Philippines

<table>
<thead>
<tr>
<th>Internet Freedom Status</th>
<th>2015</th>
<th>2016</th>
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<td>Internet Freedom Status</td>
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<tr>
<td>Obstacles to Access (0-25)</td>
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<td>9</td>
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<tr>
<td>Limits on Content (0-35)</td>
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<tr>
<td>Violations of User Rights (0-40)</td>
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<td>TOTAL* (0-100)</td>
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* 0=most free, 100=least free

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**Key Developments: June 2015 – May 2016**

- At the height of the 2016 national election campaign, police warned that spreading “destructive” memes about candidates could be grounds for criminal charges (see Media, Diversity, and Content Manipulation).

- Outgoing President Benigno Aquino signed the country’s first antitrust law, which analysts hope will strengthen competition in the telecommunications sector (see ICT Market).

- The Department of Information and Communications Technology Act of 2015 created a dedicated government agency for the ICT sector (see Regulatory Bodies).
Introduction

Internet freedom improved since there was no recurrence of the internet shutdown imposed during the previous reporting period.

The Philippines held a general election on May 9, 2016. Presidential candidate Rodrigo Duterte, who openly encourages extrajudicial killings to combat crime, beat the incumbent administration's candidate. In his first press conference, Duterte said during that corrupt journalists deserved to be assassinated, a troubling omen for freedom of expression.

The threat of criminal liability may already be deterring free speech online in the Philippines, since digital activism appears to have decreased in the past two years. The 2012 cybercrime act criminalized online libel, and after a temporary suspension, the Supreme Court upheld the act's libel clause in 2014. Over 200 libel cases had been filed under the law by August 2015, though none involving legitimate speech were resulted in criminal detention during the coverage period. At the height of election campaigns in early 2016, satirical memes about candidates were widely shared online. The national police—one of two agencies tasked to enforce the cybercrime law—warned the public that anyone spreading “destructive” political memes on the internet could face charges.

Before handing power to the new administration, President Benigno Aquino, Jr. signed two pieces of legislation that are expected to be game changers in the information and communications technology (ICT) sector. The first was an antitrust law, which penalizes anticompetitive business practices to drive down costs for consumers and is expected to attract new investment in the ICT market; the second created a dedicated government agency for the sector. One of two pending bills that promoted internet freedom—the Magna Carta for Internet Freedom, was absorbed into the latter, losing many of its strongest provisions. The second, a Crowdsourcing Act which encourages citizens to participate in the legislative process, was stalled in Congress.

Obstacles to Access

Connection speeds remain among the slowest in the world but the government is addressing low internet penetration by providing thousands of free Wi-Fi hotspots with the aim of connecting 99 percent of the population. Outgoing President Benigno Aquino III signed Republic Act 10667 or the Philippine Competition Act after 25 years stalled in Congress. The country's first antitrust law could level the playing field for new entrants to the telecoms sector, which was historically dominated by the Philippine Long Distance Telephone Company. Aquino also signed Republic Act 10844 to create the Department of Information and Communications Technology.

Availability and Ease of Access

The International Telecommunication Union estimated internet penetration at 41 percent in 2015, up from 40 percent in 2014.¹ Connectivity is concentrated mainly in urban areas, while rural areas remain largely underserved.² To bridge this gap, the government started rolling out a free internet ser-

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vice in 2013 using TV White Space technologies, initially to serve communities struck by destructive typhoons in the Visayas region. In July 2015, the government launched another multimillion-dollar project to provide more than 7,000 free Wi-Fi hotspots in 43 cities. The stated aim of the Juan Konek! Digital Empowerment Program is to connect 99 percent of the population, with lower-income municipalities given priority.

Mobile phones remain the most widely used wireless communication tool with a penetration rate of 118 percent in 2015, indicating that some users have more than one device. The leading telco, Philippine Long Distance Telephone Company (PLDT), reported having 69.6 million mobile phone subscribers in the first quarter of 2015, while closest rival Globe Telecommunications had 50 million by the third quarter of the year. Mobile internet usage has been slow to take off. There were only 3.1 million mobile broadband subscribers in 2014, following the deployment of 4G LTE and HSPA+ technologies in 2013.

The slow uptake of broadband internet in the country, and the consequent low internet penetration, is largely due to steep subscription fees. The cost and slow speed of internet service has been a prominent issue since 2014, and prompted the National Telecommunications Commission (NTC) to conduct an isolated speed test of major ISPs in September 2015 to determine if they are providing subscribers with their advertised speed. Only PLDT was found to exceed its advertised speed, while Globe was found to be slower but still compliant. Akamai reported the average connection speed in the country at 2.8 Mbps in the third quarter of 2015, a slight increase from last year’s 2.5, but still putting the Philippines just 108 out of 145 countries assessed. Internet subscriptions are also comparatively expensive. In early 2016, PLDT was charging a minimum monthly subscription fee of US$21 for fixed broadband for up to 1 Mbps, compared to US$29 for up to 2 Mbps the previous year; while Globe charges US$23 for up to 2 Mbps compared to US$24 in 2015.

Restrictions on Connectivity

There was no reported incidence of intentional blocking or limiting of cellular services during the reporting period. Such a restriction was imposed for the first time in the Philippines when the government ordered a sporadic regional suspension of cellular services during the visit of Pope Francis from January 15 to 19, 2015. Mobile phone subscribers received text messages from service pro-

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6 Quarterly report to the Securities and Exchange Commission (SEC), as of March 2015. This is the latest report made available by PLDT.
7 Quarterly report to the SEC, as of March 2015.
8 Quarterly reports to the SEC, as of September 30, 2014.
Providers citing a directive from the NTC to block network coverage for security reasons. Following the unpopular move, the government announced in advance that it would not block cellular services during the Asia Pacific Economic Cooperation Summit, another high-profile event held on November 18 and 19, 2015.

There were 400 ISPs registered with the NTC in 2013, according to most recent government data. Many of these connect to PLDT, which owns the majority of fixed-line connections as well as the 10,000 kilometer domestic fiber-optic network that connects to several international networks. Since the completion of a new cable linking the central provinces of Palawan and Iloilo in January 2014, the company now owns or partly owns five out of nine international cable landing stations. In October 2015, PLDT announced the construction a US$40 million international cable to link to the U.S. and Japan with a landing station in Mindanao.

ICT Market

Companies entering the market go through a two-stage process. First, they must obtain a congressional license that involves parliamentary hearings and the approval of both the upper and lower houses. Second, they need to apply for certification from the NTC.

The constitution limits foreign ownership of local businesses to 40 percent. Internet service is currently classified as a value-added service and is therefore subject to fewer regulatory requirements than mobile and fixed phone services.

In the 1990s, government legislation allowed competitors a foothold in a market dominated by the PLDT, a company that had been U.S.-owned and Philippine government-owned before becoming a private entity. Until recently, the country did not have antitrust laws to promote healthy competition between businesses. But in a development welcomed by observers, the president signed Republic Act 10667, or the Philippine Competition Act, in July 2015, 25 years after it was filed in the eighth Congress (1987-1992) as House Bill 5286. According to its principal author, Senator Bam Aquino, the law is “expected to eliminate cartels, and penalize anti-competitive agreements and abuses of dominant players in the markets that lead to high prices of goods and services.” He clarified that the law “does not directly prohibit the existence of monopolies,” and will not stop an entity from maintaining its dominance in the market as long as it does not commit abuses such as driving away competition.

In September 2015, shortly after the law was signed, San Miguel Corporation announced its plans...
to enter the telecommunications industry in partnership with Australia’s Telstra Corporation, a joint venture seen as much-needed by an industry in need of competition. However, after months of talks, the venture appeared to have stalled amid disagreements between the parties concerning risk-sharing brought about by potential regulatory problems. One major concern was a PLDT and Globe petition to the NTC to auction the 700 MHz frequency currently owned by San Miguel, which would supposedly be tapped by the joint venture. Telstra required a 100 percent refund of its US$1 billion investment if the frequency issue was not resolved.

Regulatory Bodies

On May 23, 2016, before ending his term as president, Benigno Aquino, Jr. signed into law Senate Bill No. 2686 (a reintroduction of Senate Bill No. 50 filed in 2010), to create a separate and dedicated agency to head the development of ICTs. Republic Act 10844, known as the Department of Information and Communications Technology Act (DICT) of 2015, either abolished or absorbed institutions governing the ICT sector.

Among the abolished offices are the Information and Communications Technology Office, the National Computer Center, National Computer Institute and all units pertinent to communications under the Department of Transportation and Communications. Three offices are now attached to the DICT: The National Privacy Commission; the Cybercrime Investigation and Coordination Center (see Legal Environment); and the National Telecommunications Commission, which has regulated the industry with quasi-judicial powers and developed tariff and technical regulations, licensing conditions, and competition and interconnection requirements since its creation in 1979. All three offices will continue to function according to their mandate.

The newly formed DICT will be headed by a Secretary, three undersecretaries, and four assistant secretaries; all of whom are to be appointed by the president. The law provides that these positions must be filled in by people with seven years of experience in areas including ICTs, IT service management, information security, cybersecurity, and data privacy.

Limits on Content

During the 2016 national elections, netizens turned to social media to know more about candidates, especially for those vying for the presidency, and to express their support or disapproval. This activity did not escape the anti-cybercrime group of the Philippine National Police, which warned the public that “spreading destructive memes” could be grounds for libel charges. In late 2015, the DOJ issued an advisory reminding ISPs to report online activity involving child pornography and emphasizing strong penalties for noncompliance.

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30 The Department of Transportation and Communications has also been renamed the Department of Transportation. Republic Act 10644.
Blocking and Filtering

No systematic government censorship of online content has been documented in the Philippines, and internet users enjoyed unrestricted access to both domestic and international sources of information during the coverage period of this report. Internet users freely access social networks and communication apps including YouTube, Facebook, Twitter, and international blog-hosting services. Although rare, blocking and filtering of content is allowed under a law that requires ISPs to prevent access to pornographic sites.\(^{31}\) Other than the DOJ’s brief call to ISPs to block Canada-based online dating site Ashley Madison in November 2014,\(^{32}\) which it retracted a month later, no disproportionate blocking of online content has been documented.

On September 1, 2015, The Department of Justice (DOJ) released an advisory reminding ISPs of their responsibility to block and report access to child pornography. Penalties for violations include fines of up to US$10,000 and loss of license.\(^{33}\)

The Supreme Court ruled in February 2014 against Section 19, the infamous “takedown” clause of the 2012 Cybercrime Prevention Act that would have allowed the Department of Justice to “restrict or block” overly broad categories of content without a court order;\(^{34}\) however, it upheld other provisions criminalizing online libel (see Legal Environment).

Content Removal

The government does not usually order removal of online content. One exception in early 2015 involved an online video depicting the killing of 44 members of the Philippine National Police Special Action Force in Mamasapano, Maguindanao, in the southern Philippines, allegedly by Muslim insurgents. The video went viral on YouTube, eliciting public anger against the uploader of the video as well as the perpetrators, on grounds that sharing the footage was insensitive to the families. The Office of the President ordered the uploader to take down the video.\(^{35}\) After the individual refused to comply, the National Bureau of Investigation (NBI) threatened to go after the individual, and those who subsequently shared or “liked” it on social media.\(^{36}\) This announcement was issued in spite of the fact that the Supreme Court had found in their 2014 ruling against Section 5 of the Cybercrime law that it was unconstitutional to punish those who simply like or share a post or video online. The NBI later said they had identified the source of the video, but no criminal charges were reported.\(^{37}\)

The video, in several edited versions, remained accessible.

The Magna Carta for Philippine Internet Freedom, filed by Senator Miriam Defensor Santiago in July

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2013, attracted widespread support and discussion on social media, particularly a provision that “provides for court proceedings in cases where websites or networks are to be taken down and prohibits censorship of content without a court order.” The legislation met an undistinguished conclusion in the Senate during the coverage period when it was absorbed into Senate Bill No. 2686 and later signed into law as Republic Act 10844, creating a government agency for ICTs (see Regulatory Bodies). The requirement for a court order to support content removal requests was not included. Since so many internet freedom protections were diluted or lost, supporters hope the original legislation will be reintroduced.

### Media, Diversity, and Content Manipulation

Generally, the Philippine blogosphere is rich and thriving. Both state and non-state actors actively use the internet as a platform to discuss politics, especially during elections. There have been no explicit government restrictions in place against any social media or communication applications.

Many news websites are online versions of traditional media, which may reflect self-censorship due to the level of violence against journalists in the Philippines.

There are periodic reports of state officials and private authorities using harassment to suppress online speech. In January, as campaigning for the 2016 national elections heated up, the Philippine National Police issued a warning against spreading “destructive memes” about candidates on the internet. The statement did not elaborate on the definition of “destructive,” saying only that its anti-cybercrime group can easily track down offenders on social media and have them charged with online libel. It also remains unclear what they meant by “spreading”—as the term could cover a range of activities, from creating to reposting and “liking.”

### Digital Activism

No prominent online calls for action occurred during the reporting period, in contrast to previous years. Digital activism in the Philippines has had a significant impact on a number of contentious sociopolitical issues, making national and international headlines and prompting positive action from the government. Past successes include a 2013 protest against the alleged misuse of PHP 10 billion (US$220 million) from a Priority Development Assistance Fund, locally dubbed the “pork barrel,” by senators and members of Congress. A Facebook petition called for the abolition of the fund and the filing of criminal charges against the lawmakers, and helped fuel nationwide protests. The Su-

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Violations of User Rights

On August 12, 2015, the government issued Implementing Rules and Regulations of the Cybercrime Prevention Act, three years after the law’s enactment. It contained specific provisions addressing some vague sections in the law such as the overlapping of administrative functions of government agencies; the role of ISPs in collecting and preserving data; and the need for a court order before law enforcers can gather computer data. The national police reported that incidents of cybercrime went up to more than 1,000 as of August 2015. These included high-profile libel cases against an online media organization and a prominent fashion blogger.

Legal Environment

The Bill of Rights of the 1987 constitution protects freedom of expression (Section 4) and privacy of communication (Section 1). However, some laws undermine those protections. Libel is punishable by fines and imprisonment under Articles 353 and 360 of the revised penal code. This has historically been challenging to prove in online cases which lack a physical place of publication—one of the requirements for an offline prosecution—and in 2007, a Department of Justice resolution established that the provisions do not apply to statements posted on websites.

Section 4c (4) of the 2012 Cybercrime Prevention Act, however, classified libel as a cybercrime. Section 6 stipulates a higher degree of punishment for online libel, with prison terms of up to eight years, almost double the maximum penalty for the identical offense perpetrated offline, which is punishable by prison terms of six months to four years and two months. The Supreme Court suspended implementation of the law after widespread protests, but in February 2014 ruled that the libel provision was constitutional, keeping the disproportionate penalties on the books. However, it

47 BlogWatch.tv
49 Department of Justice, Resolution No. 05-1-11895 on Malayan Insurance vs. Philip Piccio, et al., June 20, 2007. Article 353 states that, “libel is committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means.” The Department also stated that the accused are not culpable because they cannot be considered as authors, editors, or publishers as provided for in Article 360. Critics have further noted that the Revised Penal Code of the Philippines dates from 1932, long predating digital technology.
clarified that users reacting online to a libellous post—by “liking” it, for example—could not be held liable, and struck down Sections 12 and 19 that would have allowed law enforcers to monitor and collect real-time traffic data without a court order.\(^52\)

After a three-year delay, the DOJ released the Implementing Rules and Regulations (IRR) governing the act on August 12, 2015.\(^53\) The IRR provides for the establishment of the Cybercrime Investigation and Coordinating Center, a central investigative body under the Office of the President. Law enforcement authorities tasked with investigating cybercrime, the National Bureau of Investigation and the Philippine National Police cybercrime unit, and have the power to collect or record any computer data, but only with a court order (Section 13).\(^54\) Regarding the hotly-contested criminalization of online libel, DOJ Secretary De Lima stated that the justice department had wanted it out of the law from the beginning, but that it had a responsibility to include it in the IRR and enforce the provision.\(^55\)

Other pending legislation could strengthen internet freedom. Senator Teofisto Guingona III filed a crowdsourcing bill in 2013. Also known as Senate Bill No. 73, the act would allow citizens to participate in the legislative process through the use of ICTs, and require lawmakers to include citizens’ comments in committee reports concerning pending bills. If passed, it would make some important measures mandatory: people’s committee hearings to be held in Congress (Section 6); continuous online participation by citizens while debates are being held on the floor (Section 7); and a pre-approval consultation (Section 8) wherein the president of the Philippines must allow people to send online comments about a pending bill for five days, and subsequently consider those comments for at least another three days, before signing a bill into law.\(^56\) In early 2016, the Crowdsourcing Act has not gone beyond first reading.

Twenty-two years after it was first filed in Congress, the Senate approved the People’s Freedom of Information Act of 2013 in March 2014.\(^57\) In November, the lower chamber also approved the bill, which critics said was watered down.\(^58\) The bill passed the Committee on Appropriations on March 4, 2015; the bill is awaiting second reading, the timeframe for which is not known.\(^59\)

### Prosecutions and Detentions for Online Activities

The Supreme Court’s ruling in favor of punishing online libel under the Cybercrime Prevention Act resulted in a flood of charges. In a report released on August 27, 2015, the Philippine National Police

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Anti Cybercrime Group reported an increase in cybercrime cases from 150 in 2013 to 1,211 in 2015, including 240 libel cases.

A number of high-profile examples came to light during the reporting period, though no-one was reported to have been detained as a result. On November 16, 2015, a judge dismissed a libel case filed by businesswoman Janet Lim Napoles against a reporter for the online news outfit Rappler, who reported on the lavish lifestyle of Napoles’ daughter. In April 2015, Napoles was convicted of working with politicians to skim funds from a Priority Development Assistance Fund known as “the pork barrel” (see Digital Activism). In the libel case, the judge ruled that Rappler’s report was neither “defamatory nor malicious.”

Fashion blogger Michael Sy Lim was sued twice in late 2015 for allegedly publishing false accusations against another designer and an actress on his blog Fashion Pulis. While the actress dropped the charges in December, the case involving the designer is pending.

In a separate 2015 case involving online speech, the government initiated deportation proceedings against a Thai national after he posted derogatory statements about Filipinos on Facebook and in an online community page. He is not allowed re-entry to the country.

**Surveillance, Privacy, and Anonymity**

A 2012 Data Privacy Act established parameters for the collection of personal financial information and an independent privacy regulator. Other laws with privacy implications include the Anti-Child Pornography Act of 2009 which explicitly states that its section on ISPs may not be “construed to require an ISP to engage in the monitoring of any user,” though it does require them to “obtain” and “preserve” evidence of violations, and threatens to revoke their license for noncompliance. Section 12 of the law also authorizes local government units to monitor and regulate commercial establishments that provide internet services. Under the Human Security Act of 2007, law enforcement officials must obtain a court order to intercept communications or conduct surveillance activities against individuals or organizations suspected of terrorist activity. To date, no abuse of this law has been reported.

There are no restrictions on anonymous communication in the Philippines. The government does not require user registration for internet and mobile access, and prepaid services are widely available, even in small neighborhood stores. During this coverage period however, the senate renewed a proposal to make prepaid SIM card registration mandatory amid reports of increasing cybercrime, particularly child pornography. Senator Vicente Sotto III, the same lawmaker who pushed for online libel to be included in the cybercrime law, presented the Cellphone Registration Act in a senate
hearing on August 11, 2015, a proposal which telcos vigorously opposed. Globe stated that the bill violated people's right to privacy, citing the absence of data privacy in the bill; and their right to communicate, citing a provision that prohibits people under the age of 15 from owning a registered SIM card.

Intimidation and Violence

Violence against journalists is a significant problem in the Philippines. As of December 2015, the Committee to Protect Journalists reported at least 77 Philippine journalists had been killed in relation to their work—most covering political issues like corruption—since 1992. An entrenched culture of impunity for these attacks sends the message that individuals exercising free speech can be attacked at will.

During his first press conference a month before being sworn in, President-elect Rodrigo Duterte said that journalists taking bribes or getting paid to attack or defend politicians deserve to be killed. "If you are an upright journalist, nothing will happen to you," he said. Local and international journalists' rights groups condemned the statement.

There were no reports of physical violence targeting internet users during the coverage period of this report, though threats were sent using digital communication tools. In July 2015, several journalists in southern Mindanao reported receiving a text message from a group threatening them with "death by firing squad" for failing to cover a march organized by the group to promote their cause of recovering former Philippine territories.

Technical Attacks

There have been no reports of politically motivated incidents of technical violence or cyberattacks perpetrated by the government toward private individuals. In previous years, the hacktivist group Anonymous Philippines attacked several government websites. Individuals claiming association with the group stepped up their defacing and hacking activity against government and celebrity websites in late 2015, posting invitations to join a peaceful global protest. In March 2016, Anonymous warned the Commission on Election (Comelec) that it had deployed a dormant virus in voting machines in advance of May 2016 elections which would be activated if a machine's receipt feature, which verifies that a vote has been cast, was not switched on.