



PERMANENT MISSION OF THE REPUBLIC OF THE PHILIPPINES
TO THE UNITED NATIONS AND OTHER INTERNATIONAL
ORGANIZATIONS, GENEVA

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The Permanent Mission of the Republic of the Philippines to the United Nations and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights (Attn: Special Procedures Branch) and, with reference to joint communication UA PHL 1/2018 dated 22 January 2018 concerning Rappler's certificate of incorporation and alleged threats against journalists working for Rappler, has the honor to enclose the response from the Philippine Government.

In its response, the Philippine government emphasizes that the cases faced by Rappler concern its accountability under the rule of law and has nothing to do with press freedom. Notwithstanding the cases, **there has not been any restriction to the work of Rappler or its journalists, including its Chief Executive Officer Maria Ressa, evidenced by Rappler's continued operation and presence online, and Maria Ressa's freedom of movement.**

The Philippine government also highlights that the Constitutionally-protected freedom of the press, as well as of speech and of expression are highly valued rights that have always been zealously guarded by the Philippines. As the government continues to strengthen the guarantees for the protection of freedom of expression and opinion, media space continues to expand with at least 2,276 private media outlets in operation.

The Philippine government invites the concerned Special Procedures mandate holders to consult Section 5 (Media Freedom) of the Philippine Human Rights Situationer¹. This section contains information on the situation of media/ press freedom in the country as well as government efforts to further safeguard this space and uphold the welfare of media practitioners.

The Permanent Mission of the Philippines requests the assistance of the OHCHR Special Procedures Branch in publishing the Philippine Government's response on to the SPMH communications website.

The Permanent Mission of the Republic of the Philippines to the United Nations and other International Organizations in Geneva avails itself of the opportunity to renew to the Office of the United Nations High Commissioner for Human Rights (Attn: Special Procedures Branch) the assurances of its highest consideration.

Geneva, 16 November 2020

**OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS
(Attn: Special Procedures Branch)**

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52 Rue de Paquis
CH-1201 Geneva, Switzerland

Enclosure: The Philippine Government's Response to UA PHL 1/2018 dated 22 January 2018



¹ <https://www.officialgazette.gov.ph/downloads/2020/06jun/20200609-PH-Human-Rights-Situationer.pdf>

The Special Procedures' Joint Communication UA PHL 1/2018 cites information it received concerning the Security and Exchange Commission's (SEC) revocation of Rappler's certificate of incorporation. It cites concerns on the impact of the SEC decision on independent reporting on critical public interest issues in the country and alleges that the attempted closure of Rappler appears to constitute an attempt to silence and censor critical reporting, including on alleged human rights violations.

The Philippine government highlights that allegations concerning the media outlet Rappler have been exhaustively addressed in Section 5.6.1 of the Philippine Human Rights Situationer¹ and invites the concerned Special Procedures mandate holders to consult especially Section 5 of the document on Media Freedom. This section contains information on the situation of media/ press freedom in the country as well as government efforts to further safeguard this space and uphold the welfare of media practitioners.

In response to UA PHL/ 1/2018, the Philippine government emphasizes that the Constitutionally-protected freedom of the press, as well as of speech and of expression are highly valued rights that have always been zealously guarded by the Philippines, deeply conscious that having a plurality of voices including critical ones is an essential requirement for the continued functioning of its democracy.

As of 2019, at least 2,276 private media outlets (364 AM stations, 951 FM stations, 561 TV stations, and around 400 newspaper titles) excluding online media, are operating actively in the Philippines attesting to the vibrancy of the media space in the country. The government, in contrast, operates 34 media outlets consisting of 32 radio stations and 2 TV stations, namely PTV4 and IBC13. Contrary to allegations, media space in the Philippines continues to expand as the government strengthens the operationalization of the guarantees for the protection of freedom of expression and opinion.

The Philippine government emphasizes that the cases faced by Rappler concern its accountability under the rule of law and has nothing to do with press freedom. Notwithstanding the cases, **there has not been any restriction to the work of Rappler or its journalists, including its Chief Executive Officer Maria Ressa, evidenced by Rappler's continued operation and presence online, and Maria Ressa's freedom of movement.**

I. Facts of the cases involving Rappler

The Philippines provides the facts of the cases involving Rappler, as follows:

- a) ***Revocation by the Securities and Exchange Commission of the certificate of incorporation on Rappler*** - The SEC is duly empowered and has competence in determining the legality of corporations in the country. SEC conducted its investigation upon the request of the Office of the Solicitor General in December 2016. During its investigation, the SEC found that that Rappler Holdings Corp. issued Philippine Depository Receipts covering shares of Rappler to foreign juridical entities, namely Omdiyar Network Fund LLC and NBM Rappler L.P. which was founded and co-owned by North Base Media Ltd., a foreign juridical entity.

In January 2018, SEC rendered its decision to revoke Rappler's certificate of incorporation for violating the foreign equity restriction in the Constitution and the

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Securities Regulation Code which provide that the ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations or associations wholly owned and managed by such citizens.

- b) ***Complaint filed by the Bureau of Internal Revenue*** – In a complaint filed by the Bureau of Internal Revenue (BIR) against Rappler Holdings Corp. (RHC), its President Maria Ressa and its independent Certified Public Accountant (CPA) Noel Baladlang for violation of the tax code, the National Prosecution Service (NPS) of the Department of Justice found probable cause to indict them for wilful attempt to evade or defeat tax and wilful failure to supply correct and accurate information under Sections 254 and 255 of the National Internal Revenue Code or the Philippine Tax Code. BIR alleged that they and one other, their treasurer, did not reflect in the 2015 tax returns the total gain of almost P162.5M which it realized from its issuance of Philippine Depositary Receipts to NBM Rappler LP and Omidyar Network Fund LLC.

A PDR is a security which grants the holder the right to the delivery or sale of the underlying shares of stock. RHC bought 119,434,438 common shares from Rappler Inc at P1 per share. Rappler issued PDRs against most of the shares it held to NBM Rappler and Omidyar at the subscription price of P181.6M - a gain of almost P162M which it didn't declare. RHC's CPA certified its financial statements despite its failure to disclose its purchase of RI shares. NPS ruled that in buying RI shares for the purpose of underwriting PDRs for resale to interested buyers, RHC acted as a middleman whose profits were taxable under the tax code. The tax code makes a corporate president, among officers, personally liable for such infractions by the corporations.

By not declaring such profits in its returns, Rappler Holdings Corp. also violated Section 253 of the Tax Code which makes a corporate president, among other officers, personally liable for such infraction by the corporation. RHC's president Maria Ressa raised the defense of criminal intent which NPS ruled is better ventilated during trial.

- c) ***Cyber-libel case filed by private complainant*** [REDACTED] – The Constitutionally-protected freedom of the press, as well as of speech and of expression are rights zealously guarded by the Philippines whose courts have consistently ruled that libel – whether made in print or online – is speech that does not enjoy protection under the Constitution. Rappler and its CEO are accused of having committed this crime by a private individual.

In October 2017, A complaint was filed by [REDACTED] against Rappler, its CEO Ressa, and [REDACTED], asking the National Bureau of Investigation (NBI) to investigate and take appropriate action in connection with an on-line article posted in Rappler dated May 2012 entitled "CJ using SUVs of controversial businessman", referring to then [REDACTED]. Rappler reported [REDACTED] as being under investigation for illegal activities. In 2012, [REDACTED] requested that the article be taken down but the request was apparently turned down as the article continued to be available online.

In March 2018, NBI recommended indicting Rappler and Ressa on cyberlibel charges under Section 4(c)(4) of the Cybercrime Prevention Act of 2012. While Ressa argued, among others, that she could not be accused of cyber libel for an article published on 29 May 2012 as the Cybercrime Law only took effect on 3 October 2012, the NPS resolved that "While we agree with respondents that the first publication of the article on 29 May 2012 is not covered by the Cybercrime Act of 2012, considering that the law was promulgated only in September 2012, we cannot share the same view with respect to the

19 February 2014 publication. Under the 'multiple publication rule,' a single defamatory statement, if published several times, gives rise to as many offenses as there are publications. Accordingly we hold that the republication of the article as may have been modified or revised is a distinct and separate offense, for which the author, respondent Santos, should be prosecuted. Respondent Ressa, being the editor, should be included in the indictment (Art. 360, Revised Penal Code). Rappler, Inc. should also be included pursuant to Section 9 of R.A. No. 10175."

The case has already gone to trial and is now submitted for decision. It was reported that the case was set for promulgation of judgment on 3 April 2020 pursuant to the order of Judge [REDACTED], presiding judge of Branch 46. However, due to the on-going pandemic, the promulgation of the decision was postponed.

It is not correct to claim that press freedom is being curtailed because Ms. Ressa was arrested and prosecuted for libel. She has had the full opportunity to disprove the accusations against her and present her arguments in court. Philippine laws and courts guarantee this, in addition to other rights granted an accused, including the right to bail which she posted.

The cases involving Rappler firmly establish that the government upholds the rule of law and that no one is above the law. **The conclusion that mass media should be exempted from judicial process undermines the rule of law, constitutes a blanket attack on press freedom in the Philippines, and contradicts the principle of equality before the law which is the foundation of the justice system in any strong democracy across the world.**

In perspective, not a few journalists in the country have faced, or are facing, private libel charges for articles they have written and caused to be published. The resort to judicial process is well within the right of the aggrieved individual to prosecute his claim, and the accused are afforded the exercise of their right to present evidence that will exonerate them from the charges when the case proceeds to trial.

The **National Press Club of the Philippines**, a professional and social organization incorporated in 1952 and now with membership comprising of over 800 journalists, in its statement in early 2018, reminded Ms. Ressa and Rappler to **follow and observe the rule of law** that exempts no one. In its statements of 16 February 2019 and 13 November 2019, NPC said that *"filing a libel case is a legal remedy available to everyone and should not be politicized"* and *"while the NPC upholds and recognize the importance of a free-flow of ideas and opinions in a democracy...We have to put our foot down over this statement (Ressa's) because clearly, this is a slander to our country and to all peace-loving, law-abiding Filipinos, those in the media included. Insofar as the NPC and other professional media organizations here in the country are concerned, Ms. Ressa's fantastic claims bordering on slandering the country are her way of skirting discussions on her serious violations of the law... Thru the strong partnership today between the government and the various national media organizations, threats to the life, liberty and safety of all journalists are now being attended to, compared to previous administrations.*

II. Measures and systems in place to protect journalists

Improving the protection for the freedom of opinion and expression and the safety of media workers have been a priority of the Duterte administration since it assumed office in mid-2016. Accordingly, two of the first orders signed by President Duterte are Executive Order No. 2 of 2016 signed on 23 July 2016 on the "Freedom of Information" and

Administrative Order No. 1 of 2016 signed on 11 October 2016 creating the "Presidential Task Force on Media Security."

Protecting the Media: The Presidential Task Force on Media Security (Task Force)

The Presidential Task Force on Media Security is considered as a first in Asia, and possibly the world, with a dedicated mandate to protect the life, liberty, and security of media workers. It is co-chaired by the Department of Justice and the Presidential Communications Operations Office, with the Commission on Human Rights, the Ombudsman, and the heads of media organizations as observers.

The Task Force gathered all case data from various agencies and media sources to map incidents and all outstanding cases of media killings in the country and facilitated investigations on all cases new and pending. A team of investigators and prosecutors is designated for the speedy probe of new cases of media killings. Another major component of the work of the Task Force is to respond to reports of threats or intimidation against media workers.

Just a year after the creation of the Task Force, whose work yielded positive impact on the security of media workers, the CPJ reported progress and made **a special citation of the Philippines as one of the countries with an improved ranking in the 2018 Global Impunity Index**. In December 2018, the Reporters without Borders (RSF) delisted the Philippines from its list of the Top 5 most dangerous countries in the world for journalists.

a) The Task Force's case data (As of April 20, 2020)

The records of the Task Force show that there are 22 reported cases of media worker killings that occurred under the administration of President Duterte.

Of the 22 cases, only seven have been established, upon initial investigation, to be work-related: those of [REDACTED]. These cases are now pending before the trial courts, except that of [REDACTED] where the investigation was turned over on 5 February 2019 to the Criminal Investigation and Detection Group for the conduct of a more intensive and focused investigation.

From 2016 to mid-2020, the Task Force, in tandem with other agencies, investigated, monitored, and had acted on all 22 cases of killings involving media workers, to include the non-work-related killings.

From 1986 to mid-2020, there are a total of 251 reported cases of violence against media workers nationwide. Out of the 251 cases from 1986 to present, 180 were killings, 65 were threats, while 6 were those who survived attempts on their lives.

Of the 180 media worker killings, 69 were deemed by the Task Force as work-related, as provided for in the Operational Guidelines of Administrative Order no. 1 wherein the victim is an active media practitioner at the time of his death and the motive is related to his work as media worker.

These 69 work-related cases in the Task Force's work file include the 32 cases of killings from the Maguindanao Massacre. With the judgment rendered on the case of the Maguindanao Massacre on 19 December 2019, only 1 case remain under investigation while 31 cases have been brought to court.

Following is the breakdown of status as of April 2020:

- **49 cases** – Reached conviction of the suspects
 - 15 – *Work Related*
 - 3 – *Not Work Related*
 - 31 – *Maguindanao Massacre*
- **17 cases** – Filed in Court
- **6 cases** – Under Investigation

b) Threats and intimidation against media workers

Since its creation in 2016, the Task Force has received 65 reported cases of threats made against media workers. The 65 cases have been acted upon and investigated by police and judicial authorities and the departments which comprise the Task Force.

A Quick Response System is in place to serve as a mechanism for receiving, recording, resolving and responding to reports on complaint/ grievance or requests for assistance by media workers involving threats and intimidation. After careful and thorough validation of the threats, the Task Force immediately issues a notice/letter to persons of interest, informing them that they are on the Task Force's watchlist. This has served as an effective prevention measure.

c) Fight against disinformation and fake news

While providing opportunities for enhancing freedom of expression, media independence and diversity, the digital age has also brought in new challenges and threats. These include the growth of online trolls/ fake accounts geared toward spreading hate in the online community which heightens the risk for media workers of actual physical attacks following online threats and harassment.

Of the 65 reported cases of threats received by the Task Force, three cases involved online threats in which the journalists were tagged as communist terrorists by certain Facebook pages in relation to their published news articles. The reposting and sharing generated comments that constituted intimidation and threats. The Task Force immediately coordinated and made representations with Facebook to take down the damaging posts. The Task Force also discussed long-term collaboration with Facebook on the implementation of measures to neutralize and counter the proliferation of dubious social media accounts or pages that continue to target journalists for the practice of their profession and other related measures to further strengthen the online protection and security of media workers.

Another challenge relating to the digital age is the proliferation of fake news. The spread of fake news and disinformation assails the foundations of a strong and vibrant democracy. The Presidential Communications Operations Office (PCOO) launched in 2019 its "Dismiss Disinformation Campaign" to stop disinformation by encouraging a culture of responsibility and discernment among the public, including media practitioners, highlighting the civic responsibility of every citizen to share only the correct, right and truthful information.

d) Promoting an enabling environment for media workers

President Duterte signed on 23 July 2016 *Executive Order No. 2 of 2016 signed on 23 July 2016 on the "Freedom of Information"*, three weeks after assuming office on 30 June 2016.

This provides for full public disclosure of all government records involving public interest and upholds the constitutional right of people to information on matters of public concern. Covering all government offices under the Executive Branch, it requires all executive departments, agencies, bureaus, and offices to disclose public records, contracts, transactions, and any information requested by a member of the public, except for matters affecting national security and other exceptions.

The landmark issuance established the agenda for good governance and transparency by the administration, facilitating public access to public records of public interest. At the same time, the government is working with members of Congress on the enactment of the Freedom of Information Act that will have a broader scope beyond executive agencies.

The Philippine government is determined to put in place measures to improve the media industry, enhance safeguards for media space, and advance the welfare of all Filipino media workers.

To enhance the enabling environment for press freedom in the Philippines, President Duterte signed on 25 September 2019 **Republic Act No. 114581** which **expands the coverage of exemptions from revealing the source of published news or information obtained in confidence** to include journalists from broadcast and online news agencies. This exemption used to apply exclusively to print journalism.

The law provides that *“any publisher, owner, or duly recognized or accredited journalist, writer, reporter, contributor, opinion writer, editor, columnist, manager, media practitioner involved in the writing, editing, production and dissemination of news for mass circulation, of any print, broadcast, wire service organization or electronic mass media, including cable TV and its variants cannot be compelled to reveal their sources.”* The law also guarantees the protection of the right of the person transmitting confidential information to media practitioners to exercise his freedom of speech and opinion on condition of anonymity.

The Philippine government also recognizes that strengthening the protection of the rights of media workers requires addressing the root causes of their vulnerabilities. The vulnerabilities in the media profession in the Philippine setting arise from, among others, rivalries and infighting among various media groups and practitioners, low wages and non-standardized benefits and correlation between media ownership and local politics.

To address these vulnerabilities, the Task Force and Anti-Crime and Terrorism Community Involvement and Support (ACT-CIS) Party-list forged a Memorandum of Agreement on 17 July 2019 to collaborate on the enactment of a **Media Workers Welfare Act**, which is now enrolled as House Bill No. 2476. The House Bill seeks to provide quality compensation and security of tenure for media workers. It seeks to **improve the conditions of work and living wages for media workers**, and establish a professional media environment that is conducive to an empowered, free, and productive media work.

This bill seeks among others to grant to media workers mandatory additional insurance benefits by the Social Security System and the Government Service Insurance System including death benefits, disability benefits, and reimbursement of medical expenses, and further provides for a matrix for the hazard pays of employees dispatched to war-torn areas for coverage as there is none yet existing today.

The bill also proposes the creation of a Commission on Press Freedom and Media Security that will serve as the media workers' shield from all forms of attacks and as a development center for journalism. Under the bill, the Commission shall promulgate the Code of Ethics of media workers within six months from the effectivity of the act and shall also hold activities aimed at strengthening the journalism profession.