



November 28, 2011

**Submission of the International Federation of Journalists (IFJ) Asia-Pacific  
and the National Union of Journalists of the Philippines (NUJP)  
to the 13th Session of the Universal Periodic Review**

**Republic of the Philippines**

**1. Overview**

This submission is an effort by the International Federation of Journalists (Asia-Pacific) to uphold the rights of journalists and the media to freedom of expression and access to information, to defend fundamental freedoms and human rights and to end the persistent culture of impunity that challenges the Philippines.

The submission considers the long history of impunity for the murders of journalists and media workers, and links this culture to ongoing violence against journalists in the Philippines. It provides an update of the status of trials of those accused of perpetrating the Ampatuan Massacre, November 23, 2009 and further details efforts made by some of the accused to evade or delay proceedings, noting a long-running pattern of stalling and evasion in prosecuting the killers of media personnel in the Philippines. Recent cases of murder are outlined, and remaining issues that impact upon impunity and freedom of expression are analysed.

The submission makes reference to recommendation 6 of the Working Group Report of UPR on the Philippines in 2008 (noting that journalists and media workers, alongside human rights defenders, are those most frequently targeted by extrajudicial killings):

To completely eliminate torture and extrajudicial killings (Holy See), to intensify its efforts to carry out investigations and prosecutions on extrajudicial killings and punish those responsible (Switzerland) as well as to provide a follow-up report on efforts and measures to address extrajudicial killings and enforced disappearances, taking into account the recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions (The Netherlands);

**2. Impunity & Patterns of Violence**

In a pattern similar to that of preceding administrations, the 2001-10 administration of President Gloria Macapagal Arroyo consistently failed to quell a nationwide culture of violent retribution against journalists and media personnel, especially journalists who reported on corruption and contentious political issues.

In November 2011, journalists in the Philippines and around the world marked the two-year anniversary of the Ampatuan Town Massacre in which 58<sup>1</sup> people, including 32 journalists and media workers, were brutally murdered in the southern Philippines. The massacre remains the single worst atrocity against journalists and media personnel in living memory. The second anniversary of the massacre also served as the date for the inaugural International Day to End Impunity, a global day of action organised by the International Freedom of Expression Exchange (IFEX).

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<sup>1</sup> Charges have been brought in 57 murders cases; the remains of the 58<sup>th</sup> victim believed to be journalist Reynaldo “Bebot” Momay have yet to be found.

The atrocity in Ampatuan town occurred in the context of a decades-long culture of impunity for violence targeting journalists and other human rights defenders. Up to November 23, 2009, at least 68 journalists and media workers had been killed under the administration of Arroyo since 2001. In almost all instances, no adequate police investigation was conducted, few charges were laid and fewer prosecutions were mounted.<sup>2</sup> Convictions have been achieved in only five cases brought to trial. In none have figures suspected of ordering the crimes been convicted.

The shocking death toll at Ampatuan Town and the failure thus far to successfully prosecute the perpetrators propelled the Philippines to third on the Committee to Protect Journalists' 2010 Impunity Index, a list of countries with the highest rates of unsolved journalist murders. Only war-afflicted Iraq and Somalia had worse records<sup>3</sup>.

The election in May 2010 of President Benigno Aquino brought hopes for a significant change in approach from that taken by the Arroyo administration, which had maintained close political ties to the Ampatuans, who helped secure votes in Maguindanao during the 2004 general elections. However, the trend of extrajudicial killings targeting media and human rights activists has continued.<sup>4</sup>

At a meeting in Cagayan de Oro, Mindanao, in June 2010, local journalists commented that local power-holders and warlords appeared emboldened by the weak response of police and judicial authorities to the massacre. Hostility toward the media was said to be more open at that time, and there was a fear of increasing dangers.<sup>5</sup>

Such concerns are not confined to Mindanao. The National Union of Journalists in the Philippines (NUJP) identifies key risk locations also to include Abra and Cagayan provinces in Luzon; Nueva Ecija in Central Luzon; Southern Luzon; and Samar in Eastern Visayas. Warlords and other local power-holders continue to struggle to gain or retain political control at the local level, while criminal elements remain significant sources of risk to media personnel across the country.

Press freedom monitors in the Philippines have recorded at least six journalists have been killed since 1 January 2011 in connection to their work:<sup>6</sup>

- **Dr Gerardo Ortega**, anchor/commentator, dwAR, 24 January 2011
- **Maria Len Flores Somera**, anchor, dzME, 24 March 2011
- **Romeo Olea**, commentator, dwEB-FM, 13 June 2011
- **Datu Roy Bagtikan Gallego**, broadcaster, 92.7 Smile FM San Francisco, 14 October 2011

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<sup>2</sup> International Solidarity Mission. 2009. *Massacre in the Philippines: International Solidarity Mission Rapid Assessment*. December. Available at <http://asiapacific.ifj.org/assets/docs/203/037/15d11cb-013d725.pdf>

<sup>3</sup> CPJ. 2010. *Getting away with Murder: CPJ's 2010 Impunity Index*. April 2010. <http://www.cpj.org/reports/2010/04/cpj-2010-impunity-index-getting-away-with-murder.php>. See also See also? IFJ, 2011. *Gunning for Media: Journalists and Media Staff Killed in 2010*. Available at <http://www.ifj.org/assets/docs/177/253/f8badb1-e23bbfd.pdf>

<sup>4</sup> Human Rights Watch. 2010. *They Own the People: The Ampatuans, State-Backed Militias, and Killings in the Southern Philippines*. <http://www.hrw.org/en/reports/2010/11/16/they-own-people-0>

<sup>6</sup> National Union of Journalists in the Philippines

The motives of two other cases involving **Neil Jimena**, a broadcaster for Radio Mindanao Network Iloilo dyRI shot dead on 28 August 2011, and **Johnson Pascual**, editor-in-chief and a columnist from *Prime News* shot on 7 October 2011, are still being investigated.

Concerns remain about the commitment of national and provincial authorities to take concerted action to ensure that police investigations and prosecutors bring perpetrators of violence against journalists and human rights activists to prompt justice; to undertake measures to protect the security and safety of media personnel; and to promote media integrity that serves the public interest.

Media employers and corporations also carry responsibility to take steps to ensure the safety and security of journalists and other employees. This includes the many media workers who operate as freelancers and stringers, who are responsible for much of the reportage from outlying provinces and districts where the security risks are high. In 2010, risk-mapping surveys and seminars with media personnel working in provinces far from Manila drew strong conclusions confirming a link between poor working conditions (pay, job security and training) and the vulnerability of media workers to corruption and personal security risks.<sup>7</sup>

## 2.1 Challenges to the Judicial Process & Lack of Effective Investigation

Two years after the Ampatuan Town Massacre, legal proceedings have only been initiated for about one third of the 197 suspects. At the time of writing only 64 of these suspects have been arraigned, and only 93 are in custody.

National and international journalists' organisations and media groups are gravely concerned by attempts to subvert the judicial process, including bribe offers to victims' families, and the use of intimidation and deadly violence against witnesses<sup>8</sup>. One potential witness, Suwaib Upham,<sup>9</sup> known publicly as Jesse, was killed in June 2010 under unclear circumstances. An alleged member of the Ampatuans' militia who offered to testify as a witness in the case, Upham had given several press interviews detailing his role as one of the gunmen in the Massacre. He was in the process of enrolling in the Justice Department's witness protection program at the time of his murder.

Throughout 2010, the defense lawyers filed a series of motions--including ones to remove both judge and prosecutors--that had the effect of delaying the proceedings. Press advocates have long complained that defense attorneys exploit lenient court rules to drag out the judicial process in the hopes of eroding the will of the prosecution.

Concerns have also been raised by Philippine advocates and international experts that that deeply flawed forensic work and widespread lack of cooperation among law enforcement officials are also hindering the prosecution.

These developments underscore the need for attentive national and international monitoring of trial proceedings and an evaluation as to whether an effective investigation has taken place in line with international standards.

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<sup>7</sup> NUJP-led seminars in Tagaytay, June 2010, and Koronadal, Mindanao, November 2010.

<sup>8</sup> A CPJ special report, *Impunity on Trial in the Philippines*, details a continuous pattern of bribes, threats and violence intended to intimidate witnesses and the victims' families. The report is available at <http://cpj.org/reports/2010/11/impunity-on-trial-in-the-philippines.php>.

<sup>9</sup> Also known as Sweb Dalanda Bedo. On occasion, his surname is spelled Upam.  
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In a bid to open the Philippine courts to greater public scrutiny, the National Union of Journalists in the Philippines (NUJP) and other local journalists/media workers filed a petition asking the Supreme Court to allow live radio and TV coverage of the hearings.

In March 2011, “A Call for Transparency and Vigilance”, signed by more than 10 Philippine groups, demanded a speedy and fair prosecution of the Ampatuan Town Massacre.<sup>10</sup> They note the massacre trial has entered a crucial phase.

The Philippine Court of Appeals rejected a certiorari filed by suspended ARMM (Autonomous Region in Muslim Mindanao) governor Zaldy Ampatuan, which sought to remove him from the list of those accused of organizing and carrying out the 2009 massacre. Such legal manoeuvring threatens to prolong the trial. The delays pose a financial and psychological strain on witnesses, family members and advocates as well as tax scant resources for witness protection.

The Ampatuan Town Massacre trial is the most prominent case where stalling tactics and witness harassment, including the use of violence, are in play in efforts to prosecute suspects. Where prior cases of the murders of journalists have come to prosecution – and very few have done so – similar tactics have been used, for example in the prosecution of suspected masterminds for the murder of popular columnist Marlene Garcia Esperat. The government employees who allegedly initiated the 2005 killing remain at large pending a petition for certiorari and prohibition filed before the branch of the Court of Appeals in Mindanao.

Just as important as the full prosecution of the suspects is an essential need to assist the families of the victims to remain united in their quest for justice, in the face of concerted efforts to break their solidarity by manipulating their vulnerabilities. Humanitarian assistance from support organisations is needed, but so too is the visibility of organisations standing with and by the families in their actions.

### **3. Criminal Libel, Prior Restraint and “Order of Battle”**

Aside from killings and assaults on journalists, the following issues and events hinder the full enjoyment of the right to freedom of opinion and expression in the Philippines.

Criminal libel is used to harass journalists and silence critical reporting. Most vulnerable are community journalists who have little resources to pay fines or defend court cases. The most prominent cases have been those of broadcaster Alex Adonis, of Davao, and Joaquin Briones, of Masbate, who both served several years behind bars<sup>11</sup>.

The Movie, Television Review and Classification Board (MTRCB) released its MTRCB Memorandum No. 05-7 in 2005, requiring even news and public affairs programs to submit copies of the program to the board before airing, thus constituting prior restraint. The board has wielded this memorandum to demand changes in several public affairs programs.

Journalists’ organisations have been calling for the Armed Forces of the Philippines (AFP) to end the practice of naming journalists and media groups in the “Order of Battle”. The practice has essentially been

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<sup>10</sup> “A Call for Vigilance,” statement by signed by Freedom Fund for Filipino Journalists, National Union of Journalists of the Philippines, Center for Media Freedom and Responsibility, November 23 Movement, Philippine Center for Photojournalism, Center for Community Journalism and Development, College Editors’ Guild of the Philippines. Available at <http://www.cmfr-phil.org/2011/03/04/a-call-for-transparency-and-vigilance/>

<sup>11</sup> “Jailed Broadcaster Released,” December 28, 2008. Center for Media Freedom and Responsibility. Available at <http://www.cmfr-phil.org/2008/12/28/jailed-broadcaster-released/>; See also CenterLaw <http://www.roquebutuyan.com/centerlaw/Advocacy.html>



a form of preparing a “hit list”, whereby certain journalists and media groups deemed as too critical are branded “enemies of the state”. Being named on the list has a severe chilling effect.

#### **4. Proposed Laws**

Two bills pending in the Philippines Congress hold great significance for freedom of expression and opinion.

The Right of Reply Bill calls on media to grant the right of reply to anyone who feels they have been poorly treated by the media or face heavy fines or up to six months in prison for the offending individual. It has been widely criticized by Philippine media and free press advocates for threatening to undermine the editorial prerogative of what to air or print.

The Freedom of Information Act, which the previous Congress failed to pass, has been refiled in the current Congress.

National groups are running a campaign against the Right of Reply Bill and calling for the passage of the FOI law. Meetings were conducted recently with high level officials of the Presidential Communications Group to pressure the Aquino administration to publicly commit to support the FOI bill and send a positive signal to legislators. To date, this remains unfulfilled. The status of both acts contribute to an atmosphere where national government is not supportive of free exchange and expression of ideas

#### **6. Recommendations**

We respectfully ask that the Universal Periodic Review working group call on the Government of the Philippines to take the following actions in next 12 months:

- Issue a Congressional statement in defence of the rights of journalists and the media, recognising the Philippines’ commitment to the Geneva Conventions, the Universal Declaration of Human Rights and United Nations Security Council Resolution 1738, and acknowledging the vital role journalists play in strengthening democracy by informing communities and scrutinising power.
- Direct authorities to effectively and impartially investigate all attacks on journalists, media personnel and human rights defenders.
- Provide authorities with adequate resources to identify perpetrators and bring them to justice, and to fully compensate the victims and/or their next of kin.
- Take all necessary measures to ensure the safety of survivors, witnesses, and families before, during, and after every trial.
- Ensure that the trials of all the alleged perpetrators of the 2009 Ampatuan Town Massacre are open and transparent, that there is no political interference, and that international trial monitors and the media are present.
- Fully and independently investigate the possible involvement of Philippine military personnel, and government officials in the Ampatuan Town Massacre, and make the findings public.
- Establish an independent taskforce—endorsed by local authorities, international experts, media organizations and civil society—to fully investigate and to bring to justice all attacks on journalists, media personnel and human rights defenders. The independent body can be modelled



on the International Commission Against Impunity in Guatemala (CICIG), created in 2006 as a result of an agreement between the United Nations and the Guatemalan government to investigate issues related to the operations of illegal security groups and clandestine security organizations and effectuate the dismantling of such groups

- Ensure the Freedom of Information Bill is adopted by the Congress with meaningful consultations with the civil society in the drafting process.
- Act within the current Congress to decriminalise libel.
- Develop and implement a sustained training program on freedom of expression and the rights of journalists for law enforcement and military personnel and government officials.
- Ban all paramilitary and militia forces due to their long and continuing history of serious human rights violations, including the killing of journalists.

We also call on international institutions and governments to:

- Offer external law enforcement assistance in the investigation of serious human rights violations, including the Ampatuan Town Massacre. This assistance should consist of forensic analysis, witness protection, case preparation, and tracing of fugitives, in accordance with Philippine laws and international conventions.
- Offer to work with the Philippine government to provide witness protection abroad.
- Engage legal experts to analyze legal proceedings in the prosecution of the Ampatuan Town Massacre, and if permitted dispatch trial monitors, to ensure international standards are met.
- Offer support to the Philippines government for the implementation of programmes for humanitarian, legal and psychological assistance to journalists, media personnel, and their families, who are victims of violence coordination with international organizations already undertaking such activities.

Sincerely,

International Federation of Journalists (Asia-Pacific)  
National Union of Journalists of the Philippines