



Center for Media Freedom and Responsibility
Philippine Press Freedom Report 2008



Center for Media Freedom and Responsibility:
Philippine Press Freedom Report 2008
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Foreword

AS THIS report on the state of press freedom in the Philippines in 2008 was being prepared, the number of journalists killed in the line of duty for the year had risen to six. This is four more than the toll in 2007, and makes 2008 one of the worst years on record since 2001.

But it wasn't only the killing of journalists that has made 2008 a bad year for press freedom in the Philippines.

A journalist was still in prison as the year was ending, despite his having served part of his sentence and having been pardoned, and after a second case for libel filed in connection with the same incident that led to his imprisonment had been dropped.

A decision by the Makati Regional Trial Court upheld the legality of the arrests of several dozen journalists on Nov. 29, 2007, in effect endowing the police with the power to decide which events journalists may cover.

A right of reply bill, which among other consequences could bankrupt small publications, and in effect deny editors the prerogative to choose what to air or publish, has been approved by the Senate and is pending in the House of Representatives, whose version of it imposes prison terms for non-compliance.

Across the entire range of universally accepted press freedom indicators—imprisonment, murders, attacks and harassments, among others—the Philippine press in fact qualifies as only partly free in that except for the constitutional protection afforded by Section 4 of Article III of the Bill of Rights, it is and has been constantly under a variety of threats.

This Report, made possible by the support of the Open Society Institute, looks into those threats as part of the effort not only to record the details of a situation that needs exposure, but also as the Center for Media Freedom and Responsibility's contribution to the campaign to change it.

Press Freedom Continued to Decline in 2008



PRESS FREEDOM again took a beating in 2008 as the number of journalists killed in the line of duty, one of the most telling indicators of threat to press freedom, rose to six from two recorded cases in 2007.

The Philippines' ranking in world press freedom surveys had improved due to the marked decrease—from six journalists killed in the line of duty in 2006 to only two—in 2007. In the 2007 press freedom index of the Paris-based Reporters Without Borders (Reporters Sans Frontiers-RSF), the Philippines moved 14 places higher, which RSF noted as an “unexpected improvement”.

But with the elements that feed impunity still present—lack of political will, poor law enforcement, and an ineffective judicial system—the number of killings, which since 2003 had never been below five, except in 2007, again went up this year. There are now 39 journalists killed in the line of duty during the Gloria Macapagal Arroyo administration—more than half of the 77 killed since 1986.

Indifference

Despite these developments and the hostile environment in which journalists work, government has remained basically indifferent to the situation.

When RSF downgraded the country's press freedom ranking in 2008, dropping 11 places from 128th to 139th in its 2008 Annual Worldwide Press Freedom Index, then Presidential Management Staff head Cerge Remonde dismissed the fall as only a “matter of perception.”

“But if you think hard about it, this is more perception than reality,” Remonde said over government-run Radyo ng Bayan.

“If those behind the rankings monitored our radio and TV, they would see the press is very lively, aggressive and free,” Remonde said.

RSF cited “corruption” as a “disease that eats away at democracies and what makes them lose ground in the ranking.”

"The existence of people who break the law to get rich and who punish inquisitive journalists with impunity is a scourge that keeps several 'great countries'...in shameful positions," RSF said.

Perception, perception

And yet, when the Philippines was again named as one of the most corrupt countries in Transparency International's corruption perception index, government had also dismissed it as mere perception.

Presidential Anti-Graft Commission chair Constanca de Guzman said that Transparency International's survey was "not a factual assessment of the actual situation" while deputy presidential spokesperson Anthony Golez Jr. was quoted in a *GMANews.TV* report as saying that the survey merely "tells us something" but is "not Gospel truth."

Arroyo was quoted in an *Inquirer.net* report as saying that the Transparency International survey was "a whole layering of perception indices. And if you compare the Philippines with the rest of the region, we have to remember that the Philippines has the freest media in the region."

In another instance in 2008, Arroyo had described the media in the Philippines as the "freest", a tag difficult to reconcile with the growing number of journalists killed every year.

"I know for a fact, from being around my father...how challenging it is to govern our nation, especially with a media that are the freest in the whole world, as it was during my father's presidency," said Arroyo in an address delivered in Cabarroguis, Quirino province on Sept. 10, 2008.

Justice Secretary Raul Gonzalez has also reinforced the government's insular attitude toward criticisms regarding press freedom-related issues.

In Jan. 2008, Gonzalez told the New York-based Committee to Protect Journalists (CPJ) to "go jump in a river." Gonzalez made the remark when CPJ asked him to recall an advisory he issued to media outfits warning that they risk "criminal liabilities" if they disobey government orders "during emergencies."

Gonzalez's advisory was issued on the heels of the Nov. 29, 2007 arrest of media practitioners at The Peninsula Manila hotel.

Government orders

But the government has not been limiting itself to statements. Different government orders in 2008 also helped erode press freedom.

Philippine National Police (PNP) Director-General Jesus Verzosa issued a directive on Oct. 30, 2008, "The Decentralization of the Public Information Office", which sought to limit media's access to police blotter reports.

"The information contained in the police blotter, in order to protect the integrity of the document and the identity of any victim and suspect, shall not be made accessible to the public or media, without the proper authorization from the head of office or unless the disclosure is in compliance with a lawful order of the court or any pertinent authority," Verzosa's directive stated.

Verzosa's directive drew condemnation from media groups such as the National Union of Journalists of the Philippines (NUJP) and the National Press Club.

Commission on Human Rights of the Philippines chair Leila de Lima was quoted in news reports as saying the directive "limits access to information" and is a "violation of the right to information."

After even Malacañang questioned the directive, Verzosa withdrew and said journalists do not need any more to get authorization to view the police blotter, which is a usual source of leads for different stories.

Complaints plus

ABS-CBN 2, meanwhile, became the subject of a government complaint after airing an exclusive interview with Moro Islamic Liberation Front leader Abdullah Macapaar alias Commander Bravo.

Abs-cbnNEWS.com reported that the National Telecommunications Commission (NTC) filed a complaint against ABS-CBN 2 for allegedly violating the Kapisanan ng mga Brodkaster ng Pilipinas (KBP, Association of Broadcasters of the Philippines) Broadcast Code of 2007 by airing the Bravo interview in Oct. 2008. The complaint was filed before the KBP Standards Authority. During the interview, Bravo aired his anger over the government and said that they will “fight until the end” for their rights.

ABS-CBN 2 news and current affairs head Maria Ressa defended the Bravo interview and said it was a “legitimate story”. “It is our responsibility as journalists to report on people and events that affect public interest. The public has the right to know. Commander Bravo is one of the country’s most wanted men, a key figure in the collapse of the peace process in Mindanao. He’s a legitimate story, and our interview with him adhere to ethical standards of journalism,” Ressa said in an official statement.

Amando Doronila said in his Nov. 29, 2008 *Philippine Daily Inquirer* column that “a ban on broadcasting such interview in effect already restricts the scope of the freedom of media on the ground that such broadcasts constitute a threat to the security of the state.”

Before NTC’s complaint, Gonzalez had already declared that he was “considering a complaint” against ABS-CBN 2 for violating the KBP Broadcast Code of 2007 which states that “criminals shall not be glorified” and that “crime should always be condemned.”

Gonzalez also said that ABS-CBN 2 may have violated certain provisions of its franchise agreement because of the interview. Gonzalez, demonstrating government’s tendency to shoot the messenger and betraying a misappreciation of media’s role in a society, also took issue with ABS-CBN 2 for not helping them arrest Bravo.

“Government spent millions chasing Bravo and (Commander Umbra) Kato, and here is (ABS-CBN 2) with easy access to Bravo giving him all the publicity. The least they should do is give info to the government,” Gonzalez told *abs-cbnNEWS.com*.

Media profiling

In Mindanao, media practitioners cried foul over the attempt by the Western Mindanao Command (Westmincom) of the Armed Forces of the Philippines (AFP) in “media profiling” in Nov. 2008.

According to the NUJP, journalists covering the Westmincom were required by the latter to complete an information sheet before they can be accredited for coverage. Among the required information are the journalist’s social security and tax identification numbers, distinguishing physical marks, eye and hair color, blood type as well as the names and addresses of next of kin, phone numbers, e-mail addresses, and religious affiliation.

The form also requires journalists to sign a waiver of “all my legal rights/claims against the AFP for any accident, loss or any untoward incident that may occur while covering the AFP activities,” supposedly executed “on my own free will and volition.”

NUJP condemned the requirement and described it as “an invasion of privacy. It is a subtle repression of press freedom as it would give the Westmincom information office blanket authority to decide who it will or will not consider a journalist, an authority it does not have the competence or legal right to possess.”

Legal Setbacks

The press also suffered setbacks in the courts.

Makati City Regional Trial Court (RTC) Branch 56 judge Reynaldo Laigo dismissed the civil damage suit filed by journalists and media organizations against government officials for the arrest of around 30 media practitioners covering a Nov. 29, 2007 press conference by rebel soldiers at The Peninsula Manila hotel. In his five-page decision, Laigo said media were “lucky” the state did not file appropriate criminal charges under Article 151 (Resistance and disobedience to a person in authority or the agents of such person) of the Revised Penal Code.

On June 27, 2008, the Court of Appeals (CA) denied the petition for a writ of amparo filed by Oriental Mindoro journalist Nilo Baculo saying that it “reasonably doubts the believability of (Baculo’s) murder-plot story.” The appellate court also said the respondents (several local government officials) could not possibly want Baculo dead for his 11- or 10-year old commentaries. This was the first time that a journalist in danger had petitioned for a writ of amparo.

The Supreme Court’s decision on Sept. 4, 2008 upholding former economic planning secretary Romulo Neri’s invocation of executive privilege in the National Broadband Network-Zhong Xing Telecommunications Equipment Corp. controversy, and the CA’s dismissal on Sept. 11, 2008 of the petition for a writ of amparo filed by corruption whistleblower Rodolfo “Jun” Lozada weakened Philippine press’ function to provide information to the public and narrowed its sources of information.

The only victory attained by the press in a major court decision came when the appellate court in Manila denied on Sept. 22, 2008 the petition by presidential spouse Jose Miguel Arroyo to junk the P12.5-million suit filed against him by journalists in 2006 in response to the 11 libel cases he filed against 46 journalists. Makati RTC judge Zenaida Laguilles is now hearing the case again.

Libel

The Supreme Court released an administrative circular on Jan. 25, 2008 advising judges to prefer fines over imprisonment in deciding libel cases. Despite the circular, *The Daily Tribune* publisher Ninez Cacho Olivares was still sentenced to jail (a minimum of six months to a maximum of two years) and to pay P5 million in moral damages and P33,732 in civil damages for libel. Makati RTC Judge Winlove Dumayas found Olivares guilty of libel for an article she wrote in 2003 alleging ethical lapses on the Ombudsman then. Olivares has appealed the ruling.

Davao-based broadcaster Alexander “Lex” Adonis was still in prison until December even after being granted parole by the Department of Justice Board of Pardons and Parole in Dec. 2007 and having posted bail in a second libel case in May 2008. Adonis was released from the Davao Penal Colony (Dapecol)

on Dec. 23, 2008 after the Davao RTC dismissed the second libel case against him. The release order came two months after he issued an apology to an alleged paramour of House of Representatives Speaker Prospero Nograles.

Adonis was sentenced to jail on Jan. 26, 2007 for a libel charge filed by Nograles. The libel case stemmed from a radio commentary by Adonis alleging that Nograles was seen running naked in a Manila hotel when caught by the husband of his alleged paramour.

The authorities at Dapecol refused to release Adonis after the alleged former paramour—a female broadcaster in Davao—filed a separate case on the same grounds. A petition for habeas corpus filed by the Center for Media Freedom and Responsibility (CMFR) and the NUJP is now pending.

Legislation, prosecution

The right of reply bills—one of which has passed the third and final reading at the Senate while the other is set for second reading at the House—also have dire implications for press practice.

The bills, which are open to abuse especially in the coming 2010 presidential elections, impose stiff penalties for non-compliance. The Senate version imposes a penalty ranging from P10,000 to P50,000, while the House version imposes fines ranging from P10,000 to P200,000 along with prison terms and even closure or suspension of the franchise of the offending media outfit.

With the near-passage of the right of reply bills, efforts by various groups to have libel decriminalized, which CMFR has called for since the early '90s, remain dim. Also, the Senate's Committee on Public Information and Mass Media has yet to conduct a hearing on the pending Freedom of Information act.

Positive developments, however, did occur in 2008 in the prosecution of the killers of journalists. At the initiative of the Freedom Fund for Filipino Journalists (FFFJ) and the NUJP, the prosecution of the killers of broadcasters Rolando Ureta and Herson Hinolan resumed in May 2008. FFFJ is a coalition of six media organizations in the Philippines. CMFR is a founding member of the FFFJ and serves as its secretariat.

FFFJ has also helped in the legal battle for the prosecution of the alleged masterminds in the 2005 killing of Sultan Kudarat-based journalist Marlene Esperat. A new case against the alleged masterminds, Osmeña Montañer and Estrella Sabay, was filed before the Tacurong City RTC on Oct. 20, 2008. The court issued warrants of arrest against them the following day. The case against the suspects in the killing of Roger Mariano, being heard at the Manila RTC, is already nearing its resolution as the defense panel is already about to wrap up its presentation of evidence.

A shorter version of this article is in the Dec. 2008 issue of the PJR Reports.

Killing of Journalists Spikes in 2008

AT AROUND 6 p.m. on Dec. 2, 2008, Leonilo Mila, 38, of Radyo Natin (Our Radio) in San Roque, Northern Samar was on his way out of the radio station compound when unknown assailants attacked him. Mila had just ended his afternoon music program "*Himig Waraynon* (Waraynon Sound)" and was on his way home. Mila also anchored a morning public service program "*Pungkaras sa Kaagonon* (Wake up at Dawn)".

Alice Cagro, station manager of Radyo Natin in San Roque, said other employees heard a series of gun shots a few minutes after Mila left the office. Cagro called the mayor and asked for help in looking for Mila. She said the police and some village officials found Mila's body in an empty lot a few meters from the gate. Mila was reportedly dragged to the lot by unknown assailants before he was killed. "He was grasping some grass and his lips were tightly closed. It seemed as if he had begged for his life," she said. Mila, who had been receiving death threats prior to the killing because of his commentaries, sustained six gunshot wounds.

On Nov. 17, 2008, Arcio Padrigao, 55, was gunned down by a killer onboard a motorcycle in Gingoog City, Misamis Oriental. Padrigao, who had a block-time program in dxRS FM - Radyo Natin, had just dropped off his daughter in front of a local university when he was killed.

Padrigao criticized local government corruption as well as illegal logging activities in his province on his program. He also wrote a column for the community newspaper *Mindanao Monitor Today*.

Only a week apart in Aug. 2008, two Radio Mindanao Network (RMN) broadcasters were killed on their way home from work. On Aug. 4, 2008, Dennis Cuesta of dxMD-RMN in General Santos was shot by a gunman on a motorcycle along a national highway near a shopping mall. Cuesta died five days after the attack in a hospital. Another RMN broadcaster, Martin Roxas of dyVR-RMN, was killed on Aug. 7, 2008 in Roxas City, capital of Capiz. (A General Santos City court ordered the arrest of Police Inspector Redempto "Boy" Acharon and several others for the killing of Cuesta last Feb. 3, 2009.)

Marcos Mataro, host of the show *D'X-Man* at UNTV 37, was waiting for a Manila-bound bus when two masked gunmen attacked him on April 27, 2008 at the North Luzon Expressway toll gate in San Simon, Pampanga. Two months after, on June 30, 2008, a gunman riding on a motorcycle overtook the car of Quezon-based journalist Fausto Albert "Bert" Sison and opened fire. Sison was on his way home with his daughters, Almira and Liwayway, who are also journalists. Almira was unhurt, while Liwayway was hit in the shoulder.

This article is in the Dec. 2008 issue of the PJR Reports.



The Legal Environment For Press Freedom

By Prima Jesusa B. Quinsayas

Bills introduced in Congress in 2008 once passed could adversely affect Philippine media practice. Among these are bills supposedly aimed at improving the economic and working conditions of media practitioners while others aim to impose government control on the press. In 2008, bills and resolutions on access to information and libel received much interest and discussion in the context of a continuing government policy to limit free expression. Lawyer Prima Jesus B. Quinsayas writes about the limitations on and opportunities for the practice of journalism and the increasingly limited protection of press freedom in the country given both the existing as well as emerging legal environment.

If monitoring the bills introduced in both houses of Congress is important, so are the Supreme Court decisions that affect the media and free expression. In 2008 a number of these decisions tended to undermine press freedom, despite the Chief Justice's commitment to its defense and enhancement. The majority decisions in the Supreme Court have tended to undermine the public interest function of the press to provide citizens the information they need. Among other such decisions, the Supreme Court's Sept. 4 affirmation of its earlier decision in favor of executive privilege of government officials was a blow both to the principle of government transparency as well as to the responsibility of the press to report on matters of public interest.

Press freedom as a right

The Philippine Constitution provides for and protects press freedom. Section 4, Article III of the 1987 Philippine Constitution reads:

“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.”

But Article III or the Bill of Rights, aside from recognizing and guaranteeing our rights, also sets the parameters for and limits the exercise of the three fundamental powers of the State: police power, power of eminent domain, and power of taxation. These three powers may not be exercised arbitrarily to the prejudice of the Bill of Rights. Every right is a limitation on the State.

Section 4 of the Bill of Rights limits the nature of laws that may be passed by the legislative department. It begins with a prohibition: “No law shall be passed...”

The said constitutional provision seems to ring with absoluteness, that indeed no law shall be passed abridging the freedom of the press and that no law shall recognize any other freedom or right that, in effect, diminishes press freedom.

While there is a hierarchy of rights—life and liberty is superior to the right to property, for example—press freedom is considered a civil right, and the Supreme Court has declared that in the hierarchy of civil liberties, the right to a free press occupies a preferred position as it is essential to the preservation and vitality of our civil and political institutions. There are very few instances when the Supreme Court has declared other rights, such as the right to privacy, as having preferred status over press freedom.

Despite this high regard, violations of press freedom continue to persist in the Philippines. These violations involve different aspects of press freedom.

There are four aspects to a free press: access to information, freedom from prior restraint, the right to disseminate information, and freedom from subsequent

punishment. The first two must be present before a piece of information can become news, while the last two are vital after the information becomes news.

All four must be present for press freedom to be considered existing or genuine. It is a violation of press freedom when any of the four is violated.

Access to information

This is also known as the Right to Information or the Right to Know. It is provided for under Section 7 of the Bill of Rights:

“The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.”

The provision, while clearly recognizing the right of the people to know, also sets several limitations:

1. The right to information is limited to matters of public concern;
2. Access is granted to official, not unofficial, records, and to documents and papers that pertain to official acts, transactions or decisions;
3. Government research data accessed must be those used as basis for policy development;
4. Such access is afforded the citizen, not the alien; and
5. All of the above is subject to limitations as provided by law.

While Section 4 of Article III sounds absolute with its “No law shall be passed...”, another constitutional provision sets limitations to the right of the people to know. Section 9 limits access to information, the first ingredient of a free press.

This has provided a window for the legislative branch to pass statutes that may well impinge on press freedom. Legal limitations on the exercise of the right to information range from reasonable ones such as obtaining information from government agencies only during office hours, to the economically prejudicial requirement of charging a fee for certain information, to the more serious ones where concepts like national security and/or diplomatic relations are used as reasons to justify outright denial of access to specific information.

To address the problem of the unavailability of information and official documents as a result of minimal disclosure of government offices, even when such information is of public interest, Sen. Manuel “Mar” Roxas III has filed Senate Bill No. 109 or the Free Information Act. He said that ensuring public access to government documents is “vital in upholding the principles of transparency and press freedom.” The bill, he added, would ensure the unfettered exercise of the people’s right to know. (There are other bills on the access to information pending at both houses of the Congress.)

But legal limitations are not just those that may be provided by law. They may also come in the form of jurisprudence or cases decided by the Supreme Court. Article 8 of the New Civil Code (NCC) provides that: “Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.”

Hence, Supreme Court decisions have the effect of law. These decisions, unless overruled by the Supreme Court itself, are binding and serve as authoritative precedent for other cases that may arise in the future.

Executive privilege

On March 25, 2008, the Supreme Court promulgated a decision upholding the claim of executive privilege over communications between former Director General of the National Economic and Development Authority Romulo Neri and President Gloria Macapagal Arroyo elicited by three questions in the Senate inquiry regarding the aborted national broadband network (NBN) contract entered into by the government and Zhong Xing Telecommunications Equipment Corp. of the People’s Republic of China.

The Supreme Court decision is primarily centered on whether the Senate could force Neri to answer three questions:

1. Whether Arroyo followed up on the NBN project;
2. Whether or not Arroyo directed Neri to prioritize the project; and
3. Whether Arroyo directed Neri to approve the project after being told about the alleged P200-million bribe of former Commission on Elections chairman Benjamin Abalos.

Voting 9-6 in favor of the invocation of executive privilege, among the legal grounds the Supreme Court gave for its decision were: that the communications elicited by the three questions are covered by executive privilege, specifically the presidential communications privilege, which relate to the “quintessential and non-delegable power” of the President to enter into executive agreements with other countries; there was no adequate showing of a compelling need to justify the limitation of the privilege; and that the claim of executive privilege was properly invoked by Executive Secretary Eduardo Ermita as “the information sought to be disclosed might impair our diplomatic as well as economic relations with the People’s Republic of China.”

Furthermore, the Supreme Court found no merit in the contention of the Senate that Neri’s claim of executive privilege violates the Constitutional provision on the right of the people to matters of public concern.

It was held that the right to public information, like any other right, is subject to limitation as may be provided by law. “Clearly, there is a recognized public interest in the confidentiality of certain information. We find the information subject of this case belonging to such kind (of information),” the High Court ruled.

The Supreme Court added, “More than anything else though, the right of Congress or any of its Committees to obtain information *in aid of legislation* cannot be equated with the public’s right to information. The former cannot claim that every legislative inquiry is an exercise of the public’s right to information.”

“The right to information must be balanced with and should give way in appropriate cases to constitutional precepts particularly those pertaining to

the delicate interplay of executive-legislative powers and privileges which is the subject of careful review by numerous decided cases," stressed the Court. From this Supreme Court decision, it is evident that the political concept of separation of powers between the executive and legislative branches of the government, and the foreign affairs of the State may and can limit the right to information.

Freedom from prior restraint

The above ruling of the Supreme Court not only imposes additional limitations to the right to information. It may also allow prior restraint, as government officials may claim that certain information is covered by executive privilege. In such a scenario, however, the law provides remedies such as securing a court order for the release of certain information or seeking a judicial declaration that such information is not confidential nor is it covered by executive privilege.

The thought, however, of having to go to court whenever a piece of information is denied on the ground of confidentiality or executive privilege is daunting, if not absurd.

Freedom from prior restraint is necessary for a truly free press. Even assuming that the courts would eventually rule against the so-called confidentiality of the information sought, or declare improper the claim of executive privilege, the delay that comes with seeking legal relief is already an impediment to the exercise of press freedom.

Prior restraint seemingly sanctioned by jurisprudence is not common. More often, it is the executive branch of the government that imposes prior restraint. This is because it is the executive branch that is tasked to implement the law. Early in Nov. 2008, Director-General Jesus Verzosa, Philippine National Police (PNP) chief, issued a directive dated Oct. 20, 2008, banning public access to police blotters. The directive said that "request for information from the public and the media... shall be coursed through and be provided by the PIO (public information officer)/spokesperson, upon clearance from the head of office."

The rationale given was the need to ensure confidentiality of certain information, such as those related to ongoing operations or pertaining to the identity of minor victims.

“We want to protect the privacy of some complainants especially children, minors, victims, whereby it involves probable violation of honor, the crimes against honor and chastity,” the PNP chief said.

Cloaked with a noble reason, Verzosa’s order in reality has very little legal basis. One legal provision cited is Section 43 of the Juvenile Justice and Welfare Act of 2006 or Republic Act (RA) 9344, which partly states that: “The component authorities shall undertake all measures to protect this confidentiality of proceedings, including non-disclosure of records to the media, maintaining a separate police blotter for cases involving children in conflict with the law and adopting a system of coding to conceal material information which will lead to the child’s identity.”

From the above provision, it is clear that banning access to police blotters is not the measure proposed to ensure the confidentiality of proceedings involving children in conflict with the law, but the maintenance of separate police blotters. According to Director for Police Community Relations, Leopoldo Bataoil, the PNP is now considering having two police blotters, which he named “general patronage” and “confidential”.

After getting a lot of criticism from various media organizations such as the National Press Club and the National Union of Journalists of the Philippines, Verzosa backed down on the implementation of his directive.

Verzosa said journalists no longer need to seek the approval of the station commander or the PIO of the particular police office. They only need to go to the designated desk officer or desk sergeant. This, he said, is a form of “delegated authority”, which may be exercised by desk officers except when sensitive cases are concerned.

Be that as it may, the directive readily assumes the worst of the press: that it is so irresponsible as to release information that would compromise ongoing police operations, jeopardize national security, and expose the identities of minor victims. It usurps the most basic role of the press—to inform the people—by deciding which information can and cannot be released to the media and the public.

The right to disseminate

This deals with freedom of circulation.

While a press organization may have been allowed to publish or produce news, it is another matter as to whether it will be allowed to disseminate it.

The suppression of the right to disseminate takes various forms such as padlocking a media office, confiscating copies of a particular issue of a newspaper, revoking the business permit or license to operate of a broadcast station, and exerting pressure on media advertisers. These are among the more common ways of clipping the capability of media organizations to disseminate news.

Under the concept of “hierarchy of rights”, the first two methods may be done in the guise of protecting an interest or right allegedly higher than press freedom. One such higher interest is the right of the State to protect itself against acts of sedition that may undermine its authority or threaten its very existence.

Presidential Proclamations 1081 and 1017 issued by the late Ferdinand Marcos and Arroyo, respectively, are classic examples. Both were used to justify the closure of media offices and organizations, citing the need to protect the State from seditious elements.

An example of this would be the raid by police operatives on the office of opposition paper *The Daily Tribune* on Feb. 25, 2006, after Arroyo’s declaration of Presidential Proclamation 1017, stating that the country is in a state of emergency.

The third one is a tactic popularly used by local government officials, usually mayors, against radio stations that are critical of the local administration. The cancellation of license or permit to operate is usually based on legal claims like failure to pay a certain local tax or fee, absence of necessary legal papers or documents and or violation of a local ordinance.

Justice Secretary Raul Gonzalez threatened ABS-CBN 2 with the cancellation of its franchise when it aired an interview with Moro Islamic Liberation Front

commander Abdullah Macapaar alias Commander Bravo on Oct. 20 and 21, 2008. Gonzalez said he was considering a complaint against ABS-CBN 2, and accused the network of violating the 2007 Broadcast Code of the Kapisanan ng mga Brodkaster ng Pilipinas (KBP, Association of Broadcasters of the Philippines), specifically Sections 2 and 4, which state that “criminals shall not be glorified and “crime should always be condemned.”

In all of the above instances, the suppression of the right to disseminate is clothed with legality, and so appears legitimate.

The last method is ingenious in its roundabout way of using the law to legitimize it. Usually employed by government officials who wield political power, the objective is to get sponsors or advertisers to withdraw from a news publication or broadcast program.

Sometime in Aug. 2008, a commentary radio program over dyRD-AM went off-air for about a week.

The anchors of “*Pulso* (Pulse)” claimed it had to go off-air because of the harassment initiated by the Office of the City Mayor of Manila against its sponsors. Roberto Alba and Fred Ticong alleged the harassment was done to silence them for their commentaries on the administration of Mayor Alfredo Lim.

“This is a clear curtailment of press freedom and the right of the people to freely express their grievances to government,” Alba said.

In just one day, four of the program sponsors withdrew, allegedly to avoid the possible revocation of their mayor’s permit, a claim Lim denied.

In one of his weekly “Mayor’s Report” episodes aired over the same station, Lim offered to pay for the airtime of “*Pulso*” to prove he was not behind the pull-out of its advertisers.

The said program resumed broadcast after a new group of advertisers provided financial sponsorship. Alba promised that he will continue his crusade against bad governance especially at the local government level.

“No amount of pressure can stop me from this crusade,” he stressed.

Subsequent punishment

The fourth and last aspect of a free press refers to the absence of penalties as a result of a published or aired report.

This is probably the most violated aspect of press freedom. Subsequent punishment comes in many forms, from the more direct form of filing defamation and libel cases against journalists to the worst form—that of the extrajudicial killing of journalists. Indirect ways have also been resorted to such as filing lawsuits disguised as a civil action.

Libel is, by far, the most prevalent form of subsequent punishment. Punishable under Article 355 of the Revised Penal Code (RPC), the crime of libel carries a penalty of imprisonment or fine, or both.

In 2008, press freedom seemingly found a champion in the person of Chief Justice Reynato S. Puno. On Jan. 25, 2008, the Chief Justice issued Administrative Circular No. 08-2008 addressed to all judges, on the observance of a “rule of preference” in the imposition of penalties in libel cases. In other words, the circular advised judges all over the country to refrain from imposing jail sentences on journalists and other persons convicted of libel.

Citing several cases in his circular, Puno noted that in most libel cases, the accused committed libel for justifiable reasons such as in defense of one’s honor, in reaction to a provocation, and in the belief of exercising a civic or moral duty. In cases involving journalists, he said, mistakes were made with honest intentions. Therefore, the payment of a fine “would already satisfy the intent of the law to punish the culprit.”

The circular, however, stresses that it “does not remove imprisonment as an alternative penalty for the crime of libel.” It remains the judge’s discretion whether to impose on the convicted journalist the maximum P6,000 fine or to sentence the journalist to prison for a maximum term of four years and two months.

Applying the so-called “rule of preference”, the Supreme Court has lately been upholding the conviction of journalists and letting them off with a fine. Although the non-imposition of imprisonment is welcome, the affirmation

of the convictions is a far change from the past rulings of the High Court upholding freedom of speech, which have become doctrine.

On Sept. 16, 2008, the Supreme Court affirmed the guilty verdict in a 1999 libel case filed by Carlos So, an official of the Bureau of Customs Intelligence and Investigation Service at the Ninoy Aquino International Airport (NAIA). The Second Division denied the petitions filed by columnist and broadcaster Erwin Tulfo, editors Susan Cambri, Rey Salao, Jocelyn Barlizo, and Carlo Publishing House Inc. president Philip Pichay seeking the reversal of the Court of Appeals (CA) decision upholding their conviction for libel.

The decision held that the articles “cannot be considered as qualified privileged communication” since they did not meet the standard under the second paragraph of Article 354 of the RPC:

“The articles clearly are not the fair and true reports contemplated by the provision. They provide no details of the acts committed by the subject, Atty. So. They are plain and simple baseless accusations, backed up by the word of one unnamed source. Good faith is lacking, as Tulfo failed to substantiate or even attempt to verify his story before publication. Tulfo goes even further to attack the character of the subject...even calling him a disgrace to his religion and the legal profession.”

The High Court added, “(t)his is no case of mere error or honest mistake, but a case of a journalist abdicating his responsibility to verify his story and instead misinforming the public.”

However, the penalties imposed by the Pasay City Regional Trial Court (RTC) ordering the payment of P800,000 actual damages, P1 million moral damages, and P500,000 exemplary damages, were amended.

“Though we find petitioners guilty of the crime charged, the punishment must still be tempered with justice.... Freedom of expression as well as freedom of the press may not be unrestrained, but neither reined in too harshly. In light of this, considering the necessity of a free press balanced with the necessity of a responsible press, the penalty of a fine of P6,000 for each count of libel,

with subsidiary imprisonment in case of insolvency, should suffice." The RTC had originally sentenced Tulfo, Cambri, Salao, Barlizo, and Pichay to serve six months to four years and two months in prison for each count of libel.

In the same month of Sept. 2008, the Supreme Court also denied a petition filed by publisher Isagani Yambot, editor-in-chief Letty Jimenez Magsanoc, and correspondents Teddy Molina and Juliet Pascual of the *Philippine Daily Inquirer*. The petition had sought to stop the Vigan RTC from hearing a 1996 libel case filed by lawyer Raymundo Armovit.

The libel charges were based on *Inquirer* articles that implied that Armovit hid his client Rolito Go when the latter escaped during his trial for the killing of a student, for which Go was later convicted.

The Third Division upheld the appellate court's decision that the Vigan RTC has the right to dismiss or withdraw the Information based on its assessment of the preliminary investigation records, in accordance with its exercise of judicial discretion and prerogative.

It was further held that the other arguments raised by Yambot and company were matters of defense, which "can be properly ventilated during the trial."

In order to prove their innocence, journalists must go through usually lengthy criminal proceedings. The thought of being subjected to a tedious criminal trial is enough to create a chilling effect on journalists, who may exercise self-censorship in order to spare themselves the experience.

In the face of extralegal killings, including those of journalists, and of enforced disappearances, the Supreme Court exercised its rulemaking power under Section 5 (5), Article VIII of the 1987 Constitution which partly provides that the Supreme Court has the power "to promulgate rules concerning the protection and enforcement of constitutional rights..."

On Sept. 25, 2007, the High Court issued A.M. No. 07-9-12-SC and on Jan. 22, 2008, A.M. No. 08-1-16-SC providing for the Rules on the Writs of Amparo and Habeas Data respectively. The former took effect Oct. 24, 2007, while the latter took effect on Feb. 2, 2008.

The writ of amparo owes its name to the Spanish word “amparar”, which means “to protect”. This special remedy is available to enforce constitutional rights other than the right to physical liberty, which is protected by the writ of habeas corpus. The former seeks to protect the right to life, right to liberty, and right to security.

A court granting this remedy may issue a protection order, a production order, or an inspection order, or a combination of two or all. Such orders are clearly more extensive than that available when it is the remedy of habeas corpus that is sought.

The writ of habeas data, on the other hand, is a special remedy that protects the right to personality. It is available when one has reason to believe that State agents are unnecessarily gathering information about him or her or has placed his or her person under unwarranted surveillance. This remedy may be sought to stop such activities and/or to compel State agents to reveal data that has been gathered on the person.

These two rules provide alternative legal remedies to journalists who may have received or are receiving threats to their lives or security, or who suspect they are under surveillance because of their work as journalists.

Privileged communication

Privileged communication is the most common defense available to journalists charged with libel. While it is explicitly provided for under Article 354 (2) of the RPC, it does not deter the filing of libel suits which may sometimes be multiple counts of libel.

Based on the legal definition under Article 353 of the RPC, every article deemed libelous is one count of libel. A journalist can be charged with several counts of libel even if the articles deal with the same subject matter.

In early June of 2008, a Makati City court found Ninez Cacho Olivares, journalist and publisher of *The Daily Tribune*, guilty of libel for writing a column accusing the Villaraza Cruz Marcelo & Angangco Law Firm, in collusion with then Ombudsman Simeon Marcelo, of influence-peddling in the NAIA 3 deal.

Despite the Puno circular, she was sentenced to a minimum of six months' and a maximum of two years' imprisonment, and ordered to pay P5 million in moral damages and P33,732.25 in civil damages including a libel fine of P4,000.

The firm said it will pursue and prosecute 47 more libel suits—one case for every article—against Olivares.

The risk of a libel case is very real for many journalists. In Baguio City, the 91-year-old editor of *Baguio Midland Courier* was charged with and arraigned for libel on Aug.14, 2008.

City budget officer Leticia Clemente sued Cecile Afable and her nephew Charles Hamada, publisher of *Courier*, for implicating her in a series of articles and commentaries about a supposed government "mafia" that had profited from the annual *Panagbenga* (Baguio Flower Festival).

The commentaries had alluded to a female official who was not named. Clemente was, however, identified in an article that dealt with former Baguio City Mayor Braulio Yaranon's charges. Yaranon had accused city officials of graft for their involvement in a private foundation that managed the flower festival.

The Investigating Prosecutor found the commentaries alluding to the unnamed female official's promiscuity malicious and recommended the filing of the libel charges.

The filing of a libel case is dependent on the prosecutor's finding of "probable cause". The Supreme Court has defined "probable cause" as the existence of "such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted."

The definition provides much leeway in the exercise of discretion on the part of the prosecutor. Being part of the executive branch, the prosecutor is comparatively more vulnerable to political pressures than is a judge, who is part of the judiciary. It is not uncommon for prosecutors to find themselves in the middle of a political tug-of-war.

Libel as politics

The case of Afable may be an example of how politics can influence a libel case. At the preliminary investigation stage, all the Baguio-based prosecutors inhibited themselves from said case. This prompted the transfer of the case to Dagupan Prosecutor Ferdinand Parayno, who eventually recommended dropping Yaranon from among those Clemente sued leaving only Afable and Hamada as respondents.

The decriminalization of libel has long been sought by Philippine media. At present, several bills seeking to decriminalize libel or amending the libel law are pending in the Senate. Sen. Roxas, who filed one such bill, said the nature of the offense can be resolved in civil proceedings. With the present law defining libel as a crime, the prescribed penalty of imprisonment can be used as a means of harassment by powerful people, he said.

Another senator, Aquilino Pimentel Jr., has urged Congress to end its indecisiveness regarding the decriminalization of libel. However, he also insists that another measure be put in place. This is the right to reply, which gives aggrieved parties media space for their replies to allegations against them.

In the House of Representatives, Speaker Prospero Nograles has also initiated moves to decriminalize libel.

Despite the positive steps taken by the legislature, neither house of Congress has unequivocally declared the decriminalization of libel as a priority measure.

The prospect of a lawsuit is not limited to those criminal in nature. A provision in the NCC provides for a separate and distinct legal remedy in the form of a civil action. Article 33 states:

"In cases of defamation, fraud, and physical injuries a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence."

Thus, one may file a criminal case, a civil action for damages based on defamation, which includes libel, or both against a journalist.

On Sept. 16, 2008, the CA dismissed the petition of *Inquirer* publisher Yambot; editors Artemio Engracia, Louie Camino and Carlito Pablo; and columnist Ramon Tulfo seeking to stop the Las Piñas RTC from hearing the P20.5-million damage suit filed by Sen. Panfilo Lacson in 2003.

The *Inquirer* editorial team claimed lack of jurisdiction because of wrong venue. The CA ruled that the lower court has jurisdiction over the complaint and that venue was properly laid.

Interestingly, the civil case Lacson filed cited Article 26 of the NCC as one of its grounds. The provision reads:

“Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:

“(1) Prying into the privacy of another’s residence;

“(2) Meddling with or disturbing the private life or family relations of another;

“(3) Intriguing to cause another to be alienated from his friends;

“(4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition.”

From the pronouncements of the appellate court, it appears the above provision provides another legal remedy aside from those found in the RPC and Article 33 of the NCC. The CA stated:

“The nature of respondent’s action is a civil action for damages arising from alleged defamatory articles for which petitioners may be held civilly liable either under Article 353 of the Revised Penal Code or under

Article 26 of the New Civil Code. It is not simply a libel case as petitioners would want to impress.”

“Reading” the law

As may be gleaned from the Lacson case, there is no telling which law may be used to threaten or violate a journalist’s freedom from subsequent punishment. All that is required is that a lawyer persuade the courts to read more into a legal provision, and to act accordingly based on such an expanded interpretation of the law.

RA 9372 or the Human Security Act (HSA) is one law with certain provisions that may invite expanded interpretation and application.

RA 9372 was signed into law on March 6, 2007. To date, no Implementing Rules and Regulations (IRR) have been drawn up. Anti-HSA proponents claim the lack of IRR gives too much discretion to law enforcers in, say, detaining a terrorist suspect for three days without formal charges in court. Journalists perceived to have reported on a terrorist suspect and presented the latter in a positive light may be liable for terrorism.

Some lawyer-politicians, like Sen. Juan Ponce Enrile and Sen. Pimentel claim RA 9372 does not need any IRR.

“A law is a law. It’s complete when it’s finished. The IRR is not needed because it’s a criminal law. Does the Revised Penal Code have an IRR?” Sen. Enrile asked.

“The IRR is not a requirement of the law. The law without an IRR does not make the law invalid,” Sen. Pimentel said.

With Enrile recently elected as Senate President, it is not likely for said chamber of Congress to support any move in the near future to have the IRR drawn up.

Some advocacy-oriented groups have petitioned the Supreme Court to declare RA 9372 unconstitutional. The High Court has yet to act on the petitions.

State inaction is a contributing factor to the continuing violations against press freedom. One form of subsequent punishment that has not been given satisfactory State attention is the killing of journalists.

The most pro-active State response, so far, has been the creation of Task Force (TF) 211 under the Department of Justice. The task force is specifically tasked to prosecute cases involving such killings. TF 211, however, handles not only killings of journalists but also those considered extrajudicial killings.

Given the sad reality of public prosecutors being individually assigned piles of cases, it is no surprise that TF 211 is short-staffed and in need of more prosecutors to divide the legal workload among themselves. Even as burdened prosecutors work to secure the conviction of suspected killers, another journalist is killed. The number of journalists killed is increasing faster than the number of convictions.

The State has yet to enforce concrete measures that would deter or prevent the killings of journalists.

Media ownership and content

Ownership and content are also subject to legal limitations.

Section 11, Article XVI of the Constitution provides:

“(1) The ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations, wholly-owned and managed by such citizens.

“The Congress shall regulate or prohibit monopolies in commercial mass media when the public interest so requires. No combinations in restraint of trade or unfair competition therein shall be allowed.

“(2) The advertising industry is impressed with public interest, and shall be regulated by law for the protection

of consumers and the promotion of the general welfare.

“Only Filipino citizens or corporations or associations at least seventy per centum of the capital of which is owned by such citizens shall be allowed to engage in the advertising industry.

“The participation of foreign investors in the governing body of entities in such industry shall be limited to their proportionate share in the capital thereof, and all the executive and managing officers of such entities must be citizens of the Philippines.”

Media ownership is made exclusive to Filipinos to prevent an alien or foreigner, whether a natural or juridical person, from having control over media content and information flow and thereby unduly shaping the minds and thoughts of the Filipino audience. Likewise, the prohibition against monopolies is to avoid having one group dominate the media industry.

The recent makeover of ABC-5 has raised questions on the legality of the new management setup with the entry of a Malaysian company as its partner. The company brought in much needed capital and upgraded the company's broadcast equipment.

Renamed TV5, network officials admit the Malaysian partner has bought all its airtime. They insist, however, that control of the network is still in the hands of the local partner. The foreign partner is simply an airtime seller and content provider, except for news and religious programs.

The technical terms used to describe the foreign partner of TV5 are open to many interpretations. One question begs to be asked: is the setup not an ingenious way of going around Section 11 (1), Article XVI of the Constitution? Does it not defeat the very spirit behind said provision?

The specter of the TV5 foreign partner having a say in what Filipinos may and may not know, although at present farfetched, is not impossible. Such “gatekeeping” control over the information flow of the network directly affects the people's right to information, and impinges on press freedom.

Media content

Media content is under the control of not only the owners of media organizations. Regulatory bodies such as the Movie and Television Review and Classification Board and KBP have police powers to regulate broadcast media content before and/or after airing.

Print media, in contrast, enjoys considerably greater freedom where content is concerned. But this may soon change with the right of reply bills pending in the Senate and House of Representatives.

Sen. Pimentel, one of the authors of the Senate version, stressed the decriminalization of libel should go hand in hand with the right of reply.

Senate Bill No. 2150 has already been approved on third and final reading by the Senate. It awaits passage by the House of Representatives.

The bill provides that "all persons...who are accused directly or indirectly of committing or having committed or of intending to commit any crime or offense defined by law or are criticized by innuendo, suggestion or rumor for any lapse in behavior in public or private life shall have the right to reply to the charges published or printed in newspapers, magazines, newsletters or publications circulated commercially or for free, or to criticisms aired or broadcast over radio, television, websites or through any electronic device."

In reply to concerns that the bill would infringe on the discretion of media to decide what to publish or air, Sen. Pimentel claimed "the bill will in fact widen freedom of expression by obliging the media to provide space to the response and explanation of persons to media reports or commentaries that are inaccurate, unfair or biased against them and injurious to their reputation."

He added that the publication or airing of the side of the aggrieved parties will enhance media credibility and at the same time avert possible libel charges filed by aggrieved parties against journalists.

The Senate Bill requires the publication of the reply, three days after its delivery, in the "same space." The reply cannot be edited, except to remove "libelous allegations."

House Bill No. 3306, authored by Bacolod Rep. Monico Puentevella, imposes penalties for repeated failure to provide print space or airtime for the right of reply. For the fifth and succeeding offense, the House version imposes a maximum P200,000 fine, not more than 30 days imprisonment, and the closure or suspension of the franchise of the publication or broadcast media for 30 days.

Fair and balanced reporting is the duty of every journalist. It includes publishing or airing all sides of an issue. The legislation of this duty via the right of reply bills assumes that journalists are incapable of responsibly practicing their profession and performing their duties. The bills are anchored on the assumption that all journalists are irresponsible people who write biased and one-sided reports.

What's more, demanding that the media allocate print space or airtime for the right of reply violates the property rights of media organizations. The proposed right of reply law is but a creative way to go around the doctrine laid down by the Supreme Court that print space cannot be procured without paying just compensation. By analogy, the same doctrine applies to airtime.

Furthermore, the Supreme Court has ruled that laws seeking to deprive anyone of life, liberty or property must pass the "clear and present danger test". The bills do not pass this test. There is no showing that the state of reporting in the Philippines has reached such point that it poses a threat to the very existence of our civil and political institutions.

Worst of all, by dictating what the press should publish or air, the bills infringe on the freedom of speech and of the press. The Supreme Court has acknowledged that "our history shows that the struggle to protect the freedom of speech, expression and the press was, at bottom, the struggle for the indispensable preconditions for the exercise of other freedoms.

"For it is only when the people have unbridled access to information and the press that they will be capable of rendering enlightened judgments."

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Triumphs and Problems in Protecting Witnesses

by Leo Dacera

In 2008, the effort to identify, apprehend, and bring to trial the masterminds and gunmen in the cases of slain journalists continued, with mixed success as a result.

Senior state prosecutor and director of the Department of Justice's Witness Protection Security and Benefits Program Leo Dacera addresses a crucial issue in the prosecution of the killers of journalists: the limitations and failings of the Philippine justice system particularly in the area of witness protection.

Given the defective justice system, the prosecution of anyone who commits a crime relies heavily on the testimonies of witnesses rather than police investigation and/or the presentation of evidence. This particular experience demonstrates the importance of protecting witnesses in the killing of journalists.

When we started working on media murder cases in 2003 one of our departed colleagues from the prosecution service left us with some guidelines. He died after a grueling cross examination by the defense of our child witnesses who had steadfastly identified the suspects in court. Perhaps realizing the difficulties that lay ahead, during some of our light moments he gave us the following advice:

1. Never volunteer to investigate or prosecute high profile cases like political killings and media murders. When you see that your boss is desperate to indict someone of a non-bailable offense, let him beg you to take on the case so you could demand that he take care of logistics and to have someone to blame him later on when you don't get what you need.
2. Do not accept a case folder from the law enforcers for prosecution on a promise that they will submit further evidence. More often than not you will be on your own after receiving the record when the publicity dies down.
3. Do not attempt to do police work yourself by digging too deep into what is not in the record. You would find more offenses and suspects involved and would be in deep trouble because you would not know how to proceed from there.
4. Be sure you are not motivated by monetary gain alone. You might be confused because rewards are offered and given only to accused informants while you, who have to sit in the courtroom with hardened criminals all day and argue endlessly with their battery of lawyers, will have no part in the handsome reward.
5. You must not be outgoing and sociable. For every suspected criminal you prosecute at least 10 of his companions, relatives and supporters are unidentified and are just waiting for you to have a good time.

One can say that this is a rather cynical perspective, but for prosecutors and witness protection personnel handling heinous crimes in our country, the list of laments could actually go on forever as we now appreciate the wisdom in our departed colleagues' words.

From our first media murder case, that of Edgar Damalerio from Pagadian City in 2002 which took four years of trial work to get a life imprisonment sentence against the accused police officer, our team is now seeking capital punishment in 22 cases nationwide. As the number of arrests mount, more witnesses are encouraged to testify and identify more conspirators, which translates to further leg work, paperwork and logistical difficulties.

Ironically, the resources available for the prosecution of these cases and in protecting endangered witnesses have dwindled. Without meaning to be immodest, despite the inadequate resources of the Witness Protection Program (WPP) there has been a marked increase in applications for coverage which we see as a recognition of the WPP's vital role in fostering respect for the rule of law in the Philippines, particularly in the prosecution of media murder cases. From the standpoint of conscientious prosecutors and law enforcers, witness protection and care has become an indispensable tool in their quest for justice. With the proactive stance taken in the implementation of the WPP's mandate by the Department of Justice, even the courts have relied on the Program for security and other allied assistance to judges and court personnel particularly in high risk cases.

Recent studies have identified the limitations of the WPP and areas that could stand improvement. The European Union Assessment Mission in 2007 stated that "the strength of the WPP is that it exists." Philip Alston, the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions in his report on his Mission to the Philippines in Feb. 2007 wrote that the witness protection program is underresourced, inadequate and inaccessible and the absence of witnesses is a key explanation why extrajudicial executions hardly ever lead to convictions. Other interest groups state that the Program is only good on paper.

Of particular interest to foreign investigators is the complaint that the living conditions of witnesses in safe houses is not up to global standards. While WPP safe houses do not have the amenities of the average first world housing unit, the Program sees to it that it is within middle class standards in the Philippines. The imposition of stringent regulations in program safe houses is essential for the integrity of the security arrangements and the protection of witnesses staying therein. The relocation of high-risk witnesses and their families from the danger area to another region of the country entails enormous costs.

Finding secure housing, appropriate schools for children, and other necessary facilities needed by witnesses requires equally enormous, and covert, effort. It is necessary that witnesses abide by safe house rules to shield it from detection. It is only through consistent and strict observance of these regulations that witnesses could be properly protected and their well-being ensured.

As far as admission into the Program is concerned, suffice it to say that the law provides for the qualification of the witness, as well as the procedure and steps for admission. Admittedly, the threshold requirement for admission is rather low since all witnesses under threat in grave offenses may qualify for coverage. However, amendment of the law to raise the bar of threshold requirement to only cases of national interest may deprive poor but deserving victims of assistance necessary to ensure their access to courts, considering that 85 percent of the Program clients belong to the marginalized sector.

While these observations may be valid to some extent, it has to be stressed that participation in the WPP is a very serious step and one that should not be undertaken without extensive consideration. Consequently, notwithstanding its limitations, participation in the Program is necessarily a partnership between the Program's protective service and the witness. It would not be enough that a person is under threat for the Program to cover him. It is essential that he qualifies and firmly signifies his intention to abide by Program regulations.

Although participation in the Program is voluntary, one must keep in mind that Program procedures must be strictly complied with so that the spirit and intent of the law is upheld and only bona fide witnesses under threat are allocated public funds specifically earmarked for witness protection.

It must also be deeply instilled in the witness that the Program is not providing him with rights and benefits as a means of persuading him or encouraging him to give evidence, or as a reward for giving evidence in any criminal proceeding. He should not be given the idea that he could enrich himself by becoming a government witness. This is a universal principle of witness protection meant to ensure that the constitutional rights of an accused to due process are not violated.

What constitutes a sufficient effort to assist witnesses will necessarily vary with the facts of a particular case. The determination of what comprises sufficient

efforts and appropriate types of assistance depends largely on the anticipated level of threat, the needs of the witness clients, the selection of techniques most likely useful to respond to their needs, and the absolute amount of effort or level of resources needed to provide assistance.

Recanting witnesses

This brings to the fore the recurring issue of recanting prosecution witnesses even among WPP-covered witnesses. While Philippine jurisprudence abounds in support of the doctrine that witness recantations are looked upon by courts with disfavor, particularly when obtained from poor and unlettered witnesses for monetary considerations, it has been the Program's experience that the prosecution of cases is often mired in technicalities and is eventually lost despite strong evidence due to the courts' and prosecutors' giving weight to witness recantations. Although refusal by a covered witness to testify is punishable with perjury or contempt, the light imposable penalty has not deterred its recurrence in the trial of media murder cases and other heinous crimes cases. This is an area where legislation is necessary to improve Program implementation.

In a third world setting, family and community pressure plays an important role in sustaining witnesses' determination to testify truthfully. In a recent multiple incestuous rape case, the victim's mother herself forced her rape victim child to leave the Program and unjustly accused WPP personnel of kidnapping to gain custody of her child to prevent her from testifying in court. In the murder of broadcast journalist Herson Hinolan, the witness's grandfather and village leaders demanded that the witness, who had already testified in court, be released from WPP protective custody, claiming that they will all be harmed by the accused's allies if the witness continues to cooperate with the prosecution. In the trial of the suspect in print and broadcast journalist Rolando Ureta's murder, the witness' father whose request for firearms and pocket money from the Program had been denied, executed an affidavit in favor of the accused to cast doubt on his own son's testimony. In the hearing on the murder of broadcast journalist Edgar Amoro, the eyewitness's wife prevailed upon him not to identify the accused in court for fear that her and her son's employment with the local government would be terminated by the suspected mastermind.

In all these cases the witness's recantation was obtained through their relatives who yielded to monetary considerations. While the witness and their relatives may be prosecuted for obstruction, subornation, perjury and/or contempt, the expeditious prosecution of the main case for murder is adversely affected since the investigation and prosecution of the peripheral cases also require the prosecutor's time and effort, and the unprogrammed use of already scarce resources often results in long delays and disastrous results.

It is not uncommon that witnesses who adamantly refuse bribes and stand fast in their resolve to testify find themselves accused of serious offenses on trumped up charges. In a recent murder case, a witness who felt it was his social duty to disclose the truth about his politician uncle was detained in the municipal jail on a sham complaint to force him to give a controverting statement absolving the accused. In this case the Program had to devote extraordinary resources to the witness' case to compel the court to order his inclusion in the Program and to defend him at the trial.

Despite seemingly insurmountable odds, however, it is heartening to know that bona fide witnesses still stand up for truth and justice with ample support and protection. While the WPP tries its level best to meet all its witness-clients' numerous demands, in the ultimate analysis it is their sincere dedication to the cause of the prosecution and an earnest desire for truth and justice, over and above economic or personal gain, which determines their usefulness to the cause of getting justice for the slain journalists.

Confidentiality vs. publicity

The investigation of the killing of journalists especially when endangered witnesses are covered by the WPP attracts widespread public interest because of the potential drama of the story. While it is beneficial as a regulatory mechanism for accountability, sensationalized media interest on the victims, witnesses and the people involved in the prosecution and the disclosure of confidential matters pertaining to their WPP coverage can be detrimental to the prosecution.

In one case involving a witness in the prosecution of the son of a senator and his wealthy friends for rape and murder, the massive publicity attending all

aspects of the investigation, prosecution and trial unduly interfered with the implementation of program policies and hindered security procedures. In the end the supposedly covert arrangements for the witness's security turned into a farce when movie offers for the witness's life story started coming which WPP officials were compelled to sanction upon the witness's threat to withdraw from the case. Consequently, the witness was allowed to watch the shooting of the movie, attend meetings with movie stars, directors and producers, and to appear on TV talk shows and media interviews to promote the movie. Not to be outdone, lawyers and public officials shared the limelight with the witness to advance their own agenda. In the end it was inevitable that the Program had to be dragged into litigation arising from a dispute among the parties over their share in the film profits.

A lesson to be learned here is that more often than not, prolonged media exposure not only of the witnesses but also of public officers entrusted with prosecution, supervision and protection elevates them from being ordinary individuals to the status of celebrities. This transformation comes with a stiff price for the WPP. As celebrities, the expectations of the people concerned rise and so do their needs and wants. With their perceived higher stature comes increased costs as more manpower and other resources are needed to maintain and secure them. Public officials no matter how peripheral their role is in the case, often go overboard to project to the public the importance of the case and the level of threat (objective or subjective) to the witness, and, for obvious reasons, tend to overstate their role. Consequently, leniency and forbearance in implementing the established policies for admission and the conditions of coverage of witnesses results in the further loss of credibility of the internal procedures that in the first place are already suspect due to incoherent policy instructions. The latter often result in the disruption of program operations, disclosure of covert procedures, the loss of anonymity of witnesses and program personnel, jealousy and resentment, decline in morale, susceptibility of witnesses to overtures for settlement, commission of violations to justify exit from the program, media exposes on program ineptitude, recantation, failure of the prosecution, and, eventually, a miscarriage of justice. This has been a common experience especially when witness separation from the program arises from refusal to conform with security regulations and more often when unreasonable financial demands on the Program are made and denied.

Towards a more effective program

A working protection scheme based on the strength of the other pillars of the criminal justice system will win public confidence, support and cooperation, and have profound effects on the country's entire judicial system.

The outcome of a case depends on the quality of evidence presented to the court, which in turn depends on the investigation, from its earliest stages. If a witness or victim immediately reports his knowledge of a crime after its occurrence, describes in detail what happened, points to the person and the evidence that confirm his narration, his claims corroborated by other witnesses and stands firm on his testimony, the case will probably be a success. On the other hand, if a witness is frightened and has low expectations of the courts, came forward much later, is reluctant to give details of the crime, other corroborative witnesses fail to substantiate his story, and under pressure or promises changes his/her account, the case is unlikely to succeed. The determining factor between one outcome and the other is protection.

Witness protection is also about how a judge exercises authority. In developed legal systems, the judge asserts the prerogative to make decisions on how the case is handled. Respect for that authority is determined by the extent of respect for fair trial. Where fair trial is respected judicial orders are upheld. Where fair trial is sabotaged, judicial orders are mocked. When accused is able to get rid of prosecution witnesses or cause them to recant their earlier testimony, the court is also made into a cruel parody.

The absence of a fair trial and the absence of witness protection are one and the same. When the public perceives that the courts are in the hands of the rich, powerful and influential, and even the best judges can be manipulated and cornered, the entire system loses credibility. Where a case is repeatedly postponed for the most trivial reasons and the witnesses and victims eventually lose interest and accede to an offer of settlement leading to the dismissal of the case, the judge may be acting within the law but the effect is that the court makes a mockery of itself. Where judges, prosecutors, and law enforcers are active participants in this charade, the very notion of justice will be lost to society.

Amendment of the rules of criminal procedure under the rule-making power of the Supreme Court should be undertaken to allow the perpetuation of

WPP witnesses' testimony while awaiting resolution of proceedings in higher courts.

The most basic principle for obtaining reliable witness testimony is that witnesses should not be exposed to intimidation. Thus, a key component of witness protection is reducing or optimally eliminating any possibility of contact that would allow intimidation.

A judge should be able to limit any unnecessary contact between the witness and a defendant. Violations of any court order for the protection of witnesses should be severely sanctioned. However, except in a few highly urbanized cities, conditions in Philippine courts hardly inspire confidence in witnesses that they are well protected if they participate in the trial. Most court houses are small, ill-equipped, congested and poorly maintained. Storage areas occupy most of the office spaces and separate holding areas for witnesses are not available.

As a minimum requirement for the protection of court witnesses waiting to testify, a secure separate waiting room or facility must be provided to prevent confrontations with the suspect, the accused or defense witnesses. Contact between a witness and a suspect or a defense witness may be intimidating to the former. Such contacts, however, may be a necessary consequence of logistical arrangements in court buildings. To the extent possible, such exposure should be avoided by providing separate waiting areas for witnesses.¹

The issuance in 2007 by the Supreme Court of Memorandum Order No. 42-2007 providing for an interim security protocol for trial courts that all detention prisoners shall always be handcuffed while in the court premises, and the creation of the Judiciary Security Unit among others is a welcome development. This must however be matched with the corresponding allocation of resources for its proper implementation. The problem of the basic infrastructure of courts could be addressed primarily through the proper funding and execution of judicial infrastructure projects.

The judiciary may likewise strengthen witness protection by developing procedural means of protection such as the use of modern communication technology in all WPP-covered witness testimony, shielding the identify of

1 UN Office of Drugs and Crime, Best Practices on Witness Protection

witnesses during the testimony, and authorizing judges to issue provisional measures at any stage of a criminal case to prevent contact between the witness and the accused and his allies thereby reducing the risk of intimidation.

No free lunch

The adage that “the best things in life are free” assumes new meaning in our experience in the prosecution of media cases and other heinous crimes. It may be impolite to mention logistical matters in connection with our work, but we have to realize that zeal, industry and integrity alone do not win cases. When the U.S. Department of Justice Attaché inquired about prosecutor insurance, compensation and resources for prosecuting cases involving politicians, state agents and armed groups, they thought we were joking when we said that on the average we get an extra \$150 a month for work done beyond the regular 8 hours daily, and for the seven days a week spent in catching up with paper work which could not be done during trial days.

Although the number of cases have mounted over the years manpower and logistical support actually devoted to the protection of witnesses and prosecuting their cases have declined. The high turnover of prosecution personnel is attributable to the low compensation levels, poor working conditions and the lack of opportunities for professional advancement.

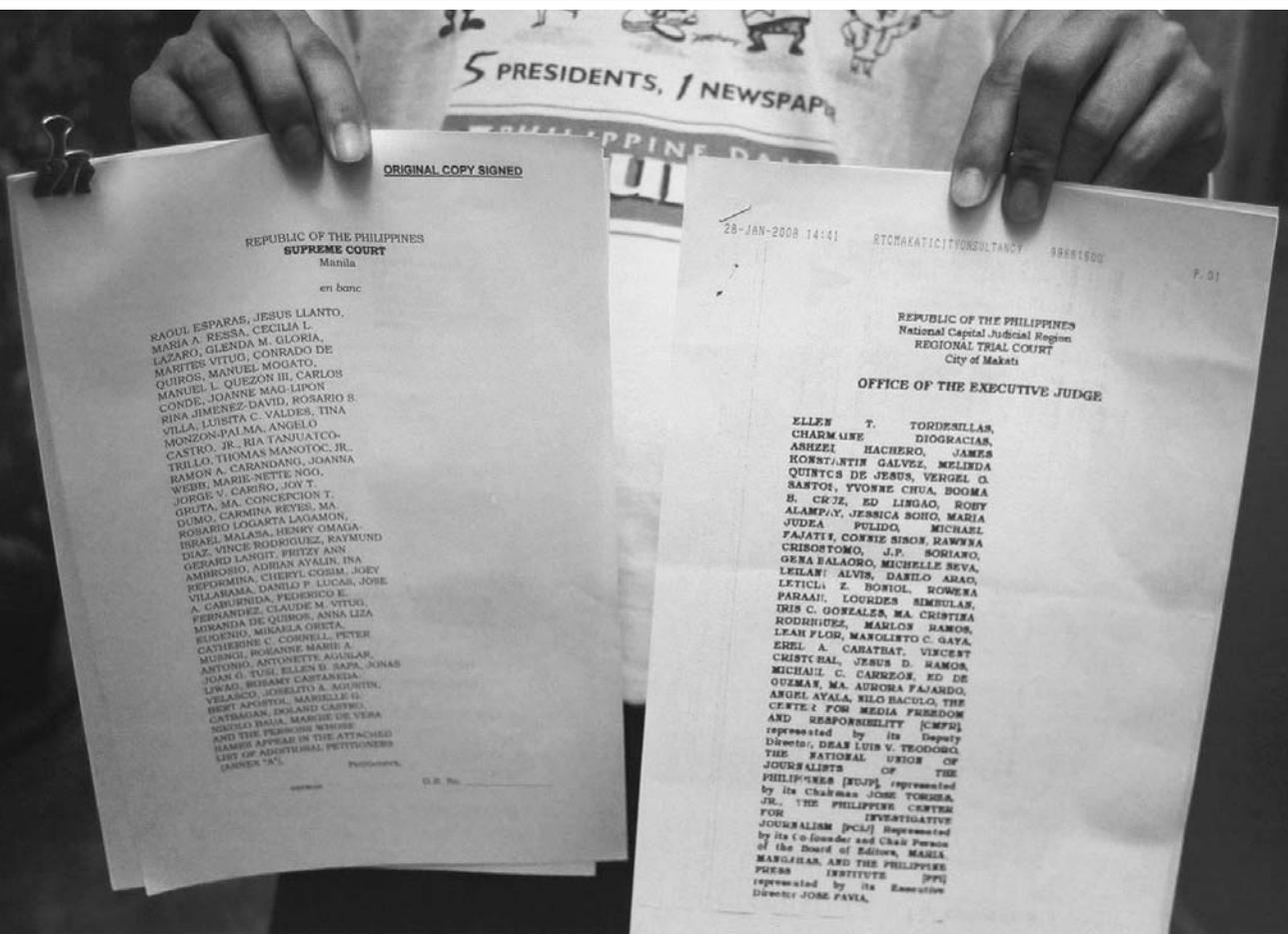
It is not uncommon for senior trial prosecutors to say that had they been younger they would not think twice of going to nursing school to give their children a better break overseas.

Although we recognize that in a developing country like ours the Witness Protection Program and the prosecution service will always have to stand in line for scarce resources which must first be devoted for our people’s basic needs, the issue should be properly addressed soonest before we reach the point where the problems become so huge and so many they compromise the capacity of the system to a point where the prosecution of the cases of slain journalists becomes nearly impossible. When that happens, not only Philippine journalism will suffer, so too will Philippine democracy.

Having stated our limitations we wish to be optimistic that this is an opportunity for us to proceed more intelligently and judiciously from here. Much is to be done to build and strengthen our legal framework and processes. It is in this regard that constant vigilance and enduring support of well intentioned organizations such as the Center for Media Freedom and Responsibility, the Freedom Fund for Filipino Journalists, the Kapisanan ng mga Broadkaster ng Pilipinas (Association of Broadcasters of the Philippines), the National Press Club, the National Union of Journalists of the Philippines, and the Southeast Asian Press Alliance, is crucial in the fulfillment of our common goal of fostering respect for the rule of law.

Senior State Prosecutor Leo Dacera is the director of the Department of Justice Witness Protection Program.

Media's capacity for self-defense Fighting Back



The Philippine media's ability to fight back proved important in overcoming obstacles to the independent practice of journalism in 2008. Before the unabated killings and attacks and the repressive laws and government policies, much of the Philippine media presented a united front in protecting press freedom and free expression as well as the people's right to know.

On Nov. 29, 2007, several former military officials led by former Navy Lieutenant and now Sen. Antonio Trillanes IV and Army Brig. Gen. Danilo Lim walked out of the hearing on the charges of rebellion and sedition against them at the Makati Regional Trial Court (RTC) and held a press conference at The Peninsula Manila hotel. Trillanes, Lim, some members of the military rebel group Magdalo, and sympathizers called on the public to demand President Gloria Macapagal Arroyo's resignation.

Several media practitioners covering the trial proceeded to The Peninsula Manila hotel and attended the press briefing. After a brief stand-off between Trillanes and Lim's group and the police, with the police ramming an armored personnel carrier through the hotel entrance, Trillanes and Lim's group surrendered. The journalists covering the event and their support crews were arrested along with the Trillanes group. They were handcuffed and brought to a police camp for "processing".

Media organizations and journalists condemned the arrests and said the journalists were merely doing their jobs. Several government officials supported the actions of the police and said the media allegedly obstructed justice by staying at the hotel as police operations began, thus they protected the rebels during the stand-off. Officials also said the media would be arrested should they behave as they did in the Peninsula siege.

In response to the arrests and the government statements, several media organizations and journalists filed on Jan. 28, 2008 two separate cases against the police and government officials.

The Center for Media Freedom and Responsibility (CMFR), the National Union of Journalists of the Philippines (NUJP), the Philippine Center for Investigative Journalism, and the Philippine Press Institute along with other individuals filed a civil damage suit before the Makati RTC. The civil damage suit is currently on

appeal after Makati RTC Branch 56 judge Reynaldo Laigo dismissed the case on June 20, 2008.

Meanwhile, 81 journalists led by ABS-CBN 2 staff filed a separate petition for a writ of prohibition and/or inhibition asking the Supreme Court to stop the government from threatening, arresting, or imposing any form of prior restraint on the media.

Fighting impunity

The Philippine media's united effort to combat the culture of impunity which encourages attacks on and threats against journalists saw successes in the battle to bring justice to the families of slain journalists.

With the initiative of the Freedom Fund for Filipino Journalists (FFFJ) and the NUJP, the trials of the alleged killers of Aklan-based broadcasters Rolando Ureta and Herson Hinolan resumed in May 2008. FFFJ is a coalition of six media organizations in the Philippines formed in 2003. CMFR is a founding member of FFFJ and serves as its secretariat.

Also with the help of the FFFJ, a new case against the alleged masterminds in the 2005 killing of Sultan Kudarat journalist Marlene Esperat was filed on Oct. 20, 2008 before the Tacurong City RTC. The court has issued warrants of arrest against alleged masterminds Osmeña Montañer and Estrella Sabay the following day.

To end the culture of impunity, justices, lawyers, legal experts, media organizations, and human rights and press freedom advocates from as far as Latin America came together at the Manila Conference on Impunity and Press Freedom in Feb. 2008. CMFR and the Southeast Asian Press Alliance (SEAPA), with the support of the Committee to Protect Journalists (CPJ) and the Open Society Institute (OSI), hosted the international conference at The Peninsula Manila hotel.

CMFR, CPJ, FFFJ, OSI, and SEAPA launched an international campaign against impunity during the Manila conference. The campaign aims to enhance public awareness on the issues of impunity, improve the protection of journalists, and establish a legal defense fund.

Helping community journalists

Media organizations and press freedom advocates also provided legal and financial assistance to journalists and media practitioners in the provinces who are under threat and/or attack. On Feb. 4, 2008, NUJP helped Oriental Mindoro-based journalist Nilo Baculo Sr. file a petition for a writ of amparo after learning a plot to kill him.

This was the first time that a provincial journalist in danger has petitioned the High Tribunal for a writ of amparo. Out of the 77 journalists/media practitioners killed in the line of duty since 1986, 73 were from the provinces.

Baculo, publisher and writer of the community newsletter *Traveler's News*, allegedly found out on Dec. 16, 2007 about the attempt in his life after the "would-be assassin" approached and informed him that a group of people wanted him dead due to his exposés.

The Court of Appeals' (CA) Former Special Third Division in Manila dismissed on June 27, 2008 Baculo's petition saying it "reasonably doubts the believability of the petitioner's murder-plot story."

The hired hitman backed out of the deal after learning that it was the journalist he had been hired to kill. The supposed hitman, claimed Baculo, informed Baculo that local businessman Wilfredo Caballero, Calapan City Administrator Antonio Perez, and Councilor Allan Mañibo wanted him dead. The latter three allegedly got in touch with the hitman through Maximo Evora, a retired provincial warden. Calapan City is the capital of Oriental Mindoro.

Baculo asked the High Court to issue him a "temporary protection order" under Section 14 of the Rule on the Writ of Amparo. A "temporary protection order" provides the petitioners protection by "a government agency or by an accredited person or private institution capable of keeping and securing their safety."

The writ of amparo is "a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity." The implementing guidelines for the writ were issued by the Supreme Court on Sept. 25, 2007, in light of the tide of extrajudicial killings and enforced

disappearances that continues to besiege the Philippines. The writ took effect on Oct. 24, 2007.

In another case, CMFR and NUJP filed on May 30, 2008 a petition for a writ of habeas corpus before the Supreme Court to release Davao-based broadcaster Alexander "Lex" Adonis from prison. The petition was the organizations' answer to the refusal of the authorities at the Davao Penal Colony (Dapecol, also known as the Davao Prison and Penal Farm) to free Adonis despite a Dec. 2007 Department of Justice's Board of Pardons and Parole (DOJ-BPP) release order and the posting of a P5,000 bail bond for a second libel case filed by an alleged paramour of House Speaker and Davao City First District representative Prospero Nograles.

Dapecol warden Supt. Venancio Tesoro, who has only custodial powers over prisoners, argued that the second libel case nullified the parole of Adonis. The second libel case filed was based on the same reports questioned in the first libel case filed by Nograles in Oct. 2001. Nograles filed libel charges after Adonis reported in his program that Nograles and a married female broadcaster were allegedly caught in a compromising situation at a hotel in Metro Manila. Adonis's report was based on tabloid articles.

Adonis, formerly of *Bombo Radyo* in Davao, was convicted on Jan. 26, 2007 for a libel case filed against him by Nograles after failing to attend several hearings and forfeiting his right to present evidence.

Adonis spent almost two years in prison. He was set free on Dec. 23, 2008 after the DOJ-Bureau of Corrections (DOJ-BuCor) approved his release order. The DOJ-BuCor order came two months after the Davao City RTC Branch 14 dismissed the second libel case and ordered that Adonis be "released from detention unless there be other lawful ground for his further confinement."

The case was dismissed after the alleged paramour withdrew charges in return of Adonis's apology. During his release, Adonis explained his decision to apologize. "The decision to say sorry... was a hard move I had taken. I would like to state now the truth that while I did say sorry, it did not in any way mean a capitulation of the truth I have been pursuing nor did it mean an admission of my guilt," Adonis said.

Adonis now works for the radio station Radio Mindanao Network in Davao City.

Safety training for defense

On June 8, 2008, the promise of an allegedly exclusive interview with the new leadership of the bandit group Abu Sayyaf led to the ten-day captivity of ABS-CBN 2 reporter Cecilia Victoria “Ces” Drilon, her cameraman and assistant cameraman, and a Mindanao university professor. In addition to rigorous ethics training, the incident also highlighted the importance of safety training for media practitioners.

A Center for Media Freedom and Responsibility study on the killing of journalists from 2001 to 2007 highlighted the need for news organizations to provide safety and ethics training for media practitioners. Training in both safety and ethics could help reduce individual and institutional vulnerability to attacks and threats.

Since June 2007, the National Union of Journalists of the Philippines (NUJP) with the support of the International Federation of Journalists (IFJ) has been holding safety training seminars and workshops for journalists and other media practitioners. NUJP has conducted six such seminars in which there were around 150 participants.

IFJ-NUJP Media Safety Office Executive Coordinator Rowena Paraan said that the first part of the training provides participants a background on why journalism has become a dangerous profession in the Philippines and in other parts of the globe. Paraan said resource persons identify the sources of the danger and why journalists and media practitioners remain vulnerable to attack.

The participants also walk through a review of laws and international standards on the practice of journalism and press freedom and free expression. They also discuss ethical journalism practice as a form of protection.

The second part of the NUJP safety training contains practical knowledge to prepare media practitioners for hostile situations, Paraan said. Two of the sessions included in this part are weapons awareness and conflict management.

In the weapons awareness session, journalists/media practitioners familiarize themselves with different firearms and weapons. Paraan explained that journalists need to understand how such weapons work not just for their reports but also to be prepared when assailants attack them with guns or other weapons.

The conflict management session shows journalists/media practitioners how to deal with hostile situations such as violent rallies and demonstrations. They also discuss how journalists should handle death threats and surveillance.

A Public Service Privately Owned



A broadcast network's programming reformat in Aug. 2008 and the lawsuit it faced from another major broadcast company provided the Philippine public a rare glimpse into the nature of media ownership in the Philippines.

In 2008, ABC-5, the third oldest broadcast network in the Philippines, entered into a long-time block time agreement with MPB Primedia Inc., a local company connected with the Malaysian conglomerate Media Prima Berhad. Among the consequences of the agreement was a massive programming reformat. TV5 as it is now known has become the third most-watched station nationwide, according to AGB Nielsen Media Research. TV5, which now operates 24/7, has provincial stations and cable TV affiliates nationwide.

The block time agreement resulted in a lawsuit by leading broadcast company GMA-7 and affiliates Citynet and Zoe Broadcasting against TV5 in Dec. 2008. The complainants argued that the "blocktime agreement" between TV5 and the Malaysian company violated the 1987 Philippine Constitution that restricts ownership and management of mass media to Filipino citizens or corporations.

The complainants asked the Quezon City Regional Trial Court to nullify the said agreement as well as claiming a total of P11 million for damages "to compensate for the loss of revenues due to unfair competition."

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."

TV5 had not yet released a statement on the lawsuit as of press time. But during the TV5 press launch in Aug. 2008, company chief executive officer Christopher Sy said that the company is still owned by Filipino businessman Tonyboy Cojuangco. "Prime Media has simply entered into a block time agreement but we do not have any equity in this station," he said.

Commercial in nature

Like their counterparts in most other countries, the Philippine mass media are first of all commercial enterprises controlled by political and economic interest groups. As commercial enterprises, they are focused on profitability, or at least the minimizing of financial losses. This obviously creates a conflict between the private interests of the mass media and their public service function. The commercial imperative has driven the mass media into: sensationalism, choosing news that will sell newspapers or boost ratings, suppressing meaningful but less popular stories, slanting of news and commentary favorable to the interests that control the media, occasional reporting on the most important issues, among other consequences.

These can be seen in the proliferation of advertorials in newspapers, the rise of infotainment programming in television, and the decline—in both frequency and quality—of in-depth stories.

Since the American period in the 1920s, the mass media in the Philippines have been dominated by 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 1986. 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 reemerged; powerful families again saw the media as their domain.

The diverse political and economic interests of those who own and control much of the Philippine media has permitted—at various times and depending on the political climate—the printing and airing of diverse views, although fairly limited to a narrow range (from far right to center) of the political spectrum. However, a number of individuals with relatively radical views have managed to be heard and read through the media primarily because the political categories (Left, Right, or Center; Liberal or Conservative) in the Philippines have tended to be nebulous.

For example, the owner of a major influential daily, the *Manila Bulletin*, has interests in shipping, banking, hotel, and other ventures. The owner of another broadsheet, the *Manila Standard Today*, has interests in shipping ports and terminals and has entered port and terminal contracts with the government.

The two biggest media networks are owned by companies of wealthy families. ABS-CBN 2 is owned by the Lopez family and the GMA-7 network by the Gozon-Duavit-Jimenez family.

Both ABS-CBN 2 and GMA-7 are major multimedia conglomerates that have several VHF (very high frequency) and UHF (ultra high frequency) TV stations, FM and AM radio stations, and subsidiaries and affiliates in video/audio postproduction, film production and distribution, music and video production, radio and the Internet.

Aside from owning a number of magazines and printing press(es), the Lopezes' business conglomerate has also been involved in telecommunications, power generation and distribution, infrastructure, real estate development, and health care delivery.

The government has its own media system, which includes the Office of the Press Secretary, the Philippine Information Agency, and a government TV and radio network as well as two other government-sequestered TV stations. With freedom curtailed to serve personal and political agendas of public officials, the government-owned/sequestered media almost always report news and commentary favorable to whatever administration is in power.

Media landscape

There are nine broadsheets published in the English language that claim national circulations: *Bulletin*, *BusinessWorld*, *BusinessMirror*, *Malaya* (now *Malaya Business Insight*), *Philippine Daily Inquirer*, *Standard Today*, *The Manila Times*, *The Philippine Star*, and *The Daily Tribune*. *Bulletin*, *Inquirer*, and *Star*, which are published from the national capital of Metro Manila, lead in circulation and advertising revenues. There are also a number of community newspapers and tabloids.

The newspaper circulation relative to the population (estimated at 90.46 million in 2008 according to the National Statistics Office) is small. The national newspapers print between 10,000 and 400,000 copies daily. The print runs of community newspapers on the other hand range from a low of 50 copies to a high of 45,000. No more than two million people, or 2.21 percent of the

estimated 2008 population, are reached by the newspapers, even if a pass-on readership of five is assumed. There are at least two known national associations of newspaper publishers. One of the two, the Philippine Press Institute (PPI), has 94 newspaper-members nationwide.

As of June 2007, National Telecommunications Commission (NTC) figures show that the country has 247 television stations, 382 AM radio broadcast stations, and 628 FM stations in 2006.

According to a July 2005 survey of the Asia Research Organization Inc., 95 percent of Filipino households own a television set while 79 percent own a radio. The survey gathered data from 16 million households nationwide.

According to the NTC, there were 408 registered Internet service providers (ISPs) in the Philippines in 2006, compared with only 177 in 2005—or 230.51-percent increase in the number of ISPs.

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.

During the impeachment of former President Joseph Estrada and his eventual ouster from office, short-message service (SMS) texting, websites, and online groups were a contributing factor to the propaganda of both sides. In the current crises facing President Gloria Macapagal Arroyo, blogs, social networking sites, and online video-sharing sites have taken on a much more prominent role.

In the 2005 political crisis which threatened the Arroyo presidency, blogging played a significant part in providing the public with uncensored information they cannot get from the mainstream media. These included the popular blog of the Philippine Center for Investigative Journalism (PCIJ), which was among the first to post online audio files and transcripts of the alleged election cheating controversy involving Arroyo.

The top media organizations are online, including the three most widely circulated English language broadsheets. The websites of the country's major television stations are also popular among Filipinos.

Aside from PCIJ, other news organizations that provide in-depth stories, such as *Newsbreak* and the newly-created group *VERA Files*, are also online. Issues underreported by the press are discussed online in news organizations such as *Bulatlat*, *PinoyPress*, and *Mindanews*.

Legal requirements

There are no licensing, registration or membership requirements in any media organization for media practitioners in the Philippines. For media organizations themselves, the powers of the NTC 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.

Media ownership

Aside from prohibiting foreign individuals or company to own media organizations in the country, Section 11 of Article XVI (General Provisions) of the 1987 Constitution also 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. 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.

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

State of Self-Regulation



OFWS AND
LABOR MIGRATION
**ANEMIC
REPORTING
AND OTHER
WOES**

THE "EURO
GENERALS" SCANDAL
**A COVER-UP
OR A LAPSE IN
JUDGEMENT?**



**PR IN THE
SEASON
OF GIVING**

PJR REPORTS

Published by the Center for Media Freedom & Responsibility

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PRESS FREEDOM CONTINUED TO DECLINE IN 2008



The only known remaining readers' advocate in the country resigned in 2008, in a development likely to further undermine the press ombudsman system as a self-regulatory mechanism. But the press council system continued to develop and progress as journalists and concerned citizens got together to organize the Central Luzon regional press council covering several provinces in addition to the three already existing provincial press councils (Palawan, Baguio-Benguet, and Cebu).

Despite the Constitutional guarantee of press freedom and free expression, the Philippine press is still hampered by troubling working conditions, ownership issues, government interference, and professional and ethical problems. But the press has found a solution in self-regulation, through which it addresses these issues by encouraging press responsibility as well as avoiding the regulation by government.

Among the forms of self-regulation in the country are press monitoring publications, readers' advocates (also known as the press ombudsman), and press councils.

Media organizations and advocacy groups oversee self-regulation in the Philippine press. Among them are the Center for Community Journalism and Development, the Center for Media Freedom and Responsibility (CMFR), the Kapisanan ng mga Brodkaster ng Pilipinas (KBP, Association of Broadcasters of the Philippines), the National Union of Journalists of the Philippines (NUJP), and the Philippine Press Institute (PPI).

Voluntary compliance

The Philippine press has *PJR Reports* (formerly known as the *Philippine Journalism Review*), the Philippine Journalist's Code of Ethics, and the Broadcast Code of the KBP to monitor press performance and ethical compliance.

CMFR publishes *PJR Reports* monthly and sends it to over 500 journalists nationwide. It is the product of CMFR's continuing monitor of media coverage of events and issues.

PPI and the National Press Club formulated the Philippine Journalist's Code of Ethics, and encourage its observance among the country's newspapers.

The KBP Broadcast Code is the set of standards of performance and ethical conduct upheld by KBP-member radio and television stations. All member stations should adhere to the code; appropriate sanctions are applied to those who do not. KBP revised the Broadcast Code in 2007.

KBP also has the Standards Authority (KBP-SA) to ensure that member stations abide by KBP rules. KBP-SA hears complaints against violators of the code.

The insider's limited success

The press ombudsman concept has achieved limited success in the Philippines. The one national broadsheet in the country that has retained the position of readers' advocate saw the resignation of its fourth ombudsman in Jan. 2008, and has named no replacement so far. The position has been vacant a number of times since it was created in 1988.

According to its publisher, Isagani Yambot, the biggest national daily, the *Philippine Daily Inquirer*, prides itself in retaining an ombudsman to "ensure the paper's excellence, integrity, editorial independence, and social responsibility." But journalist and former *PJR Reports* editor Lorna Kalaw Tirol served as the readers' advocate in the *Inquirer* for only two years and four months. Although Tirol did not provide her exact reasons for resigning, she said she left the job because she found it "too stressful, frustrating, and thankless." (Full story is published in the Sept. 2008 issue of the *PJR Reports*.)

The reader's advocate has been called many names: press or news ombudsman, readers' representative, or public editor.

The function of the press ombudsman varies per news organization. But his/her main tasks include representing the public in the newsroom, receiving and answering complaints about the paper's work, monitoring the paper's editorial content for possible ethical violations, and assisting in the professional training of the news staff.

The press ombudsman concept has been criticized primarily because the reader's advocate is an insider in the newspaper organization. This makes him/her vulnerable to the pressures of the newsroom and to the private or political

interests of the owners. It is alleged that the public's interest is relegated to second place as a result.

Press accountability

In Aug. 2008, Central Luzon journalists began organizing a regional citizens press council (RCPC). As of press time, these journalists were in the process of forming provincial CPCs in consultation with other journalists and sectors, and running awareness campaigns to introduce the public to the idea of a press council and its purposes.

The Central Luzon RCPC will be the fourth CPC to have been established successfully. News organizations in the Central Luzon region have begun publishing reports and background material on the formation of the RCPC. The reports said journalists and various sectors including local governments have responded positively to the idea of a press council.

A press council provides a venue for hearing and reviewing public complaints and serves as a non-judicial recourse for aggrieved parties offended by a report. It also provides a public forum for the discussion of media, their professional and ethical standards, and their usefulness to the community they serve. Press councils aim to temper, if not entirely prevent, court charges and violence against the press.

PPI organized the Philippine Press Council (PPC) in 1993. The PPC has received few complaints due to lack of public awareness as well as because it is limited to Metro Manila newspapers.

With this experience, the CMFR developed the community press council concept to include civil society representatives to make the grievance process more accessible. The inclusion of non-journalist members brings a community perspective to the practice of journalism—one that encourages accurate, complete, fair, and balanced reporting.

CMFR helped establish CPCs in Cebu, Baguio, and Palawan which adhere to this active public engagement. May 5, 2002 marked the establishment of the first regional CPC, the Cebu Citizens Press Council (CCPC). The Baguio

Citizens Press Council and the Palawan Community Media Council were also established in 2002, on May 30 and June 8, respectively. Of the three, the CCPC is the most active. CCPC programs are focused on responsible practice as well as media literacy.

CMFR envisions the improvement and transformation of journalism in the Philippines with the help of these press councils among other initiatives and campaigns it has undertaken and is currently involved in.

Media in the Public Eye

The Philippine media exist in a legal regime of press freedom. But this does not mean that the media answer only to themselves through self-regulatory mechanisms. More importantly they are accountable to the public they serve.

Only when the public understands the role of the media in society, as well as their values, ethics and standards, is authentic accountability possible. A public ignorant of the media's value in the furtherance of democracy, which expects too little or too much, cannot effectively monitor the media. In the end, media literacy should also be a priority of the news organizations and media advocacy groups as well as the public.

The following complaints in 2008 revealed the limited capacity of the public to be a watchdog of the press. But they also demonstrate the low credibility of the press, mostly as a result of the media's excesses and violations of their own standards and values.

Print

The print medium's unreliable compliance with the right of reply was a major complaint against the press in 2008.

This problem was highlighted in the case of Enrique Locsin, vice president of the government-sequestered company Philcomsat Holdings Corp., who had to buy ad space in *The Philippine Star* just to air his complaint over a Dec. 19, 2007 Victor Agustin column in the *Manila Standard Today*. His letter was finally printed in the Jan. 28, 2008 issue of the *Star*.

Locsin said the *Standard Today* had refused to publish his letter even as a paid advertisement. He said Agustin even used parts of it to make him look worse before the public.

Locsin, also publisher of the news magazine *Philippines Free Press*, eventually filed a libel suit against the *Standard Today*. In a statement quoted in the

April 2008 *PJR Reports* (formerly known as *Philippine Journalism Review*) issue, Locsin said he did not file a complaint before the Philippine Press Council (PPC), a self-regulatory body under the Philippine Press Institute, because he was unaware of its existence.

Since Locsin is himself in the media community, *PJR Reports* said it was a telling indication of the lack of public awareness of the existence of venues like the PPC as well as citizens press councils in the communities where complainants may seek to resolve media issues rather than pursuing court action or violence.

It also indicated that although "...newspapers recognize the right of reply, they throw all sorts of obstacles in its implementation, as is evident in the *Standard Today's* multiple conditions it wanted Locsin to meet before publishing his letter."

"If the right of reply is to be of any use for those aggrieved by the media, the latter need to make it easy rather than difficult for that right to be exercised."

"The sense among policy and lawmakers that the media are arbitrary and arrogant in the exercise of their power in fact proceeds mostly from their personal knowledge of how often the media have been asked to provide space or air time to those they have maligned, or otherwise mistreated, and have refused."

Three other cases also illustrated the press' lack of fairness in its reporting.

Antonio Calipjo Go, who briefly abandoned his 12-year campaign to free Filipino public schools from government-approved textbooks that contain conspicuous errors, protested before the PPC what he said was some columnists' campaign of vilification.

Go said in a *Philippine Daily Inquirer* three-part report in Dec. 2008 that some columnists who questioned his integrity wrote allegedly libelous articles against him.

He told the *Inquirer*: "The articles created the overall impression that I am a victimizer, a blackmailer, and an extortionist."

"My name, which acquired its patina of respectability over 12 years of a one-man crusade, had been irremediably, irretrievably tarnished for all time," Go said in a letter to the *Inquirer*. "They kill the messenger, they kill the message. That's why they are destroying my reputation, to kill the message."

The *Inquirer* report said newspapers have yet to publish the rejoinder that the PPC asked Go to write.

Two other cases involved the *Inquirer*.

Presidential daughter Evangeline Lourdes "Luli" Arroyo and former Philippine National Oil Company president Eduardo V. Mañalac both denied the validity of *Inquirer* articles which reported on them in separate incidents. The *Inquirer* apologized only to Mañalac.

Arroyo was one of the stranded passengers of the Asian Spirit May 1 flights that were delayed for several hours. The *Inquirer* reported that she was "whisked off in a presidential chopper."

"(*Inquirer's*) decision to print unverified and false information as part of a news story is even worse. As if that were not enough, the editors decided to put malice into their photo caption by juxtaposing a photo of suffering passengers in a crowded airport with embellished wrong information that I had used not just any chopper but a presidential chopper. This is in such contrast to GMA Network's report which included only the facts in their report and which bothered to verify information given to them by sources," Arroyo said in a May 10, 2008 letter to the *Inquirer*.

On the other hand, Mañalac denied that that he was appearing as a witness in the Senate's investigation of the botched national broadband network deal as the *Inquirer* had reported.

"What the *Inquirer* has done I consider a total abuse of press freedom, an arrogant display of undeserved self righteousness, and a complete and utter denial of my own rights as a private citizen. Consider being rudely surprised on a quiet Sunday morning with a totally false account of yourself on the front page of a major daily newspaper boasting a readership of millions of Filipinos both here and abroad. If this is not a crime, it should be, a crime necessitating

the most severe type of legal action,” Mañalac told *abs-cbnNEWS.com* on March 10, 2008.

The failure to provide the right to reply weakens the merits of media self-regulation. It eventually lends credence to claims that the press deserves external regulation.

Broadcast

On the other hand, a 2007 University of the Philippines (UP) study found the lack of viewer militancy evident among Filipino television news consumers, particularly in Metro Manila. The study concluded that Metro Manila viewers are peripheral or passive recipients of news.

Fernando D. Paragas, assistant professor at the Communication Research Department of the UP College of Mass Communication, explained in an *Inquirer* report in March 2008 that the respondents had been so accustomed to the way television news reports are presented that they have become satisfied with the reporting.

However, the respondents were aware of some problems by mentioning too much negative news reports; too much shallow, people-focused stories; one-sided/biased reporting; and weak graphics and mobile images as unwelcome. But ironically, they did not find the reports sensational.

Interest in Philippine current affairs is still high despite the media focus on crime and entertainment, however.

While television news programs continue to use the hook-and-hold format, a common framework for news programs globally, the results of the survey showed that people want more substantive news. On top of their preferences was the banner story, followed by the weather report, national news, local/community news, public service, police reports, human interest/trivia, and entertainment and sports.

But Paragas said they do not find relevance in the news to their individual lives since the news programs play up entertainment stories and trivia.

If anything, the mixed results underscore the need for a study on media literacy to determine how literate TV viewers assess the content of news reports, Paragas said.

The 9th Extension Research Project of the UP Communication Research Department, "*Mulat or Manunuri ng Ulat: Viewers Reception and Evaluation of Television News Programs*" also found that GMA-7's *24 Oras* and ABS-CBN 2's *TV Patrol World* had the highest viewership among television news programs.

It validated the view that the broadcast medium, particularly free TV, is the preferred source of news for Filipinos in the National Capital Region (NCR).

The survey had 1,100 respondents selected through systematic random sampling from 14 of the 17 cities and municipalities in the NCR. The NCR accounts for about 12.44 percent of the entire Philippine population—the largest number in any region, according to the projected population in 2008 by the National Statistics Office.

The Sorry Record of 2008

Killings and Other Attacks

SLAIN JOURNALISTS 1986-2008

67. **Marlene Garcia Esperat** (The Midland Review/Tacurong City)
68. **Klein Cantoneros** (dxAA-FM/Dipolog City)
69. **Philip Agustin** (Starline Times Recorder/Aurora)
70. **Rolando Morales** (dwMD-Radio Mindanao Network, South Cotabato)
71. **Ricardo "Ding" Uy** (dzRS-AM/Sorsogon City)
72. **Robert Ramos** (Katapat/Laguna)
73. **George Benaohan** (dyDD/Cebu City)
74. **Rolly Cañete** (dxPR/Pagadian City)

Jailed broadcaster released

A Davao broadcaster was released on Dec. 23, 2008 after spending almost two years in prison in Davao del Norte for libel. Libel is a criminal offense in the Philippines.

Alexander "Lex" Adonis, formerly of Bombo Radyo in Davao City, was released from the Davao Penal Colony (Dapecol) at around 2 p.m. after the Department of Justice-Bureau of Corrections (DoJ-BuCor) approved his release. The release order, signed by DoJ undersecretary and BuCor director Oscar Calderon included 52 other prisoners, *GMANews.TV* reported.

Dodong Solis of the Kapisanan ng mga Broadkaster ng Pilipinas (Association of Broadcasters of the Philippines)-Davao Chapter and radio station Radio Mindanao Network told the Center for Media Freedom and Responsibility (CMFR) that Adonis was released due to his Dec. 2007 parole.

The DoJ-Board of Pardons and Parole paroled Adonis on Dec. 11, 2007 after he had served the minimum sentence for a libel case. But Dapecol warden Supt. Venancio Tesoro refused to release him when a second libel case based on the same report for which he had been convicted was filed by a woman alleged to be the paramour of House of Representatives Speaker Prospero Nograles.

On May 26, 2008, Tesoro still refused to release Adonis despite a release order by the Davao Regional Trial Court Branch (RTC) 14 after Davao media colleagues paid a P5,000 bail bond for Adonis. Tesoro, who has only custodial powers over prisoners, argued that the pending case disqualified Adonis from parole.

The alleged paramour withdrew the second libel case in Oct. 2008 after Adonis issued a public apology. The Davao City RTC Branch 14 then dismissed on Oct. 27, 2008 the second libel case and ordered that Adonis be "released from detention unless there be other lawful ground for his further confinement".

According to Adonis's colleagues in Davao, the National Press Club (NPC) apparently convinced him to issue an apology letter and to withdraw his counsel Harry Roque to give the lawyers of NPC the right to negotiate Adonis's

case with the alleged paramour. Adonis had been asked by Nograles and his alleged paramour to apologize as a pre-condition for his release.

Several media reports after Adonis's release quoted Nograles as saying that he and NPC convinced the alleged paramour to withdraw the charges of libel against the jailed broadcaster.

Upon his release, Adonis read a statement expressing his gratitude to the media organizations and individuals who helped him during his detention and worked for his release. He also explained his decision to apologize. "The decision to say sorry...was a hard move I had taken. I would like to state now the truth that while I did say sorry, it did not in any way mean a capitulation of the truth I have been pursuing nor did it mean an admission of my guilt," Adonis said.

Roque, the former counsel of Adonis, said in a statement that "there was no need for that apology." He added that "Mr. Adonis had already been paroled. It was his legal right to be released from prison, a right that Director Tesoro refused to recognize. That is why we filed a petition for a writ of habeas corpus before the Supreme Court." A petition for a writ of habeas corpus asking for the release of Adonis was filed by the CMFR and the National Union of Journalists of the Philippines on May 30, 2008.

Adonis was convicted on Jan. 26, 2007 for the first libel case filed against him by Nograles. Davao City First District representative Nograles, the fourth most powerful person in the Philippines, filed libel charges in Oct. 2001 for Adonis's report on his alleged extra-marital affairs. Adonis, reading from tabloids, reported on his program that Nograles had been caught in a compromising situation with his alleged paramour in a hotel in Manila.

Another journalist killed

A radio broadcaster was gunned down by unknown assailants in the town of San Roque, Northern Samar on Dec. 2, 2008.

At around 6 p.m., Leo Mila, 38, of Radyo Natin (Our Radio) FM in San Roque was on his way out of the radio station compound when unknown assailants attacked him. Mila had just ended his afternoon music program "*Himig Waraynon* (Waraynon Sound)" and was on his way home. Mila also anchored a morning public service program "*Pungkaras sa Kaagonon* (Wake up at Dawn)".

Mila was the sixth journalist/media practitioner to be killed in the line of duty in 2008, when a total of seven journalists were killed in the Philippines.

Alice Cagro, station manager of Radyo Natin FM in San Roque, said other employees heard a series of gunshots a few minutes after Mila left the office. But they did not immediately go out because it was dark.

"They went out after 30 minutes. When they reached the gate, they saw Mila's motorcycle on the ground but not Mila. The motorcycle seemed to have hit the left wing of the gate; the engine was still running," Cagro told Center for Media Freedom and Responsibility (CMFR). The other radio employees went back to the office and told Cagro that Mila was missing.

Cagro asked local authorities for help in looking for Mila. She said the police and some village officials found Mila's body in an empty lot a few meters from the gate. Mila was reportedly dragged to the lot by unknown assailants before he was killed. "He was grasping some grass and his lips were tightly closed. It seemed as if he had begged for his life," she said.

Mila sustained six gunshot wounds—one in his head, another in his breast, two in his shoulders, and two in his thighs. Mila is survived by his wife and two children ages 9 and 10.

His colleagues believe that the killing of Mila was work-related. Mila had been receiving death threats prior to the killing because of his commentaries. Rommel Rutor of dyMS-Aksyon Radio (Action Radio) and *Samar Weekly Express*

told CMFR Mila had been receiving threats from an unidentified teacher and a local official.

“We saw each other last Saturday in Catarman. I was telling him about death threats I have received, when he told me he was also getting death threats,” Rutor said. Mila had reported the threats to the local police, his colleagues said.

Sixth journalist killed

A broadcaster was shot and killed on Nov. 17, 2008 by a killer on a motorcycle in Gingoog City, Misamis Oriental.

Arecio Padrigao, 55, of dxRS Radyo Natin (Our Radio) had just dropped off his daughter in front of the Bukidnon State University when he was killed by an assassin on a motorcycle. The incident happened at about 7:15 in the morning. His killing seemed work-related.

Padrigao anchored “*Sayri ang Katilingban* (Know the People)”, a block-time radio program for dxRS Radyo Natin aired every Friday. Padrigao criticized local government corruption as well as illegal logging activities in his province on his program. He also wrote a column for the community newspaper *Mindanao Monitor Today*.

Block timing is a practice in the Philippine provinces where individuals buy “blocks” of radio time for their programs. Payments are usually generated by the program’s advertisements.

Toto Gancia, a radio announcer for dxRS Radyo Natin, told Center for Media Freedom and Responsibility that Padrigao had received threats prior to his killing.

“His (Padrigao’s) wife told me that he received threats prior to his killing. The threats told him in effect that he would not live until Christmas,” Gancia said.

Like many other journalists who have received death threats, Padrigao did not take the threats seriously.

“Masterminds” petition denied

The Manila Court of Appeals (CA) denied on Oct. 15, 2008 the petition for certiorari and prohibition filed by the alleged masterminds to stop the re-investigation of, and the filing of charges on, the 2005 killing of journalist Marlene Esperat.

In a 17-page decision penned by Associate Justice Bienvenido Reyes, the CA Special Eighth Division denied the Nov. 19, 2007 petition by Osmeña Montañer and Estrella Sabay, alleged masterminds in the killing of Esperat, asking the court to prohibit the state prosecutor and the Department of Justice from re-investigating the case and re-filing charges against them.

“It is legally permissible for public respondents to re-open the preliminary investigation,” the appellate court said. “...(T)he complainants may present new or additional evidence which could alter the result of the earlier finding of no probable cause and accordingly ask for a reinvestigation or a reopening of preliminary investigation.”

The court also ruled that the prior withdrawal of the charges against them at the Tacurong City Regional Trial Court (RTC) did not prejudice the re-filing of charges. “Such dismissal merely relieved the petitioners from imprisonment or from being held on bail and not to acquit them of the crime charged.”

It added that “(t)here is no statement in the order of dismissal of RTC Tacurong City (dated Aug. 31, 2005) that the dismissal was with prejudice. A dismissal order is generally deemed to be without prejudice to the filing of another action.... The only instance when dismissal of an action is with prejudice is, when the order itself so states.”

The appellate court also denied the Montañer and Sabay motion to “implead the Regional Trial Court of Tacurong City, Sultan Kudarat; Cotabato City; or any other court as nominal party.”

Private prosecutor Nena Santos said the Manila CA decision would be “a big help” in the prosecution of Montañer and Sabay in Tacurong City. On Oct. 20, 2008, the prosecution refiled murder charges against Montañer and Sabay before the Tacurong City RTC Branch 20 of Judge Melanio S. Guerrero. Guerrero issued warrants of arrest against the two the following day.

“That will be helpful in the case filed in Tacurong City since the Court of Appeals declared that the former dismissal (of the charges against them) does not prejudice refiling the case,” Santos said. She added that the CA also answered the questions posed by the motion to quash filed by Montañer and Sabay on Oct. 21, 2008 before Tacurong City’s RTC Branch 20.

Esperat was killed on March 24, 2005 by unknown assailants inside her home and in full view of her children in Tacurong City. She was known for her exposés on alleged corrupt activities in the regional office of the Department of Agriculture where Montañer and Sabay work.

Court orders arrest

A Sultan Kudarat court had ordered the arrest of the alleged masterminds in the 2005 killing of a Sultan Kudarat journalist a day after murder charges were filed against them.

Judge Melanio S. Guerrero of the Tacurong City Regional Trial Court (RTC) Branch 20 on Oct. 21, 2008 warrants of arrest against the alleged masterminds in the killing of journalist Marlene Esperat. Murder charges were filed against them on Oct. 20, 2008.

However, Montañer and Sabay filed on Oct. 21, 2008 a motion to quash the Information before the Tacurong City RTC Branch 20.

On Feb. 4, 2008, the Cebu City RTC Branch 7 of Judge Simeon Dumdum had issued warrants of arrest against Montañer and Sabay. But a preliminary injunction issued by the Cebu City Court of Appeals (CA) on May 14, 2008 prevented the serving of the warrants of arrest and Judge Dumdum from hearing the case. Montañer and Sabay filed the petition for the issuance of a preliminary injunction before the appellate court in March 2008, arguing that the Cebu City RTC had no jurisdiction over the case filed against them.

The Cebu City CA agreed with the Office of the Solicitor General’s opinion that the case against Montañer and Sabay should be filed at Tacurong City where the murder happened.

On Sept. 28, 2008, Judge Dumdung approved the petition for the withdrawal of charges at the Cebu City RTC filed by the prosecutors in preparation for the filing of a murder case against the alleged masterminds before the Tacurong City RTC.

The prosecution refiled the case in Tacurong. Montañer and Sabays subsequently filed before the Manila CA a petition to stop the re-investigation and re-filing of charges against them.

Journalists' suit will proceed

The Manila Court of Appeals (CA) denied on Sept. 22, 2008 a motion by the husband of President Gloria Macapagal Arroyo to quash the class suit filed against him by journalists in response to his numerous libel suits. The court also lifted a writ of preliminary injunction and directed the trial court to continue with the hearing.

“(T)he petition is denied for lack of merit. Accordingly, the writ of preliminary injunction is lifted and the case remanded to the trial court which is ordered to conduct further proceedings with dispatch,” the 23-page CA decision, penned by Associate Justice Fernanda Lampas Peralta, stated.

Thirty-six journalists, together with the Center for Media Freedom and Responsibility (CMFR), the Philippine Center for Investigative Journalism and the Manila newspaper *The Daily Tribune*, filed the P12.5-million class suit against Jose Miguel “Mike” Arroyo, husband of President Gloria Macapagal Arroyo on Dec. 28, 2006. The journalists argued that the 11 libel suits Mr. Arroyo had filed against 46 members of the press were an abuse of his right to litigate and was an attack on press freedom.

After surviving a high-risk heart operation, Mr. Arroyo announced through the presidential spokesman on May 3, 2007 that he would withdraw all the libel cases he had filed against journalists. The media practitioners who sued Mr. Arroyo however continued with the case, so that a decision on its merits could define the legal parameters for suing journalists for libel.

Mr. Arroyo’s legal counsel Ruy Rondain told abs-cbnNEWS.com/Newsbreak that he will appeal the decision.

"I'm disappointed. I thought my arguments were clear. Of course, I don't agree with the decision. I have 15 days to file a motion for reconsideration," Rondain told *abs-cbnNEWS.com/Newsbreak*.

Mr. Arroyo filed a petition for certiorari before the CA arguing that Makati City Judge Zenaida Laguilles committed "grave abuse of discretion in admitting the amended complaint" of the journalists as the allegedly insufficient docket fees paid by the latter did not give Laguilles jurisdiction over the case.

A certiorari is a writ which could be issued by a superior court to a lower court to annul or modify ongoing proceedings if the latter judge acted on a case outside his jurisdiction.

In the original complaint filed by the journalists, the word "each" appeared in the section asking for damages amounting to P12.5 million. Mr. Arroyo noted that the word "each" meant each petitioner is asking for P12.5 million in damages, with a docket fee totaling P9 million.

The journalists filed an amended complaint to delete the word "each" and replace it with "aggregate" in the section pertaining to damages sought, as well as to include the names of additional journalists.

The appellate court did not pass judgment on the issue of docket fees, as it only ruled on the issue of "jurisdiction and grave abuse of discretion," about which allegation the CA ruled was "wanting in this case."

Libel is a criminal offense in the Philippines, and many media organizations including CMFR have been campaigning for its decriminalization for years.

Broadcasters receive death threats

Two Davao City-based radio broadcasters received death threats after reporting alleged extortion activities involving some local government officials.

Erin Lumosbog of RPN-9's Davao radio station dxKT-Radyo Ronda (Roving Radio) and James Pala of dxAM-Radyo Rapido (Rapid Radio) said they received the threats on their mobile phones telling them to stop discussing alleged extortion activities by some councilors of the municipality of Sta. Cruz in Davao del Sur, an Oct. 7, 2008 *Inquirer.net* report said.

In a phone interview with the Center for Media Freedom and Responsibility on Oct. 8, 2008, Lumosbog said the threats came after he discussed in his radio program allegations by a local businessman that some municipal council members had asked him for P1.2 million in exchange for their approval of his request to quarry.

The businessman was able to raise only P480,000. His request was later denied. When the councilors allegedly refused to return his P480,000, the businessman asked for help from the media.

Inquirer.net quoted one of the messages as saying "If you will not stop doing commentaries on the Sta. Cruz issue, bullets might force you to stop." Lumosbog tried calling the numbers used to send him the threats but all had been deactivated.

Lumosbog continues to discuss the issue in his radio program but said he is taking precautionary measures. "If we let the threats affect us, our radio program will be ruined," he said in Filipino. He explained that he has lessened his field activities and is staying in a "safe house".

"We have been asking the councilors to explain their side," Lumosbog said in Filipino. But he said the councilors seem to be avoiding the media. "When we went to see the councilors allegedly involved, they suddenly disappeared from the session hall," he said.

There is an ongoing investigation on the alleged extortion activities. Sta. Cruz municipal mayor Joel Ray Lopez told *Inquirer.net* that several businessmen did "(decide) to withdraw their investments (in Sta. Cruz) because some councilors were asking money from them in exchange for some favors."

High Court upholds guilty verdict against columnist

The Supreme Court affirmed on Sept. 16, 2008 the guilty verdict on a 1999 libel case filed by a customs official against a columnist, three editors, and the publisher of a popular Manila-based tabloid.

The Supreme Court's Second Division denied the petitions filed by columnist and broadcaster Erwin Tulfo, editors Susan Cambri, Rey Salao, Jocelyn Barlizo, and Carlo Publishing House Inc. president Philip Pichay asking for the

reversal of the Court of Appeals (CA) decision to uphold their conviction for libel in a complaint by lawyer Carlos So. So was an official of the Bureau of Customs Intelligence and Investigation Service at the Manila's Ninoy Aquino International Airport.

The decision followed one in which the Court allowed a lower court to hear against a libel case filed in 1996 against the Manila broadsheet *Philippine Daily Inquirer*.

The Court also denied in Sept. 2008 a petition filed by *Inquirer's* publisher Isagani Yambot, editor in chief Letty Jimenez Magasanoc, and correspondents Teddy Molina and Juliet Pascual to stop the Vigan Regional Trial Court (RTC) from hearing a libel case filed against them by lawyer Raymundo Armovit in 1996.

The 1996 libel charges against the *Inquirer* are based on articles implying that Armovit hid his client Rolito Go when the latter escaped during his trial for the killing of a student. Go was later convicted.

In the Tulfo case, So sued after Tulfo accused him of corruption and extortion several times in his "Direct Hit" column in the tabloid *Remate* in 1999.

On Nov. 17, 2000, the Pasay City RTC Branch 112 found Tulfo, Cambri, Salao, Barlizo, and Pichay guilty of four counts of libel.

The group appealed the decision before the CA. But the Court denied their appeal on June 17, 2003 as well as their motions for reconsideration on Dec. 11, 2003. They then filed a petition for review before the Supreme Court.

Tulfo and the other defendants argued in their separate petitions that both the appellate court and the Pasay City RTC "erred" in their decision holding them liable of criminal libel. Tulfo argued that the RTC should have classified his articles under "qualified privileged communication" since So is a public official, while the editors and Pichay questioned their inclusion in the case.

The Supreme Court in its 31-page decision penned by Associate Justice Presbitero Velasco Jr. explained the articles "cannot be considered as qualified privileged communication" since it did not meet the standard under the second paragraph of Article 354 of the Revised Penal Code.

"The articles clearly are not the fair and true reports contemplated by the provision. They provide no details of the acts committed by the subject, Atty. So. They are plain and simple baseless accusations, backed up by the word of one unnamed source. Good faith is lacking, as Tulfo failed to substantiate or even attempt to verify his story before publication. Tulfo goes even further to attack the character of the subject...even calling him a disgrace to his religion and the legal profession," the decision said. So is a member of the religious organization Iglesia ni Cristo.

The Court also said that "(t)his is no case of mere error or honest mistake, but a case of a journalist abdicating his responsibility to verify his story and instead misinforming the public."

Journalists are "reporters of facts, not fiction, and must be able to back up their stories with solid research. The power of the press and the corresponding duty to exercise that power judiciously cannot be understated," the decision said.

However, the Court amended the earlier penalties imposed by the Pasay City RTC on the defendants. The RTC had earlier ordered the defendants to pay P800,000 in actual damages, P1 million in moral damages, and an additional P500,000 in exemplary damages. They were also sentenced to serve six months to four years and two months in prison for each count of libel.

"Though we find petitioners guilty of the crime charged, the punishment must still be tempered with justice.... Freedom of expression as well as freedom of the press may not be unrestrained, but neither reined in too harshly. In light of this, considering the necessity of a free press balanced with the necessity of a responsible press, the penalty of a fine of P6,000 for each count of libel, with subsidiary imprisonment in case of insolvency, should suffice."

It said that the provision for actual damages has no basis. "There was no showing of any pecuniary loss suffered by the complainant Atty. So. Without proof of actual loss that can be measured, the award of actual damages cannot stand." The fine for exemplary damages is also "not justified."

Appeals Court reverses decision on libel case

Saying it would have “a devastating and catastrophic effect on the freedom of speech and of the press,” the Court of Appeals (CA) reversed on Aug. 28, 2008 its March 2008 decision which upheld a guilty verdict for libel on the staff members of a defunct newspaper.

The CA’s Special Former 15th Division in its 10-page decision granted the petition filed by the staff members of the defunct newspaper *Manila Chronicle* asking the appellate court to reconsider its March 18, 2008 decision which upheld a 2002 Makati Regional Trial Court (RTC) ruling ordering them to pay businessman Alfonso Yuchengco P101 million worth of damages and legal fees.

The appellants-respondents included The Manila Chronicle Publishing Corp., owner Robert Cuyuito Jr., and editors and reporters Neal Cruz, Ernesto Tolentino, Noel Cabrera, Thelma San Juan, Gerry Zaragosa, Donna Gatdula, Raul Valino, and Rodney Diola.

The *Manila Chronicle* filed a motion for reconsideration before the appellate court questioning the Nov. 8, 2002 decision of Makati RTC Branch 136 finding them guilty of libel. The libel case stemmed from a series of articles published in November and December of 1994 in the *Chronicle* calling Yuchengco a “Marcos crony” and a “corporate raider” who engaged in dubious financial transactions.” The *Philippine Journalism Review* reported about the case in its Dec. 2002 issue.

In its March 18, 2008 decision penned by Associate Justice Agustin Dizon, *GMANews.TV* reported that the appellate court denied the *Chronicle’s* motion for reconsideration, saying there was a “preponderance of evidence” to prove there was actual malice in the publication of the articles. It also said the newspaper failed to get Yuchengco’s side, and that Cuyuito abused his power as chair and owner of the *Chronicle* to publish defamatory reports against Yuchengco. Cuyuito and Yuchengco are both in the insurance business and were allegedly battling over the ownership of Oriental Petroleum and Mineral Resources Corp. at that time, *GMANews.TV* noted.

But the CA’s Special Former 15th Division in its Aug. 28, 2008 decision said it found no actual malice in the articles. “The records are bereft of proof of actual

malice on the part of the defendants-appellants for the imputations made in the subject articles," said the decision penned by Associate Justice Amelita Tolentino as quoted by the newspaper *The Manila Times*.

It also recognized that the previous decision put aside the appellants' arguments that the articles fell under privileged communication as stated in the Constitution and that its subjects are of public interest, the *Times* reported. The *Chronicle* reports involved publicly listed companies like the Benguet Corp., the Oriental Petroleum and Mineral Resources Corp., and the Rizal Commercial Banking Corp. which are of great interest to the general public especially small investors, the *Times* reported.

It further noted that the March 18, 2008 ruling neglected to note that Yuchengco is a public figure who has served in various government posts, the *Malaya* newspaper said. Yuchengco has been the presidential adviser on foreign affairs since Jan. 2004.

The CA explained that this makes "good intention and justifiable motive" and truth acceptable defense, *Malaya* reported. "The interest of society and maintenance of good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. Men in public eye may suffer under the hostile and unjust accusation (but) the wound can be assuaged with the balm of a clear conscience," the decision pointed out.

Publisher jailed for libel

The publisher of a known anti-government broadsheet was arrested on Sept. 4, 2008 for libel, while another publisher's libel conviction was affirmed after a judge denied her motion for reconsideration.

Amado Macasaet, publisher of the daily newspaper *Malaya* as well as the tabloid *Abante*, was arrested for a nine-year old libel case by operatives of the Criminal Investigation and Detection Group (CIDG) of the Philippine National Police at his office in Port Area, Manila.

Macasaet is also the president of the Philippine Press Institute as well as director of Samahang Plaridel, an organization of veteran journalists and communicators.

Makati Regional Trial Court Branch 59 Judge Winlove Dumayas meanwhile denied the motion for reconsideration filed by Ninez Cacho Olivares asking the former to overturn his earlier decision convicting Olivares of libel.

Olivares, publisher of *The Daily Tribune*, another critical broadsheet, said she and her lawyers will bring the case to the Court of Appeals.

Dumayas had sentenced Olivares to a minimum of six months to a maximum of two years in prison and to pay P5 million in moral damages and P33,732.25 in civil damages for a story she wrote about a prominent law firm's alleged unethical and corrupt practices.

The Supreme Court earlier in 2008 issued a circular urging courts to choose the imposition of fines rather than imprisonment on journalists convicted of libel.

The case against Macasaet was filed in 1999 by former Rizal Governor Casimiro Ynares and Narciso Santiago Jr. for articles Macasaet wrote in 1999 in *Malaya* and *Abante* about a conflict between two cockfighting groups, one of which was headed by Ynares.

Santiago Jr. is the husband of administration Sen. Miriam Defensor Santiago while Ynares is the brother of Supreme Court Justice Consuelo Ynares-Santiago.

Also included in the charge sheet are *Malaya* editors Enrique P. Romualdez and Joy P. de los Reyes. According to *Malaya* news editor Minnie Advincula, the CIDG agents did not look for Romualdez or De Los Reyes when they came to their office to arrest Macasaet.

Macasaet, 72, said he was surprised by the arrest as he was not informed of the libel case's being filed against him.

"Normally, after the information has been filed, I would be informed. I should have been informed so I could have prepared to post bail just like (what I did) in other libel cases so the efforts of the police in arresting me and my time will not be wasted," Macasaet told *Malaya*.

"This is actually the first time that I have been arrested," Macasaet said.

Macasaet was released later in the afternoon after posting P10,000 for his provisional liberty.

According to *Malaya*, seven other counts of libel arising from the same articles had also been filed by Santiago Jr., all of which have been dismissed for lack of merit.

Macasaet was earlier cited for indirect contempt by the Supreme Court in a decision dated Aug. 8, 2007 and ordered to pay a fine of P20,000 for his columns in Sept. 2007 alleging a P10-million bribery incident involving Ynares-Santiago.

Radio broadcaster dies five days after being shot

A radio broadcaster died of his wounds on Aug. 9, 2008, five days after he was shot by unknown assailants in General Santos City, South Cotabato.

Dennis Cuesta, a commentator and program director of dxMD-Radio Mindanao Network (RMN) in General Santos, died at around 4 p.m., *MindaNews* online reported. He was 38 and had seven children.

RMN commentator Mel Coronel was earlier quoted as saying that dxMD-RMN General Santos City staff had rushed to the hospital on Saturday "after hearing he (Cuesta) had slightly opened his left eye and moved his eyeball."

"We went inside to talk to him. It was like he was saying goodbye to us," Coronel told the *Associated Press*.

A gunman on a motorcycle shot Cuesta on Aug. 4, 2008 along a national highway near a shopping mall in General Santos City. He had just come from an RMN promotional program. Cuesta sustained wounds in the head and near the spinal column after being shot five times with a .45 caliber pistol.

Dodong Solis, RMN assistant area manager for Mindanao, believes that the assassin was a hired killer. "The killing was very professional," Solis said.

Colleagues believe that the attempted murder is related to his work as a journalist.

Solis said barely a month before the incident, Cuesta had addressed in his radio program "*Sumbong at Aksiyon* (Grievance Desk)" a complaint submitted by an individual whose village water supply was contaminated. Cuesta received a phone call from the secretary of the association believed to be behind the contamination angrily reprimanding him for his report. Solis said that the City Health Council investigated the association as a result of Cuesta's report.

Alex Joson, RMN station manager for General Santos, said that after Cuesta's report about the water contamination, the latter began receiving death threats while suspicious individuals were seen roaming the vicinity of the station.

Solis also said that Cuesta had been advised by his wife to resign from his job as radio broadcaster or to request reassignment, which Cuesta rejected.

Cuesta sustained wounds in the head and near the spinal column. When Cuesta was confined at the hospital, the attending doctor said that half of his body would be paralyzed should he survive.

"That incidents like this could happen in broad daylight is a painful reality here. This is very saddening," Solis said. "I hope incidents like this will make the government work further in ensuring that we could safely practice."

Cuesta was the second RMN broadcaster killed in Aug. 2008. Martin Roxas, program director of dyVR-RMN in Roxas City, died on Aug. 7, 2008 after a gunman, similarly on a motorcycle, shot him a few kilometers away from the station. Two suspects have been arrested by local operatives for Roxas's death.

Broadcaster killed in Capiz

A radio broadcaster was killed on Aug. 7, 2008 by a gunman on a motorcycle in Roxas City, Capiz.

Martin Roxas, program director of dyVR-Radio Mindanao Network (RMN) in Roxas, was shot in the nape. Roxas was himself on a motorcycle. He was pronounced dead an hour after he was brought to the Capiz Emmanuel Hospital. He was 32.

Jeony Bigay, RMN's area manager for Western Visayas, said Roxas had just finished his noon time show, "*Targetanay sa Udto* (Targeting at Noon)", and was on his way home when attacked. Bigay said the attack happened at Bayot Drive in Roxas City, approximately two kilometers away the station.

He said Roxas had been harassed by three unidentified men in the same area while he was on his way home. The station reported the harassment to the local police.

During his Aug. 7 program, Bigay said Roxas interviewed Capiz First District Rep. Antonio "Tony" del Rosario about the anomaly surrounding the financial aid given to indigent hospital patients during Del Rosario's term as mayor of Roxas City. Roxas found fictitious names in the list of recipients of city financial aid. Roxas had been discussing the alleged anomalous transaction in his program for two weeks.

Bigay will be meeting with Roxas's family to discuss their next move. "We will decide which government agency—the NBI (National Bureau of Investigation) or the police—we'll ask for help," he explained.

"We believe this is 100% work-related," Bigay said. "We are deeply saddened. This is another assault (on press freedom)... We will continue what Roxas has started."

Petition for writ of amparo denied

In what could be a setback to the campaign for the legal protection of journalists under threat, the Manila Court of Appeals (CA) denied on June 27, 2008 a petition for a writ of amparo filed by an Oriental Mindoro-based journalist.

In a 21-page decision penned by Associate Justice Rosmari Carandang, the CA's Former Special Third Division found the threat to life claimed by Nilo Baculo Sr., former broadcaster and publisher of the community newsletter *Traveler's News*, "unsubstantiated".

Baculo asked the Supreme Court on Feb. 4, 2008 to issue a "temporary protection order" under Section 14 of the Rule on the Writ of Amparo after

an alleged hired killer told Baculo of a plot to kill him. The supposed hitman, a certain "Roger", said he refused the job upon knowing that it was Baculo he was to kill.

Roger, Baculo claimed, said he was hired by local businessman Wilfredo Caballero, Calapan City Administrator Antonio Perez and Councilor Allan Mañibo. The latter three allegedly got in touch with Roger through Maximo Evora, a retired provincial warden. All four are respondents in Baculo's petition. Calapan City is the capital of Oriental Mindoro.

On March 11, 2008, the Supreme Court ordered the appellate court to decide on the continuance of the writ after granting Baculo's plea for a temporary protection order.

But, the appellate court was "unconvinced" that respondents Caballero, Perez, and Mañibo wanted Baculo dead because of his hard-hitting exposés. "His tirades against respondents on events that happened eleven (11) or ten (10) years ago could not possibly be the reason why respondents want him dead only now," the decision stated, stressing that Baculo is "no longer part of the media."

The Court also said it "reasonably doubts the believability of petitioner's murder-plot story." It said that "(a)t most, (the) story is hearsay, a story relayed to petitioner by his would-be assassin."

"In a petition for a writ of amparo, petitioner must provide substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion that there is a real and actual threat to his right to life, liberty and security. In this case, petitioner based his allegations on mere suspicions, presumptions, without substantial basis. This is not sufficient to warrant the issuance of the privilege of the extraordinary writ of amparo," the decision stated.

Baculo has yet to decide his next move. "Our justice system is rotten," he said in Filipino. "You have to die first before you can prove (the threat)."

It was the first time that a provincial journalist in danger has petitioned the High Tribunal for a writ of amparo.

Journalist killed in Quezon province

Two unidentified men gunned down a provincial journalist who was on his way home in Sariaya, Quezon province on June 30, 2008.

Fausto Albert "Bert" Sison, 60, a correspondent for the weekly *Regional Bulletin* and a broadcaster at the Lucena-based dzAT-AM, was with his daughters Almira and Liwayway when two men on a motorcycle overtook his car and opened fire in Lutukan village, Sariaya, Quezon at around 5:30 p.m.

"After overtaking the car, the suspects opened fire and when it stopped, one of them approached the car and peppered it with bullets," the Manila broadsheet *Philippine Daily Inquirer* quoted Quezon police director Senior Supt. Fidel Posadas as saying. "Clearly, the suspects were very angry at Sison."

Sison and his daughters were on their way home from a party when the incident happened. Witnesses said the assailants used a motorcycle with no plate and escaped through Guis-Guis village, *The Philippine Star* reported.

The police have yet to identify the suspects and the motive behind the killing. "We are looking into several leads," Supt. Eduardo Somera, Quezon police deputy for operations and head of the Task Force Bert Sison, said to Center for Media Freedom and Responsibility. Posadas has created Task Force Bert Sison to handle the investigation.

Delfin Mallari Jr., an *Inquirer* correspondent and a member of the National Union of Journalists of the Philippines chapter in Quezon, said Sison's family knew of no threat against him.

Sison sustained nine gunshot wounds, while Liwayway was shot in the right arm as she ran out of the car. Almira was not hurt because her father shielded her from the shots, police reports said.

Sison's daughters also work as correspondents for the *Regional Bulletin*.

Publisher convicted of libel, sentenced

The publisher of a daily newspaper critical of the Arroyo government was found guilty of libel on June 5, 2008 and was sentenced to a minimum of six months to a maximum of two years in prison. She was also ordered to pay P5 million in moral damages and P33,732.25 in civil damages.

Makati Regional Trial Court Branch 59 Judge Winlove Dumayas found Ninez Cacho Olivares, publisher of the *The Daily Tribune*, guilty of libel for a June 23, 2003 article, "Firm's Partners Ensure Victory of AEDC". The article alleged that then Ombudsman Simeon Marcelo chose people connected to his own law firm, Carpio Villaraza Cruz (CVC), to handle a complaint by one of its clients against the winning bidder in a controversial build-operate contract for the Ninoy Aquino International Airport Terminal III. Olivares is also the editor in chief of and a columnist for the *Tribune*.

Olivares's lawyer Alexis Medina said he is weighing their options on whether to file a motion for reconsideration to Dumayas or an appeal to the Court of Appeals (CA). Olivares has posted bail for her provisional liberty.

CVC claimed in a court affidavit that the article "maligned and blackened the reputation" of the firm by "accusing them of being mere influence peddlers, unlawfully manipulating government institutions for their own ends and using their power against the good of the country."

Olivares stood by her story and maintained that it was not libelous. The story was also a matter of grave public interest, Olivares said.

There are 47 other libel cases filed by CVC against Olivares, each case corresponding to a story. Medina said that they have appealed 46 of the cases to the CA, asking that they be consolidated into one, while one case is already being heard.

The *Tribune* has been critical of the Arroyo administration since it came to power in 2001. Police operatives raided the office of the *Tribune* on Feb. 25, 2006 when President Gloria Macapagal Arroyo declared a state of emergency.
– with reports from abs-cbnNEWS.com/Newsbreak

Media groups ask Supreme Court to release jailed broadcaster

Two media organizations filed a petition for a writ of habeas corpus before the Supreme Court on May 30, 2008 asking for the release of jailed radio commentator Alexander "Lex" Adonis.

The Center for Media Freedom and Responsibility (CMFR) and the National Union of Journalists of the Philippines (NUJP) questioned before the Supreme Court the refusal of Supt. Venancio Tesoro to release Adonis despite a Dec. 2007 parole order from the Department of Justice's Board of Pardons and Parole (DOJ-BPP) and a release order from the Davao Regional Trial Court (RTC) Branch 14 issued on May 26, 2008. Tesoro is the warden of the Davao Penal Colony (Dapecol) where Adonis is serving a sentence for criminal libel.

Adonis was sentenced on Jan. 26, 2007 to a five months and one day to four years, six months and one day imprisonment and a fine of P200,000 in a libel complaint filed by House of Representatives Speaker Prospero Nograles in 2001.

Nograles filed libel charges after Adonis reported in his radio program that Nograles and his alleged former paramour, Davao-based broadcaster Jeanette Leuterio, had been caught by the latter's husband in a compromising situation at a hotel in Manila. Adonis was convicted after missing several hearings and forfeiting his right to present evidence. He now faces another libel case on the same incident, this time filed by Leuterio.

"There is no legal basis for the continued detention of Adonis since he already has a discharge order on the first case and a release order on the second case," said Adonis's counsel, lawyer Harry Roque.

The petition argued that "the pending case for libel now with Branch 14 of the city's Regional Trial Court...should not be a bar to his enjoyment of the parole already granted (to) him." It added that "Tesoro cannot arrogate unto himself the power to unilaterally declare that there is no legal ground to release Petitioner (Adonis) from detention."

The DOJ-BPP granted Adonis parole on Dec. 11, 2007 after he had served the minimum sentence for the Nograles case. The order was received by the regional parole officer in Feb. 2008, but Adonis was not informed about it. Tesoro decided not to implement the order because of the libel case filed by Leuterio against Adonis for the same incident. Adonis, his counsel, and fellow

journalists only found out about the parole order on May 2, 2008 when they accidentally ran into the Davao City parole officer.

A parole is the “conditional release of an offender from a correctional institution after he has served the minimum of his prison sentence.”

Adonis, through his counsel Roque, asked on May 26, 2008 Davao RTC Branch 14 Judge George Omelio to allow him to post bail for the second libel case on the strength of his parole for the first case. Omelio granted the petition and issued a release order after Davao media paid the P5,000 bail bond.

The Davao journalists who went to Dapecol to secure the release of Adonis were however disappointed as Tesoro refused to release Adonis. “We were hoping that Adonis could be released today...but when we arrived the warden told us he could not release Adonis because of the pending (libel) case,” *Davao Today* reporter Cheryll Fiel said.

But Tesoro refused to honor the court order, still arguing that Adonis has a pending libel case. “We have to inform higher authorities before obeying the court order to release Adonis,” Tesoro told the journalists who came to fetch Adonis.

“This is why many people have lost faith in the system. We have done everything by the book, yet this has happened,” Roque said.

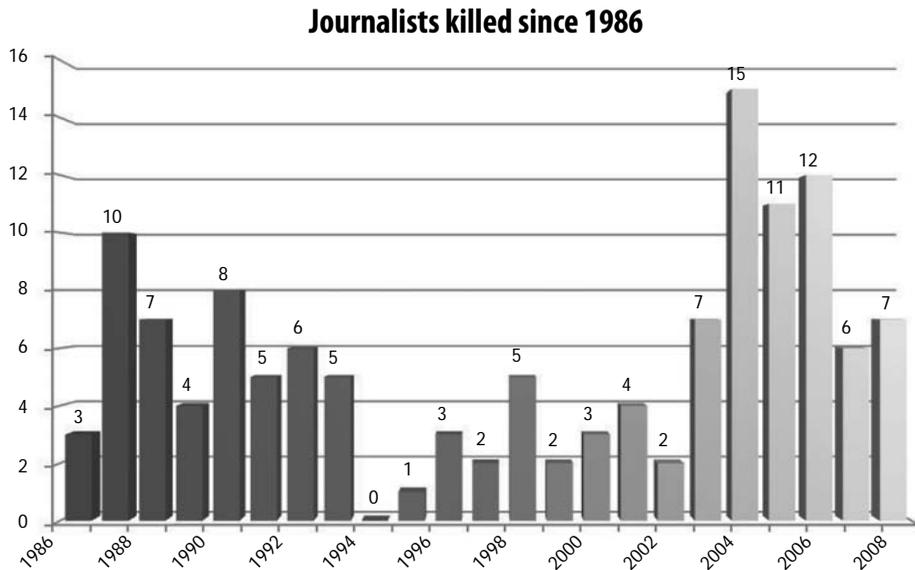
Adonis also sought the implementation of Supreme Court Administrative Circular No. 08-2008 on *Guidelines in the Observance of a Rule of Preference in the Imposition of Penalties in Libel Cases*, which encourages fines over imprisonment, on the libel case filed by Nograles. “We are questioning whether or not the SC (Supreme Court) Circular could be given a retroactive effect in the case of Adonis,” Roque explained.

In April 2008, Adonis, with the help of Roque, also filed a complaint, with CMFR and NUJP as co-signatory, before the United Nations’ Human Rights Committee regarding Adonis’s plight and calling attention to the country’s archaic criminal libel law. Roque also asked the RTC to re-open the libel case filed by Nograles, on the basis of a Supreme Court memorandum urging the imposition of fines instead of imprisonment in libel cases.

CMFR DATABASE ON THE KILLING OF JOURNALISTS/MEDIA PRACTITIONERS IN THE PHILIPPINES SINCE 1986*

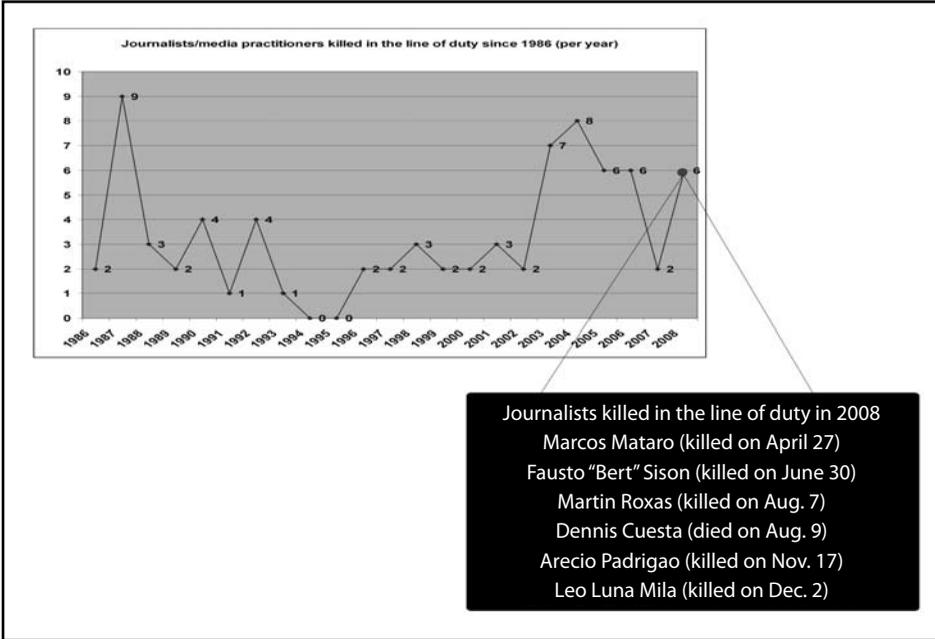
(Updated as of December 2008)

2008 Highlights



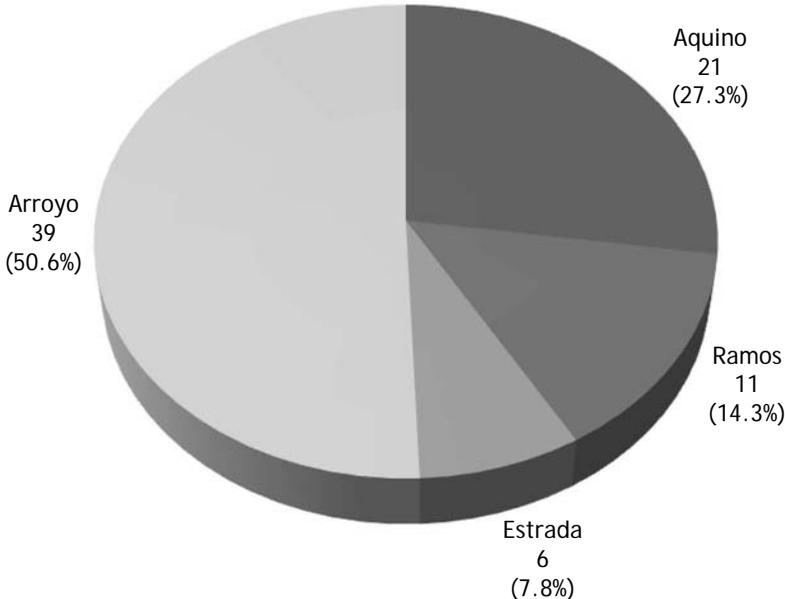
The Center for Media Freedom and Responsibility (CMFR) recorded seven cases of killing of journalists/media practitioners in 2008. Six out of the seven journalists/media practitioners killed in 2008 were work-related—a marked increase from the two recorded cases in 2007.

*More detailed information may be accessed
at http://www.cmfr-phil.org/map/index_inline.html

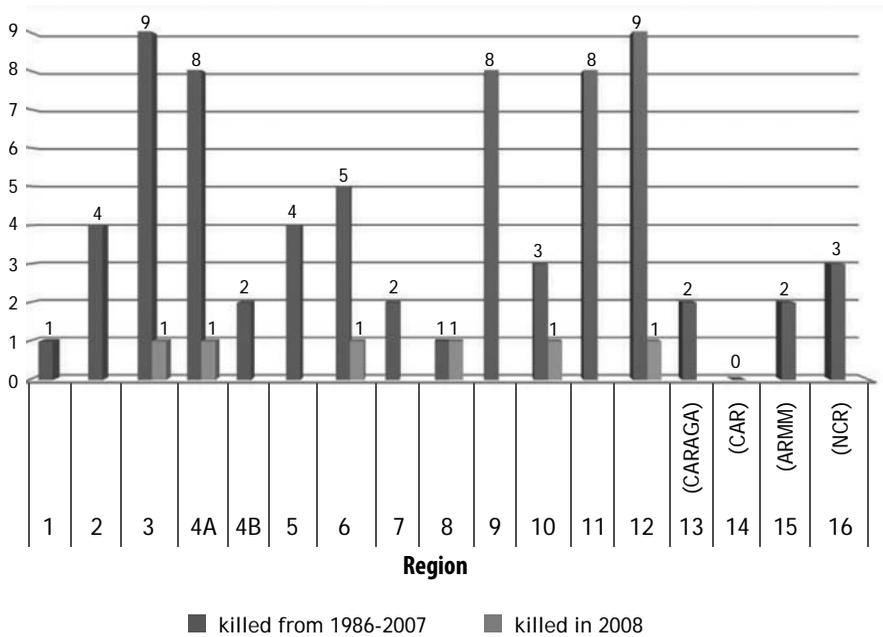


Of the 128 journalists killed since 1986, 77 were killed because of their work. Thirty-nine out of the 77 cases of journalists killed in the line of duty (50.6 percent) happened during the Arroyo administration.

Journalists/media practitioners killed in the line of duty since 1986 per administration

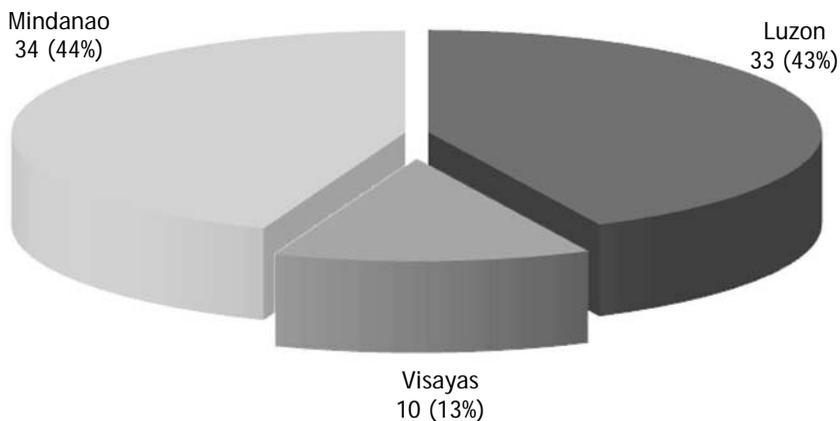


Journalists killed in the line of duty since 1986 per region



Most of the journalists killed in the line of duty since 1986 were based in the provinces. Region 3 and Region 12 registered the most number (10) of journalists slain in relation to their work since 1986.

Journalists killed in the line of duty since 1986 per island group

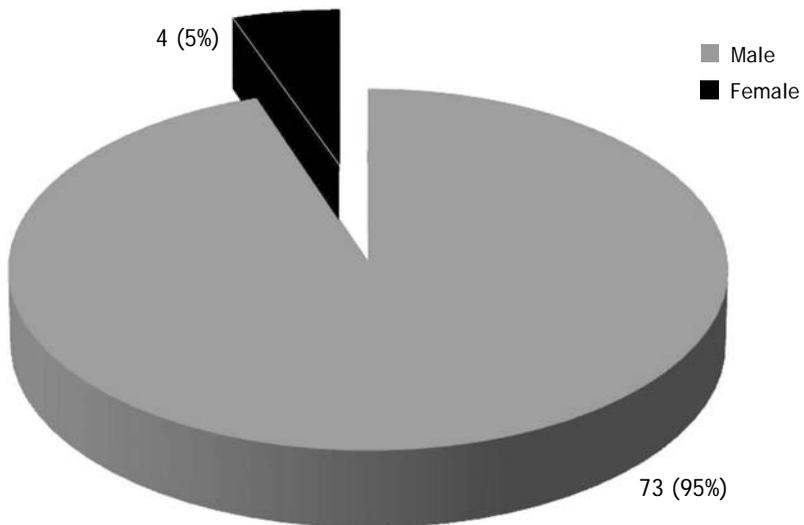


Location of killing of journalists during the Arroyo administration



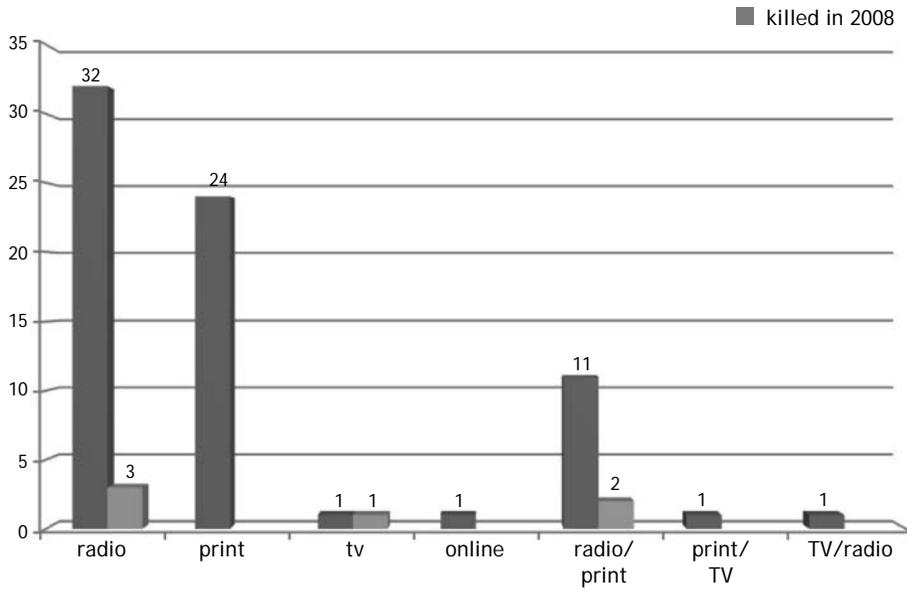
Most journalists killed in the line of duty since 2001 were on their way home (14 or 35.9 percent).

All journalists killed since 1986



Four (almost five percent) of the 77 journalists killed in the line of duty since 1986 were women.

All journalists/media practitioners killed in the line of duty since 1986 by medium



Most of the journalists slain in the line of duty worked solely for radio (35 of the 77 or 45.5 percent), followed by those who worked for print (24 of the 77 or 31.2 percent). In 2008, five of the six journalists killed in the line of duty worked as anchor/commentator for a local radio station.

FILIPINO JOURNALISTS/MEDIA PRACTITIONERS KILLED IN THE LINE OF DUTY SINCE 1986

No.	Date of Death	Name	News Organization / Place of Killing
1	1986-Apr-24	Pete F. Mabazza	<i>Manila Bulletin</i> / Tuguegarao City, Cagayan
2	1986-Apr-25	Wilfredo Vicoy	<i>Reuters</i> / Tuguegarao City, Cagayan
3	1987-Mar-24	Virgilio Pacala	<i>Manila Hotline</i> / San Pablo, Laguna
4	1987-Apr-12	Dionisio Perpetuo Joaquin	<i>Olongapo News</i> / Olongapo City, Zambales
5	1987-Aug-27	Narciso Balani	dxRA / Davao City, Davao del Sur
6	1987-Aug-27	Rogie Zagado	dxRA / Davao City, Davao del Sur
7	1987-Aug-27	Leo Palo	dxRA / Davao City, Davao del Sur
8	1987-Aug-27	Cesar Maglalang	dxRA / Davao City, Davao del Sur
9	1987-Aug-28	Martin Castor	<i>Pilipino Ngayon</i> / Manila
10	1987-Oct-04	Ramon Noblejas	dyVL / Tacloban City, Leyte
11	1987-Oct-10	Leo Enriquez III	<i>Kyodo news service, Washington Times, People's Journal</i> / Cebu City, Cebu
12	1988-Mar-29	Noel Miranda	<i>Mindanao Scanner</i> / Tagum City, Davao del Norte
13	1988-Aug-12	Ruben R. Manrique	<i>Luzon Tribune</i> / Balanga City, Bataan
14	1988-Oct-30	Josef Aldeguer Nava	<i>Visayan Life Today</i> , dyRP / Iloilo City, Iloilo
15	1989-Oct-17	Severino Arcones	dyFM-Radyo Bombo / Iloilo City, Iloilo
16	1989-Dec-01	Eddie Telan	<i>Newscaster</i> / Quezon City
17	1990-Feb-4	Enrique Lingan	<i>The Luzon Times, The Midway Star</i> / Lucena City, Quezon
18	1990-Feb-6	Joseph "Joe" Kreuger	<i>Mindoro Weekly Reporter</i> / Pinamalayan, Oriental Mindoro
19	1990-May-15	Reynaldo Catindig, Sr.	<i>Northern Sierra Madre Express</i> / Timauini, Isabela
20	1990-Jul-08	Jean Ladringan	<i>Southern Star</i> / General Santos City, South Cotabato
21	1991-Apr-14	Nesino Paulin Toling	<i>Panguil Bay Monitor</i> / Ozamiz, Misamis Occidental
22	1992-Jul-01	Danilo Vergara	<i>Philippine Post</i> / Iligan, Lanao del Norte
23	1992-July-3	Abdulajid "Jade" Ladja	<i>Prensa Zamboanga</i> / Zamboanga City, Zamboanga
24	1992-Sep-21	Rev. Greg Hapalla	dxAS / Zamboanga City, Zamboanga del Sur

No.	Date of Death	Name	News Organization / Place of Killing
25	1992-Dec-02	Gloria Martin	dxXX / Isabela, Basilan
26	1993-Jan-11	Romeo Andrada Legaspi	<i>Voice of Zambales</i> / Olongapo City, Zambales
27	1996-Feb-12	Ferdinand Reyes	<i>Press Freedom</i> / Dipolog City, Zamboanga del Norte
28	1996-Dec-15	Alberto Berbon	dzMM / Imus, Cavite
29	1997-Jun-03	Daniel J. Hernandez	<i>People's Journal Tonight</i> / Quezon City
30	1997-Dec-17	Regalado Mabazza	Polaris cable network / Cauayan, Isabela
31	1998-Feb-15	Odilon Mallari	dxCP / General Santos City, South Cotabato
32	1998-Mar-29	Rey Bancairin	dxLL / Zamboanga City, Zamboanga del Sur
33	1998-Oct-30	Dominador "Dom" Bentulan	dxGS / General Santos City, South Cotabato
34	1999-Jan-21	Bienvenido Dasal	dxKR Radyo Agong / Koronadal, South Cotabato
35	1999-Apr-25	Frank Palma	Bombo Radyo / Bacolod City, Negros Occidental
36	2000-May-23	Vincent Rodriguez	dzMM / Guagua, Pampanga
37	2000-Nov-17	Olimpio Jalapit	dxPR / Pagadian City, Zamboanga del Sur
38	2001-Jan-03	Rolando Ureta	dyKR / Kalibo, Aklan
39	2001-Feb-24	Mohammad Yusoph	dxID / Pagadian City, Zamboanga del Sur
40	2001-May-30	Candelario "Jhun" Cayona	dxLL / Zamboanga City, Zamboanga del Sur
41	2002-May-13	Edgar Damalerio	dxKP, <i>Zamboanga Scribe</i> , <i>Mindanao Gold Star</i> / Pagadian City, Zamboanga del Sur
42	2002-Aug-22	Rhode Sonny Esguerra Alcantara	<i>Kokus</i> , Celestron Cable TV / San Pablo City, Laguna
43	2003-Apr-28	John Belen Villanueva, Jr.	dzGB / Camalig, Albay
44	2003-May-17	Apolinario "Polly" Pobeda	dwTI / Lucena City, Quezon
45	2003-Jul-08	Bonifacio Gregorio	<i>Dyaryo Banat</i> / La Paz, Tarlac
46	2003-Aug-19	Noel Villarante	<i>The Laguna Score</i> , dzJV / Sta. Cruz, Laguna
47	2003-Aug-20	Rico Ramirez	dxSF / San Francisco, Agusan del Sur
48	2003-Sept-06	Juan "Jun" Pala	dxGO / Davao City, Davao del Sur
49	2003-Dec-02	Nelson Nadura	dyME / Masbate City, Masbate
50	2004-Feb-11	Rowell Endrinal	dzRC, <i>Metro News</i> / Legaspi City, Albay
51	2004-Jun-17	Elpidio "Ely" Binoya	MBC-DZRH Radyo Natin / General Santos City, South Cotabato

No.	Date of Death	Name	News Organization / Place of Killing
52	2004-Jul 31	Roger Mariano	dzJC / San Nicolas, Ilocos Norte
53	2004-Aug-05	Arnnel Manalo	dzRH, <i>Bulgar, Dyaryo Veritas</i> / Bauan, Batangas
54	2004-Sept-29	Romeo Binungcal	<i>Remate, Bulgar, Mt. Samat Forum</i> / Sta. Rosa, Pilar, Bataan
55	2004-Oct-19	Eldy Gabinales, aka Eldy Sablas	dxJR-FM Radio Real / Tandag, Surigao del Sur
56	2004-Nov-12	Gene Boyd Lumawag	<i>MindaNews</i> / Jolo, Sulu
57	2004-Nov-15	Herson Hinolan	dyIN / Kalibo, Aklan
58	2005-Mar-24	Marlene Esperat	<i>The Midland Review</i> / Tacurong City, Sultan Kudarat
59	2005-May-10	Philip Agustin	<i>Starline Times Recorder</i> / Dingalan, Aurora
60	2005-Jul-05	Rolando Morales	dxMD / General Santos City, South Cotabato
61	2005-Nov-18	Ricardo Uy	dzRS-AM / Sorsogon City, Sorsogon
62	2005-Nov-20	Robert Ramos	<i>Katapat</i> / Cabuyao, Laguna
63	2005-Dec-01	George Benaogan	dyDD / Cebu City, Cebu
64	2006-Jan-20	Rolly Cañete	dxPR / Pagadian City, Zamboanga del Sur
65	2006-Apr-02	Orlando Mendoza	<i>Tarlac Profile, Tarlac Patrol</i> / Tarlac City, Tarlac
66	2006-May-22	Fernando Batul	dyPR / Puerto Princesa City, Palawan
67	2006-Jun-19	George Vigo	dxND / Kidapawan, Cotabato
68	2006-Jun-19	Maricel Alave-Vigo	dxND / Kidapawan, Cotabato
69	2006-Jul-18	Armando "Rachman" Pace	dxDS / Digos City, Davao del Sur
70	2007-Apr-18	Carmelo "Mark" Palacios	dzRB / Sta. Rosa, Nueva Ecija
71	2007-Dec-24	Fernando "Batman" Lintuan	dxGO / Davao City, Davao del Sur
72	2008-April-27	Marcos Mataro	UNTV 37 / San Simon toll gate, North Luzon Expressway
73	2008-June-30	Fausto Albert "Bert" Sison	dzAT, <i>Regional Bulletin</i> / Sariaya, Quezon
74	2008-Aug-7	Martin Roxas	dyVR / Roxas City, Capiz
75	2008-Aug-9	Dennis Cuesta	dxMD / General Santos City, South Cotabato
76	2008-Nov-17	Arecio Padrigao	dxRS FM/ Gingoog City, Misamis Oriental
77	2008-Dec-2	Leo Luna Mila	Radyo Natin FM / San Roque, Northern Samar

About the Center for Media Freedom and Responsibility

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.

All over the world, press freedom has been found to be essential to the democratic system. Effective participatory government is possible only when it can count on a well-informed society where individuals freely exchange ideas, where public debate and discussion arise from knowledge and understanding of national affairs.

That freedom involves not only media professionals, but also the public served by the media—public officials, the private sector, civil society groups, readers, viewers and listeners—who receive information and are part of the cycle of public communication. But freedom of the press, like all liberties, has its limits, for the simple reason that it is vulnerable to abuse.

Democratic recovery confronts serious obstacles on the media front. The press and the media need to exert special efforts to measure up as a collective vehicle of information, as an instrument for clarifying complex issues and dilemmas of development that the public should understand.

Against this background, CMFR was organized in 1989 as a private, non-stock, non-profit organization involving the different sectors of society. Its programs uphold press freedom, promote responsible journalism and encourage journalistic excellence.

For more information about CMFR, visit <http://www.cmfr-phil.org>.