

CYBERCRIME AND HUMAN RIGHTS REPORT

2021



FOUNDATION
FOR MEDIA
ALTERNATIVES



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INTRODUCTION

This year-end cybercrime and human rights report for 2021 (covering the period of July to December 2021) documents cybercrime cases and developments in the Cybercrime Prevention Act (CPA) and Anti-Terrorism Law (ATL) after the release of the midyear cybercrime and human rights report. The midyear report, which covered updates from January to June 2021, documented the prevalence of red-tagging; the weaponization of cyberlibel; the proliferation of threats to cybersecurity in a pandemic; and the passage of a bill addressing online sexual exploitation of children (OSEC). The report also set the context for cybercrime and human rights in the second half of 2021: intensified electoral campaigns, the deprioritization of legislation amending the CPA, and the possibility of an unfavorable court ruling retaining the dangerous provisions of the ATL.

The Philippines continues to struggle with its public health governance as COVID-19 develops new and infectious variants, which hamper the country's road to recovery. In a backdrop that sees the Philippines as one the worst countries to live in during the pandemic, the exercise of freedom of speech online remains precarious, even as there are welcome developments including the withdrawal or dismissal of libel cases, the declaration of unconstitutionality of a key provision of the ATL, and jurisprudence clarifying the importance of free speech in public matters and holding public officers accountable, as will be seen below.

In this report, other notable observations related to cybercrime and human rights include: public officials and/or candidates employing cyberlibel cases or utilizing the CPA to restrict speech or actions they deem damaging to their reputation, with some seeking damages in millions; a widespread modus operandi involving cybersex and credit card fraud; and an alarming number of frauds perpetrated online (related to cybersecurity) as suspects continue to take advantage of internet transactions in a pandemic.





CYBERCRIME CASES

CYBER LIBEL / LIBEL

Jurisprudential update: Tulfo v. People and Atty. So and Macasaet and Quijano v. So and People

At the tail-end of June 2021, the Supreme Court released a January 2021 decision acquitting a popular host and newsman, now known for his confrontational television shows, for a 1999 libel case. The case involved a column he previously wrote about the alleged illegal activities of a Bureau of Customs lawyer. In the acquittal, the Supreme Court, in two consolidated cases entitled Tulfo v. People and Atty. So and Macasaet and Quijano v. So and People, notably made several landmark statements, which reflected the Philippine judiciary's consistent apprehensions on the criminalization of libel. The case is an important development on how Philippine jurisprudence on libel evolves.

First, the Supreme Court declared in the cases that “the constitutionality of criminalizing libel is doubtful.” The Court, speaking through Justice Marvic Leonen, said “the libel cases that have reached this Court in recent years generally involve notable personalities for parties, highlighting a propensity for the powerful and influential to use the advantages of criminal libel to silence their critics,” reflecting the overall trend observed by civil society and the press on the uses (and abuses) of criminal libel.

Second, the cases also included recommendations from the Supreme Court on alternatives to utilizing criminal libel to address attacks on a person's reputation or credibility, such as utilizing the civil actions in the Civil Code's chapter on Human Relations. The Court said: “Civil actions for defamation are more consistent with our democratic values since they do not threaten the constitutional right to free speech, and avoid the unnecessary chilling effect on criticisms toward public officials. The proper economic burden on complainants of civil actions also reduces the possibility of using libel as a tool to harass or silence critics and dissenters.”

Third, the acquittal is significant for illustrating the application of “actual malice,” specifically the “reckless disregard” standard of ascertaining whether defamatory statements are false or not, as applicable to libel cases involving the exercise of a public officer of their functions. The prosecution in a libel case must prove “actual malice” on the part of the person accused of libel for the case to prosper, specifically if it is a case that involves criticism of a public officer.

In the case here, the Court said that since the Bureau of Customs lawyer was a public official, it is the prosecution’s burden to prove actual malice, or “with knowledge that it was false or with reckless disregard of whether it was false or not.” Determining “reckless disregard” depends on the facts of each case—but it cannot be “be based on ‘whether a reasonably prudent [person] would have published, or would have investigated before publishing.’” Rather, this depends on “whether sufficient evidence has been adduced ‘to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of [their] publication.’”

Petitioner Tulfo here, in writing his column, relied on informants in criticizing the lawyer So in his column. The fact that he relied on mere informants, said the Court, cannot be taken as proof of “reckless disregard” of its accuracy. The Court said further:

- The fact that no administrative case has been filed against So does not mean Tulfo’s statements (alleging corruption on his part, among others) are false;
- Columnists need not have personal knowledge on the material they report, and may contact sources and informants—the identity of which they are not required to disclose by law (Republic Act 53, as amended).
- Failure to obtain the ‘other side of the story’ does not prove actual malice, “for as long as the reporter ‘does not entertain a ‘high degree of awareness of [its] probable falsity.’”
- A reporter need not be put under microscopic examination to prove actual malice or falsity, as this would defeat the purpose of privileged communications, i.e., reporting on public issues.



In ruling that the petitioner merely reported on the alleged illegal activities of a public officer in the exercise of his public functions, the Court stated: “Our libel laws must not be broadly construed as to deter comments on public affairs and the conduct of public officials. Such comments are made in the exercise of the fundamental right to freedom of expression and the press.”

Media reports

A senator, who is running for vice president in the elections, filed in July 2021 cyberlibel complaints against the owners of a Youtube channel and the country manager of Google, for a series of videos involving his celebrity wife. The videos supposedly claimed his wife filed a case of physical abuse against him, and that his wife had a lover. The senator justified the complaints by saying “if it’s the family and loved ones at stake, you can’t let it pass, you have to fight it so that’s why we’re filing the complaint. This is too much.”

Also in July, prosecutors junked a cyberlibel case filed by a foreigner against a local radio station manager. While reports did not specify the reasons why the case was junked, the local radio station manager asserted that he wrote his story following journalistic standards. His story was translated from a Facebook post of a local police station, titled “Foreign suspect arrested by the Police Station 5 for Disobedience to a person in authority.”

In August, the management of a top Philippine broadsheet was criticized for accepting an “compromise deal that is unprincipled and lopsidedly favorable” to a radio broadcaster who filed a libel case against the newspaper, its editors, and writers previously, over a story involving the pork barrel. The deal had the broadsheet issuing apologies, purging articles online, and providing Php 1.5 million worth of advertising space to the radio broadcaster. A former editor said: “I’m afraid the *Inquirer* would be getting more than it bargained for – diminished credibility, demoralized staff, and loss of respect among our media peers. It wouldn’t be far-fetched to expect our readers, editorial staff, and media colleagues taking us to task for shirking our responsibility of holding the line in defense of press freedom.”

The same month, a cyberlibel complaint earlier filed against the CEO and a writer of an online news publication was withdrawn and dropped by the courts. The complaint involved a “thesis-for-sale” story. While this was good news, the lawyer for the online news publication commented, however, “that the case was even filed at the level of the investigating prosecutor, however, spotlights the danger to press freedom and freedom of expression that criminal cyber libel poses....perhaps it may be time to consider seriously taking a second look at the Cybercrime Prevention Act of 2012, particularly its provisions on cyber libel as a crime.”

In September, a senator and presidential candidate asked for Php 100 million in damages in a libel and cyberlibel complaint against a leader of a religious organization, who accused the former of misusing government funds. The senator said the religious leader should be penalized for using “his power and influence to spread fake news and false information.” Meanwhile, counsels for the religious leader said “the complaint of Senator Manny Pacquiao may be considered as retaliatory and a political move on his part considering that the election is coming and we shall do all within our power to ensure that this complaint will not curtail what is a constitutionally protected speech and expression.”

Another presidential candidate and incumbent Manila mayor also made statements relating to libel that month. The mayor clarified his stance on decriminalizing libel, saying he does not agree with using libel suits as harassment suits or imprisonment as a penalty: “It is still a crime or maybe a penalty for such a person but you don’t have to go to jail. You should be penalized, that’s my point,” he said.

Commenting on the Pulitzer Prize won by Rappler CEO Maria Ressa, a UN investigator said in October that ‘gender equality in free speech in the Philippines is still far off,’ noting that the Pulitzer Prize winner has been convicted of cyberlibel, among other complaints. She has also been a victim of harassment online, which correlates to how sexual and gender-based violence, hate speech and disinformation “are used extensively online and offline to chill or kill women’s expression.”

Online harassment and gender inequality are also relevant in a Php 10 million cyberlibel complaint filed by a male advertising executive against his female colleague, after the latter alleged that the former sexually harassed him years ago. In a statement released in relation to a counter-affidavit to the complaint, the female ad exec said of her former colleague: “His perjurious refusal to admit his mistake and, worse, his filing of a baseless complaint, is to victimize me yet again, and to victimize other women whom he denies even exist.”

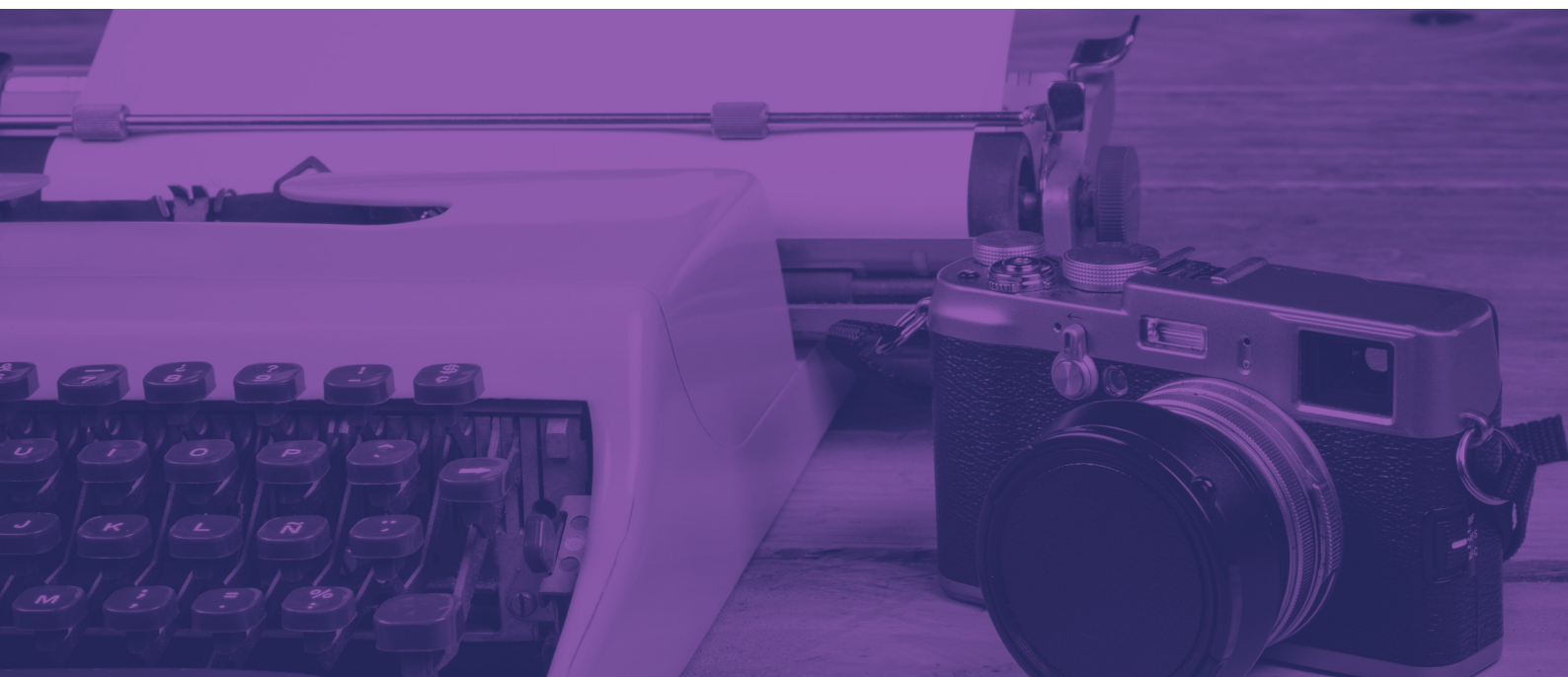
In November, a party-list representative in Congress filed a one-billion peso cyberlibel case against an actor, who commented online that the government official spent public funds for her wedding. The official said: “The posts were meant (sic) nothing more than their malicious intentions of maligning my person, depicting me as a corrupt public official.” In December, prosecutors proceeded to indict the same actor for cyberlibel, saying that “calling someone a thief, without proof and with heavy malice, is where to draw the line as this is already libelous.” The prosecutors cleared other actors of the same cyberlibel charge.



A businesswoman and Congressional aspirant asked the National Bureau of Investigation to probe and file a cyberlibel case against a Facebook user named “Boses ng Bayan QC,” who posted that the businesswoman and her family have links to illegal drugs.

Meanwhile, after a warrant of arrest was issued earlier this year, law enforcement arrested a former Iloilo provincial administrator in hiding (tagged a “fugitive social media blogger”) for previous libel charges. This arrest, along with inciting to sedition charges filed against three Bohol media personalities, warranted a Bohol tri-media group to release statements on the matter. Among others, the tri-media group said that the “more menacing” inciting to sedition charge filed by a Bohol provincial governor against three media personalities, instead of libel or cyberlibel charges, is “a monstrous attempt to steamroll media.” A columnist commented that the “charge of instigating anarchy would be a stretch for community journalists. That must be why the Bohol tri-media group called it an act of bullying or steamrolling, using a hatchet instead of the usual whip.” Among others, the columnist pointed out that both the arrest of the Iloilo administrator/blogger and the charges against Bohol journalists took advantage of the law by using faraway venues. The columnist also raised the issue of public concern versus right of redress: “Public officials say they merely avail themselves of the right of redress under the law (“You can publish, we can sue”) even as journalists decry what they see as oppression and harassment and attempt to silence critics of the said officials.”

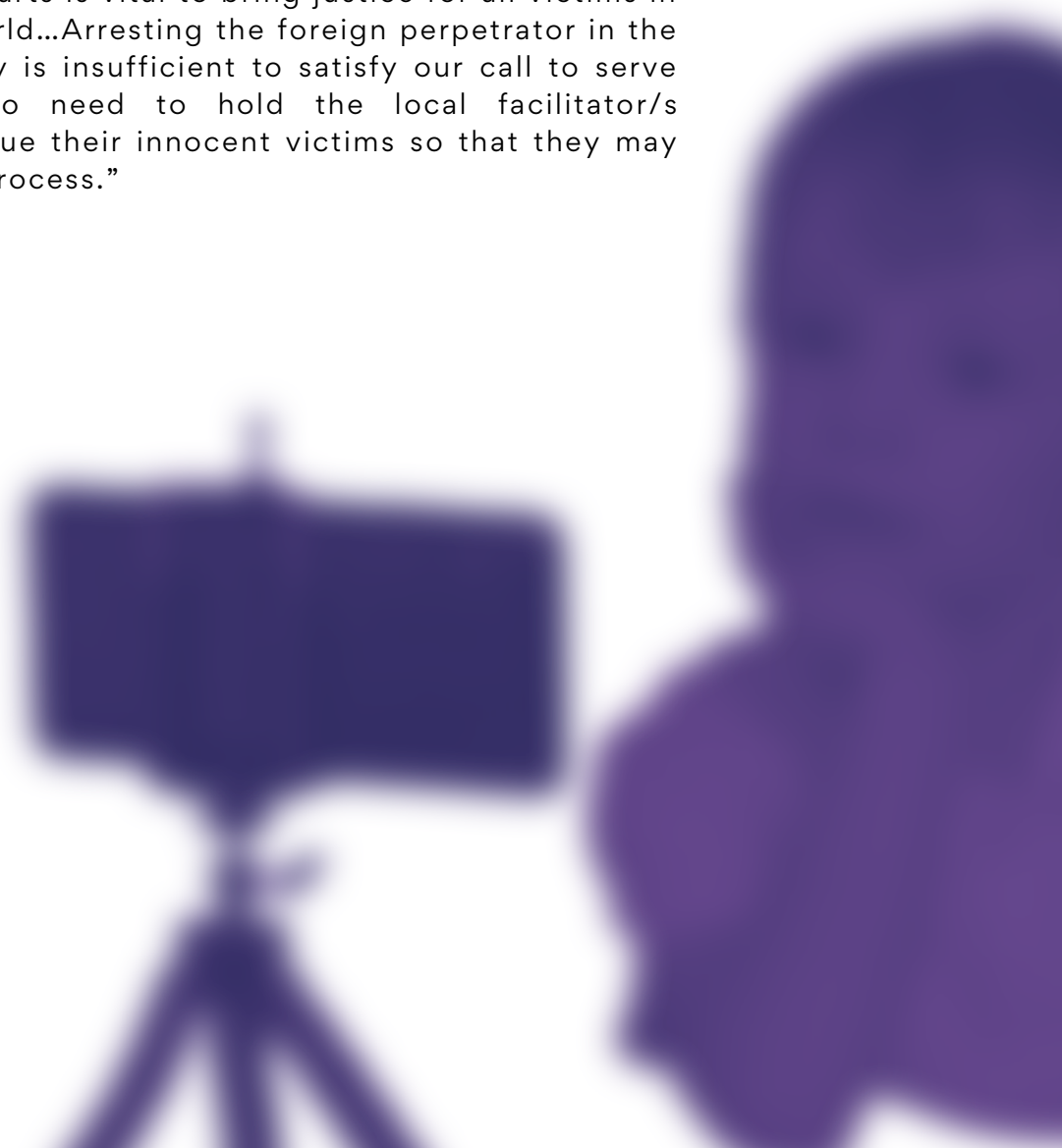
In December, another government official filed a multimillion cyberlibel suit against several news organizations for publishing stories about a gas field buyout. The official said that by reporting on the issue, the journalists accused him of graft. A lawyers’ group has offered its services to the journalists subject of the complaint, saying that “as lawyers who believe in the importance of the Freedom of the Press, we cannot stand idle and let this happen. The PBA [Philippine Bar Association] will not allow the law on libel to be weaponized against the vanguards of our democracy.” The group also recognized how the multimillion suit (at least 200 million) may be financially debilitating and draining for journalists.



CYBERSEX / ONLINE SEXUAL EXPLOITATION OF CHILDREN

Various reports from July to September detailed a modus operandi involving credit card fraud and erotic massage services. Suspected members of a cybersex ring, according to the police, posed as call center agents and offered erotic massage services on a dating site for a registration fee. Once the registration fee is deducted from the victim's credit card, the latter is blocked from the dating site. Police officers say there are around 50 branches of this cybersex ring. Apprehended suspects are held for charges based on the Cybercrime Prevention Act.

The perpetrator of an online sexual exploitation of children case is apprehended by the police in October. Two minors were rescued from their relative (an aunt/cousin) in a case that involved a foreigner facilitating cybersex crimes against minors. The police stated: "Online sexual exploitation of children is indeed a crime with no borders. Inter-agency cooperation with our foreign counterparts is vital to bring justice for all victims in both parts of the world...Arresting the foreign perpetrator in the demand side country is insufficient to satisfy our call to serve justice but we also need to hold the local facilitator/s responsible and rescue their innocent victims so that they may begin their healing process."



CYBERSECURITY

In August, the Philippine National Police released a statement that cybercriminals continue to exploit the pandemic, with 121 complaints filed against 80 individuals for different cybercrimes, including “spreading fake news on the internet, illegal online sale of medical supplies, and online scams.”

The PNP added that data from March 9 to August 9 this year show that 87 complaints were filed against persons spreading fake news, three complaints over online scams, and 31 complaints for online profiteering, overpricing, hoarding and unauthorized selling of medical supplies.

In December, a cyberattack was reported on the online platform of a social media news network, with the website barraged with 650,000 requests per second at the peak of the attack. According to a report, “At the start of the attack around 95% of the requests were hitting a recently published story on the Philippine Senate’s approval of a bill allowing 100% foreign ownership of public services.” The requests later switched to the website’s homepage. The same month, another attack was previously reported on the online platform of a major television network.

OTHER CYBERCRIMES

In July, prosecutors indicted a lawyer for cyber unjust vexation after he held an online “meme-making” contest with prizes, with the theme “Commishunga” (roughly, “idiotic commissioner”), against a government official—an election commissioner. The meme-making contest encouraged online users to create images and captions, which prosecutors found “mockingly threw shade” against the commissioner.

Unjust vexation is “any human conduct, without violence, that unjustly annoys an innocent person.” According to the resolution: “The respondent’s series of acts arose from a single criminal intent to vex and annoy Guanzon hence only one count of unjust vexation can be charged against him.”



DEVELOPMENTS ON THE CYBERCRIME PREVENTION ACT

In July 2021, former Justice of the Supreme Court Antonio Carpio called for amendments to existing libel laws, to hold online platforms accountable for posts or comments of fake or fictitious users in their platforms. Specifically, he proposed that if a comment is made under a fake or fictitious name in an online platform, such comment should be presumed malicious on the part of the publisher for allowing the fictitious account to make the libelous comment without verifying their identity.

However, the National Union of Journalists of the Philippines stated that while the call was laudable, it was not feasible, since the unique identifiers in accessing websites are IP addresses, and not real names. It added: “Putting the burden on news agencies and websites to deter trolls is a myopic appreciation of the issue...Social media companies have a huge role to play too. They need to prevent such actors from abusing their platforms and spreading hate and misinformation.”



ANTI-TERROR LAW CASES AND UPDATES

In July, an Olongapo court acquitted the two Aeta farmers previously charged with violations of the Anti-Terror Law, specifically Section 4 (a) or “acts intended to cause death or serious bodily injury to any person, or endangers a person’s life” for allegedly shooting soldiers. This case was supposed to be the first publicly-known case on the ATL.

In acquitting the two farmers, the court said: “After a careful examination of the records, the Court holds that the prosecution failed to discharge the burden of proving the identities of the accused as the perpetrators of the crime of violation of Section 4 of RA 11479. Thus, the case for violation of this law against the accused must be dismissed...The inconsistencies of the soldiers on the presence of the accused at the crime scene and the profiling of the accused, and the presence of the danger signals in their identification of the accused cast doubts on their testimonies that accused were the perpetrators of the crime of violation of Section 4 of RA No. 11479.” The court also held invalid the warrantless arrests of the farmers.

However, in the same month, police arrested four Mindoro farmers for possessing firearms (a shotgun and an anti-personnel mine) and for allegedly helping out members of the New People’s Army, in violation of the ATL.

UPDATES ON SUPREME COURT PETITIONS TO NULLIFY THE ATL



The Supreme Court released its decision on the petitions against the ATL in December, and voided a qualifier in Section 4 meant to criminalize dissent or advocacy if these are “intended to cause death or serious physical harm to a person, to endanger a person’s life, or to create a serious risk to public safety”. Without the qualifier, the provision now reads: “Provided, that terrorism as defined in this section shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights.”

While this is a welcome development, human rights advocates still note the ATL is still a dangerous law. Among others, the ATL “still gives the executive anti-terror council the power to designate a person or a group as terrorists based only on their own determination, without having to go to court,” according to a report, and still gives the council the power to detain a suspect up to 24 days.

CONCLUSION

As online campaigns for the May 2022 elections start in full swing, the utilization or weaponization of libel, cyberlibel, and other crimes under the CPA and the ATL will most likely continue, especially among incumbent public officials seeking office and who may be subject to wider criticism. As observed in this report, public officials notably sought exorbitant damages as redress to alleged libel, which, while not amounting to imprisonment for journalists or critics, may nonetheless have the same chilling effect that restrains free speech. It bears reminding that even damages as a penalty for libel must be within “reasonable limits,” as stated by the [UN Human Rights Committee](#); this aspect must be continuously monitored as libel and cyberlibel cases continue to be filed.

As noted [previously](#), litigation and decisions made by the Supreme Court—which form part of Philippine law—hold potential in developing a consensus that libel should not be penalized. The case of *Tulfo v. People et al*, as discussed above, is binding law and sets a precedent for other cases concerning libel, including cyberlibel: a precedent that favors free speech especially when it comes to matters of public concern. Advocates should utilize and closely monitor developments such as *Tulfo* to strengthen calls for the decriminalization of libel and the amendment of the CPA.

Relating to cybersex, the focus should remain on cases of OSEC and how these are addressed by laws aside from the CPA. Outside of OSEC, there needs to be a careful study of how the cybersex provisions of the CPA apply to cases such as the case reported herein, which involves not only cybersex but financial fraud. Cases such as these provide further justification to redefine what cybersex should mean in the CPA.

As noted in the midyear report, and as reflected herein, cases of cybersecurity remain high, reflecting the ongoing challenge of government agencies in improving the physical infrastructure and legal and policy framework to ensure measures to address cybersecurity gaps benefit not just large business, but also (and more importantly) citizens and end-users who are left to adjust without proper support as lives move online in a protracted pandemic.

With regard to the ATL, how law enforcement implement the law minus the provision criminalizing dissent must also be monitored; it may be that while the Court's striking down of this provision was a welcome development, other harmful provisions of the law that remain valid may still be abused to the detriment of human rights, as exhibited by the acquittal of Aeta farmers in the first publicly-known cybercrime case. The ATL is still a dangerous law. As elections draw near, and in the backdrop of an administration that still takes an authoritarian and militaristic approach to governance, it remains a potent weapon to silence critics.



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