physical form. Slander is spoken²⁸.

Libel is defined as “a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance tending to cause dishonor, discredit or contempt of a natural or juridical person, or to blacken the memory of one who is dead²⁹.” When defamatory statements are echoed or spread without identifying the source or speaker, it may be prosecuted as intriguing against honor.³⁰

The elements of the crime that must all be proven are:

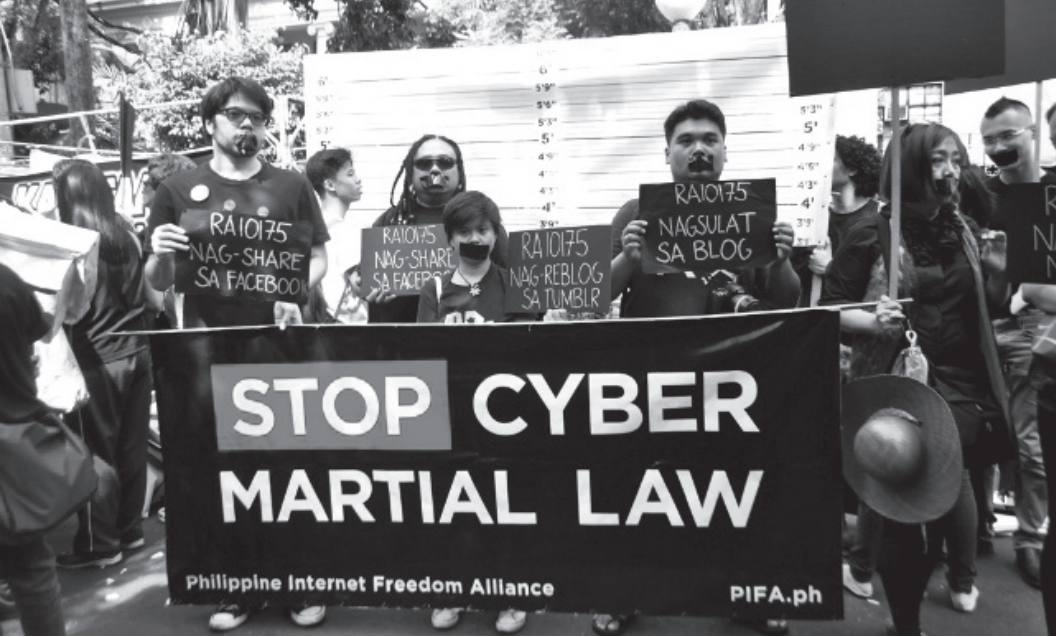
- There was an imputation statement) of a crime, vice, defect, act, omission, condition, status, or circumstance about a person.
- Such statement injures the reputation of the person; it was defamatory, because it causes dishonor, discredit, or contempt.
- The statement was published: it was made through writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition or any similar means.
- There was malice. When the person defamed is a private person, malice is presumed. When the person is a public figure or official, actual malice has to be proven. Actual malice is knowing that that a statement is false, and recklessly ignoring or not mentioning the truth.

- The person defamed is identifiable by other persons. If a person defamed is not named, the description or references should sufficiently identify him/her.
- When a computer system is used, the charge becomes **cyberlibel**.

	LIBEL	CYBERLIBEL
Persons liable	<ul style="list-style-type: none"> • Publisher • Author or editor • Editor or business manager • Proprietor/owner/printer 	<ul style="list-style-type: none"> • Author • Editor or business manager
Penalty	<p>Imprisonment: 6 months and 1 day to 4 years and 2 months</p> <p>Fine: P40,000 to P1,200,000</p>	<p>Imprisonment: 2 years, 4 months and 1 day to 8 years</p> <p>Fine: P6,000 up to the maximum amount determined by the Court</p>

The law on cybercrime³¹ generally upgrades the penalty for crimes. It increased the penalty for libel by one degree, effectively extending the prescriptive period from one year in the penal code, to fifteen (15) years.³² This means that a person defamed has a longer opportunity to file a case if the defamation was published electronically; in contrast, libel can only be filed within a year of publication.

The law provides the penalty for libel as either imprisonment or fine. The Supreme Court of the Philippines in 2008 issued



guidelines for courts to consider fines alone, if just according to the circumstances.³³ The United Nations Human Rights Committee in 2011, acting upon the request of a journalist who went to prison, declared that “imprisonment is never an appropriate penalty” for libel, and that the Philippines violated its treaty obligation under the International Covenant on Civil and Political Rights.³⁴

Civil libel is a suit that seeks monetary damages for a private or personal wrong.³⁵ The civil action is automatically part of the criminal action.

There are many concerns over defamation laws repressing the freedom of speech, expression, and of the press, which courts continually deal with. Deciding on the question of constitutionality of the cybercrime law, the Supreme Court declared that there is no liability for liking, sharing, or reacting to a libelous cyberlibel post on social media networks and other such interactive websites.³⁶ However, a comment or statement made by another person is altogether a new defamation that can give rise to a separate charge.

Some defenses against libel/cyberlibel:

- The person referred to, not being explicitly named, cannot be identified by an ordinary person. It is not enough that a person claims that he/she feels alluded to; a third person must be able to recognize the person defamed.
- The statement is not defamatory. The tone, circumstances, and context may impact the interpretation of words.
- There is no “actual malice” where the case is filed by/ the person defamed is a public official or public figure.³⁷ The higher standard gives leeway for reporting on public activity and conduct by public officials or public figures.
- The statement was true, and there are good and justifiable motives. Truth is not an absolute defense in libel cases, but it can diminish malice.
- The statement was made in private or privileged communications. Private communication, even if overheard, is not presumed malicious. Privileged communications exempt the speaker or the statement from prosecution.
- The statement is a fair and true report, made in good faith, and without any comments or remarks on government proceedings.
- There was a correction or retraction. However, this is not a complete defense; it usually serves to reduce the damages granted by the court. The retraction must admit that the statement is false, and that it is made to repair the inaccuracy.

B. Incitement and terrorism laws

Incitement laws punish speech that encourage another person to commit a crime. The law expressly penalizes incitement to war,³⁸ incitement to rebellion and insurrection³⁹, incitement to sedition⁴⁰, and incitement to terrorism⁴¹. All of these crimes target politically-related or politically-motivated speech. Incitement laws pose significant risk to journalists reporting or commenting on conflict, as courts have viewed context and timing can contribute, wittingly or unwittingly, to activity.

The Philippine Anti-Terrorism Act punishes incitement when there is a “reasonable probability” that the disputed speech will successfully incite others to commit terrorism⁴². This appears to follow the Brandenburg test, where an individual’s speech could fall under the unprotected category of incitement only if it leads to imminent lawless action, or imminent disorder.

Incitement laws in the Philippines protect the government and public order, but has not extended the same protection to private individuals. There is no law against hate speech, incitement to violence and discrimination.

Recent years have seen the role of the state and state actors being central to hate speech and discrimination, and the use of laws to suppress dissent.

C. Restrictions on access to information

The people have the constitutional right to information on matters of public concern.⁴³ There is a government policy of transparency and accountability for acts and transactions of government, as well as an obligation upon all public officials to make public documents accessible to, and readily available for inspection⁴⁴. The right to information can only be limited by law or reasonable conditions for access. However, no law has been passed that promotes or operationalizes the freedom of information regime in the country.

The latest executive order on freedom of information⁴⁵, issued in 2016, specifically lists exceptions:

1. Information covered by executive privilege;
2. Privileged information relating to national security, defense, or international relations;
3. Information concerning law enforcement and protection of public and personal safety;
4. Information deemed confidential for the protection of the privacy of persons and certain individuals;
5. Information, documents or records deemed confidential;
6. Prejudicial premature disclosure, such as actions or resolutions that have not been finalized;
7. Records of proceedings treated as confidential or privileged;
8. Matters treated as confidential under banking and finance laws; and
9. Any other matter considered confidential under laws and regulations.

The FOI executive order allows Filipino citizens to request any information about government transactions and operations, provided that it does not put into jeopardy privacy and matters of national security. There is an online electronic portal that courses requests to particular agencies⁴⁶. However, this system only covers the executive branch of government.

Separately, the legislative and judicial branches of government have protocols and instructions. Both houses of congress maintain a Legislative Information System, an online search-based system that allows access to information and status as well as download of full texts of bills, resolutions, and other acts of Congress. The courts have their own rules on access to court proceedings and records, which are considered public. The Rule on Access to Information About the Supreme Court categorically states that information will be denied if the request (1) is made by one whose identity is fictitious or not

legitimate; (2) is prompted by sheer idle curiosity; (3) made with a plainly discernible improper motive; (4) made for a commercial purpose; (5) is contrary to laws, morals, good customs, or public policy, e.g. when the request pertains to privileged documents or communications. Lower courts have also made their own rules, but which cannot be contrary to or less reasonable than the regulations set by the higher court.

D. Privacy laws

The right of privacy of individuals may be measured against an expectation of privacy; generally, the public and the media cannot cover or report on activities done in private spaces. There is also a Data Privacy Act⁴⁷ that protects individual personal information and regulates the processing of personal information by public and private entities.

Media is also bound by confidentiality rules in some court proceedings. The “best interests of the child” require that minors in court proceedings cannot be named⁴⁸; the risk of discrimination, harassment, and social vigilantism also prohibits the naming of rape victims⁴⁹, persons afflicted with AIDS⁵⁰, and with COVID-19.

VI. International mechanisms for the protection of journalists

From a human rights perspective, states are the main duty-bearers in enforcing, protecting, and fulfilling human rights. States are responsible and can be held accountable for their acts or omissions. On the other hand, state authorities are also the most common perpetrators of human rights violations.

The United Nations, the largest supranational organization, recognizes that the media freedom and the safety of

journalists are under threat around the globe. The UN Office of the High Commission on Human Rights (OHCHR) is mandated to promote and protect the effective enjoyment by all of all human rights, including the right to freedom of expression, and other rights of journalists and media workers. The Human Rights Council is an inter-governmental body within the system that discusses all thematic human rights issues and situations. Independently, there are special rapporteurs, experts appointed by the UN Human Rights Council, who are required to report and advise on human rights from a thematic or country-specific perspective. There has been a special rapporteur on freedom of expression since 1993.⁵¹

Countries can raise their situations to the attention of the Human Rights Council, and of the UN system during the Universal Periodic Review (UPR)⁵². It is a unique process which involves a review of the human rights records of all UN member states, under the auspices of the Human Rights Council. It provides the opportunity for specific groups to confront their government about action or inaction on human rights obligations. Advocacy groups may also request the special rapporteur to conduct investigations.

Recently, the UN has emphasized risks to the safety of journalists in the digital age, including vulnerability to becoming targets of unlawful or arbitrary surveillance and/or the interception of communications, hacking, including government-sponsored hacking, and denial of service attacks to force the shutdown of particular media websites or services, in violation of their rights to privacy and to freedom of expression. Various reports and declarations have continually addressed the threats of prosecution, arrest, imprisonment, denial of journalistic access and failure to investigate or prosecute crimes against journalists.

The Philippines is a party to most UN human rights treaties. In 2011, the UN Human Rights Committee ruled on a submission by a Filipino journalist that the libel law in the Philippines violated his rights. The Human Rights Council declared that the

sanction of imprisonment for libel is incompatible with Article 19 of the International Covenant on Civil and Political Rights, and reminded the Philippine government of its obligation to provide effective remedy for violation of the right to freedom of expression.

The Philippines is also a party to a regional instrument, the ASEAN Human Rights Declaration of 2012. The declaration defines a broad range of internationally accepted rights, including civil, political, economic, social and cultural rights. However, these instruments are recommendatory and there is no particular recourse for action, compared to Europe, Latin America, where states have been obliged to act on and prevent attacks on journalists⁵³. Taking into consideration these international obligations, the country updated its Philippine Plan of Action on the Safety of Journalists in 2019 and enhanced monitoring, investigation, and prosecution mechanisms to ensure safety of journalists.

Private non-government, non-profit groups with the specific objective of promoting press freedom worldwide have been instrumental and effective in compelling state action. Among these groups are the International Press Institute, a global network with members in 120 countries today; the Committee to Protect Journalists (CPJ), founded in 1981 in the US; Reporters without Border, founded in 1985 in France; and Justice for Journalists Foundation, a London-based organization which monitors attacks against media workers and funds investigations into violence and abuse against professional and citizen journalists. These groups have set up several platforms and networks worldwide to help the dialogue between the governments and media organizations. Non-government organizations, especially those with sectoral focus, have been able to more properly monitor adherence of states to human rights standards not only on paper, but in practice as well.

Endnotes

- 1 Committee to Protect Journalists. November 1, 2022. Killing with impunity: Vast majority of journalists' murderers go free.
- 2 Luna, Franco. "CHR: Freedom Parks protected from 'no permit, no rally' policy". Philstar.com. (<https://www.philstar.com/headlines/2022/01/19/2154943/task-force-taps-cops-media-security-stresses-not-all-journo-killings-work-related>)
- 3 Pinlac, Beatrice. NUJP calls on gov't to address culture of impunity for crimes vs journalists. November 3, 2022. <https://newsinfo.inquirer.net/1688806/nujp-calls-on-govt-to-address-culture-of-impunity-for-crimes-vs-journalists>
- 4 Center for Media Freedom and Responsibility, May 3, 2022 (<https://www.facebook.com/CMFR.Philippines/posts/5413890715288381>)
- 5 Navallo, Mike. Journalist Frank Cimatu convicted of cyber libel over FB post vs ex-agri chief. December 13, 2022. <https://news.abs-cbn.com/news/12/13/22/journalist-frank-cimatu-convicted-of-cyber-libel>
- 6 Attacks against media in the Philippines continue. Qurium: The Media Foundation. June 22, 2021 (<https://www.qurium.org/alerts/philippines/attacks-against-media-in-the-philippines-continue/>)
- 7 Clarin, A.M. Cyberattacks traced to PH hackers hailed by gov't as 'computer geniuses,' probe shows. Bulatlat.com. March 15, 2022 (<https://www.bulatlat.com/2022/03/15/cyberattacks-traced-to-ph-hackers-hailed-by-govt-as-computer-geniuses-probe-shows/>)
- 8 Clarin A.M., Red-tagging constitutes human rights violation — CHR Cordilera. Bulatlat.com. August 31, 2021 (<https://www.bulatlat.com/2022/03/15/cyberattacks-traced-to-ph-hackers-hailed-by-govt-as-computer-geniuses-probe-shows/>)
- 9 Philippine News Agency. April 2, 2021 (<https://www.pna.gov.ph/articles/1135652>)
- 10 Agabin, Pacifico (2016). *Mestizo: The Story of the Philippine Legal System*, 2nd ed., UP Law Center
- 11 Section 4, Article III, 1987 Constitution
- 12 Section 4, Article III, 1987 Constitution
- 13 Section 3, Article III, 1987 Constitution
- 14 Section 11, Article XVI, 1987 Constitution
- 15 Act No. 3815, December 8, 1930, as amended
- 16 Republic Act No. 386, June 18, 1949, as amended
- 17 Republic Act No. 8293, June 6, 1997
- 18 Republic Act No. 53, October 5, 1946, as amended by Republic Act No. 11458, August 30, 2019
- 19 Republic Act No. 11699, April 13, 2022

20 This provision mirrors Article 19 of the Universal Declaration on Human Rights.

21 Article 8 of the Civil Code of the Philippines provides that ‘judicial decisions applying to or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines’.

22 This is enunciated in the case *Chavez v. Gonzales*, G.R. No. 168338, February 15, 2008

23 Jay L. Batongbacal, JJ Disini, Michelle Esquivias, Dante Gatmaytan, Oliver Xavier A. Reyes, and Theodore Te, *Building a Resilient Judicial System*, University of the Philippines College of Law, May 2020, available at: <https://law.upd.edu.ph/wp-content/uploads/2020/05/Building-a-Resilient-Judicial-System-UP-College-of-Law-7-May-2020.pdf>

24 Section 8, Article VIII, 1987 Constitution

25 Section 1, Article III, 1987 Constitution

26 Section 3, Article III, 1987 Constitution

27 Section 3, Article III, 1987 Constitution

28 Article 358, Revised Penal Code

29 Article 353, Revised Penal Code

30 Article 364, Revised Penal Code

31 Republic Act No. 10175, September 12, 2012

32 The 15-year period is being contested in the appeal of journalist Maria Ressa, who was convicted by a trial court for cyberlibel in 2020. The issue of prescription has yet to be finally decided by the Supreme Court. See: Jairo Bolledo, *Court of Appeals denies Maria Ressa’s appeal in cyber libel case*, Rappler.com, October 11, 2022, available at: <https://www.rappler.com/nation/court-appeals-denies-maria-ressa-appeal-cyber-libel-case/>

33 SC Administrative Circular No. 08-2008, January 25, 2008

34 *Alexander Adonis v. The Philippines*, Communication No. 1815/2008

35 The concept *per se* does not exist, but can be inferred from the application of Articles 30 and 33 of the Civil Code taken with Article 353 of the Revised Penal Code.

36 The decision on the constitutionality of the cybercrime law also discussed cyber libel. *Disini v. Secretary of Justice*, G.R. No. 203335, February 18, 2014

37 “Actual malice” was defined in the landmark case of *New York Times v. Sullivan*

38 Article 118, Revised Penal Code

39 Article 138, Revised Penal Code

40 Article 142, Revised Penal Code

41 Section 9, Republic Act No. 11479 (Anti Terrorism Act)

42 Implementing Rules and Regulations, R.A. No. 11479, October 16, 2020

43 Section 7, Article III, 1987 Constitution

44 Code of Conduct and Ethical Standards for Public Officials and Employees;

Republic Act No. 6713,

45 Executive Order No. 2, series of 2016

46 <https://www.foi.gov.ph/>

47 Republic Act No. 10173, August 15, 2012

48 Youth offenders are covered in Presidential Decree No. 603, December 10, 1974; parties in Family Court cases in Republic Act No. 8369, October 28, 199

49 Republic Act No. 8505, February 13, 1998

50 Republic Act No. 8504, February 13, 1998

51 The website of the office: <https://www.ohchr.org/en/special-procedures/sr-freedom-of-opinion-and-expression>

52 The website of the Philippine reports: <https://www.ohchr.org/en/hr-bodies/upr/ph-index>

53 The Inter-American Court of Human Rights has declared the State of Colombia internationally responsible for the death of journalists and for the failure to guarantee their right to freedom of expression. In the case of *Carvajal Carvajal v. Colombia* (Serie C No. 352, March 13, 2018), the Court ruled that both the killing and the lack of investigation constituted a violation of the right to free expression. It emphasized that the combination of violence and impunity has a twofold negative effect: first, a chilling effect on other journalists covering similar stories, and second, on the community that will no longer receive complete information.



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