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F R E E D O M
of
E X P R E S S I O N
and
the
M E D I A



b a s e l i n e
s t u d i e s

'Everyone has the right to freedom of expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.'

ARTICLE 19 OF THE UNIVERSAL
DECLARATION OF HUMAN RIGHTS



FREEDOM OF EXPRESSION AND THE MEDIA IN THE PHILIPPINES

*part of a series of baseline studies on
seven Southeast Asian countries*

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ISBN 1 902598 80 6

December 2005

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Acknowledgements

This report is a product of cooperation between ARTICLE 19 and the Center for Media Freedom and Responsibility (CMFR). The first draft of the report was written by Luis Teodoro (consultant of CMFR). Dini Widiastuti (Asia Programme Officer of ARTICLE 19) updated and added sections to the report. Comments and editing were provided by two ARTICLE 19 staff: Debra Long (Asia Programme Officer) and Luitgard Hammerer (Director of Asia and Europe Programmes). Copy-editing was done by Dini Widiastuti. The report was proof-read by Joanna Hoare. The cover was designed by Mardiana Tukiran

We would like to thank the European Commission for providing funding for this study and seven other baseline studies on freedom of expression and the media. These studies are parts of the project “Promoting and Protecting Freedom of Expression and Freedom of Information in the ASEAN Region”. We would also like to thank other donors who have contributed to this project: the Open Society Foundation, the Royal Norwegian Embassy in Bangkok and UNESCO.

“This project is co-financed by the European Initiative for Democracy and Human Rights, European Commission. Opinions in this publication is fully the responsibility of ARTICLE 19 and Internews, and therefore do not reflect the official views of the European Commission.”



“This study was published with support from UNESCO. The ideas and opinions expressed in this study are those of the authors and do not necessarily represent the views of UNESCO. The designations employed and the presentation of material throughout the publication do not imply the expression of any opinion whatsoever on part of UNESCO concerning the legal status of any country, territory, city or area, or of its authorities, or concerning its frontiers or boundaries.”

Freedom of Expression and the Media in the Philippines

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1. INTRODUCTION

The media in the Philippines are often remarked upon as being the freest in Asia. Conventional academic opinion in the Philippines attributes the country's long tradition of respect for free expression and a free press to the American colonial administration.

The Philippines was a colony of Spain from 1521 to 1898. Following the defeat of the Spanish, in the Spanish-American war in 1898, the revolutionary leader Emilio Aguinaldo declared independence on June 12, 1898. However, this independence was not recognised by the United States, and the islands were transferred to the United States by Spain under the terms of the Treaty of Paris for the sum of USD 20 million. The Philippines' independence was finally recognised on July 4, 1946, when, following nearly 50 years of occupation, the United States withdrew its sovereignty over the islands.

During the American period of administration, American jurisprudence, together with the American court system, was implemented within the Philippines. During this period, press freedom was recognised, although it was exercised only to a limited extent, and there were few problems related to free expression in the Philippines for much of the period. Only one celebrated case, involving the conviction for libel of a newspaper publisher and editor who had advocated early Philippine independence, dampened press freedom and free expression.¹

A commitment to free expression, the right to information and press freedom, with which the leaders of both the 19th century Philippine Reform Movement and the 1896 Revolution were familiar, was continued in the Malolos Constitution of the First Philippine Republic (1899) nearly 103 years ago. The same provisions of the Malolos Constitution not only survived, but were even expanded, in the country's subsequent Constitutions.² But the current state of free expression in the Philippines, demonstrates how the existence of both liberal laws and a liberal tradition is no guarantee for the full exercise of free expression. During different administrations, freedom of expression and press freedom have been challenged. There are four contributing factors for this that will be important foci of this report:

¹ Pineda-Ofreneo, Rosalinda., *The Manipulated Press: A History of Philippine Journalism Since 1945 – 2nd edition*, (Manila: Solar Publishing Corporation, 1986), p.238.

² Teodoro, Jr, Luis V. and Rosalinda V. Kabatay, *Mass Media Laws and Regulations in the Philippines – 2nd ed.*, (Singapore: Asian Media Information & Communication Centre, 2001), p. 1.

- The weakness of the Philippine government relative to control over its local organs.
- The continuing armed struggle and the security forces' response to it.
- The more recent official concern over terrorism.
- The failure of the Philippine mass media to provide citizens with balanced and objective information they need on matters such as their own rights.

Presently, the assassination of journalists is one of the most problematic issues of free expression in the Philippines, a problem that has been ongoing since 1986. Ironically, this was the year when the Marcos dictatorship was overthrown by the first "People Power" uprising, which succeeded in part because citizens as well as the press pushed the limits of freedom beyond existing laws.

The alleged suspects for the murder of certain prominent journalists have been local politicians and policemen loyal to them and the killings have been regarded as a response to criticism of local government officials made in the media by the murdered journalists.³

Another recent challenge to freedom of expression is the current emphasis on implementing anti-terrorism measures. Loosely defined by government security forces, anti-terrorism is often used as an excuse for the suppression of free expression in the form of withholding permits for public demonstrations as well as veiled threats against legal left-wing groups.

What is concerning is that there is very little response from either the public at large or from the mass media towards the erosion of freedom of expression. Self-censorship, and government control over the mass media, creates the environment where there is a lack of reliable, accurate information on vital issues actually reaching most Filipinos.

This study will discuss the characteristics, role and history of the mass media in the Philippines, the laws that have a bearing on media performance, media ownership, and how political developments, such as the focus on anti-terrorism and scandals involving successive presidents, tend to define the exercise of press freedom and free expression.

³ *Philippine Journalism Review* (August 2002).

2. KEY RECOMMENDATIONS

To the Philippine government and parliament:

- Take all necessary measures to tackle the culture of impunity and bring the perpetrators of violence against journalists and activists to justice.
- Amend the constitution to allow foreign investment in the media sector.
- Transform the Philippine Broadcasting Service and the National Broadcasting Network into genuine public service broadcasters.
 - Draw up, based on a public consultation process, a broadcasting policy for the Philippines, and develop broadcasting legislation that is in line with international standards. In particular, the legislation should:
 - Provide for licensing procedures that are fully transparent and fair;
 - Explicitly state the independence of the broadcast regulator;
 - Ensure the regulator is truly independent from political and commercial pressures through appropriate funding arrangements, membership and appointment procedures;
 - Provide clear regulations to limit ownership concentration; and
 - Include specific provisions for the promotion of diversity in broadcasting, such as the allocation of a particular number of licences for community broadcasting, and provisions on programming in minority languages.
- Replace the Movie and Television Review and Classification Board (MTRCB) and the Videogram Regulatory Board (VRB) by a new independent institution that complies with international standards of film and video classification.
- Amend the penal code to:
 - Repeal criminal defamation provisions;
 - Bring the provisions relating to national security and public order in line with international standards.
- Develop civil defamation provisions in line with international standards.
- Adopt and implement an access to information law that fully complies with international standards in this field and establish an independent body, for instance an information commissioner, to oversee its implementation.
- Ensure that all measures taken to combat terrorism, including the new legislation, are fully compatible with international human rights standards.
- Protect and guarantee the freedom of assembly.



To the media and civil society:

- Campaign for the repeal of the MTRCB and VRB legislation and for their replacement with new institutions.
- Campaign for the development of a high-standard broadcasting law that includes the creation of an independent regulatory body to oversee TV and radio broadcasting.
- Encourage, through media literacy campaigns, public awareness of and involvement in improving the professional and ethical standards of the mass media.
- Bring media advocacy and support organisations together to campaign for the prosecution of all those responsible for the murder of journalists.
- Support continuing media education programmes meant to enhance professional and ethical awareness and compliance.
- Improve and increase coverage on areas outside the capital, and on marginalised people and areas.
- Enhance public and media awareness of the human rights implications of the anti-terrorism bill, and campaign for amendments to the bill that will genuinely address the terrorism problem without compromising civil liberties and free expression.
- Encourage public and media support for the passage of the access to information bill through a sustained public and media information campaign.



3. BACKGROUND

The Republic of the Philippines is a democratic State. Its government is unitary and is headed by a president who is elected directly by the national electorate every six years and is ineligible for re-election. Legislative power is in the hands of a bicameral Congress with a similar structure to that of the United States. The two houses are the Senate, containing 24 senators, and the House of Representatives, with 219 members. Senators are elected at large, not representing any particular district or constituency. The judiciary is highly developed and is administered by the Supreme Court.⁴

The Philippines, which consists of over 7000 islands, was a colony of Spain between 1521 and 1898. Although victorious against Spain, the forces of the 1896 Revolution failed to have the independence of the Philippines recognised and were eventually defeated in 1900 by the United States, who exercised sovereignty over the country, by virtue of the 1898 Treaty of Paris until 1946.

Elements of Spanish culture are still evident in the religion, language and social structure of the country. Eighty-five per cent of the Philippine's population belong to the Catholic faith and twenty-five per cent of the vocabulary of the national language, Filipino, is Spanish or Spanish-derived. According to the 1987 Constitution, Filipino is the national language. It is also the official language, together with English. Filipino language is based on Tagalog, the language of the largest native group in the country.⁵ Apart from Tagalog there are about 170 languages spoken in the Philippines, making it one of the most ethnically diverse countries in Asia.⁶

A land tenancy system based on the feudal hacienda model persists, and is the key element in prolonging social instability. The Philippine poor are largely landless peasants. Landowners as well as big business representatives dominate both politics and the economic system. The interests of landlords, for example, have historically dominated both houses of Congress, a fact which has made reform of the feudal tenancy system, inherited from Spain, problematic. The United States, has also remained an influential foreign player within the country.

⁴ Nolleto, Jose, *The 1987 Constitution of the Philippines with Highlights of the New Constitution 1992 revised edition.*, (Mandaluyong City: National Bookstore, 1992).

⁵ According to the 2000 Census, there were 22 million people Tagalog native speakers and 18.5 million Cebuano.

⁶ There has been an allegation that in recent decades, the government has worked to make the country more culturally homogeneous

(<http://en.wikipedia.org/wiki/Philippines#Geography>)

3.1. Constitutional and Legal Systems

Philippine Constitution

The Philippines has had four constitutions: the Malolos Constitution of 1898, the 1935 Constitution, the 1973 or (Ferdinand) Marcos Constitution and the 1987 or People Power Constitution. Each constitution represents key political developments. The first, the Constitution of the First Philippine Republic of 1899 grew out of the revolution against Spain and its subsequent triumph. The second was promulgated and adopted under the US Commonwealth, although it remained in force until 1972, when Ferdinand Marcos, utilising one of its provisions, placed the entire country under martial law and made himself absolute ruler. The third was adopted during the martial law period, when it was unanimously approved in pre-arranged community meetings.

The fourth was the result of the overthrow of Marcos in 1987, and was drafted under the presidency of Marcos's successor, Corazon Aquino. It is by far the most liberal constitution the country has ever had in terms of human rights and free expression, driven as it was by its drafters' determination to prevent the recurrence of authoritarian rule.

At the time of the writing of this report, there are ongoing efforts towards constitutional amendment. Among the amendments proposed are the shift from presidential-unitary system to federal-parliamentary system and permitting foreign ownership of property and public utilities, including media outlets.

The court system and the election

The United States introduced some of its own institutions to the feudal society it found in the Philippines at the beginning of the twentieth century. The Philippine court system, for example, is modelled after that of the US, with a Supreme Court at its apex. Supreme Court decisions became part of the body of Philippine laws.

The highly developed court hierarchy has two main branches.⁷ The first is the integrated judicial system made up of the Supreme Court, the Court of Appeals and the Regional Trial Courts (RTCs). Below the RTCs are the courts of the First Level made up of Metropolitan Trial Courts, the Municipal Trial Courts and the Municipal Circuit Trial Courts. There is no trial by jury, a departure from US practice.

⁷ Teodoro and Kabatay, see note 2 on page 4, p. 4.



Historically, elections in the Philippines have been described as free, but tainted by fraud and violence. With few exceptions the fate of candidates is reportedly largely dependent on their financial capacity to wage a media campaign as well as to buy votes and intimidate voters.

In the 16 years following the end of authoritarian rule in 1986, when elements of the old elite identified with Marcos bided their time, eventually returning to power a few years later, new and more creative means to subvert elections have been developed. One of the more recent is “*dagdag bawas*” (add-subtract) which means candidates pay off election officials, to subtract votes from their opponents and to add these to their own. “*Dagdag bawas*” caused uproar in the 1992 and 1998 Senate elections.

3.2. Political and Historical Background

The Marcos era and the media during the martial law

Ferdinand Marcos ruled the Philippines from 1965 to 1989. Among his most notorious decision is the imposition of martial law in 1972-1981 through *Presidential Proclamation No. 1081*. Under the Proclamation, mass media personnel were listed as supporters of communism who should be arrested. Among the other reasons put forward for the adoption of the Proclamation was that media had abused its relative freedom.⁸

Immediately after the adoption of the Proclamation, all media facilities were closed and leading journalists were arrested. Soon afterwards, a broadsheet, the *Daily Express*, owned by Roberto Benedicto, one of Marcos’ supporters, started operating. Benedicto also owned Channel 9 and Radio Philippines Network. Cronyism, happened not only in the media industry, but also in other areas. Marcos confiscated businesses owned by oligarch families and distributed them to his supporters, largely small-time businessmen.

During the martial law years, corruption was rampant and cronyism was at its peak. The press was severely controlled and repressed through a score of regulation. By the early 1980s, public dissatisfaction with the Marcos regime had grown, and it culminated with the assassination of Benigno Aquino Jr. in 1983.

In 1986, Marcos called for a snap election. His opponent at the election was Corazon Aquino, the wife of Benigno. Mrs Aquino was supported by the opposition and Catholic Church, and had broad public support. Both Aquino and Marcos claimed that they won the election. This political

⁸ Ibid., p.122.

crisis ended in February 1986, after a few days of EDSA Revolution or the People Power 1,⁹ where millions of Filipinos, including Cardinal Jaime Sin,¹⁰ took to the streets to demand that Marcos step down and for Corazon Aquino to be declared the new president. In 25 February, Marcos fled the country and Aquino took over the presidential seat.

Post-Marcos era

In January 2001, millions of people once again marched down EDSA. This time they rallied against President Joseph Estrada, a former actor who was popular with the masses and became the country's 13th president in June 1998. In November 2000 the President was impeached by the House of Representatives due to his involvement in illegal gambling, *jueteng*.¹¹

An impeachment court was formed shortly afterwards—the court was comprised mainly of Estrada's allies. It was the public's disappointment on the court proceedings that led to the People Power 2 or EDSA 2, and the overthrow of Joseph Estrada. The Armed Forces and the Church supported Vice President Gloria Macapagal-Arroyo, the daughter of former President Diosdado Macapagal, to replace Estrada. On 20 January 2001, the Supreme Court declared the presidency vacant and the Chief Justice swore in Mrs Arroyo as acting President.

The Arroyo presidency has been hounded by questions over the legitimacy of her first presidential term, her alleged family involvement in corruption and the allegation of vote rigging in the 2004 election. In May 2001, Estrada's supporters marched in thousands to the presidential palace and demanded that the ousted president, who had previously been arrested on charges of plunder, be released and reinstated. In June 2005, a recording of a conversation between the President and an official of the Election Commission, Virgilio Garcillano, was leaked to the media, which allegedly prove the allegations that Arroyo manipulated the voting process in 2004, and that the election commissioner Garcillano was implicated in it. By the time this report went to printing this scandal had not been resolved.

⁹ EDSA stands for Epifanio de los Santos Avenue, the main highway in Metro Manila and the main site of the rallies.

¹⁰ The late Cardinal Jaime Sin was the archbishop of Manila and one of the most influential leaders of the Philippine Catholic Church. He was a prominent player in the country's politics for 20 years, during which he helped to secure Corazon Aquino and Gloria Macapagal-Arroyo's presidencies.

¹¹ This scandal is known as "juetengate".



Demonstration demanding Gloria Arroyo resignation (Photo: Indymedia)

The Church

Despite the policy of separation of between the church and State, the Roman Catholic Church exerts considerable influence in the both governmental and non-governmental affairs. This influence is particularly apparent on the government policy on family planning and prohibition of divorce.

The church played a significant role in installing Corazon Aquino and Gloria Macapagal-Arroyo as president. Clergies like the late Cardinal Jaime Sin, was the symbol of church involvement in politics. In EDSA 1, the Cardinal motivated people to go to the streets, whilst in EDSA 2, he condemned Joseph Estrada in a mass in Manila and praised Arroyo as ‘one who epitomizes the Christian, feminine ideal’.¹²

Nevertheless, the relationship between the church and Mrs Arroyo is rumoured to be troubled, in particular after an incident, on 14 October 2005, where the police fired water cannons during a prayer procession in which a former vice-president and three Catholic bishops were at the front. The incident has provoked condemnation and is regarded as damaging for the President’s popularity.

Conflict and terrorism

Conflict in the southern part of the Philippines has been in evidence since the 14th Century. Since then factions of the Muslim population in the island of Mindanao have been fighting for independence. The factions that have been struggling for the separation of Mindanao from the

¹² Delgado-Yulo, Karla, “Woman on the Verge”, *Philippine Daily Inquirer*, 5 November 2000

Republic of Philippines since the 1970s are the Moro National Liberation Front (MNLF) and the Moro Islamic Liberation Front (MILF). The Philippine government has signed a peace agreement with each group, but sporadic violence still continues. In recent years, the island has been linked with terrorist groups as Abu Sayyaf and Jemaah Islamiyah. Both have radical Islamic groups that are well-known for a series of kidnappings and bombing, not just in the Philippines but also in other countries in the region.

Mindanao is also the base of the New People's Army (NPA), the military wing of the Communist Party of the Philippines (CPP).¹³ The NPA aims to overthrow the government through protracted guerrilla warfare, although the government does not categorise the NPA as a terrorist organisation. A peace process between the parties was agreed in February 2000.

4. INTERNATIONAL AND CONSTITUTIONAL OBLIGATIONS

4.1. The Importance of Freedom of Expression

Article 19 of the *Universal Declaration on Human Rights* (UDHR) guarantees the right to freedom of expression in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.¹⁴

The UDHR, as a UN General Assembly resolution, is not directly binding on States. However, parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948.¹⁵

The *International Covenant on Civil and Political Rights* (ICCPR),¹⁶ a treaty ratified by over 150 States, including the Philippines, imposes

¹³ Founded 1930, the CPP was decimated by military defeats in the early 1950s, but was re-established in 1968 by young university-based leftist intellectuals.

¹⁴ UN General Assembly Resolution 217A(III), adopted 10 December 1948.

¹⁵ See, for example, *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd Circuit).

¹⁶ UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force



formal legal obligations on State Parties to respect its provisions and elaborates on many of the rights included in the UDHR.¹⁷ Article 19 of the ICCPR guarantees the right to freedom of expression in terms very similar to those found at Article 19 of the UDHR:

1. Everyone shall have the right to freedom of opinion.
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.

Freedom of expression is also protected in all three regional human rights instruments, by Article 10 of the *European Convention on Human Rights*,¹⁸ Article 13 of the *American Convention on Human Rights*¹⁹ and Article 9 of the *African Charter on Human and Peoples' Rights*.²⁰ The right to freedom of expression enjoys a prominent status in each of these regional conventions and, although the Philippines cannot be a party to them, the judgments and decisions issued by courts under these regional mechanisms, offer an authoritative interpretation of freedom of expression principles in various different contexts.

Freedom of expression is a key human right, in particular because of its fundamental role in underpinning democracy. At its very first session, in 1946, the UN General Assembly adopted Resolution 59(I) which states: "Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated."²¹

As the UN Human Rights Committee has said: "The right to freedom of expression is of paramount importance in any democratic society."²²

23 March 1976.

¹⁷ The Philippines ratified the International Covenant on Civil and Political Rights in 1986. It has also ratified the International Convention on Elimination of All Forms of Racial Discrimination in 1967, the Convention on Equality and anti Discrimination Against Women in 1981, International Covenant on Economic, Social and Cultural Rights in 1974, International Convention on the Rights of the Child in 1990. No other countries in Southeast Asia has ratified as many UN treaties as the Philippines.

¹⁸ Adopted 4 November 1950, in force 3 September 1953.

¹⁹ Adopted 22 November 1969, in force 18 July 1978.

²⁰ Adopted 26 June 1981, in force 21 October 1986.

²¹ 14 December 1946.

²² *Tae-Hoon Park v. Republic of Korea*, 20 October 1998, Communication No. 628/1995, para. 10.3.

4.2. Guarantee of Freedom of Expression in the Philippine Constitution

All four Philippine Constitutions have acknowledged free expression and press freedom, although this has not always ensured effective protection of these rights, notably during the Marcos era. Both have always been part of the Filipinos' long struggle for freedom and are part of the Philippine revolutionary tradition.

The Malolos Constitution guaranteed that no Filipino would be deprived of 'the right to freely express his ideas or opinions, orally or in writing, through the use of the press and similar means'.

American control at the onset of the 20th century brought the US Constitution's First Amendment into the Philippine legal system through President William McKinley's Instructions to the Second Philippine Commission. Freedom of speech and of the press were subsequently incorporated into the 1935 Constitution, together with all the relevant jurisprudence from US and British constitutional cases. The same provision was largely adopted by the 1973 Constitution.

The People Power Constitution guarantees in Article III – Bill of Rights – freedom of expression (Section 4), privacy (Section 3) and the right to information (Section 7).²³


Section 4 of Article III reads as follows:

No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

The Constitution also contains other provisions with implications for media and freedom of expression:

Article IX-C on the Commission on Elections empowers the Commission to "supervise or regulate the enjoyment and utilisation of all franchises and permits for the operation of...media of communication... to ensure equal opportunity, time and space and the right to reply, including reasonable equal rates therefore, for public information campaigns and forums..."

²³ http://www.supremecourt.gov.ph/Constitution/1987_constitution.htm#Bill_of_Rights



Article XVI (General Provisions) Section 11 limits media ownership to “citizens of the Philippines, or to corporations, cooperatives or associations wholly owned and managed by such citizens.” The same section empowers Congress to “regulate or prohibit monopolies in commercial mass media when the public interest so requires.”

4.3. Freedom of Information under International Law

In the international human rights instruments noted above, freedom of information was not set out separately but was instead included as part of the fundamental right to freedom of expression. Freedom of expression, as noted above, includes the right to seek, receive and impart information. Freedom of information, including the right to access information held by public authorities, is a core element of the broader right to freedom of expression. This has been attested to by numerous authoritative international statements.

The UN Special Rapporteur on Freedom of Opinion and Expression has provided extensive commentary on this right in his Annual Reports to the UN Commission on Human Rights. In 1997, he stated:

The Special Rapporteur, therefore, underscores once again that the tendency of many Governments to withhold information from the people at large ... is to be strongly checked.²⁴

His commentary on this subject was welcomed by the UN Commission on Human Rights, which called on the Special Rapporteur to “develop further his commentary on the right to seek and receive information and to expand on his observations and recommendations arising from communications”.²⁵ In his 1998 Annual Report, the Special Rapporteur declared that freedom of information includes the right to access information held by the State:

[T]he right to seek, receive and impart information imposes a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems....²⁶

²⁴ Report of the Special Rapporteur, 4 February 1997, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/1997/31.

²⁵ Resolution 1997/27, 11 April 1997, para. 12(d).

²⁶ Report of the Special Rapporteur, 28 January 1998, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/1998/40, para. 14.

In November 1999, the three special mandates on freedom of expression—the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression—came together for the first time under the auspices of ARTICLE 19. They adopted a Joint Declaration which included the following statement:

Implicit in freedom of expression is the public’s right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people’s participation in government would remain fragmented.²⁷

The right to freedom of information has also explicitly been recognised in all three regional systems for the protection of human rights.

4.4. Guarantee to the Right to Information in the Philippine Constitution

The constitutional guarantee (in Article III, Section 7) of access to information—a right crucial to an informed and free press—is related to Article VI, Section 16 (4) of the 1987 Constitution, which requires the two houses of Congress to ‘keep a journal of [their] proceedings, and from time to time publish the same’. Section 20 of the same Article mandates that ‘the records and the books of accounts of the Congress shall be preserved and be open to the public’.

The right to information is in fact a general principle, as mandated in Article II (Declaration of Principles): “... the state adopts and implements a policy of full public disclosure of all its transactions.”

Such provisions led the Supreme Court to rule in favour of newspaper reporters who were seeking information on reports that certain Marcos-period legislators had received loans from the Government Service Insurance System just before the 1986 election. On the right to information, the Court stated:

²⁷ The Joint Declaration was adopted on 26 November 1999.



The cornerstone of the republican system of government (said the court) is delegation of power by the people to the state. In this system, government agencies and institutions operate within the limits of the authority conferred by the people. Denied access to information on the inner workings of government, the citizenry can become prey to the whims and caprices of those to whom power has been delegated....Petitions are practitioners in media. As such, they have both the right to gather and the obligation to check the accuracy of the information they disseminate. For them, the freedom of the press and of speech is... vital to the exercise of their professions. The right of access to information assures that these freedoms are not rendered nugatory by the government's monopolising pertinent information. The right to information... is meant to enhance the widening role of the citizenry in governmental decision-making as well as checking abuse in government.²⁸

4.5. Restrictions on Freedom of Expression

The right to freedom of expression is not absolute; both international law and most national constitutions recognise that it may be restricted. However, any limitations must remain within strictly defined parameters. Article 19(3) of the ICCPR lays down the conditions which any restriction on freedom of expression must meet: 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.

A similar formulation can be found in the European, American and African regional human rights treaties. These have been interpreted as requiring restrictions to meet a strict three-part test.²⁹

International jurisprudence makes it clear that this test presents a high standard which any interference must overcome. The European Court of Human Rights has stated: "Freedom of expression ... is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly established."³⁰

²⁸ *Valmonte v. Belmonte* (170 SCRA 256 [1989]).

²⁹ See, *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7 (UN Human Rights Committee).

³⁰ See, for example, *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88,

First, the interference must be provided for by law. This requirement will be fulfilled only where the law is accessible and ‘formulated with sufficient precision to enable the citizen to regulate his conduct’.³¹ Second, the interference must pursue a legitimate aim. The list of aims in Article 19(3) of the ICCPR is exclusive in the sense that no other aims are considered to be legitimate as grounds for restricting freedom of expression. Third, the restriction must be necessary to secure one of those aims. The word “necessary” means that there must be a “pressing social need” for the restriction. The reasons given by the State to justify the restriction must be “relevant and sufficient” and the restriction must be proportionate to the aim pursued.

The Constitution of the Philippines, however, does not explicitly provide for restrictions to the right to freedom of expression. The only restriction to the rights to expression and information and press freedom is encapsulated in the provision on the right to privacy. Article III, Sections 3 of the Constitution states:

(1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

4.6. Freedom of Expression and the Media

The guarantee of freedom of expression applies with particular force to the media, including the broadcast media and public service broadcasters. The European Court of Human Rights, for example, has consistently emphasised the “pre-eminent role of the press in a State governed by the rule of law”.³² It has further stated:

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.³³

para. 63.

³¹ *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para. 49 (European Court of Human Rights).

³² *Thorgeirson v. Iceland*, see note 30 on page 18.

³³ *Castells v. Spain*, 24 April 1992, Application No. 11798/85, para. 43.



As the UN Human Rights Committee has stressed, a free media is essential in the political process:

[T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.³⁴

The Inter-American Court of Human Rights has stated: “It is the mass media that make the exercise of freedom of expression a reality.”³⁵ Media as a whole merit special protection, in part because of their role in making public ‘information and ideas on matters of public interest. Not only does [the press] have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of “public watchdog”’.³⁶ It may be noted that the obligation to respect freedom of expression lies with States, not with the media *per se*. However, this obligation does apply to publicly-funded broadcasters. Because of their link to the State, these broadcasters are directly bound by international guarantees of human rights. In addition, publicly-funded broadcasters are in a special position to satisfy the public’s right to know and to guarantee pluralism and access, and it is therefore particularly important that they promote these rights.

4.7. Other International Standards Relevant to Freedom of Expression and the Media in the Philippines

Privacy

Like the right to freedom of expression, the right to privacy is protected under all major international human rights instruments, with the exception of the African Charter on Human and Peoples’ Rights.³⁷ For example, Article 17 of the ICCPR states that

³⁴ UN Human Rights Committee General Comment 25, issued 12 July 1996.

³⁵ *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 34.

³⁶ *Thorgeirson v. Iceland*, note 30 on page 18.

³⁷ This does not mean that the notion of privacy is alien to African States; privacy is protected in the national constitutions of Cameroon (Article 12), Eritrea (Article 18) and Kenya (Article 70), to name but a few.

No-one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

However, the right to respect for private life is not an absolute right. Like freedom of expression, it may be limited 1) in accordance with law, 2) in pursuit of a legitimate aim and 3) only to the extent ‘necessary in a democratic society’.

The question whether an invasion of privacy can be justified will often turn on the notoriously vague notion of “public interest”. While courts have noted that the phrase “public interest” is not necessarily what the public is interested in,³⁸ it is difficult to define the concept in a positive way.³⁹ However, it is clear that, to avoid a chilling effect, the public interest must be defined broadly so that journalists and editors are not forced to make excessively fine distinctions with the result that the flow of important information to the public is diminished.

Pluralism

Article 2 of the ICCPR places an obligation on States to ‘adopt such legislative or other measures as may be necessary to give effect to the rights recognised by the Covenant’. This means that States are required not only to refrain from interfering with rights but also to take positive steps to ensure that rights, including freedom of expression, are respected. In effect, governments are under an obligation to create an environment in which a diverse, independent media can flourish, thereby satisfying the public’s right to know.

An important aspect of States’ positive obligations to promote freedom of expression, is the need to promote pluralism within, and ensure equal access of all to, the media. As the European Court of Human Rights has stated: “[Imparting] information and ideas of general interest ... cannot be successfully accomplished unless it is grounded in the principle of pluralism”.⁴⁰ The Inter-American Court has held that freedom of expression requires that “the communication media are potentially open to all without discrimination or, more precisely, that there be no individuals or groups that are excluded from access to such media”.⁴¹

³⁸ See, for example, *National Media Ltd. and Ors v. Bogoshi*, 1998(4) SA 1196 (SC), at 1212.

³⁹ In *Aubry v. Éditions Vice-Versa Inc.* [1998] 1 SCR 591, para. 26, Canadian Supreme Court Chief Justice Lamer noted: “It is inevitable that the concept of public interest is imprecise.”

⁴⁰ *Informationsverein Lentia and Others v. Austria*, 24 November 1993, Application Nos. 13914/88 and 15041/89, para. 38.

⁴¹ *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, note 35 on page 20, para. 34.



The UN Human Rights Committee has stressed the importance of a pluralistic media in nation-building processes, holding that attempts to straight-jacket the media to advance “national unity” violate freedom of expression: “The legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democratic tenets and human rights.”⁴²

Public Service Broadcasting

The advancement of pluralism in the media is also an important rationale for public service broadcasting. A number of international instruments stress the importance of public service broadcasters and their contribution to promoting diversity and pluralism.⁴³ ARTICLE 19 has adopted a set of principles on broadcast regulation, *Access to the Airwaves: Principles on Freedom of Expression and Broadcasting*,⁴⁴ which set out standards in this area based on international, regional and comparative law. In addition, the Committee of Ministers of the Council of Europe has adopted a Recommendation on the Guarantee of the Independence of Public Service Broadcasting.⁴⁵

A key aspect of the international standards relating to public broadcasting, is that State broadcasters should be transformed into independent public service broadcasters with a mandate to serve the public interest.⁴⁶ The Council of Europe Recommendation stresses the need for public broadcasters to be fully independent of government and commercial interests, stating that the “legal framework governing public service broadcasting organisations should clearly stipulate their editorial independence and institutional autonomy” in all key areas, including “the editing and presentation of news and current affairs programmes”.⁴⁷ Members of the supervisory bodies of publicly-funded broadcasters should be appointed in an open and pluralistic manner and the rules governing the supervisory bodies should be defined so as to ensure they are not at risk of political or other interference.⁴⁸

⁴² *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7.

⁴³ See, for example, the Declaration of Alma Ata, 9 October 1992 (endorsed by the General Conference of UNESCO at its 28th session in 1995) and the Protocol on the system of public broadcasting in the Member States, Annexed to the Treaty of Amsterdam, Official Journal C 340, 10 November 1997.

⁴⁴ ARTICLE 19, *Access to the Airwaves*, (ARTICLE 19: London, March 2002).

⁴⁵ Recommendation No. R (96) 10 on the Guarantee of the Independence of Public Service Broadcasting, adopted 11 September 1996.

⁴⁶ See *Access to the Airwaves*, see note 44 above, Principle 34. See also the Declaration of Sofia, adopted under the auspices of UNESCO by the European Seminar on Promoting Independent and Pluralistic Media (with special focus on Central and Eastern Europe), 13 September 1997, which states: “State-owned broadcasting and news agencies should be, as a matter of priority, reformed and granted status of journalistic and editorial independence as open public service institutions.”

⁴⁷ No. R (96) 10, see note 45 above, Guideline I.

⁴⁸ *Ibid.*, Guideline III.

Furthermore, the public service remit of these broadcasters must be clearly set out in law, and must include the requirements that they:

1. provide quality, independent programming which contributes to a plurality of opinions and an informed public;
2. provide comprehensive news and current affairs programming which is impartial, accurate and balanced;
3. provide a wide range of broadcast material which strikes a balance between programming of wide appeal and specialised programmes that serve the needs of different audiences; be universally accessible and serve all the people and regions of the country, including minority groups;
4. provide educational programmes and programmes directed towards children; and
5. promote local programme production, including through minimum quotas for original productions and material produced by independent producers.⁴⁹

Finally, the funding of public service broadcasters must be ‘based on the principle that member states undertake to maintain and, where necessary, establish an appropriate, secure and transparent funding framework which guarantees public service broadcasting organisations the means necessary to accomplish their missions’.⁵⁰ Importantly, the Council of Europe Recommendation stresses that “the decision-making power of authorities external to the public service broadcasting organisation in question regarding its funding should not be used to exert, directly or indirectly, any influence over the editorial independence and institutional autonomy of the organisation”.⁵¹

Independence of media bodies

In order to protect the right to freedom of expression, it is imperative that the media be permitted to operate independently from government control. This ensures the media’s role as public watchdog and that the public has access to a wide range of opinions, especially on matters of public interest.

Under international law, it is well established that bodies with regulatory or administrative powers over both public and private broadcasters should be independent and be protected against political interference. In the Joint Declaration noted above, the UN, OSCE and OAS special mandates protecting freedom of expression state:

⁴⁹ *Access to the Airwaves*, see note 44 on page 22, Principle 37.

⁵⁰ Recommendation No. R (96) 10, note 45 on page 22, Principle V.

⁵¹ *Ibid.*



All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointments process for members which is transparent, allows for public input and is not controlled by any particular political party.⁵²

Regional bodies, including the Council of Europe and the African Commission on Human and Peoples' Rights, have also made it clear that the independence of regulatory authorities is fundamentally important. The latter recently adopted a Declaration of Principles on Freedom of Expression in Africa, which states:

Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.⁵³

The Committee of Ministers of the Council of Europe has adopted a Recommendation on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector, which states in a pre-ambular paragraph:

[T]o guarantee the existence of a wide range of independent and autonomous media in the broadcasting sector...specially appointed independent regulatory authorities for the broadcasting sector, with expert knowledge in the area, have an important role to play within the framework of the law.⁵⁴

The Recommendation goes on to note that Member States should set up independent regulatory authorities. Its guidelines provide that Member States should devise a legislative framework to ensure the unimpeded functioning of regulatory authorities and which clearly affirms and protects their independence.⁵⁵ The Recommendation further provides that this framework should guarantee that members of regulatory bodies are appointed in a democratic and transparent manner.⁵⁶

⁵² Joint Declaration, see Note 27 on page 17.

⁵³ Adopted by the African Commission on Human and Peoples' Rights at its 32nd Session, 17-23 October 2002.

⁵⁴ Recommendation No. R(2000) 23, adopted 20 December 2000.

⁵⁵ Ibid. Guideline 1.

⁵⁶ Ibid. Guideline 5.

5. MEDIA SITUATION

5.1. Journalistic Traditions and Trends

The Philippine press, the refrain goes, is “the freest in Asia”. This is true in at least the legal sense, and in contrast to the three centuries of Spanish rule during which press censorship was the norm and free expression was subject to anti-subversion laws.

Although press freedom was incorporated into the Philippine organic law during the American colonial period, the “dangerous tendency” rule was the test for sedition. This rule dictated that any utterance or publication could be censored if there was a possibility that it may cause harm to the public or to the government. Whilst occupied by the Japanese for four years (1941-1945), the Philippines was subject to total press censorship. Censorship was similarly imposed during the martial law period (1972-1986).⁵⁷

Philippine journalism has two traditions, each of which has gone by different names in the last 100 years. The tradition of acquiescence is supportive of what is, or what exists—whether it is Spanish colonialism, American conquest, Japanese occupation or home-grown oppression. The tradition of protest initially demanded reforms in the late 19th century, and then progressed into a demand for independence and sweeping social change.

The latter tradition went by the name “alternative press” during the late Marcos period.⁵⁸ It was presumed to be a new phenomenon, but was actually not. Indeed, during the most acute periods of crisis within the Philippines over the years, this alternative press resurfaced to provide Filipinos with the information they needed to understand events that the tradition of acquiescence was either too timid or too involved with to be able to adequately interpret, or to report. The Marcos period was a watershed in the resurgence of this tradition.

Although the press in the Philippines has had a long history, that history has conventionally included the colonial press. The press, however, was instrumental in the emergence of the Filipino nation during the reform and revolutionary periods, which suggests that the true history of the Filipino press is that of the alternative press, with its immense

⁵⁷ Ibid. These and other data on Philippine laws affecting the mass media are from Teodoro and Kabatay, see note 2 on page 4.

⁵⁸ Teodoro, Luis V., “Reexamining the Fundamentals”, *Philippine Journalism Review*, Vol. IX No. 2 (June 1998), p. 26.



contribution to the Filipino struggle for national independence, social change, democratisation, and justice.⁵⁹

In 1986, however, the alternative press itself consisted of two tendencies. The progressive tendency, with a radical critique of Philippine society and a vision of an alternative economic, political and social system and the liberal tendency, with a reformist outlook and a basic faith in the justice and wisdom of the existing system.

In the years following the 1986 EDSA (People Power) Revolt, this latter tendency, though retaining its liberal outlook, became itself as much a part of the establishment as the conservative press, which during the Marcos period had been so supportive of the regime.

Both tendencies continue to exist today, but not in terms of institutional representation, as is the case in Europe, where the distinction between the liberal and conservative press tends to be sharp. The liberal tendency in the Philippine press remains limited to a few broadsheets and individual practitioners.

The conservative wing of the Philippine press, to which the other broadsheets based in Manila overwhelmingly belong, was driven further to timidity and collaboration in 2000. Since early that year, there had been increasing reports of columns being censored, as well as instances of self-censorship.

During a press forum in November 2000, Sheila Coronel of the Philippine Center for Investigative Journalism (PCIJ) said there was increasing unwillingness amongst editors to publish pieces that were critical of government, particularly PCIJ reports.⁶⁰ In the same month, a Manila-based broadsheet ceased publication because its owner was withholding newsprint. This was his response to the displeasure expressed by Malacanang (the presidential palace), to his paper's publication of the PCIJ reports on Mr Estrada's unexplained wealth, his real estate company and his numerous hundred-million-peso mansions. The broadsheet involved was the *Philippine Post*, which was owned by an Estrada associate. When it was founded, the editor, Danilo Mariano, made editorial freedom a condition of his employment. Although the owner agreed, in 2002 he objected to the publication of the PCIJ exposés in the *Post*. The *Post* editors argued that it would have been unprofessional to ignore the PCIJ reports, and continued to publish them. The owner subsequently withheld the release of newsprint, forcing his own newspaper to cease publication.

⁵⁹ Teodoro and Kabatay, see note 2 on page 4.

⁶⁰ Update on the political crisis: *Where do we go from here?*, a forum organized by the Center for Media Freedom and Responsibility held on November 22, 2000 at the Far Eastern University.

Skill limitations have further contributed to the failings of the mass media. A study by the Center for Media Freedom and Responsibility (CMFR) of five Manila broadsheets including the *Philippine Daily Inquirer*, the *Manila Bulletin*, and the *Philippine Star* (the three broadsheets with the largest circulation) revealed that between March and June 2000, they failed to provide the contextual information readers needed to understand the crisis in the Muslim areas of Mindanao.⁶¹

Several newspapers also fomented anti-Muslim prejudices through articles identifying terrorism with Muslims as an ethnic group. Newspapers' are overwhelmingly dependent (around 80 per cent of the time) on government sources and whilst news based on these sources sold more newspapers, they did not enlighten readers on a complex and destructive conflict.⁶²

In periods of political instability, fear—of government displeasure, of advertisers and of financial losses—has made the press timid. Sharing the ideological assumptions of the political and economic system of which they are a part, individual practitioners as well as entire news organisations never quite succeed in examining the roots of the Philippine crisis, or to even devote space to the erosion of the right to free expression.

As noted earlier, there are no specific laws that regulate the Philippine press, and the laws that do affect its performance are fairly liberal. Instead, the press tends to be regulated by extralegal forces—the power of government over the business enterprises of media owners, the power of the advertisers, and the ideological shackles that unknown to many media practitioners often shape their responses to public issues, thus hindering flow of information during a crisis.

Obviously, a free press is not achieved simply through the absence of official regulation, and even when achieved, does not necessarily lead to a just, free or democratic society. Theoretically, private ownership is the guarantee of a free press, and with it should come responsible and accountable behaviour. In practice, however, press freedom is often compromised by the interference of owners who have interests to protect and who compel their editors and reporters to cover events from the perspective of those interests. Part of the reason for this is that there is no consensus in the Philippines, either among the members of the press itself or the public, regarding the role the press should be playing in Philippine society.

⁶¹ CMFR Research Team, "Special Report: Media failed to educate the public on the Mindanao crisis," *Philippine Journalism Review*, Vol. XI No. 3 (September 2000), pp. 28-38.

⁶² *Ibid.*



The result is, at best, only occasional reporting on the most important issues, among them the apparent decline of the right of free expression, and as the mass media is the major instrument for public information, the general public is uninformed even about its most basic rights and their violation.

Media as a public watchdog

However, despite the difficulties faced by the media generally within the country, the Manila-based mass media has become a separate power in itself, in some instances compelling political leaders to change their plans or even to completely reverse them.

In 1996, for example, when President Fidel Ramos attempted to extend his six-year term by seeking an amendment to the Constitution, leading media organisations, especially those representing the most widely circulated English-language broadsheets such as the *Inquirer*, launched an “anti-Cha Cha” or anti-*Charter Change* campaign.

In recent years, radio has also been one arena where media power has been rigorously exercised. The “public service programme” which allows listeners to call in to complain about a problem in their neighbourhood—for example, an abusive policeman who makes it a habit to fire his service firearm in the air whenever he is drunk—has become deeply rooted in the Philippine media. These programmes provide airtime for public criticism of government officials, even debating with them when the latter call to defend themselves, and demanding explanations and quick action.

They serve to persuade government agencies, mired in bureaucratic inaction, into doing their jobs. In this sense these programmes, like much of the Philippine media, are monitoring the government to ensure that the system somehow works.

5.2. Media Market

In the Philippines, radio has the biggest audience among all the mass media (85 per cent), followed by television (74 per cent) and print (32 per cent).⁶³ Print media, however, has an 82 per cent reach in Metropolitan Manila, which has a population of some 10 million and is the country’s business, political and cultural centre. Print media may thus be surmised to be as influential in the capital as television, which has a

⁶³ National Statistics Coordination Board, *Media Fact Book 2000*. All data on media coverage in the Philippines are from this source.

reach of 96 per cent among residents. In 2002, there were eight “national” (meaning Manila based) newspapers in the Philippines, and 408 community newspapers, mostly weeklies and monthlies. English is the predominant language in both the national and community press, although some community newspapers were being published in two (English and Filipino, the national language) or even three (English, Filipino and a local language) languages.

Newspaper circulation relative to the population is small (75 million in 2001). The national newspapers print between only 10,000 and 400,000 copies daily, while the print run of the community newspapers ranges from a low of 50 copies to a high of 45,000. No more than two million people, or 2.7 per cent of the 2001 population, are reached by the newspapers, even if a pass-on readership of five is assumed. The *Philippine Daily Inquirer* or *The Inquirer*, is the most widely read broadsheet newspaper in the Philippines, with a daily circulation of 260,000 copies—a 52-per cent share of total circulation of broadsheets in the country. Other big newspapers are the *Manila Bulletin*, the *Philippine Star*, *Manila Times* and *Business World*.

A problem for the reach of the print media is the country’s functional literacy rate.⁶⁴ According to the results of the 2003 Functional Literacy, Education and Mass Media Survey, about 48.4 million or 84 per cent of the population aged 10-64 years old are functionally literate.⁶⁵

In broadcasting, there were uneven rates of growth between 1997 and 2000. The number of AM radio stations nation-wide rose from 333 in 1997 to just 335 in 2000 whilst FM stations grew from 399 to 537. TV stations numbered 194 in 2000, up from 159 in 1997. The number of cable TV stations hooked up to international servers, but which also partially generate their own content, expanded from 894 in 1997 to 1162 in 2000.⁶⁶ Among the biggest national stations are the ABS-CBN Broadcasting Company (multimedia network), and GMA Network (multimedia network). In radio, the two biggest radio stations that operate nationally are the Manila Broadcasting Company (over 500 radio stations) and Radio Mindanao Network (40 stations).

The most significant growth in Philippine telecommunications has been cellular phone subscriptions—from 1,343,620 in 1997 to 6,454,359 in 2000. Since 1992, the growth of the cellular phone in the Philippine has surpassed its ASEAN counterparts.⁶⁷ This explosion has proven to be

⁶⁴ A person is functionally literate when their level of reading and writing is sufficient for everyday life but not for autonomous activity, such as reading newspapers.

⁶⁵ http://www.census.gov.ph/data/sectordata/2003/f103_tab02.htm

⁶⁶ 2000 National Telecommunications (NTC) Annual Report.

⁶⁷ “Silenced”, Privacy International, [http://www.privacyinternational.org/article.shtml?cmd\[347\]=x-347-61390&als\[theme\]=Silenced%20Report](http://www.privacyinternational.org/article.shtml?cmd[347]=x-347-61390&als[theme]=Silenced%20Report)



critical in the enhancement of free expression in the Philippines, primarily through “texting” or the short messaging service (SMS).

Although the Internet is still in its infancy in the Philippines, it has also grown quite rapidly in recent years. Between 2000 and 2005, Internet usage grew from 2.6 to 9.3 per cent of the population, or from 2 million to 7.8 million users.⁶⁸ Compared with other countries in Southeast Asia, the growth of Internet market penetration in the Philippines within the last five years is similar to Thailand, over 250 per cent. It is important to note, however, that over half of all Philippine Internet users live in the capital city, Manila. Many parts of the country are still lagging behind due to the lack of basic telephone services.⁶⁹



A vigil for Philippine journalists killed (Photo: Indymedia)

5.3. Public Broadcaster

There is no public broadcasting service in the Philippines. Instead, the country has the Philippine Broadcasting Service—a State-owned radio with 31 stations nationwide—and the National Broadcasting Network, a State-owned television network. Both operate under the Office of Press Secretary.

⁶⁸ Source: the Internet World Statistics: <http://www.internetworldstats.com/asia.htm>
<http://www.seapabkk.org/news/2004/10/20041001.html>

⁶⁹ Privacy International, see note 67 on page 29.

Recently there has been a revival of talks to transform the State broadcasting system into an independent public broadcasting service. The Secretary for Government Mass media Group has announced the government commitment to set up a PSB.⁷⁰

The plan to establish a public broadcasting service is a very positive development that could help to promote freedom of expression and ensure equal access of all to the media in the Philippines. To be able to serve these functions, the new public broadcaster should be fully independent of government and commercial interests. Chapter 4 of this report explains in more detail some of the international standards relating to public broadcasting.

5.4. Media Ownership

Since the American period in the 1920s, the mass media in the Philippines have been dominated by individual business and political interests. In the Marcos era, the President's cronies owned and controlled the media. Their control ended as soon as Corazon Aquino took over power from Marcos in 1989. Dozens of new newspapers were set up, TV and radio empires returned from exile to reclaim their properties which were confiscated by the Marcos regime. The old order re-emerged; powerful families again saw the media as their domain.

The majority owners of the most influential daily, the *Philippine Daily Inquirer*, for example, include real estate and food manufacturing interests. *Manila Bulletin* owner Emilio Yap has interests in shipping and other ventures.⁷¹ The two biggest media networks are owned by companies of wealthy families. ABS-CBN is owned by the Lopez family and the GMA network by the Gozon-Duavit-Jimenez family. As the table below demonstrates, ABS-CBN is a multimedia company that has 33 TV stations all over the country, 20 FM and nine AM radio stations, and subsidiaries and affiliates in video/audio postproduction, film production and distribution, and audio recording and distribution. It runs a cable TV network and is also a cable TV and Internet provider. Furthermore it owns a number of magazines and printing press.

The GMA network is also a multimedia company, and has subsidiaries and affiliates in film production and distribution, music and video production, radio and the Internet.⁷²

⁷⁰ "Philippines To Transform State Broadcasting System into Independent Public Broadcasting Service", http://portal.unesco.org/ci/en/ev.phpURL_ID=18407&URL_DO=DO_TOPIC&URL_SECTION=201.html

⁷¹ Ofreneo and Coronel, Sheila. "Lords of the Press", *The Investigative Reporting Magazine*, Vol. V No. 2 (April-June 1999), p.11.

⁷² Coronel, "Philippine media; Free but not Diverse", *Pluralism in the Newsroom*, Asia



Table 5.1. The Lopez Family Business Conglomerate (2003)

<i>Industry</i>	<i>Company</i>
Broadcasting	ABS-CBN Broadcasting Corp. Sky Vision Corp (cable)
Telecoms	Bayan Telecommunications
ISP	Bayanmap Corp.
E-commerce	Bayantra Dotcom
Computer services	Corporate Information Solutions
Power	First Phil Holdings Inc.
Infrastructure	First Phil Infrastructure
Water	Maynilad Water Services
Health care	Medical City
Real estate	Rockwell Land

Source: AGB Phillipines⁷³

Journalism Series, (Manila: CMFR, May 2005), pp.27-28.

⁷³ Taken from the table published at Ibid, p.28.

6. LAWS APPLICABLE TO PHILIPPINE MASS MEDIA⁷⁴

6.1. No Media Laws in the Philippines

Unlike many other countries, there is no body of laws in the Philippines that may be called Media Laws. Instead certain laws apply to the mass media as well as to other groups and persons. There is also a substantial body of jurisprudence, part of the law of the land, which upholds, limits, modifies and otherwise interprets the constitutional provisions related to freedom of speech and press (Article III) or otherwise affecting the media and freedom of expression (such as Article IX on the Commission on Elections, and Article XVI prohibiting foreign media ownership).⁷⁵

Besides the Constitution, legal sources affecting the mass media in the Philippines are the revised Penal Code (with provisions on national security, libel and obscenity); Chapter 2 of the Civil Code (which contains two articles on privacy), the Rules of Court (fair administration of justice and contempt) and un-repealed presidential decrees. There is also a “shield law“, Republic Act 53 as amended by RA 1477, which provides in Section 1 protection for non-disclosure of sources of information:

Without prejudice to his liability under civil and criminal laws, the publisher, editor, columnist or duly accredited reporter of a newspaper, magazine or periodical of general circulation cannot be compelled to reveal the source of any information or news report appearing in said application which was released in confidence to such publisher, editor or reporter unless the court or a Committee of Congress finds that such revelation is demanded by the security of the state.

There are no licensing, registration or membership requirements in any media organisation for media practitioners in the Philippines. For media organisations themselves, the powers of the National Telecommunications Commission are limited to the allocation of frequencies to TV and radio stations, and do not extend to supervision over content. Print publications need only to register as business enterprises.

⁷⁴ Data for this section are from Teodoro and Kabatay, see note 2 on page 4.

⁷⁵ See section 4.2 above for details.



The laws that regulate the mass media in the Philippines can be classified into three groups: those affecting all the mass media; those affecting the print media; and those affecting broadcasting and film.

6.2. Laws Applicable to All Mass Media

Foreign media ownership

As mentioned earlier, foreign ownership of media is prohibited in Article XVI (General Provisions) of the Constitution, which limits in Section 11 media ownership to ‘citizens of the Philippines, or to corporations, cooperatives or associations wholly owned and managed by such citizens’

While restrictions on foreign ownership may be warranted in the broadcast media sector, they are far more difficult to justify in the print media sector. There is no reason why foreigners should not own and run media outlets. This provision would even prohibit foreigners to operate a newspaper directed exclusively at other foreigners.

Media ownership is one of the most problematic aspects of the media situation in the Philippines, given the extent to which owner interests often intrude upon reportage and commentary in the newspapers. Despairing over the sometimes heavy-handed efforts of media owners to intervene even in the daily operations of their newspapers, some journalists have argued for allowing foreign media ownership, which is prohibited by the 1987 Constitution.

The communication theoretician Dennis McQuail points out that the media can “serve to repress as well as to liberate, to unite as well as fragment society, both to promote and to hold back change.”⁷⁶ McQuail in fact identifies the role of the media as covering a wide range of critical issues in society. The media can “attract and direct public attention”, “persuade in matters of opinion and belief”, “influence behaviour”, “structure definitions of reality”, “confer status and legitimacy” and “inform quickly and extensively”.

The question of what reality and whose reality is presented through the media is linked to who controls and owns the media and in whose interest that control is exercised. The mass media, when it is controlled by competing interests, can present a multiplicity of views rather than a single, dominant perspective. That alone makes the issue of whether or

⁷⁶ Mc Quail, Dennis, *Mc Quail’s Mass Communication Theory– 4th ed.*, (London: SAGE Publications, 2000), p. 63.

not foreign media ownership should be allowed, indeed even encouraged, important.

Foreign ownership is one of the provisions discussed under the Charter amendments that the government is preparing. The proposals to open media ownership were outlined in a draft of the Medium-Term Philippine Development Plan 2004–2010, which was recently published by the National Economic and Development Authority. Commenting on the possibility of foreign media ownership, Luis V. Teodoro Jr., a former dean of the University of the Philippines College of Mass Communication, says: "any move to open the media to foreign ownership would be divisive. Not only on nationalist lines but also on constitutional lines as well."⁷⁷

However, compared to Filipino owners, foreign media owners would be more difficult for the government to control, and therefore, may be more effective partisans for press freedom and free expression.

Ownership concentration

The same Section 11 of Article XVI empowers Congress to “regulate or prohibit monopolies in commercial mass media when the public interest so requires.”

This provision limiting media concentration is very broad. There is no clear limit on ownership in one media and across media (print and broadcast). Specific legislation is needed to regulate media ownership. In most countries, this is done through broadcasting legislation. The provision on ownership, especially for broadcast media, should clearly state the limit of ownership by one person or legal entity in broadcasting, without being too rigid. It has to take into account the wide range of broadcast outlets. The influence of a major television broadcaster cannot be compared with that of a small radio broadcaster and the same cross ownership rules should not apply to both. For example, the threat of the latter also owning a small local newspaper is quite different from the former also owning a national radio station. These rules, as well as those on undue media concentration, should focus on the threat (market dominance) and not just impose technical restrictions. The aim behind limiting cross ownership is to ensure diversity of content reflecting diversity of viewpoints and diversity of society as a whole, and to prevent manipulation of public opinion by powerful business or political interests.

⁷⁷ “Opening Philippine Media to Foreign Ownership Is Not Easy”, *Philippine Star*, 7 October 2004. The article can be accessed at SEAPA website: <http://www.seapabkk.org/news/2004/10/20041001.html>



The provisions on mass media ownership have largely been observed in practice. Foreigners do not own Philippine-based media organisations. Some Filipino corporations, however, do own print publications such as magazines, whilst at the same time being involved with radio and TV broadcasting, as is the case with the giant Benpress Corporation of the Lopez family.

The Lopez's, owners of the power monopoly Manila Electric Company, which provides electrical power to metro Manila and most parts of the main Philippine island of Luzon, once owned the *Chronicle*, a Manila broadsheet, but have now divested themselves of it. They publish magazines for working mothers whilst at the same time being engaged in radio and TV broadcasting.⁷⁸

Crimes against national security and public order

The Revised Penal Code of the Philippines contains provisions relating to national security offences, among which the crime of incitement to rebellion or insurrection (Article 138) could have an effect on the media, since it includes incitement to rebellion through 'speeches, proclamations, writings, emblems, banners or other representations tending to the same end'. No one has been charged under this article since the Marcos period.

Article 154 penalises any person who publishes 'false news which may endanger the public order, or cause damage to the interest or credit of the State', anyone who 'by words, utterances or speeches shall encourage disobedience to the law or to the constituted authorities, or praise, justify, or extol any act punished by law', who publishes 'any official resolution or document without proper authority, or before they have been published officially', as well as anyone who publishes or distributes anonymous leaflets. Penalties include a prison term of three months, plus a fine of from P200 to P1,000 (USD 4 to USD 25).

Under international law, an expression or news can only be categorised as "endangering the public order" if it passes a three-part test. Principle 6 of the *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*,⁷⁹ a set of principles on the right to freedom of expression and national security endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression⁸⁰ and recommended to States for their consideration by the UN Commission on Human Rights,⁸¹ states:

⁷⁸ See table of the Lopez family business conglomerate in section 5.3.

⁷⁹ ARTICLE 19, *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, (ARTICLE 19: London, 1996).

⁸⁰ See, for example, UN Doc E/CN.4/1996/39, 22 March 1996, para. 154.

⁸¹ See UN Doc. E/CN.4/1996/53, 19 April 1996. The Johannesburg Principles have also

...expression may be punished as a threat to national security only if a government can demonstrate that:

- (a) the expression is intended to incite imminent violence;
- (b) it is likely to incite such violence; and
- (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.⁸²

In this instance however, the article is problematic due to its overly broad scope of application. Under this article, for example, someone who simply distributes any leaflet that does not bear the real printer's name can be arrested or fined, without inciting violence.

Defamation

Libel, a criminal offence that carries imprisonment upon conviction in the Philippines, is provided for in the same Penal Code (Articles 353 to 362). Prison terms range from one day to six years, in addition to the imposition of fines. These are minimal (between USD 4 to USD 25) as in the case of violations of Article 154, but this does not prevent complainants from demanding millions of pesos in damages, some of which have been awarded, although higher courts have later reversed them.⁸³

Article 353 defines libel as “a public and malicious imputation of a crime or a vice or defect, real or imaginary, or any act, omission condition, status or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.”

Article 354 declares that “every defamatory imputation is presumed to be malicious, even if it be true,” except when it is made in a private communication to another person undertaking a legal, moral, or social duty; and when it is in a report on “any judicial, legislative or other official proceedings...or any act performed by public officers in the exercise of their functions.”

been referred to by superior courts of record around the world. See, for example, *Athukoral v. AG*, 5 May 1997, SD Nos. 1-15/97 (Supreme Court of Sri Lanka) and *Secretary of State for the Home Department v. Rehman* [2001] UKHL 47 (United Kingdom House of Lords).

⁸² See Resolution 1998/42, Preamble.

⁸³ See for instance: http://www.panna.org/resources/gpc/gpc_200208.12.2.14.dv.html; <http://www.cmfr-phil.org/alerts-mar.htm>



Articles 355 to 359 contain a list of penalties for various degrees of libel, ranging from a fine of 200 to 6,000 Philippines pesos (USD 4 to USD 120), to a fine of 200 to 2,000 pesos and imprisonment between six months and six years.

Article 201 of the same Code penalises the publication of obscene material punishable by up to three years imprisonment and fines of between six and 12 thousand pesos (about USD 125 to USD 250).

The defamation and insult provisions in Penal Code all provide for sentences of imprisonment as well as fines. Whilst international law permits limited restrictions on the right to freedom of expression in order to protect various interests, including reputation, any restriction must meet the strict three-part test discussed in Section 4.5. Accordingly, defamation laws, like all restrictions, must be proportionate to the harm done and not go beyond what is necessary in the particular circumstances.

The UN Human Rights Committee, the body responsible for overseeing the implementation of the ICCPR, has repeatedly expressed its concern about the use of custodial sanctions for defamation.⁸⁴ The UN Human Rights Committee has often commented on criminal defamation laws, welcoming their abolition where this has occurred,⁸⁵ calling for ‘review and reform [of] laws relating to criminal defamation’,⁸⁶ and expressing serious concerns about the potential for abuse of criminal defamation laws, particularly where expression on matters of public concern is at stake.⁸⁷

Therefore, the “chilling” effect, which disproportionate sanctions such as a custodial sentence, or even the threat of such sanctions, may have upon the free flow of information and ideas must be taken into account when assessing the legitimacy of defamation laws.

⁸⁴ This concern has been expressed in the context of specific country reports. For example in relation to Iceland and Jordan (1994), Tunisia and Morocco (1995), Mauritius (1996), Iraq (1997), Zimbabwe (1998), and Cameroon, Mexico, Morocco, Norway and Romania (1999).

⁸⁵ For example in the case of Sri Lanka. See Concluding Observations on Sri Lanka, 1 December 2003, CCPR/CO/79/LKA, para. 17.

⁸⁶ Concluding Observations on Norway, 1 November 1999, CCPR/C/79/Add.112, para. 14.

⁸⁷ For example, in relation to Kyrgyzstan (“[The Committee] is especially concerned about the use of libel suits against journalists who criticize the Government. Such harassment is incompatible with the freedom of expression.... The State party should ensure that journalists can perform their profession without fear of being subjected to prosecution and libel suits for criticizing government policy or government officials. Journalists and human rights activists subjected to imprisonment in contravention of articles 9 and 19 of the Covenant should be released, rehabilitated and given compensation pursuant to articles 9.5 and 14.6 of the Covenant. [emphasis added]”). Concluding Observations on Kyrgyzstan, 24 July 2000, CCPR/C/69/KGZ, para. 20. The Committee has expressed similar concerns in a host of other Concluding Observations, including those relating to Iceland and Jordan (1994), Tunisia and Morocco (1995), Mauritius (1996), Iraq and Slovakia (1997) Zimbabwe (1998), Cameroon, Mexico, Morocco and Romania (1999), Azerbaijan, Guatemala and Croatia (2001), and Serbia and Montenegro (2004).

Privacy

Protection of privacy is guaranteed in the Philippine Constitution and further regulated in the Civil and Penal Codes. The new Civil Code of the Philippines, contains a provision on the right to privacy (Article 26), violations of which can result in civil damages against private persons. Article 32 penalises any government official or individual who ‘obstructs, defeats, violates, impedes and impairs’ the exercise of freedom of speech, the freedom to write for the press or to maintain a publication, as well as the privacy of communication or correspondence. However, no government official has so far been charged under this provision. The Penal Code also has a number of provisions on privacy.⁸⁸

Under international law, the right to privacy has to be balanced with the right of the public to know, public interest and the exercise of freedom of expression, as discussed in Chapter 4. In relation to the privacy of public figure, there is an important line of argument holding that, once an individual enters the public debate in a substantive way, they will need to tolerate significantly more intrusion into their private life.

In 1998, Senator Juan Ponce Enrile tried to seek court order to stop Ayer Productions Pty. Ltd. from producing a movie entitled “The Four Day Revolution”. He alleged that the company violates his right to privacy. On this case, the Philippine Court stated:

The right of privacy like freedom of expression is not an absolute right. A limited intrusion into a person’s privacy has long been regarded as permissible when that person is a public figure and the information sought constitute matters of public character. The right of privacy cannot be invoked to resist publication and dissemination of matters of public interest.⁸⁹

Protection of sources

As noted earlier, a special law (Republic Act 53) unique to the Philippines protects journalists from being forced to reveal their sources unless ‘demanded by the security of the state’. Section 1 of this Act states that no one from a newspaper, magazine or periodical of general circulation can be ‘compelled to reveal the source of any information or news report appearing in said publication... unless the court or a House or Committee of Congress finds that such revelation is demanded by the security of the state’. Only one attempt has so far been made (in 2003) to force a journalist to reveal their sources since the Marcos period. This was widely criticised by the press and did not succeed.

⁸⁸ See Teodoro and Kabatay, see note 2 on page 4, pp. 164-165

⁸⁹ *Ayer Production Pty. Ltd. v Capulong* (160 SCRA 861 [1988]).



Election reporting

The Republic Act 6646, prohibiting newspapers and broadcasting stations from printing or broadcasting election campaign material, was one of the most controversial laws to be passed and enforced in the Philippines. Passed by Congress in 1987, the Act declared it illegal “for any newspaper, radio broadcasting or television station or other mass media, or any person making use of the mass media to sell or give free of charge print space or air time for campaign or other political purposes...”

Civil libertarians, including a retired Supreme Court justice, criticised the Act as a violation of the people’s right to information, which he said was part of free expression. It remained in force for 14 years, however, and was repealed only on 12 February 2001, in time for the May 2001 elections.

The Fair Election Act of 2001 (RA 9006) contained provisions prohibiting the publication of “surveys affecting national candidates” 15 days before an election, and “surveys affecting local candidates” seven days before an election.

In response to this legislation, the survey group Social Weather Stations argued before the Supreme Court that the ban constituted prior restraint on free speech and the right to information. The Court agreed, and ruled that Section 5.4, which forbade the publication of the information cited above, constituted an unconstitutional abridgement of the rights to free speech, expression and press freedom, and declared it invalid.

6.3. Laws Regulating Print Media

Among the laws regulating the print media, there are two in particular that can be used by the government to exercise its control over the print media.

Registration of print media

Whilst there is no formal requirement for the registration of print media, the Republic Act No. 2580, passed in 1916 by the Philippine legislature, requires the publication and recording in the Bureau of Posts of the names and post office addresses of editors, publishers, managers, owners and stockholders of newspapers in a sworn statement. Failure to comply with this requirement results in a denial of mail privileges to the offending publication.

Registration of publishers

The Republic Act 8047, an Act Providing for the Development of the Book Publishing Industry Through the Formulation and Implementation of a National Book Policy and a National Book Development Plan, enacted on 5 June 1995, declares it a State policy to promote the development of the book publishing industry to ensure a supply of affordable books for both the domestic and the export market.

Section 6 of the Act requires the registration with the National Book Development Board, created by the Act, of all persons and entities involved in book publishing. Section 10 empowers the Department of Education to consult the Board in the making of the rules and regulations needed in the preparation of books required by the country's public elementary and high schools.

Campus Journalism Act

In 1991, Congress passed the Campus Journalism Act (RA 7079), which recognised the vital role played by the campus (university and college) press in the anti-dictatorship resistance, and granted student journalists substantial freedom.

This law limits school administrations to select publication advisers from a list provided by the newspaper staff. The adviser—a post abolished at the University of the Philippines, the country's biggest State university and its best and most prestigious tertiary institution in 1964—is limited to the function of providing technical guidance and is completely denied any censorship role. Staff members also have security of tenure and may not be expelled from the school solely on the basis of the paper's performance.

Although the Act appears to be limited in applicability to a narrow, non-professional sector of the print media, its significance can be best appreciated in the context of the role school newspapers played during the martial-law period.

Most Philippine universities and colleges, whether government-owned or private, publish student newspapers. During the martial-law regime a number of these newspapers, for example the University of the Philippines' *Philippine Collegian*, were at the forefront of that resistance. As a result of this, it was widely read even outside the University, but a succession of its editors were subject to arrest and indefinite confinement in the Marcos regime's detention centres.



6.4. Laws Regulating Broadcasting

In 1985 the Supreme Court declared, in a decision on *the Eastern Broadcast Corporation v. Dans* case, “the freedom of television and broadcasting is somewhat lesser in scope than the freedom accorded to newspaper and print media.”⁹⁰ Citing US jurisprudence to defend its view, the Court invoked an American case which declared that broadcasting has only limited protection in terms of free expression because it is more pervasive and is more readily accessible to children.

Nevertheless, the Supreme Court affirmed “broadcast stations deserve the special protection given to all forms of media by due process and freedom of expression [provisions] of the Constitution.”

Review of some of the main laws related to broadcasting in the Philippines, however, shows that some provisions within these laws need improving in order to offer the special protection mentioned in the Supreme Court’s statement above.

Broadcast licensing

All radio companies in the Philippines are required to have certificates of public convenience and necessity from the National Telecommunications Commission (NTC), as specified in Executive Order No. 546 issued 23 July 1979. At the same time they need a legislative franchise to operate, as specified in the Philippine Constitution’s Article XII, Section 11. Radio companies must file their applications to the NTC, as well as an application for a franchise to the House of Representatives of the Congress of the Philippines, following administrative procedures specified by both. NTC has the power to administer and enforce all laws, rules and regulations in the field of communications. The Commissioners, as in the case of other Philippine government Commissions, are appointed by the President of the Philippines.

Under international law, it is well established that bodies with regulatory or administrative powers over both public and private broadcasters should be independent and be protected against political interference. It will be difficult for the regulatory and licensing body to be free from political interference if its members are appointed by the president.⁹¹ In a number of countries, members of the broadcasting board are nominated by the public and selected by the parliament.⁹²

During the recent political crisis, the NTC has abused its power by

⁹⁰ *Eastern Broadcast Corporation (DYRE) v. Dans, Jr.* (137 SCRA 628 [1985]). Dans was then head of the National Telecommunications Commission

⁹² Indonesia and Thailand are among countries in Asia that use this selection mechanism.

threatening to revoke broadcast media licences of organizations that continue to air alleged wiretapped conversations between President Arroyo and Election Commissioner Virgilio Garcillano. Under international law, revoking of licences can only be justified under extreme circumstances, and it has to satisfy the three-part test for restrictions, discussed in Chapter 4.

The Kapisanan ng mga Brodkaster ng Pilipinas (KBP), the self-regulatory board for broadcast media, later objected to the NTC warning. Eventually, KBP announced that the media may broadcast the alleged conversations. Published transcripts are in circulation as well as audio recordings. The fate of these media groups is pending, regarding any future NTC action, though, the KBP believes that the NTC has no legal basis in closing any TV or radio network.

Self-regulatory mechanism

Self-regulation in the Philippines has been described as largely a means of balancing interests of the government and private media sector.⁹³

As noted above, the KBP is the self-regulatory board of broadcast media. Broadcast industry representatives created the KBP during the martial law period under a government mandate for the broadcast media to regulate themselves. After the collapse of the Marcos dictatorship, however, the KBP became the primary trade organisation in broadcasting as well as the regulatory body for the industry.

The KBP has a Standards Authority that enforces standards in programming, advertising and trade practice through its Radio and Television Codes. The KBP Board of Directors, which consists of individuals from the broadcast industry, appoints the members of the Authority from the broadcast industry, academia (usually from the University of the Philippines) and the advertising industry.

The Authority observes established procedures in investigating, hearing, and adjudicating cases involving violations of the Codes, and imposes penalties that can include suspension or permanent disqualification from KBP membership, and fines. A number of radio and TV stations have been sanctioned by the Authority, but because the penalties, in particular the fines, have been minimal (for example, 6,000 pesos or USD 125 for the first offence), violations of the Codes continue.

The Codes are extremely detailed but the KBP has difficulty in enforcing them due to lack of manpower to monitor all the radio and TV stations all over the Philippines.

⁹³ Teodoro and Kabatay, see note 2 on page 4, p. 56



6.5. Laws Regulating Film, Television Programmes and Video, and the Internet

Film, television programmes and video are regulated through two issuances during Marcos' period in power: Presidential Decree 1986 "Creating the Movie and Television Review and Classification Board" (MTRCB) dated 5 October 1985, and PD 1987 "Creating the Video Regulatory Board" (VRB).

Movie and Television Review and Classification Board

Presidential Decree, PD 1986, established on 5 October 1985, grants the Movie and Television Review and Classification Board (MTRCB) the power to review and approve all publicity materials for motion pictures and television programmes. Under the provisions of this decree, the Board can disapprove and delete portions of material it deems objectionable for being immoral, contrary to law and good customs, injurious to the prestige of the Philippines and its people, or for encouraging the commission of an act of violence, a crime, or of any wrong.

The Board, who is directly under the Office of the President of the Philippines, is also empowered to supervise, regulate, grant, deny or cancel permits for the importation, export, production, distribution, sale, lease, or exhibition of all such publicity materials. Decisions by the Board banning the showing of a film or television programme can be appealed only to the President, whose decision is final.

Thus, the MTRCB, despite its name, is actually a censorship board. Several cases illustrating the dangers of this power have arisen over the last decade. For example, the Board took the decision to cut various "objectionable portions" from the film *Schindler's List*, although this was eventually overridden by the President. Filipino films have also been affected and most of these cases have inevitably clashed with the constitutional right to free expression.

In early 2001, President Gloria Macapagal Arroyo rescinded the MTRCB's permission for the showing of the Filipino film *Live Show*, that explores the desperate lives of several impoverished boys and girls who put on sex shows as a means to survive. She ordered it pulled from the theaters and sacked the liberal chair of the MTRCB, a film professor from the University of the Philippines and noted scholar of Philippine culture.

Videogram Regulatory Board

Like the MTRCB, the Videogram Regulatory Board (VRB) was created by Marcos as a body under the Office of the President of the Philippines. The VRB has the power to regulate the importation and export, as well as the production, copying, distribution, exhibition, showing, sale or disposition of videograms or any of their technical variations.

It can approve or disapprove, delete portions from and perform all other MTRCB functions concerning motion pictures, and can additionally use the word “libelous” as a reason for banning or cutting a video tape. Both the MTRCB and the VRB have the power to file criminal charges against violators of the Presidential Decrees in 1986 and 1987.

Both the MTRCB and VRB decrees have been criticised by artists, human rights and free expression groups as a throwback to the dictatorship and as inimical to the flowering of artistic expression as well as to the freedom of expression clause in the Constitution. The MTRCB and VRB decrees nevertheless remain in force. No artist or artists’ group has challenged the constitutional validity of these decrees in court.

The implicit protection given to film by Article III, Section 4 (freedom of speech) of the Constitution is undermined in practice by the censorship powers of the MTRCB and the VRB.

The MTRCB and VRB’s structural position under the Office of the President makes them vulnerable to political interference. Such position undermines their independence as regulatory bodies, as discussed in Chapter 4.

It must be noted, however, that there have been instances when the MTRCB and the VRB have not interfered with the showing of a film or video it had earlier banned in cases when they were shown for academic purposes. For example, the MTRCB banned the film “The Last Temptation of Christ” by denying its Philippine distributor an import permit, but the VRB did not prevent its showing in video tape form to film classes in the University of the Philippines. Neither did the MTRCB prevent the showing of the Filipino film *Orapronobis* (which had been shown in Cannes) at the same University’s Film Center.

In both cases the justification was that the Philippine Constitution protects the academic freedom of all State universities and colleges in the country, and neither the VRB nor MTRCB wanted the University of the Philippines to bring the matter to the courts.



Internet Regulation

In the Philippines, as elsewhere, Internet access, though still limited to a small section of the population, has provoked demands for regulation. Thankfully the government's response, in keeping with the sentiments of its informed constituents, has not been overly protective.

In 2000, the regulation of the Internet to prevent children's access to pornography was debated in Congress. During that debate the liberal Congress members argued for self-regulation by Internet service providers, some of whom have instituted measures precisely to protect minors from accessing pornography sites. Infocom Technologies, one of the largest ISP's in the country, for example, now has SafeNet for children.

Also in the year 2000, the Philippine Congress passed the Republic Act 8972, or the Electronics Commerce Act, which protects transactions over the Internet by recognising the authenticity of electronic documents, particularly email, and at the same time penalises the hacking of such documents with a fine of 100,000 pesos (USD 1800) and a prison term between six months and three years. This law recognises the validity of electronic contracts and signatures as the functional equivalent of an individual's actual signature, and makes cyber documents admissible as court evidence in, for example, a libel suit.

7. FREEDOM OF INFORMATION AND SECRECY

7.1. Information: A Public Right

The right to information, the Supreme Court has ruled, is a public right that may be exercised by any citizen. In 1987 it ruled that any citizen might claim this right: “The right of the people to information on matters of public concern ... by its very nature is a public right...when the question is one of public right, the people are ... the real party in interest ... [a citizen] need not show that [he or she] has any legal or special interest in the result [of litigation]” to avail himself or herself of this right.


Through such rulings, the rights guaranteed by Article III, Section 7 of the Constitution have been defined as:

- 1) the right to information on matters of public concern;
and
- 2) the corollary right of access to official records and documents.

The Philippine jurisprudence had recognised the right of newspapers and newspaper staff to have access to public records.

However, the right to information and the corollary right of access to public records are, in the words of the Constitution, “subject to such limitations as may be provided by law.” “ Only ‘matters of public concern’ are covered by these rights”, stated the Supreme Court in 1973. In 1987 the Court added, “the right of access may not be extended to trade secrets or confidential commercial and financial information and matters of national security.” The Court noted and thus affirmed existing statutory limits on the right to public information such as:

1. information affecting national security,
2. diplomatic correspondence relating to national security and national interest
3. matters still pending decision and



4. confidential records of different branches of government.

The mandatory publication of laws is a means of implementing the right to information.

In 1986 the Court ruled that all laws and other measures must be published in the Official Gazette:

... rules cannot be recognised as binding rules unless their existence and contents are confirmed by a valid publication intended to make full disclosure and give proper notice to the people.

Responding to this decision, President Aquino issued Executive Order 200, which provided that the publication of laws may also be made in a newspaper of general circulation as well as the Official Gazette.

The Administrative Code of 1987 also provides in Book VII, Chapter 2, Section 3 that every agency “shall file with the University of the Philippines Law Center three certified copies of every rule adopted by it.” The Center is in turn required to publish these rules.

In 1993, President Fidel Ramos issued Executive Order 89 requiring national government agencies to adopt procedures for the public and government agencies to follow when they receive requests for government data and information. There is also a Code of Conduct and Ethical Standards for Public Officials and Employees (RA 6713) that requires public employees to respond within 15 days to letters and routine requests sent by the public.

In practice, government agencies may be said to be generally cooperative in providing information to the media. Most officials are either extremely accessible to the media or actively seek media coverage. In addition to this accessibility, a vast system of public information regularly churns out press releases, instigates press conferences and leaks “information” of varying degrees of reliability to the Philippine media.

There are advantages and disadvantages to such situations. Amongst the latter, there is the uncritical use of government press releases as well as the publication of leaked information without checking its accuracy or even considering the motives of the sources.

Inevitably, given the aggressive coverage of the Philippine media, officials such as former President Aquino have tried to limit access by refusing to talk to the media. At one point during her presidency, Mrs Aquino imposed a dress code on the media, violations of which deprived the offender of the right to be in her presence. She also refused to hold regular press briefings during the latter days of her term.

The detained Mr Estrada, for his part, is currently limiting access to his person by being available only to some media practitioners and media organisations. During his incumbency, Mr Estrada relied on his spokesperson to brief the media, foregoing press conferences altogether.

Mr Ramos, on the other hand, made himself generally accessible through press conferences and briefings, and at one point even through breakfasts, lunches and dinners with selected journalists, a practice which to some observers seemed to be an attempt to guarantee favourable coverage. Today, Mrs Arroyo uses the same approach, inviting journalists to lunch or dinner and even appointing them to government posts. In 2002, Mrs Arroyo appointed several columnists from Manila newspapers to government-controlled corporations that included banks, and the social security and government insurance systems. These are lucrative positions which earn the columnists, depending on the corporation, between P50,000 and P250,000 (USD 1000 and USD 5000) a month. They constitute a formidable incentive for commenting favourably on the government, especially the appointing power.

However, following her State of the Nation Address in July 2005, Arroyo, like her predecessor Corazon Aquino, limited media access to her press conference. Reporters from independent local media complained against control of the free press and Arroyo's very strictly stage-managed press conference. Local reporters were unusually forced to submit questions in advance and reporters from State controlled media were given priority. Three out of six mainstream TV channels are controlled by the government. Foreign media were completely banned from covering the conference.

7.2. The Draft Information Act

Although guaranteed by the Constitution and the executive orders of two presidents, freedom of information in the Philippines is not covered by any law. There have been proposals in the past, but journalists' groups have opposed these because rather than widening the scope for information access, the proposed laws narrowed it by focusing on official information that could be withheld.

Journalists have also argued that despite the absence of such a law, and the consequent arbitrariness of official decisions on which information to release and which to withhold, the Philippines has not lagged behind other South East Asian countries that do have information laws, such as Thailand. In fact, these journalists claim, official information has generally been more available in the Philippines than in other countries.⁹⁴

⁹⁴ See, for example, Yvonne Chua's "The Philippines: A liberal information regime even without an information law," www.freedominfo.org posted on January 17, 2003.



However, the Philippine NGO Access to Information Network (ATIN) argues, “denial of access to information on matters of public concern in the Philippines remains widespread.”⁹⁵

ATIN’s observation is probably true in terms of the public’s, rather than journalists’ access to official information. Since many government agencies are afraid to incur the displeasure of the media, especially the Manila-based newspapers and such organisations as the PCIJ, they eventually, if not readily, release requested information.

This is not the case when ordinary citizens, such as members of NGOs, request the release of official information. Even public documents like police blotters have been described by the police as “classified” when journalism students request access. In some cases, as Yvonne Chua of PCIJ notes, students’ requests for information are either denied, or answered with interminable delays.

ATIN has drafted an information act for the consideration of the Philippine Congress.⁹⁶ It has noted that:

The problem (of information being withheld) is more acute with regard to information that does not form part of the data and reports that government agencies routinely publish or make available to the public. Requesting such documents, records and data from some government offices is frequently met with inaction, excuses, referrals, or outright rejection.

One reason for this is that much of the Philippine public still considers access to information a privilege. The media practice of cultivating exclusive sources of government information, says ATIN, in fact “worsens the problem, for it perpetuates the system of relying on information leaks for vital matters to be brought to the people’s attention”.

The recourse of going to court to compel access is not an answer, says ATIN, because the information required is not immediately made available, and what happens is that the value of the information has been diminished by the time the courts order its release.

A freedom of information law is necessary, argues ATIN, to deter violations of the freedom to information, and to clarify through law the exemptions to the enjoyment of the right.

⁹⁵ Access to Information Network. “The need for a law on access to information”, A *Dialogue with Legislators on Access to Official Information*, December 16, 2002.

⁹⁶ This draft has been analysed by ARTICLE 19 in 2002. It can be accessed at www.article19.org.

“Legislation,” argues ATIN, is needed ‘to put in place a simple, speedy and effective means of enforcing the right to information...[and] to provide uniform conditions and procedures in obtaining access to official information’.

“Legislation can provide a clear penalty for the unlawful denial of access to official information,” the NGO continues. At the same time, a Freedom of Information Act can define the scope of the guarantee rather than leaving the issue up to the interpretation of government agencies, whose outlooks range between liberal and restrictive.

ATIN’s draft of “An Act to Ensure Public Access to Official Information and For Other Purposes,” has been submitted to the House of Representatives for discussion.

The draft Act requires every government agency to keep and maintain records which the public can access, specifying that certain records may not be destroyed, specifically those pertaining to government loans and guarantees; government contracts exceeding P10 million; the declaration of assets, liabilities and net worth required of government officials and employees; investigations of graft and corrupt practices by public officers; and any others where significant public interest is involved, or may be involved. The Act also requires every government body to provide the public with information about its operations, its powers and functions, the services it delivers, its programmes, projects and performance targets and accomplishments, the means through which the public can participate in policy formulation, its record-keeping system, and details of the contracts into which it enters.

Under the draft Act, government agencies are mandated to make available to the public information on almost every aspect of their operations, policies, structure and transactions, on the records in their custody or under their control.

Further, government bodies are required to disclose to the public information not explicitly exempted by the draft Act and which poses possible harm to the public’s health, the environment, or any other matter that affects the public interest.

The draft Act also specifies the conditions in which a government agency can deny access, among them the President’s declaration through an executive order that disclosure may damage national security. This may, however, be challenged before the Supreme Court. Neither can records regarding ongoing investigations be released when disclosure would interfere with the proceedings, deprive a person of a fair trial, disclose the identity of a confidential source, or endanger the life and safety of law enforcement personnel.



The Act would create a National Information Commission charged with formulating a national information programme and establishing links with all government bodies to monitor and report on their implementation of the Act, amongst others. The Commission will be an independent body whose members will be nominated and appointed only after open hearings. The Commission and the Regional Information Offices under it are given vast powers, including the authority to declare persons in contempt and to summon parties to an issue involving access to information, as well as impose fines and penalties.

The draft Act also clarifies the scope of the constitutional guarantee of access to information and imposes fines and prison terms for its violation.

8. OTHER RESTRICTIONS ON FREEDOM OF EXPRESSION AND HARASSMENT OF THE MEDIA

8.1. Killings of Journalists

The restoration of pre-1972 liberal institutions, achieved in part through the power of the media has not prevented the killing of journalists.⁹⁷ Press freedom reports tell that as many as 55 journalists have been assassinated since the restoration of democracy in the late 1980es.⁹⁸ The International Federation of Journalists noted that in 2004, after Iraq, the Philippines is the most dangerous place to work for journalists.⁹⁹

In its report *Silenced—Slain Filipino Journalists, 2002-2005*, the CMFR reported that only two court cases ended with convictions.¹⁰⁰ On 29 November 2005, a third conviction has been pronounced in the

⁹⁷ Villalon, Agaton J.Y. The Impact of Mass Communication on the People's Participation in the 22-25, 1986 'People Power' Revolution. Unpublished Thesis. College of Mass Communication, University of the Philippines, 1986.

⁹⁸ Khan, Rachel E. and Nathan J. Lee, "The Danger of Impunity", <http://www.cmfr-phil.org/fffj1.htm>; "Damalerio killer sentenced to life in prison", 29 November 2005, <http://www.ifex.org/en/content/view/full/70730>

⁹⁹ "IFJ Calls on Government to Offer 'Real Protection' for Philippine Journalists on World Press Freedom Day", 3 May 2005, <http://www.ifj.org/default.asp?index=3126&Language=EN>

¹⁰⁰ "In search for solution: A Study of Journalist Killings in the Philippines, 2002-2005", in: *Silenced—Slain Filipino Journalists, 2002-2005*, pp.12-15: <http://www.cmfr.com.ph/pjr1.htm>

prominent murder case of journalist Edgar Damalerio. His killer, Guillermo Wapile, was sentenced to life imprisonment.¹⁰¹

The low rate of success in prosecuting cases has been a major factor contributing to the continuing use of violence. The CMFR found that most of the journalists killed worked in the provinces, and that broadcast journalists were more vulnerable. The reason behind the last fact is probably because broadcast media is considered to be more powerful than other forms of media.¹⁰²

The broadcast and print journalist Edgar Damalerio, had been assassinated on 13 May 2002 in the southern Philippines city of Pagadian. Barely three months later, on August 19, another broadcast journalist, Sonny Alcantara, was killed in broad daylight on a busy street in San Pablo City on the main northern Philippine island of Luzon.¹⁰³

The alleged suspects in the killing of these journalists have been identified as local politicians and policemen loyal to them.¹⁰⁴ The convicted killer of Edgar Damalerio, Guillermo Wapile, is a former policeman, and in San Pablo City, the instigator of the killing of Alcantara is alleged to be a local politician who hired a neighbourhood hitman to silence the journalist. Both killings are reportedly a response to criticisms of local government officials made in the media by the murdered journalists.

Local prosecutors have confessed to being fearful as a result of their involvement in cases. As a result, it has taken initiatives by media organisations based in Manila to encourage the Department of Interior and Local Government, which has legal authority over the police, to allow the investigations to continue.

The proceedings against Edgar Damalerio's killer had been re-started in June 2005 after two years of delay. The case was only able to move forward when the trial was moved from Pagadian, the ex-policeman's hometown, where the killing took place, to Cebu.

Another prominent case is the murder of Marilyn Garcia Esperat, an anti-corruption campaigner and columnist for *Midland Review*. She was shot in Tacurong, Mindanao on 24 March 2005. Before her death, Esperat had

¹⁰¹ "Damalerio killer sentenced to life in prison", 29 November 2005, <http://www.ifex.org/en/content/view/full/70730>. Wapile has announced his intention to appeal the decision.

¹⁰² A study conducted by Pulse Asia, for example, shows that television and radio were the primary source of news on campaigns and candidates in the 2004 elections. In addition, national statistics also shows that broadcast media reach more population than other media (print, Internet). See Chapter 5 for details on the statistics.

¹⁰³ "Damalerio murder update: Witness killed, another receiving threats," *Philippine Journalism Review*, Vol. XIII. No. 4 (August 2002), pp. 44-45.

¹⁰⁴ *Philippine Journalism Review* (August 2002).



written about nepotism in the town of Sultan Sa Barongis and the corruption within the local office of the Department of Agriculture. President Arroyo has pledged a “thorough investigation” into Esperat’s murder.

Following the experience of the Damalerio case, the trial process of Esperat case has also faced interruption and interference from high-ranking officials. In August 2005 the local court dismissed the murder charges against the two suspects for the Esperat murder, Osmena Montaner and Estrella Sabay—both are high-ranking officials at the Department of Agriculture.

**Table 8.1: Status of Cases of Journalists Killed¹⁰⁵
(1986 - 2005)**

Status of Case	Number
conviction	2
dismissal	3
pending Cases	15
under investigation	27
killed during crossfire with rebels	5
killed in a crossfire during coup d’etat attempt	2
Total no. of journalists killed	54

Source: CMFR

Free expression is particularly under threat in the Philippines’ countryside, since it is in the provinces where the central government is weakest and the metropolitan media least influential. The lethal combination of semi-autonomous local warlords, and police and military personnel in connivance with them, has led to the killing not only of journalists but also of political activists, to the detriment of human rights in general and free expression and free press in particular.

Lack of professionalism, mainly due to a lack of journalism training and the dependence of broadcast organisations on freelancers or “block

¹⁰⁵ This chart does not yet reflect the recent conviction of Guillermo Wapile.

timers”,¹⁰⁶ have been noted as contributory factors in journalist murder cases. Untrained journalists may not realise the risks involved in obtaining a story and may unnecessarily place themselves in danger. In its report, CMFR proposed some remedies to the problems of violence directed towards journalists:

- safety training for journalists;
- strong legal defence;
- ethics training and accreditation by the self-regulatory board for broadcast media KBP;
- establishment of citizen press councils that promote press accountability.¹⁰⁷



Cebu Citizens-Press Council Workshop (Photo: CMFR)

¹⁰⁶ Block-timer is an independent journalist or producer who buys airtime in order to broadcast programs on radio or television.

¹⁰⁷ Center for Media Freedom and Responsibility, *In search for solution: A Study of Journalist Killings in the Philippines, 2002-2005*, published in PJR Reports.



8.2. Journalistic standards

A statement from Lin Neuman of the Center to Protect Journalists (CPJ) perhaps best describes the current situation of the media in the Philippines:

The best of the contemporary Philippine media are very good and remain a bastion of muckraking courage. Public issues are widely discussed in print and broadcast media, and there is almost no official control. Unlike most Asian countries, it is unheard of for the Philippine government to successfully keep embarrassments and flaws out of the media. But the damage done by Marcos' martial law remains. By dismantling the structure of the press built up over previous decades, Marcos weakened the professionalism and ultimately politicized the media to a staggering degree. Sadly, corruption in the media is common. Salaries are low and businesses and politicians often buy favorable coverage. Some radio commentators use their microphones to peddle influence, and the military has also used radio journalists to foment unrest against communist and Muslim insurgents.¹⁰⁸

The lack of professionalism of some media people, the politicisation of the media, lack of pluralism, and hate speech are amongst the challenges faced by the media in the Philippines. These are in effect linked with other problems such as attacks against and murder of journalists—which are discussed in more detail below.

After the 1986 People Power Revolution, there has been significant growth in the coverage of environmental and women's issues, science and technology, civil society and many areas that had previously either been ignored or only marginally covered.

Before the declaration of martial law in 1972, there was at best minimal reporting on the environment, virtually nothing on human rights, and no mention at all of women's and gender issues.

The attention given to underreported and unreported subjects resulted from an increased awareness amongst journalists after 1986 that these previously neglected areas were crucial to an understanding of events in the country. As a result of this neglect, Filipinos had a distorted sense of what was going on concerning such issues. The media attention that they now receive is one of the major achievements in the history of the Philippine media over the last 15 years.

¹⁰⁸ "The Philippines: Amid Trouble, a Rich Press Tradition", CPJ Special Reports, http://www.cpj.org/Briefings/2005/phil_05/neumann_sidebar.html

This focus has encouraged a new mindset, now concerned with what is current and relevant. It has led to some exceptional reporting on issues including information technology and government performance, areas critical to Philippine life in the 21st century.

Following 1986, the Philippine media also realised the need to examine themselves as institutions vital to democratisation and development. The media became news subjects themselves, as they grew more pervasive and influential.

Despite the above, there are still many areas where the media has not been able to provide a fair and balanced coverage, including for political, ethnic and regional issues.

When the political crisis exploded towards the end of 2000, public opinion surveys, as well as counter demonstrations, were among the methods the government used to combat the broad movement supporting the resignation, ousting or impeachment of Joseph Estrada on charges of corruption, bribery, betrayal of public trust and culpable violation of the Constitution. Aside from their intended messages, however, there was another, equally disturbing communication in the results of the surveys: in addition to a leadership crisis, there was also a crisis of information in the Philippines.

In almost every survey conducted in the country, a large percentage of respondents claimed to have no information about certain issues, no matter how current. That was the case in an 26-30 October 2000 opinion poll undertaken by the survey organisation Social Weather Stations,¹⁰⁹ in which 26 per cent of the respondents claimed not to know enough to say anything about Mr Estrada, his resignation, ousting or impeachment, or even about the illegal gambling (*jueteng*) scandal in which the President was implicated.

Information was not only crucial to the outcome of the 2000-2001 political crisis; it was also critical in democratic decision-making. The crisis suggested the uncomfortable possibility that an informed citizenry, the basis of authentic democratic governance, did not exist in the Philippines.

If so many Filipinos were uninformed about the Constitution and their president's responsibilities, with many ignorant of important facts and unable to interpret the events that affect their lives, then the failure of certain institutions, including the mass media, to educate the citizenry seems to be evident.

¹⁰⁹ Social Weather Stations (SWS) survey on People Power 2 and change in presidency, October 26-30, 2000. Available at www.sws.org.ph.



A content analysis by the Centre for Media Freedom and Responsibility (CMFR) revealed the imbalance in news coverage of the country: Only three of the 11 newspapers examined—the *Manila Bulletin*, the *Philippine Daily Inquirer*, and the *Star*—have a special section for provincial news. Among them, only the Bulletin has a special page devoted to the three major islands—Luzon, Visayas and Mindanao. The other two papers alternate the regions in one provincial section.¹¹⁰ Sheila Coronel in her article “Philippine media: Free but not Diverse” stated that regions where the poorest Filipinos reside are rarely covered in the news, nor are they represented in much of television programming. News about the most impoverished provinces in the country is rare, except when chaos or calamity strikes...¹¹¹ News about minority groups are also lacking.¹¹²

The sensationalism, inaccuracies and other unprofessional practices of the Philippine media have become so pronounced that they have encouraged calls for the regulation of the press, sometimes by journalists themselves, despite the protection of the 1987 Constitution’s Article III. So far these calls have not prevailed because the media and its civil society allies, as well as liberal politicians, have resisted efforts to institute government regulation of the media.



Front cover of PJR Report (Photo: CMFR)

¹¹⁰ Khan, Rachel E., “A Manila-centric Press”, *Pluralism in the News Room*, Journalism Asia Series, (Manila: Center for Media Freedom and Responsibility, May 2005), p.31.

¹¹¹ Coronel, see note 72 on page 31, p. 29.

¹¹² CPJ Special Reports, see note 108 on page 56.

8.3. Political and commercial pressures on Media

Like their counterparts in most other countries, the Philippine mass media are first of all commercial enterprises controlled by political and economic interest groups.¹¹³ As commercial enterprises, they are focused on profitability, or at least the minimisation of losses, which at the outset creates a conflict between the private interests of the mass media and their public service function. Among other consequences, the commercial imperative has driven the mass media to sensationalism, emphasising what will sell newspapers or boost ratings, and into the suppression or slanting of news unfavourable to the interests that control the media.

Sheila Coronel, Executive Director of the Philippine Center for Investigative Journalism, noted that:

These proprietors, like their counterparts during the Marcos and pre-Marcos eras, have not been shy about using their publications or their broadcasting facilities to advance their political or business interests. Today it is not uncommon for broadcast stations or newspapers to lambaste their proprietors' business rivals or to campaign for policies that will advance their owners' corporate causes.¹¹⁴

The mass media are at the same time haunted by a vast range of professional and ethical problems. In January 2001, for example, the impeachment trial of President Joseph Estrada was the staple of front-page news. Aside from the shock value of the hundreds of millions of pesos in illegal funds that seemed to have been delivered to, deposited in the accounts of, or spent by the President, a vast amount of money from illegal gambling was supposedly turned over to an official of the government's executive branch for the corruption of the Philippine media. Indeed, one Manila columnist suggested that the media could yet turn out to be the biggest beneficiary of the illegal numbers game known as "*jueteng*".

Because of this, and other resulting implications for the state of the Philippine media, the 2000-2001 political crisis was far more than the amusing circus some foreign observers have claimed. This crisis brought into the light some of the most fundamental issues of leadership and democratic governance in the Philippines—and with them what has happened to the Philippine media, particularly the Philippine press, since 1986.

The most critical determinant of the capacity of the Philippine media to function as effective vehicles of free expression is the character of media

¹¹³ Ofreneo and Coronel see note 71 on page 31, pp. 6-14.

¹¹⁴ Ibid.



ownership. The Philippine media have been owned and controlled for decades by various political and economic interests, which regard the media as means of offence and defence. The consequences of this situation were demonstrated during the short-lived government of Joseph Estrada, which exploited the weaknesses inherent in Philippine media ownership.

In the aftermath of the 1986 People Power uprising which ousted Ferdinand Marcos a restoration of press freedom took place, Restrictive laws governing the media, including those that required a government permit to publish newspapers, and which allowed, on national security grounds, the arrest of media practitioners critical of government, were repealed. This relaxation was followed by the arrival of poor ethical and professional standards of the media. Key problems included the corruption of practitioners by government and business interests; inaccuracy; and biased, unbalanced reporting; sensationalism and dumbing-down—usually in the form of reports that exaggerated the importance of events, or that focused predominantly on sex and violence.

When Joseph Estrada came to power, the government intervened in the context of these problems, a move that was inevitably destructive. This intervention consisted of the exertion of pressure onto the media through extralegal means, as well as what appears to have been a systematic effort to corrupt the media. In the context of the media's already critical problems related to professional standards and ethical issues, government intervention was crucial to the deterioration of the media's capacity to provide the public with the information it needed.

In 1999, despite the lack of any formal government regulation of the media, there was genuine concern that the government could use harassment or violence against media practitioners it perceived to be hostile.

In that year, President Estrada, a former film actor, reportedly encouraged an advertising boycott of the *Philippine Daily Inquirer* (the *Inquirer*) by his producer friends in the movie industry. The *Inquirer* had the largest circulation among the broadsheets, making it a preferred print medium for advertising. The boycott began on 10 July 1999, two days after a dinner at Malacañang, the presidential palace, during which it has been reported that Estrada requested that the film producers withdraw their advertising in the *Inquirer* in return for tax breaks for the movie industry.¹¹⁵ Not only movie producers but also the distributors of foreign films in the Philippines withdrew advertising from the *Inquirer*. The Philippine Long Distance Company, as well as cell phone service providers Smart and Piltel, followed suit. The Fort Bonifacio Development Corporation and other government corporations withdrew their adverts almost simultaneously in mid-July 1999.

¹¹⁵ <http://www.cpj.org/attacks99/asia99/Philippines.html>

Estrada maintained that he did not issue an order for any company to withdraw its ads from the *Inquirer*. But the withdrawal of advertising by these groups appears strangely coordinated, and the situation resulted immediately in substantial financial losses for the *Inquirer*.

Estrada's hostility towards the *Inquirer* dated back to the 1998 presidential campaign, when the paper published stories he believed undermined his presidential ambitions. Presidential displeasure with the *Inquirer* continued into 1999, when the paper reported the involvement of one of Estrada's relatives in a 3 billion pesos (USD 54.3 million) bribery scandal, and in 1999 Estrada publicly expressed his anger with an *Inquirer* story published on 15 June, claiming that on a visit to Cagayan de Oro City, his son Jude left some 60,000 pesos (USD 1,000) in unpaid bills.

Defamation

Defamation suits in the Philippines can lead to imprisonment, as well as constituting a serious threat to media professionals through the exorbitantly high damages that can be awarded in defamation cases. For instance, on 1 March 2005, Raffy Tulfo, columnist at the tabloid evening daily *Abante Tonite*, was convicted to 28 years in prison after a local court found him guilty in 14 counts of libel in Pasay City. He was also ordered to pay 210 million pesos (USD 3.8 million) to the complainant, a former Bureau of Customs Intelligence and Investigation officer.¹¹⁶

In June 2002, Philippine pesticide activists Dr Romy Quijano and his daughter, journalist Ilang-Ilang Quijano learned they were being sued for libel, for the second time, by Lapanday Agricultural Company (LADECO) for their expose of pesticide poisonings in Kamukhaan, a small village in the Philippines. Already in August 2000, the company had responded to earlier revelations with a libel suit against the authors for 20 million Philippine pesos. The case was eventually dismissed, but LADECO pressed on by filing another suit in 2002, this time for 5.5 million pesos.¹¹⁷

Libel charges were filed against five journalists on 3 October 2005 for publishing stories implicating a municipal mayor as the mastermind of a 94 million pesos (approx. USD 1.7 million) bank robbery in Bogo, Cebu province, south of Manila.¹¹⁸

Often the defamation suits are brought by powerful public figures to muzzle criticism directed against them. This exercises a serious

¹¹⁶ <http://www.cmfr-phil.org/alerts-mar.htm>

¹¹⁷ http://www.panna.org/resources/gpc/gpc_200208.12.2.14.dv.html

¹¹⁸ "Five journalists face libel suit for linking local official to bank robbery", <http://www.ifex.org/en/content/view/full/69580>



“chilling” effect on media, undermining its ability to function as a democratic watchdog. It is widely accepted in international law that public officials should enjoy less protection than ordinary citizens with regard to their reputation because in a democracy the public has a right and the media a duty to scrutinise and criticise government.

The use of defamation suits by government officials in the Philippines to suppress criticism and ensure favourable media coverage is not a new phenomenon:

On 9 March 1999, Estrada began an assault on the media by filing a libel suit against the Gokongwei family-owned *Manila Times*. A *Manila Times* news story published on 16 February had described Estrada as “an unwitting ninong (godfather)” in a 17 billion pesos (USD 315 million) contract between the government’s National Power Corporation and an Argentina-based company. It was the use of the word “godfather” that offended Estrada, who said that the media could call him stupid but not corrupt. He went to court, demanding 101 million pesos (USD 1,9 million) in damages.

The suit precipitated a crisis at the *Manila Times* and later caused a mass resignation of its staff, the majority of whom believed that no libel was committed and that the newspaper should pursue the issue through the courts. The *Times* owners, however, chose to apologise to Estrada both verbally and in print. A few months later on 20 July, they sold the paper to interests identified with Estrada’s crony Mark Jimenez.

The libel suit against the *Times* and its eventual sale to an Estrada crony were clear threats to press freedom. The libel suit filed by Estrada, an incumbent president of the Republic, was not a first for the Philippine press. In 1989 Corazon Aquino filed a suit against a Manila journalist—the very first libel suit by a sitting president. Estrada’s suit, however, had an impact beyond the legal proceedings because it was accompanied by subtle threats of tax audits and other government action.

The sale of the *Times* to an Estrada crony resulted in there being one voice less in a supposedly democratic setting.

The *Manila Times* and *Inquirer* controversies, and the role of a president who was apparently not only overly sensitive to criticism but who also wanted unanimity of praise and a favourable coverage by the media, erupted in circumstances hardly ideal for the exercise of press freedom as a crucial element in democratic governance. Acquiescence to the government by much of the media was the consequence.

8.4. Anti-Terrorism

There has been a recent emphasis on anti-terrorism measures, which in the Philippines, has tended to be directed against legal left-wing groups, the armed guerrilla movements (including the Moro Islamic Liberation Front) as well as the group Abu Sayyaf, which formerly had links to the international terrorist network Al Qaeda. The first leaders of Abu Sayyaf were trained in Afghanistan in the late 1980s. Following the rise of new leaders, however, Philippine security forces claim that its links were severed in the mid-1990s.

Loosely defined by government security forces, anti-terrorism measures are often used as an excuse for the suppression of free expression in the form of withholding permits for public demonstrations as well as veiled threats against legal left-wing groups.

The governmental Commission on Human Rights (CHR) has recorded human rights violations that have occurred as part of the 34-year-old conflict in the Philippine countryside, attributing them largely to the police and military elements.¹¹⁹ Such incidents have often gone unnoticed in the capital.

The violations recorded by the CHR include the arrest without warrants of suspected guerrillas and their supporters, their arbitrary detention and torture, and in several cases, their summary execution. The same violations have been perpetrated against unarmed activists, whom the police and military identify with the guerrillas, making no distinction between the armed groups of the Left and legitimate, unarmed political parties with identical programmes.

During the first six months of 2002, sporadic newspaper reports chronicled the murder of political activists from the left-wing political party *Bayan Muna* (The People First), which under the “party list” system had three representatives elected to the Lower House of the Philippine Congress during the congressional elections of 2001.

Bayan Muna subsequently claimed that some two dozen of its leaders and mass activists, as well as several others from its affiliated organisations, including the women’s group Gabriela¹²⁰ had been killed and several others harassed, threatened with death and questioned by security forces in the Philippine countryside.¹²¹

¹¹⁹ Commission on Human Rights Status of Operations CY 2001.

¹²⁰ Named after the wife of a revolutionary leader during the Spanish period who took up resistance against Spanish rule when her husband was murdered by mercenaries under Spanish hire

¹²¹ Mallari, Delfin, Jr., “Bayan Muna leader in Mindoro slain in ambush,” *Philippine Daily Inquirer*, May 30, 2002, p.A 15.



For decades since the martial law (Marcos) period, the police and the military have labelled, without providing any proof beyond the supposed similarity of their advocacy, certain non-governmental and people's organisations (student organisations, labour unions, civil society groups, and even media organisations) as "fronts" of the Communist Party of the Philippines (CPP),¹²² the New People's Army (NPA), and the umbrella political formation known as the National Democratic Front, of which the CPP is the leading member.

A new anti-terrorism bill

Soon after the second Bali bombing, on 4 October 2005, a draft Anti-Terrorism Bill was introduced in the House of Representatives. The Act defines terrorism as "the premeditated, threatened and actual use of violence or force or by any other means of destruction perpetrated against persons, properties, or the environment, with the intention of creating or sowing a state of danger, panic, fear, or chaos in the general public, group of persons, or segment thereof, or coercing or intimidating the government to do or abstain from doing an act."

Under the bill, the eleven acts that are considered as terrorism, include:

- threatening or causing death or serious bodily harm to a person or persons;
- threatening or causing serious risks to health or safety of the public or any segment of the public;
- threatening or causing substantial damage or wanton destruction or resorting to arson on critical infrastructure or property, public or private.
- threatening or causing serious or unlawful interference with or serious unlawful disruption of an essential service, facility or system whether public or private;

This is an extremely wide, and very vague definition of terrorism and of terrorist acts, which includes acts of destruction—or merely the threat of such acts—perpetrated against property with an intent to create 'chaos to the general public'. An unruly participant in a demonstration who smashed a window would be covered by this definition. While such behaviour is not to be encouraged, at the same time it hardly qualifies as terrorism. The overly broad scope and vaguely defined offences in the bill would mean that a big demonstration, such as EDSA 1 and EDSA 2, could also be considered a terrorist act because they caused "serious interference" and even "unlawful disruption". People who are involved in such acts can become categorised as terrorists and punishable with the death penalty.

¹²² In April 2005, the National Union of Journalists of the Philippines revealed that the Intelligent Service of the Armed Forces of the Philippines had listed the journalists' association and the Philippine Center for Investigative Journalism as communist sympathizers and "enemies of the state".

Any restrictions to freedom of expression must satisfy the three-part test as discussed in Section 4.5. The Philippine Councils for the Defense of Liberties (CODAL), ARTICLE 19 and other non-governmental organisations are concerned that the anti-terrorism bill violates these international standards. The offences remain too vague and broadly stated to serve as the basis for a criminal restriction on the right to freedom of expression. The Bill fails to adequately distinguish between legitimate forms of behaviour and actual violence.

Another example of the law's flaws is that it foresees the creation of an Anti-Terrorism Council to serve as the 'central policy-making, coordinating, supervising and monitoring body' on matters of terrorism. This Council is directly attached to the Office of the President.

ARTICLE 19 is of the opinion that in order to prevent abuse and the erosion of respect for human rights, laws granting additional powers to law enforcement officials, which the anti-terrorism law does, should provide for an oversight mechanism independent from the executive powers. An oversight mechanism could take many forms, or oversight powers could be granted to an existing body, such as an ombudsman or human rights commission. At a minimum, the oversight body should have the following powers:

- to audit specific law enforcement agencies or units in relation to their implementation of the Act;
- to monitor the overall approach to implementation of the Act by law enforcement agencies;
- to report to the legislature on implementation of the Act;
- to make recommendations regarding implementation or reform of the Act; and
- to access all relevant documentation needed to carry out the above activities.

In its current form the draft law on terrorism constitutes a serious threat to freedom of expression and other human rights.¹²³

A number of opposition representatives and activists have expressed their concern that the bill, if passed into law, will complete the ingredients of martial rule, which is the unlimited power of the Commander in Chief (the President), to completely determine whether an action is an act of terrorism or not. Iloilo Representative Rolex Supico, for instance, said that, "We think we have already gone past the boundary of creeping martial law. We are already under an undeclared martial law."¹²⁴

¹²³ "Anti-terror bill: death to human rights and the Constitution".
http://www.cyberdyaryo.com/statements/st2005_1008_02.htm

¹²⁴ "Terror bill sparks fear", Inquirer News Service, 6 October 2005,
http://beta.inq7.net/nation/index.php?index=1&story_id=52433



Freedom of assembly

In late September 2005, President Arroyo issued an executive order stating that all demonstrations without permits would be pre-emptively stopped. The opposition and activists groups have accused the Arroyo administration of moving towards an undeclared version of martial law. The order, so far, seems to have failed to discourage the public from staging rallies against the Arroyo government and their policies. Bishops, nuns, farmers, students have all gone to the streets in a number of separate demonstrations.

9. LATEST DEVELOPMENT TOWARDS A FREER AND MORE RESPONSIBLE MEDIA

9.1. Media Advocacy Groups

The founding of media advocacy groups, among them the Center for Media Freedom and Responsibility, indicates a growing realisation within the profession of the need for self-evaluation and self-regulation in a democratising society. The issues of ethics and responsible reporting are also of concern to such groups as the Philippine Press Institute (PPI).

The growing concern over the quality of the media was a consequence of the martial-law experience. During that period the absence of reliable information became a weapon of the dictatorship. The availability as well as the quality of information became critical governance issues.

The most significant gain of Philippine journalism after 1986, has been the growth of investigative journalism in an environment still burdened from the martial-law period by the legacy of secrecy. The establishment of the Philippine Center for Investigative Journalism (PCIJ) in 1989 was the turning point in this rediscovery of a form that, whilst already in existence before 1972, was then largely limited to exposés and sensationalised articles.

Both media sectors, prior to and following 1972, lacked attention to rigorous research. This rediscovery of investigative journalism is crucial to the monitoring of governance, and has brought the watchdog function of journalism to a new level of professional commitment. It was a rejuvenation for print as well as broadcast.

These gains, however, whilst won, had to be sustained in conditions that were not necessarily ideal. By 1999, when the Estrada government completed its first year, it had become increasingly evident that these achievements were not lasting. Dedicated and honest media practitioners not only faced more than the usual difficulties in undertaking their work; they also had to contend with presidential bullying and actual as well as implied threats to their physical safety.

In addition to pressures and threats from the government, the media were also faced with systematic efforts by government officials to buy media practitioners. The so-called “Juetengate” scandal in which the Estrada was prosecuted for receiving money from illegal gambling, was the turning point in media self-awareness concerning this issue. On the eve of People Power 2 in 2001, the Philippine media were again in urgent need of reform and renewal.

The crisis led to an ethical and professional dilemma among many practitioners: Should they report the news as they saw fit, or tailor their reporting to the desires of the majority of the owners and editors—who were either wary of Malacañang displeasure or were close Estrada associates? Some chose to assert their autonomy, a decision that in many cases led to regular skirmishes between decision-makers and reporters in the newsrooms of both print and broadcast organisations.

9.2. Investigative Journalism

But even under these circumstances, and in response to them, a corps of dissident practitioners has developed. These practitioners see the limitations of their own coverage; they test the political, economic and ideological limits underpinned by the ownership system on a daily basis; and they desire a truly relevant journalism that owes its allegiance first and last to the people and a responsibility to impart accurate and balanced information. This was especially evident during the political crisis in 2001, when the dissidents resisted pressures by editors and owners to shape their coverage in favour of Estrada, as well as against efforts to buy them off.

These dissidents were widespread in Philippine newspapers—in Manila as well as in the communities, and included reporters, columnists and even editors. They sought the information that would help Filipinos understand their own society and its problems, and engaged newspaper decision-makers in daily struggles to get the news out to a people hungry for information, and equally important, interpretation. They are the reason why, despite the political economy of the Philippine press, critical articles and news vital to the public understanding of recent events still manage to be published, even in those newspapers whose policies,



ideological inclinations and political acquiescence to those in power make them virtual government mouthpieces.

What is clear is that for all its problems, there are individual practitioners in the Philippine media, even in the most timid and most acquiescent of Philippine newspapers, who succeed in reporting the news accurately. For them, the task of gathering information and reporting is a day-to-day struggle with editors and even with owners, an ongoing conflict that is extremely complex, characterised by small victories, narrow escapes and many defeats.

9.3. The Rise of New Media

The Internet has played an important part in the recent political crises in the Philippines. While traditional media still dominate coverage, in particular print, radio, and television, other supplementary forms of media are emerging. If SMS texting was a contributing factor to the propaganda of both sides during the impeachment of President Joseph Estrada, e-mail and online journals (or blogs) have taken on a much more prominent role in the current crisis facing President Arroyo.

The political crisis in 2000 – 2001 provoked the creation of a number of political, almost uniformly anti-Estrada, websites. Over twenty such websites, characterised by a high degree of interactivity, were identified by the CMFR's Philippine Journalism Review in December 2000.¹²⁵ They included Erap resign.com , Impeach Erap.com, Iskandalo.com, Guerrilla Information Network, and HotManila. Most Manila newspapers are also online, including the three most widely circulated English language broadsheets.

In the 2005 political crisis which is threatening the presidency of Gloria Macapagal-Arroyo, blogging has played a significant part in providing the public with uncensored information they cannot get from the mainstream media. The PCIJ's blog was the first to break the story on the existence of the recording of a conversation between the President and the official of the Electoral Commission, Virgilio Garcillano, allegedly proving that Garcillano had helped manipulate the 2004 general election results. Apart from PCIJ, some of the notable blogs are: MLQ3, The Sassy Lawyer, By Jove! and Tales from Disiniland.

¹²⁵ Eder, Ederic, "Alternative press assumes new forms and new expressions," Philippine Journalism Review, Vol. XI No. 4 (December 2000), pp. 31-33.



ARTICLE 19 champions freedom of expression and the free flow of information as fundamental human rights that underpin all others. We take our name from Article 19 of the Universal Declaration of Human Rights. It states:

Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.

ARTICLE 19 believes that freedom of expression and of information is not a luxury but a basic human right: it is central to achieving individual freedoms and developing democracy.

When people are denied freedom of speech or access to information, they are denied the right to make choices about their lives. Freedom of expression and access to information are essential to achieving equality for women and minorities, and to protecting children's rights. They are crucial to respond to the global HIV/AIDS pandemic, to fight against corruption and to ensure equitable and sustainable development.

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- ARTICLE 19 works worldwide – in partnership with 52 local organisations in more than thirty countries across Europe, Africa, Asia, Latin America and the Middle East - to lead institutional, cultural and legal change.
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- ARTICLE 19 undertakes authoritative and cutting edge research and monitoring, advocacy and campaigning work.
- ARTICLE 19 produces legal analysis, set standards, and advocate for legal and judicial changes.
- ARTICLE 19 carries out advocacy and training programmes in partnership with national NGOs to enable individuals to exercise their human rights.
- ARTICLE 19 engages international, regional and State institutions, as well as the private sector, in critical dialogue.

Founded in 1986, ARTICLE 19 was the brainchild of Roderick MacArthur, a US philanthropist and journalist. Its International Board consists of eminent journalists, academics, lawyers and campaigners from all regions of the world. ARTICLE 19 is a registered UK charity (UK Charity No. 327421) based in London with international staff present in Africa, Latin America and Canada. We receive our funding from donors and supporters worldwide who share a commitment to freedom of expression.

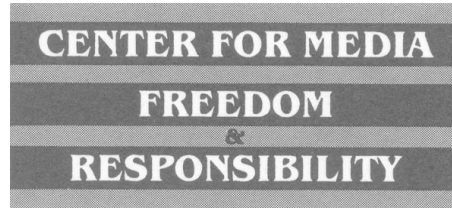
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The formation of the Center for Media Freedom and Responsibility (CMFR) addresses one of the critical concerns confronting the Philippines after People Power toppled the Marcos dictatorship in February 1986. That concern calls attention to the power of the media and the role of the free press in the development of Philippine democracy.

CMFR was established in 1989 as a private, non-stock, non-profit organization involving different sectors in the task of building up the press and news media as a pillar of democratic society. Its programs uphold press freedom, promote responsible journalism and encourage journalistic excellence.

The CMFR's main objectives are:

- 1) To protect and strengthen the free press as a pillar of democracy
- 2) To establish a framework of responsibility and ethics in the practice of the press
- 3) To promote journalistic excellence, and
- 4) To engage different sectors of society in building a free press in the Philippines.

The CMFR publishes the *Philippine Journalism Review* (PJR), a quarterly publication of commentary and feature reporting on political, economic, social and media-related issues.

The CMFR is also a founding member organization of the regional Southeast Asian Press Alliance (SEAPA) and a member of the International Freedom of Expression Exchange (IFEX).

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