

PHILIPPINES

15. Cybercrime, criminal libel and the media

From 'e-martial law' to the Magna Carta in the Philippines

Abstract: President Ferdinand E. Marcos declared martial law in the Philippines on 21 September 1972. Issuing the declaration under *Proclamation 1081* which suspended civil rights, gagged the news media and imposed military authority in the country, Marcos defended this draconian move under the Philippines Constitution in response to a series of bombings allegedly caused by communist rebels. The emergency rule at the height of the Cold War was also planned to quell rebellion and drive national development. Four decades later, on 12 September 2012, President Benigno Aquino III signed *Republic Act No. (RA) 10175*, or the *Cybercrime Prevention Act*, into law. This legislation was immediately widely condemned as a threat to freedom of expression on the internet, the media and online privacy and has been likened by human rights groups, media freedom advocates, 'netizens' and opposition Congress members as comparable to the Marcos Martial Law era. Kabataan Representative Raymond Palatino branded the legislation 'e-Martial Law', comparing it to repressive Marcos-era decrees censoring and harassing the media. Fifteen Supreme Court appeal petitions were lodged against the Cybercrime Law but the subsequent ruling found the law constitutional in February 2014. This article examines the law, challenges since the constitutional ruling, and demands for repealing the law and replacing it with a so-called 'Magna Carta' of internet media freedom.

Keywords: censorship, criminal libel, freedom of expression, freedom of information, digital media, martial law, media freedom, media law, Philippines

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CRIMINAL libel is one of the most abused means to suppress free expression and press freedom in the Philippines, according to media freedom advocates such as the Center for Media Freedom and Responsibility (CMFR) and the National Union of Journalists of the Philippines (CMFR, 2012; NUJP, 2014a). Media freedom

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advocates have argued for decriminalisation of libel for decades. They have asked Congress to amend the provisions on libel of the 83-year-old Revised Penal Code. The most significant development in the Philippine campaign to decriminalise libel has been the United Nations Human Rights Committee's (UNHRC) declaration in October 2011 that the criminal sanction for libel in the Philippines is 'excessive' and in violation of the International Covenant on Civil and Political Rights (ICCPR) to which the Philippines is a signatory.

Despite the UNHRC declaration that it is incompatible with human rights law, libel suits are still being filed against journalists, in many cases to limit criticism of public officials and other powerful individuals. The status of the Philippines in various global media freedom audit assessments has continued to decline.

For example, the Philippines 'sank further down' a global ranking of press freedom by the international media watchdog Reporters Sans Frontières (RSF) or Reporters Without Borders, reported GMA News (Marcelo, 2014; RSF, 2014). Elizabeth Marcelo cited the RSF World Press Freedom Index rankings for 2014 to show the Philippines had 'slid two rungs lower' on the ladder to 149th from 2013 when it was 147th. However, according to the most recent Index, the Philippines rose seven places to 141st (RSF, 2015). The worst year for rankings was in 2010, after the Maguindanao Massacre on 23 November 2009, when 32 of the 58 people killed were journalists. The RSF Index is based on a methodology using six general criteria—the extent of pluralism; media independence; environment and self-censorship; legislative framework; transparency of institutions and procedures that affect production of news and information, and the quality of infrastructure that supports the production of news and information.

Other media freedom organisations have been equally critical of the status of the Philippines. For example, the New York-based Committee to Protect Journalists reported that 'violence and threats against journalists, particularly in provincial areas, remained widespread' as President Benigno Aquino's vow to end impunity in media murders went unfulfilled during his third year in office (CPJ, 2014).

At least three journalists were killed in 2013, one of them was radio reporter Fernando 'Nanding' Solijon. A police officer was later identified as a suspect and placed under house arrest. At least six other reporters were killed in 2013. (Ibid.)

At least three journalists were killed in the Philippines in 2014, behind Syria (15), Palestine (7), Ukraine (6), Iraq (4), Libya (4) and Somalia (4), equal to Afghanistan (3), and ahead of Brazil, Central Africal Republic, Colombia, Democratic Republic of the Congo, Pakistan and Paraguay (all 2) (Press Freedom Barometer, 2014). Another key development raised by CPJ was the fact that the Maguindanao massacre trial for the 2009 killings of 32 journalists and media workers failed to convict any of the 197 suspects after nearly four years of legal proceedings. 'Reforms to the criminal justice

system, including new mechanisms to expedite priority cases, failed to break the trial's procedural deadlock,' reported CPJ.

'Corruption and state plunder' remained in the spotlight in 2013 with new exposés of malfeasance, according to Freedom House. The agency's World Freedom report showed how the state audit agency had confirmed the 'organised abuse' of Congress's Priority Development Assistance Funds (PDAF), which had been revealed by an investigating local newspaper. More than 38 legislators and officials were implicated in creating bogus non-government organisations, siphoning off US\$23 million from state funds. The report also found the Philippines 'remains one of the most dangerous places in the world' for journalists to work, and 'impunity for crimes against them is the norm' (Freedom House, 2014).

This was ironical given that the Philippines has 'enjoyed' democracy for almost three decades since the harsh authoritarian rule under President Ferdinand E. Marcos ended in 1986. President Marcos declared martial law in the Philippines on 21 September 1972. Issuing the declaration under *Proclamation 1081* which suspended civil rights, gagged the news media and imposed military authority in the country for nine years, Marcos defended this draconian move in response to a series of bombings allegedly caused by communist rebels. The emergency rule at the height of the Cold War was also planned to quell rebellion and drive national development.

Marcos defended the authoritarian law under the Philippine Constitution, and argued that it was needed to defend Filipino citizens from 'dangerous threats' posed by Muslim rebels and Christian vigilantes challenging national security. Four decades later, on 12 September 2012, President Benigno Aquino III signed *Republic Act No. (RA) 10175*, or the *Cybercrime Prevention Act*, into law. This legislation was immediately widely condemned as a threat to freedom of expression in the internet, the media and online privacy and has been likened by human rights groups, media freedom advocates, 'netizens' and opposition Congress members as comparable to the Marcos martial law era. Kabataan Representative Raymond Palatino branded the legislation 'e-Martial Law', comparing it to repressive Marcos-era decrees censoring and harassing the media.

Fifteen consolidated Supreme Court appeal petitions were lodged against the Cybercrime Law but the subsequent ruling found the law constitutional in February 2014. However, new challenges have been issued since then, advocating a repeal of the law and replacing it with a so-called 'Magna Carta' of internet media freedom. This article examines controversy over the law as a case study and relates it to other tough new legal mechanisms against online media in the Asia-Pacific region and the implications for political reporting.

Media ownership and a 'cluster of laws'

While Filipinos take the free flow of information and the availability of news for granted,

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argues CMFR executive director Melinda Quintos de Jesus (2006), they appear ‘incapable of making effective use of them’. She continues:

Preaching press freedom seldom arises above the level of the motherhood statement. Despite the high profile given media personalities, many journalists remain vulnerable to manipulation and harassment, their freedom and lives subject to threats and attacks.

Public officials ban media critics from covering their activities. Judges are quick to declare journalists ‘in contempt’ for negative reports on their decisions or their conduct. Mayors have ordered radio stations closed for alleged violations of business regulations, an excuse to silence strident criticism. (De Jesus, 2006)

Another example cited by de Jesus was President Gloria Macapagal Arroyo’s *Proclamation 1017*, a declaration of a state of emergency in 2006 to foil an alleged coup attempt. This ‘authorised the unthinkable: the police takeover of the offices of an [opposition] newspaper’. None of these violations, according to de Jesus, provoked public protest.

According to Article 19, an analysis of the state of the media in the Philippines in 2005 indicated that unlike in many other countries, there was no cluster of laws in the Philippines that could be described as ‘media laws’ (CMFR, 2006, p. 15). Instead, a range of laws applies to the mass media and other sectors in the Philippines. Also, there is substantial body of jurisprudence which upholds, limits and otherwise interprets constitutional provisions involving freedom of speech and the press (Article III) or other media issues (such as Article IX on the Commission of Elections, and Article XVI prohibiting foreign media ownership). There are also several presidential decrees from the Marcos era which remain in force. Interestingly, a ‘shield law’ (*Republic Act 53* as amended by *RA 1477*), which provides in Section 1 protection for journalists’ non-disclosure of the sources of their information (CMFR, 2006, p. 11), still applies.

According to the Center for Media Freedom and Responsibility (CMFR) (2006, p. 12), ‘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’. The CMFR has also noted that in response to the ‘sometimes heavy-handed efforts of media owners to intervene even in the daily operations of their newspapers’, some journalists have argued that it is time to allow foreign media ownership in the country, currently prohibited by the 1987 Constitution. However, this possibility has also faced criticism. For example, Luis V. Teodoro, a former dean of the University of the Philippines (UP) College of Mass Communication, said: ‘Any move to open the media to foreign ownership would be divisive not only on nationalist lines but on constitutional lines as well’ (*Philippine Star*, 7 October 2004). He added:

No foreigner should be allowed to dictate ... what news is good or bad for the Philippines. Only we Filipinos should decide that. The moment we give in, we surrender our last precious heritage, whatever is left of freedom of the press. (Ibid.)

When Marcos declared martial law in September 1972, ‘he proceeded to destroy what many had considered to be the freest press in Asia over the next 14 years’. Today there are dozens of English-language and Filipino newspapers in Manila—but none has had a circulation of more than 400,000—while there are about 50 radio stations and six television networks, three owned or controlled by the state.

The *Revised Penal Code* of the Philippines contains provisions relating to national security offences, including the crime of incitement to rebellion or insurrection (Article 138), which can have and has had 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’ (CMFR, 2006, p. 14). Under international law, an expression or news item can only be classed 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, a set of principles established on the right to freedom of expression and national security endorsed by the United Nations Special Rapporteur on Freedom of Opinion and Expression, states:

- ... 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. (Article 19, 1996).

Under this law, anybody who simply distributes any leaflet without the real printer’s name could be arrested and fined, even without inciting violence.

The crime of libel (defamation) in the Philippines

Libel, a criminal offence that carries imprisonment on 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. The UN Human Rights Committee, the body responsible for overseeing the implementation of the International Covenant on Civil and Political Rights, has repeatedly expressed its concern about the use of custodial sanctions for defamation, especially over specific country reports, for example Cameroon, Iceland, Iraq, Jordan, Mauritius, Mexico, Morocco, Norway, Romania, Tunisia and Zimbabwe (CMFR, 2006, p. 16).

In the Pacific region, criminal libel, or defamation, is on the statute books in some Australian states, for example sections 10 and 11 of the *Wrongs Act 1958* in the state of Victoria. This law criminalises libel if the defendant knows the publication is false. Invoking the truth defence under this law ‘requires proof of both truth and public benefit’ and it carries a two-year jail sentence as its maximum penalty (Pearson & Polden, 2015,

p. 273). As media law educator and analyst Mark Pearson notes: ‘While prosecutions for criminal defamation are rare, it is important for professional communicators to know of its existence’ (Ibid.). Pearson and Polden also point out that basic civil defamation defences now apply to criminal defamation in most jurisdictions.

The media law authors also point out that too many journalists and publishers suffer from a ‘libel chill’—where reporters and news-executives become over-cautious for fear of defamation (Ibid., p. 275).

Article 353 in the Philippines *Penal Code* 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. (CMFR, 2006, p. 15)

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’ (CMFR, 2006, p. 15).

According to the UN Human Rights Committee, 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.

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. A special law (*Republic Act 53*) is unique to the Philippines in protecting 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’ (CMFR, 2006, p. 18).

Special campus journalism freedom law

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 selecting publication advisers from a list provided by the newspaper staff. The faculty adviser—a post abolished in 1964 at the University of the Philippines, the country’s largest state university and arguably its best tertiary institution—is limited to the function of providing technical guidance and is

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 (CMFR, 2006, p. 20).

Most Philippine universities and colleges, whether government-owned or private, publish student newspapers. During the martial law regime (1972-1986) a number of these newspapers, for example the University of the Philippines's *Philippine Collegian*, were at the forefront of that resistance. The *Collegian* was widely read, even outside the university, but a succession of its editors was arrested and detained indefinitely in the Marcos regime's detention centres (Ibid.).

Among many publications that have published articles marking four decades since Marcos imposed martial law, has been *Interaksyon*, the award-winning website which published a series on corruption and human rights abuses in '40 years after martial law', including a feature on Marcos and his 'temple of doom'—the mothballed US\$2.3 billion Philippine Nuclear Power Plant at the Bataan coastal town of Morong (Paredes, 2014). Describing the 'pain before forgetting', the *Interaksyon* editors reflected:

When Ferdinand Marcos declared Martial Law 40 years ago, thousands of Filipinos from all walks of life disappeared into military and police stockades and safehouses to undergo the horrors and indignities of torture. Hundreds more were summarily executed, others simply disappeared, never to be seen again. (*Interaksyon*, 2014)

To remind readers of what building the 'New Society' that Marcos envisioned really entailed, the *Interaksyon* website posted a series of videos of those who survived the torture, and narratives from the affidavits of some of the 10,000 people who filed a class civil action to lay claim to the dictator's ill-gotten billions as compensation for their suffering. Since the ousting of Marcos, some 206 journalists and media workers have been killed, including 33 so far during the term of current President Aquino.

Historically, argues Melanie Pinlac, politicians and other powerful individuals in the Philippines have 'abused the law on criminal libel to silence criticism' (Pinlac, 2012). She cited the case of the husband of former President Gloria Macapagal-Arroyo who filed 11 libel lawsuits against 46 journalists demanding 140 million pesos (US\$3.16 million) in damages. Jose Miguel Arroyo subsequently dropped all libel cases in May 2007 after undergoing heart surgery. (Mike Arroyo drops all libel cases, 2007).

Early in October 2012, the Supreme Court of the Philippines suspended the implementation of the new law targeting cybercrime, mainly because of protests from netizens, free expression advocates and journalists' groups, including the CMFR. Branded by opponents as the 'e-martial law' because of its harsh penalties for criminal libel, tougher even



INTERAKSYON

Figures 1 & 2: Protests against the Cybercrime Law have been widespread in the Philippines, likening the legislation to an internet version of the Marcos Martial Law era.



PINOYPOLITIKAS

than under the mainstream law, the *Cybercrime Prevention Act 2012* came into force on October 3. Some critics likened the new law to the failed anti-piracy laws introduced the year before in the United States. The *Stop Online Piracy Act* (SOPA) originally known as the *E-Parasite Act*—and its Senate counterpart, the *Protect IP Act* (PIPA), were described by the Electronic Frontier Foundation as ‘a series of bills promoted by Hollywood in the US Congress that would have created a “blacklist” of censored websites’ (EFF, n.d.).

The laws against ‘rogue’ websites were defeated by an internet campaign started by EFF and other groups, leading to an ‘internet blackout’ on 18 January 2012 in protest over the censorship that would have been imposed on non-infringing websites and political speech. Commented EFF in its online issue paper: ‘Had these bills been passed five or 10 years ago, even YouTube might not exist today—in other words, the collateral damage from this legislation would be enormous’ (Ibid.).

Many Filipinos immediately campaigned against the law on social media—turning both profile images on Facebook and Twitter black in protest— and by filing 15 Supreme Court petitions challenging the constitutionality of the Act (Figures 1 & 2). Six days later, the court suspended implementation of the law for four months.

Advocates for the law argue that it would strengthen the internet governance and clamp down on identity thieves, hackers, data pirates and cybersex offenders. They also say there will be an economic spin-off because more Information and Communication Technology (ICT) companies would be more enthusiastic about investing in the republic. In contrast, notes Melanie Pinlac:

While we [CMFR] and other critics agree that there is a need to punish those who use the internet to harm children and women. Or steal identities and data for illegal use. We also believe the government has no right to impose limitations on freedom of expression in exchange for security and safety on the web.

There are also existing laws Congress could have amended to address these violations—perhaps a better option than creating a vague, badly written and all-encompassing cybercrime law that could be subject to abuse. (Pinlac, 2012, p. 1)

Under this new law, upheld as constitutional in February 2014, higher penalties have been introduced for online libel. A person convicted of cyberlibel could spend a maximum of 12 years in prison—double the imprisonment maximum for libel committed in traditional media platforms, such as broadcast and print. Fears that a journalist facing libel charges for an article published in a newspaper could be charged again under the cybercrime law if the libelous item is republished online have eased with the Supreme Court ruling in February 2014, which prohibits a separate prosecution.

Most local news organisations repost what ha[s] been printed in the papers on their websites or blog, so they would all be susceptible. This is in addition to the possibility of facing civil defamation charges. In the Philippines, a person can be sued separately and independently under both its penal and civil codes. (Pinlac, 2012, p. 2)

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However, the Supreme Court judgment explained: ‘Online libel is different. There should be no question that if the published material [in] print, said to be libelous, is again posted online or vice versa, that identical material cannot be the subject of two separate libels.’ (Disini v Sec. of Justice, 2014).

According to the CMFR and other critics, the cybercrime law ‘brazenly disregards’ national and international protections of free expression (Ibid.). Several days before the Cybercrime Act came into force, Freedom House had ranked the Philippines as one of the countries with the freest internet environment, citing the Constitution and Filipinos’ unrestricted access to ‘the Net’. The only criminal restriction on free expressions—before the cybercrime law—had been libel as defined in the Penal Code. Opponents and blogger Katrina Stuart Santiago, among others, quickly branded the legislation ‘e-Martial Law’ in reference to the harsh criminal libel penalties and the Marcos martial law years (Youth groups, tutors appeal, 2014; Torres, 2013).

Among 15 consolidated petitioners against the law were some faculty and students at the University of the Philippines whose College of Mass Communication condemned the Act for ‘undermining’ both free expression and communication education. A statement, signed by the dean, Dr Roland Tolentino, said communication and journalism students in the Philippines were taught that freedom of expression and of the press were rights guaranteed by the Constitution and were the foundations of responsible journalism (Expression and communication education, 2012). Tolentino concluded by declaring:

[The law] clearly imposes unacceptable constraints on reporting and the shaping of public opinion through whatever medium which is the essence of responsible communication and journalism. UP CMC therefore joins the press and media community calling for the immediate repeal of the *Cybercrime Prevention Act 2012* and encourages its faculty, students, staff and alumni and friends to lend their voices in opposing this repressive law. (Ibid.)

According to Mark Mereñas, writing for the Technology section of GMA News, while the Supreme Court had ruled that the online provision of the law was constitutional, it struck down others, including one that empowered the Department of Justice to restrict or block access to data violating the law (Mereñas, 2014). He wrote that in the ‘landmark ruling’ partially granting the petitions, the court clarified that only ‘original authors of libelous material are covered by the cybercrime law, and not those who merely received or reacted to it’.

‘The high court ... declared Section 4(c)(4), which penalised online libel, is not unconstitutional with respect to the original author of the post but unconstitutional only where it penalises those who simply receive the post or react to it,’ said [Supreme Court] spokesman Theodore Te, who announced the ruling in a press briefing.

In a late text message to reporters, Te clarified that online contents posted prior to the issuance of the SC ruling, including the period of the restraining order (TRC), are not yet covered by the law. (Ibid.).

In its ruling, the Supreme Court upheld the legality of section 5, which penalises anyone who aids or abets the commission of cybercrimes and anyone who attempts the commission of cybercrimes, if the crimes involved are:

- Illegal access
- Illegal interception
- Data interference
- System interference
- Misuse of devices
- Cyber squatting
- Computer-related fraud
- Computer-related identity theft
- Cybersex

The National Union of Journalists of the Philippines (NUJP), an affiliate of the Brussels-based International Federation of Journalists, was among those organisations that condemned the law, describing it as '[a] half-inch forward but a century backward' in adding to an offence that 'former colonisers had, a hundred years ago, declared criminal ... to stifle dissent' (Espejo, 2014; *The PCIJ Blog*, 2014). Describing the online libel provision as 'a convenient tool for the corrupt', the NUJP said in a statement:

By extending the reach of the antediluvian libel law into cyberspace, the Supreme Court has suddenly made a once infinite venue for expression into an arena of fear, a hunting ground for the petty and vindictive, the criminal and autocratic. We can only hope that the Supreme Court will not remain blind to this when appeals to the ruling are filed. (NUJP, 2014).

In an analysis of the enacted law in October 2012 entitled 'Martial law reborn', CMFR deputy director Luis V. Teodoro argued that by invoking a Marcos comparison that the law was not just a form of 'cyber martial law: it is martial law reborn in the digital age'. He added that the law was 'too crafty, and too deliberate an attempt to silence criticism to be anything else but malicious in its intent rather than to have been the result of what some say is the ignorance of the country's legislators' (Teodoro, 2012, p. 2). Asked two years later by the authors why reference to 'e-martial law' had apparently declined in public discourse, Teodoro replied that after the Supreme Court ruling to uphold the essential elements of the Act, 'the focus shifted to the specifics of the law, primarily the libel provisions the Court said were constitutional' (Teodoro, L. V., personal communication with the authors, 17 November 2014)

What we have in the Philippines is a conflict between lip service to libertarian principles on one hand and on the other, political dynasties' anti-democratic traditions.

Press freedom is legally protected by the Constitution, but attempts to go around this protection have been around for some time. The continuing killings [of

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journalists], of course, make a mockery of the claim that the Philippines has the freest press in the region. (Ibid.)

Earlier, the professor had frequently described the Act as a ‘grave threat to free expression’ when discussing the implications for the cyberworld. He had said the Act not only united those who had a Facebook or Twitter account, ‘who have a blog or website, who access chat rooms or who use email’, it had also ‘led to the realisation among journalism and media practitioners who primarily use the old media (print and broadcasting)’ about the threat (Teodoro, 2012, p. 1).

The protests that greeted the adoption of the Act had tended to emphasise the threat to Netizens, in the process implying that the Act is a danger only to the exercise of free expression via the Net. The reality, however, is that it is a threat to everyone, including those who use mobile phones and even to those Luddites who disdain the internet and who prefer to communicate through the old media. (Teodoro, 2014, p. 1)

According to Teodoro, there is a ‘punitive mindset among the dynasties that rule Congress and *Malacañang*’. In his view, although no journalists have so far been successfully prosecuted under this new Act, once the law ‘finds victims in the form of a blogger sued for libel, or *prima facie* evidence of libel in a website’ and the website is blocked by the Department of Justice, it will ‘exacerbate the atmosphere of repression’.

The chilling consequence would be self-censorship, and the subsequent decay of the press traditions of investigation and criticism in the old media, while the exuberance that has characterised internet communication in this country would decline into conformity and acquiescence—if the Act does not otherwise silence millions of critical websites, and bloggers and social media activists. (Teodoro, 2014, p. 2)

In fact, the first person charged under the Act was a woman and she was indicted for computer fraud, not over a media issue. Karla Martinez Ignacio was charged in Las Pinas, near Manila, in June 2014 and could face up to six years in prison if found guilty of transferring thousands of pesos to her bank account using fraudulent computer data (Woman to be first charged, 2014).

The first prosecution against a journalist was filed two months later in August 2014 by the Senate President, but not reported until early October (Senate president sues journalist for libel, 2014). But this libel case was based on the Revised Penal Code, not the cyber law. Journalist Manuel ‘Boy’ Mejorada posted a blog entry on 30 September 2013 titled ‘Putting safety on the line—the Iloilo Convention Center’. Mejorada alleged that Senate President Franklin Drilon must have helped a named architectural company ‘bypass the government’s procurement process’ in constructing the convention center. Mejorada added that ‘other architects and engineers’ found it anomalous that the designs

for the centre were already prepared before geo-technical investigations and soil tests had been carried out. Mejorada asked:

Will DPWH [Department of Public Works and Highways] sacrifice safety just to meet the deadline for the APEC [Asia-Pacific Economic Cooperation] ministers Summit in October 2015? (Ibid.)

In his libel complaint filed in the Pasay City Prosecutor's Office on 27 August 2014, Senator Dilon alleged that Mejorada's blog posting was 'malicious'. He added that Mejorada held a grudge against him after the senator no longer used him as a consultant after he had 'irresponsibly used my official social media accounts to attack political personalities' (Ibid.).

The 'Magna Carta' for the internet law

The so-called Magna Carta for Philippine Internet Freedom (widely known by its hashtag #MCPIF) is a bill introduced by Senator Miriam Defensor-Santiago as SB 53 in response to a crowdsourcing initiative by a group of Filipino lawyers, bloggers, technology buffs and human rights advocates describing themselves on their website as Democracy.Net.PH. A Senate open statement in March 2014 by engineer Pierre Tito Galla on behalf of DDN said:

Cyberspace is an alien world for many. Many are afraid; many more only grasp its fringes. Cyberspace exists as a domain of the mind, of zeroes and ones, of abstract concepts. It is not surprising, therefore, that the view of the internet is one of the widest disconnect between a government and its people. Neither has walked in each other's shoes. (Galla, 2014)

Promoting the notion of the 'Freedom Doctrine' as a holistic approach to the #MCPIF for ICT legislation, Galla declared: 'The Philippines is being cited as a model for participative democracy, that through crowdsourcing—the collaboration and direct participation of citizens enabled by the internet and ICT—laws can be crafted that reflect most accurately our people's aspirations.' Comparisons were made with the 'praise they showered [on] the parliamentarians of Brazil working towards a "Marco Civil da Internet' (Web Index Annual Report, 2013).

The bill has passed the first reading in both chambers of the Philippine Congress. The charter is based on four pillars—rights, governance, development and security. It comprises 10 parts and 85 sections and codifies a Bill of Rights for Filipino internet users, including sections banning internet censorship and data discrimination, along with sections promoting data privacy, data security, information security, net neutrality and freedom of information. Due process clauses are included in this chapter. Other parts deal with information and technology policy such as ICT4D (ICT for national development) and e-governance;

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provision for the repeal of the *Cybercrime Prevention Act 2012*; and national cybersecurity and counter cyber-terrorism. Galla explains: 'A law on the internet and ICT cannot exist in a vacuum; the protection and promotion of rights and freedoms requires a more holistic approach than that offered by the *Cybercrime Prevention Act*' (Galla, 2014).

Another progressive feature of the bill is provision for the creation of an Office of Cybercrime within the Department of Justice with powers as the central authority in enforcement of the law. Also, special courts would provide for judges who are required to have specific expertise in computer science or IT to hear or resolve cases brought under the Act. Noted EFF analyst Jillian York: 'Overall, the crowdsourced [bill] is a success story and we support our allies in the Philippines as they work to push it forward in the Senate' (York, 2013).

However, a parallel Magna Carta for Journalists Bill, *HB 2550*, has been widely condemned by local and international media groups, as a tool to regulate the media and a 'horrendous assault on press freedom by utilising the name of one of the great documents of civil rights' (Corrales, 2013; *Newsdesk*, 2013). While the bill recognised the need to improve the welfare and safety of journalists, it would impose a Fourth Estate accreditation and licensing system, long opposed by media freedom advocates. The bill proposed the creation of a Professional Journalist Examination and a Philippine Council for Journalists (PCJ) that would oversee the exam-based accreditation system. However, NUJP president Rowena Paraa condemned the 'discriminatory' bill, saying it would be 'akin to determining who can and cannot speak out freely' (Ibid.). Responding to Senator Jose 'Jinggoy' Estrada, who defended the bill by claiming it was justified due to the spate of killings and harassment of journalists and media workers in the Philippines, the NUJP declared that the union 'works for the safety and welfare of Filipino journalists and media workers. We have never seen it as one of our roles to judge who is fit or unfit to be a journalist' (Table 1) (NUJP, 2013). In January 2015, the NUJP again denounced accrediting of journalists through back-door legislative changes, this time in protest of a proposed amendment to the so-called Sotto Law shielding journalists from disclosure of sources, *Republic Act 53*, introducing an amendment HB362, which would extend the 'shield' to 'accredited' journalists. The NUJP said: 'Any state regulation of journalism can only lead to one sad result—the death of press freedom and the independent Philippine media' (NUJP, 2015).

In a separate statement, the IFJ was even harsher about state regulation, saying:

If politicians in the Philippines truly want to emulate the Magna Carta then they should focus more on the public's right to know by passing the long-delayed Freedom of Information Bill and other measures that allow media [to] keep their communities informed ...

[A] greater effort must be made by all those in power to combat the outrageous culture of impunity that aims to silence the media by killing journalists and allowing the perpetrators to get away with murder. (Cited by Corrales, 2013)

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Table 1: Philippine journalists killed : February 1986 - March 2015

| Year | Number killed | Presidents |
|--------------------------|---------------|----------------------------------|
| 1986 | 3 | Corazon Aquino Total = 37 |
| 1987 | 10 | |
| 1988 | 7 | |
| 1989 | 4 | |
| 1990 | 8 | |
| 1991 | 5 | |
| January - June 1992 | 0 | |
| July - December 1992 | 6 | Fidel Ramos Total = 19 |
| 1993 | 5 | |
| 1994 | 0 | |
| 1995 | 1 | |
| 1996 | 3 | |
| 1997 | 2 | |
| January - June 1998 | 2 | |
| July - December 1998 | 3 | Joseph Estrada Total = 9 |
| 1999 | 2 | |
| 2000 | 3 | |
| January 2001 | 1 | Gloria Arroyo Total = 108 |
| February - December 2001 | 3 | |
| 2002 | 2 | |
| 2003 | 7 | |
| 2004 | 15 | |
| 2005 | 11 | |
| 2006 | 12 | |
| 2007 | 6 | |
| 2008 | 7 | |
| 2009 | 39 | |
| January - June 2010 | 5 | |
| July - December 2010 | 3 | Benigno Aquino III Total = 38 |
| 2011 | 8 | |
| 2012 | 7 | |
| 2013 | 14 | |
| 2014 | 4 | |
| March 2015 | 2 | |
| | | GRAND TOTAL = 211 |

Source: A total of 211 Filipino journalists and media workers have been killed during four democratic administrations since the Marcos dictatorship, February 1986-March 2015. Thirty eight of these deaths have happened during President Benigno Aquino's term alone. These figures have been adapted and updated from Robie, D. (2013). *Don't Spoil My Beautiful Face: Media, Mayhem and Human Rights in the Pacific*, Auckland: Little Island Press (p. 309), and compiled from the Center for Media Freedom and Responsibility (CMFR), Committee to Protect Journalists (CPJ), Human Rights Watch (HRW), International News Safety Institute (INSI), International Press Institute (IPI), Global Journalist (GJ), National Union of Journalists in the Philippines (NUJP) and Reporters Without Borders (RWB/RSF) reports.

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Reporting information of public concern and interest involves not just journalists, but also lawyers, scientists, NGO advocates, people's movements, academia and others who have information of public interest they wish to share more widely. However, criminal libel discourages all these people from contributing to the public discourse on political issues that is vital for any democracy. The Inter-American Commission on human rights described criminal libel as having an 'inevitable chilling effect' on freedom of expression. (cited in Diokno, 2008, p. 25). According to human rights lawyer Jose Diokno: 'A journalist cannot report from prison bars. The mere threat of criminal prosecution can prevent journalists from reporting and publishing important stories' (ibid.).

By entrenching criminal libel, and with the highest court arguing constitutional justification with higher penalties for online breaches, the Philippines has signaled it wants to impose a 'chilling effect' on the nation's media. Self-interested lawmakers believe that this is an important move to safeguard their reputations no matter what the cost. This is not all; there is a critical danger of a draconian law for export as copycat legislation—just as the US anti-piracy SOPAC law provided an international precedent, as already both Singapore and Thailand have similar laws. In the South Pacific, Samoa has had criminal libel on the statute books since 2011 although it vowed to remove this (Malifa, 2012). Papua New Guinea is toying with new legislation designed to censor online. Other governments in the region could look to the Philippine model and try to emulate it in the Pacific, posing a serious threat to freedom of expression and introducing online criminal libel regimes.

Finally, Vergel Santos (2012), the former chair of the editorial board of *Business World* in the Philippines, wrote a pithy note defining criminal libel in an address to lawyers. His view:

As a law that punishes malicious attacks on someone's reputation, libel sets down determinants you can't put your finger on—undeterminable abstractions, matters of necessarily arbitrary judgment. You can cut out the heart of a journalist, and still you will find no evidence either way—malice or any purer intention; in the meantime, you have killed him; you have silenced a voice for a most critical freedom in a democracy (Santos, 2012).

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