

Gender and Privacy Online:



Insights on the Philippines

Part I of II

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About FMA

The Foundation for Media Alternatives (FMA) is a non-profit service institution whose mission is to assist citizens and communities - especially civil society organizations (CSOs) and other development stakeholders - in their strategic and appropriate use of the various information and communications media for democratization and popular empowerment.

Since its formation in 1987, FMA has sought to enhance the popularization and social marketing of development-oriented issues and campaigns through media-related interventions, social communication projects and cultural work. In 1996, FMA streamlined its programs and services in both traditional and new media, with a major focus on information and communications technologies (ICTs), to enable communities to assert their communication rights and defend their rights to information and access to knowledge, towards progressive social transformation.

FMA seeks to develop programs and projects that strategically address the questions of access to and equity of disadvantaged sectors in the area of information and communications - and in locating the so-called digital divide within existing socio-political divides, including gender. These involve:

- Promoting equitable partnerships for innovating connectivity and community access alternatives to assert the agenda of disadvantaged communities;
- Facilitating capacity-building sessions for CSOs in the area of ICT literacy, ICT management, online collaboration or advocacy, and secure online communications;
- Helping CSOs manage development content through appropriate tools and technologies towards building vibrant online communities and knowledge networks;
- Enhancing multi-stakeholder consensus-building on strategic information and communication agendas, via action-oriented research, constituency-building and public advocacy.

Introduction

A familiar premise associated with cyberspace is how it offers asylum to those who wish to shield themselves from the violence and harassment long identified with the so-called real world. People have said it is a venue where one may live in anonymity¹, free to form communities and express one's self² without fear of being misjudged or misidentified³. Women and members of the LGBTQIA+⁴ community—too often objectified, stigmatized, discriminated upon, and harassed by some members of society—benefit the most from this setup, if common perceptions are to be believed⁵.

That's not always the case. On the contrary, reality appears to be headed towards the opposite direction⁶. In 2010, this fact was highlighted when a 12-country study⁷ by the Association for Progressive Communications showed how rampant men use technology to control and harass women online, and how common it is for this issue to escalate and manifest offline. And while the research also showed how technology is critical to women's rights activists when carrying out their advocacy work, this perceptible benefit does not appear to be a sufficient counterweight.

This two-part briefing paper explores the link between public perceptions of privacy, dignity, and autonomy, and the prevalence of online gender-based violence in the Philippines. It does so by first mapping out the concepts of gender and privacy, as embedded in Filipino culture, and then using them to analyze some domestic cases that relate to online privacy. It proceeds to examine the existing legal framework on privacy and online gender-based violence, and determine if they are aligned with the needs and circumstances that apply to the local landscape.

1 Thelwal, M. (2011). *Privacy and gender in the social web*. <www.scit.wlv.ac.uk/~cm1993/papers/Privacy_Gender_preprint.doc>

2 See Barlow, John Perry. *A Declaration of the Independence of Cyberspace*. EFF. <www.eff.org/cyberspace-independence>

3 Rosen, J. (2000). *The unwanted gaze*. New York: Vintage Books.

4 Also referred to as LGBT, LGBTQ, LGBTQI, or LGBTQIA+ and allies.

5 Thelwal, M. (2011). *Op.cit.*

6 Web Foundation (2015, 9 June). Five barriers, five solutions: Closing the gender gap in ICT policy. <webfoundation.org/2015/06/five-barriers-five-solutions-closing-the-gender-gap-in-ict-policy/>; see also: Abreu, R. and Kenny, M. (2017, 24 July) Cyberbullying and LGBTQ youth: A systematic literature review and recommendations for prevention and intervention. *Journ Child Adol Trauma*. <www.researchgate.net/publication/318660552_Cyberbullying_and_LGBTQ_Youth_A_Systematic_Literature_Review_and_Recommendations_for_Prevention_and_Intervention>

7 Association for Progressive Communications (2010). How technology is being used to perpetrate violence against women – and to fight it. <www.apc.org/en/system/files/How%20Technology%20is%20Being%20Used%20to%20Perpetrate%20Violence%20Against%20Women%20%E2%80%93%20And%20to%20Fight%20it.pdf>

Gender and Privacy in the Philippines

Few scholars have looked into the domestic notion of privacy, especially one that has today's digital world as backdrop. Among them is Leonardo Mercado who, in 1994, delved into the intersection of *sarili* (self) and privacy in Filipino psychology. He explained that, unlike usual (Western) iterations of the concept, privacy in the local context puts emphasis not on the individual but on a greater reference group, specifically that of one's *sakop* (e.g., family, closest friends, etc.). Similarly, with confidentiality, privacy is "not individual, but has a group dimension such as a neighborhood with a strong bond of familiarity."⁸ According to him, privacy for Filipinos tends to be a collective idea by nature. Hence, the noticeable heavy influence of society on most people's core belief system.

Meanwhile, notions of sex, gender, (in)equality, and power are propelled by a Catholic and patriarchal slant owing to the country's long colonial history, particularly under Spain⁹. An ideal wife, for instance, is expected to keep the marriage intact by being loyal, patient, hardworking, submissive, and virtuous.¹⁰ Whatever formal employment she may have, housekeeping and managing the home's finances and make up her primary duties¹¹. She is immersed in a culture of martyrdom and silence marked by weakness, passivity, and inferiority¹². Men, on the other hand, should be authoritative¹³. He is the decision-maker and is "not expected to do household chores, except for the occasional repairs of appliances and gardening"¹⁴. Masculinity is often associated with attributes like dominance, assertiveness, and instrumentality¹⁵. On the whole, both are expected to behave according to specific sex-based roles (e.g., women as primary care givers at home, men as breadwinners)¹⁶.

Deviations often result in discrimination and harassment. Statements by no less than the current President, Rodrigo Duterte, are steady source of proof of this reality even today¹⁷. It's a state of affairs that continues in varying degrees, albeit more nuanced and less conspicuous. Within LGBTQIA+ circles, for instance, there are those who remain convinced that they are merely being tolerated by the community, and only as long they meet certain conditions.¹⁸

8 Mercado, L. (1994). *The Filipino Mind*. Washington D.C.: The Council for Research in Values and Philosophy.

9 Torres, A. (1989). Introduction: The Filipina looks at herself. In A. Torres, A., (Ed.) *The Filipino woman in focus: A book of readings*. Bangkok: UNESCO (p. 6-7).

10 Sevilla, Judy Carol C. (1989). The Filipino woman and the family. In A. Torres, A., (Ed.) *The Filipino woman in focus: A book of readings*. Bangkok: UNESCO (p. 39).

11 *Ibid.*

12 Claudio, S. (1991). The psychology of the Filipino woman. *Review of Women's Studies*.

13 Sevilla, Judy Carol C. (1989). *Op. cit.*

14 *Ibid.*

15 Sevilla, Judy Carol C. (1989). *Op. cit.* (p. 36).

16 Sevilla, Judy Carol C. (1989). *Op. cit.* (p. 38).

17 See: Basa, Mick. (2018, 25 May). Duterte: I believe in women's competence, but not in all aspects. *Rappler*. <www.rappler.com/nation/203320-duterte-comment-women-capabilities>; Ranada, Pia (2016, 10 August). Duterte on Robredo: You won't listen to a beautiful female president. *Rappler*. <www.rappler.com/nation/142613-rodrigo-duterte-zeni-robredo-beautiful-female-president>; Corrales, Nestor. (2018, 22 July). Women in a man's world. *INQUIRER.NET*. <newsinfo.inquirer.net/1012741/women-in-a-mans-world-duterte-and-his-fiercest-female-critics>

18 Gutierrez N. (2017, 17 May). LGBTQ activists. We are tolerated but not accepted in the Philippines. *Rappler*. <www.rappler.com/nation/170091-lgbtq-rights-philippines-tolerated-not-accepted>

Nonetheless, there is a general sense that the gender landscape in the country is somewhat progressing. In 2017, the Philippines ranked 10th out of 144 countries in the global Gender Gap Index Report—a positive indicator that gender parity is closer to reality¹⁹. Recent statements by Pope Francis, head of the powerful Catholic faith, have also given hope for true LGBT acceptance by the largest religious denomination of Christianity²⁰.

Gender and Privacy in the Digital Age

More than half of the Philippine population has access to the internet. It's been touted as the country with the most number of social media users, with at least an estimated 67 million accounts tucked under its belt²¹. On average, it is said that a Filipino spends nine (9) hours and twenty-nine (29) minutes a day online²².

Naturally, this has ushered in many of the benefits associated with a wired society—better and faster communication, electronic commerce, and more effective dissemination of information, just to name a few. Unfortunately, the same can be said of the darker side of the online medium, including those that relate to gender and privacy. Take, for instance, the noticeable increase in sexual harassment committed online.²³ Social media, in particular, has ushered in a world that is not only more potent when it comes to expressing ideas and facilitating advocacy work, but also one that is very conducive to harassment, misogyny, and homophobia²⁴.

The following cases represent but a snapshot of this mixed bag of goods:

As facilitator of privacy and gender equality

#BabaeAko movement (translation: I am a woman).

In response to the misogynistic tirades of President Duterte and his allies, several of the country's influential women uploaded videos of themselves objecting to the reprehensible behavior and perception of women being peddled to the public. The online campaign later translated into a street protest calling for the resignation of the controversial head of state²⁵.

19 It's worth noting, though, that the country placed higher during the previous two (2) years.

20 Hale, C. (2015, 28 July). The Pope Francis statement that changed the Church on LGBT issues. *Time*. <www.time.com/3975630/pope-francis-lgbt-issues/>

21 Camus, M. (2018, 15 February). PH is world leader in social media usage. *Inquirer*. <www.business.inquirer.net/246015/ph-world-leader-social-media-usage>

22 Bondoc, M. (2018, 4 February). Filipinos spent an average of almost 4 hours a day on social media in 2017. *GMA News Online*. <www.gmanetwork.com/news/scitech/technology/642105/filipinos-spent-an-average-of-almost-4-hours-on-social-media-in-2017/story/>

23 Lardizabal, C. & Tan, L. (2016, 22 November). Senator files bills amid increasing incidents of online sexual harassment. *CNN Philippines*. <www.cnnphilippines.com/news/2016/11/22/risa-hontiveros-files-bill-amid-increasing-incident-of-online-sexual-harassment.html>

24 Senate of the Philippines. (2017). *Online Violence is Violence - Hontiveros Tells Youth*. <www.senate.gov.ph/press_release/2017/0221_hontiveros1.asp>

25 Leonardo, K. (2018, 13 June). Filipino women take #BabaeAko movement from social media to the streets. *Rappler*. <www.rappler.com/move-ph/204774-babae-ako-campaign-filipino-women-take-movement-social-media-streets>



Outrage Magazine.

Outrage is the only LGBTQIA+ online publication in the country. Launched in April 2007, it aims to highlight news and issues relating to the community and its allies that mainstream media fails to present accurately, if at all²⁶. As part of its advocacy, it also partners with other organizations in conducting LGBTQIA- and HIV-related trainings and events. It has come up a report entitled “Being LGBT in Asia: Philippines Country Report”, in partnership with the US Agency for International Development (USAID) and the United Nations Development Program (UNDP).

A venue and enabler of discrimination and sexual harassment

The Judge with the Off-Shouldered Dress.

In 2007, Judge Ma. Cecilia Austria of a Regional Trial Court branch in Batangas was the subject of a complaint alleging that, as a magistrate, she committed an act of impropriety by posting her photographs and personal details on her account on “Friendster”, a now-defunct social media platform. One photo, in particular, showed her posing “with her upper body barely covered by a shawl, allegedly suggesting that nothing was worn underneath except probably a brassiere.”²⁷ In her defense, Austria insisted that the photos “could hardly be considered vulgar or lewd”, and that her dress was “an acceptable social outfit under contemporary standards”.²⁸ Attractive ladies are not barred from being judges, she pointed out. Nonetheless, the Court of Appeals, the Office of the Court Administrator (OCA), and even the Supreme Court all found her online behavior unbecoming of a judge. The appellate court felt that her act of maintaining a personal social networking account—including the posting of photos and disclosure of personal details as a magistrate—constituted “an act of impropriety which cannot be legally justified by the public’s acceptance of this type of conduct”. For the OCA, it “contravened the standard of propriety” set forth by the Code of Professional Responsibility for lawyers. Meanwhile, The Supreme Court was more specific in their charge. They considered Austria as having disregarded the propriety and appearance of propriety required of her under the New Code of Judicial Conduct “when she posted photos of herself wearing an ‘off-shouldered’ suggestive dress and made this available for public viewing”.

A Tale of Two Graduations.

In 2012, two female students were barred from attending their high school graduation at St. Theresa’s College (STC) in Cebu City. The school’s decision came in the wake of an internal controversy that arose after one teacher saw on Facebook pictures of the girls in their underwear, drinking hard liquor, and smoking cigarettes. Their behavior were found to have violated the school’s student handbook. The matter was eventually brought before the courts as the subject of two distinct cases. One was a Habeas Data petition filed by the parents of the two

26 www.outragemag.com/about-us/

27 *Lorenzana v. Austria* (2 April 2014) A.M. No. RTJ-09-2200.

28 *Ibid.*



students with the Regional Trial Court, and later elevated to the Supreme Court. There, the magistrates went on to decide on the extent individuals continue to enjoy privacy in online social networks like Facebook. This is what the case is most famous for today. Unfortunately, lost in the debate was the validity of the charges against the students and the propriety of the penalty meted against them. Specifically, was it a fair assessment to consider them as having worn and exhibited online clothing that advocates unhealthy behavior, depicts obscenity, or contains sexually suggestive messages? Can a charge like “posing and uploading pictures on the Internet that entail ample body exposure” be allowed to remain, without imposing unfair burden to females and others who deviate against prescribed gender behavior? In a similar case that same year, six (6) senior high school boys of a Catholic high school in Marikina City were reprimanded after posting photos of themselves kissing one another also on Facebook. Unlike their female peers in the STC case, the boys were allowed to join the commencement exercises, although their diplomas were withheld by the school.²⁹

Hokage Facebook groups.

In June 2017, so-called Pastor Hokage Facebook groups stirred widespread controversy after being thrust in the limelight by a local publication. Composed mainly of men, members of these groups regularly post and exchange sexually explicit photos and videos of women. They call each other “pastor” and refer to their group activities as “Bible studies”. To join, an individual is usually required to provide a “contribution” in the form of explicit content—celebrity photos, mainstream hardcore porn, and, on occasion, “photos of young girls—presumably minors—in suggestive poses”³⁰. Most, if not all, of the subjects of the shared material are unaware that their images have been shared online. While non-consensual sharing of images is not new by any means to online platforms, the issue was most striking because of its use of mainstream social media. The same platform used by people to connect and communicate with family and friends was being used for nefarious purposes. After the phenomenon was exposed, concerned Facebook users initiated a campaign to surface, report, and have the groups shut down.

When FMA published a paper in 2015, the idea that women and girls are “inferiors, ancillaries, and safe targets”³¹ was determined to be the primary reason behind their being frequent targets of privacy violations. The advent of the internet has somehow amplified such perception, given how open and communal the objectification of their bodies (sans consent) has become.

The implications are most disturbing, to be sure. Even if one accepts the premise that the Filipino notion of privacy is shared and community-based, willingly sharing one’s private details with a group is a far cry from claiming another person’s body and information (like property), and thereafter sharing it with others. Also, the pervasiveness of double-standards cannot be denied.

29 Calleja, N. (2012, 30 March). School withholds diplomas of 6 boys in FB ‘kiss photos’. *Inquirer*. <newsinfo.inquirer.net/169805/school-withholds-diplomas-of-6-boys-in-fb-kiss-photos>

30 Escobar, M. (2017, 29 June). The dark side of Filipino Facebook. *Esquire*. <www.esquiremag.ph/long-reads/notes-and-essays/the-rise-of-pastor-culture-and-why-it-must-end-a1513-20170629-lfrm>

31 Allen, A. (2000). Gender and privacy in cyberspace. *Penn Law: Legal Scholarship Repository*, p.1178. <scholarship.law.upenn.edu/faculty_scholarship/789>

Philippine Legal Framework on Gender and Privacy Online

Though not explicitly stated, the fundamental right to privacy is widely recognized as being enshrined in the 1987 Philippine Constitution, specifically, via at least three provisions in the Bill of Rights (Article III): the due process clause³², the guarantee against unreasonable searches and seizures³³, and the privacy of communication and correspondence clause³⁴. In the due process clause, it is considered within the meaning of the rights to life, liberty, and property, which are protected against arbitrary taking or deprivation. Similarly, it is deemed inherent in the individual right against unreasonable searches and seizures of their “persons, houses, papers, and effects”, making such “persons, houses, papers, and effects” subjects of privacy rights. It is also seen as being manifested by the provision emphasizing how “[t]he State values the dignity of every human person and guarantees full respect for human rights”.³⁵

With gender and its place in the legal system, equality between and among all persons is a cornerstone of the fundamental law. The same due process clause emphasizes this by providing that no person shall be denied “the equal protection of the laws”. Moreover, there is also Article II, Section 14 of the Constitution which maintains that the State “recognizes the role of women in nation building and shall ensure the fundamental equality before the law of women and men.”

Outside of the Constitution, there is now a smattering of laws relevant to online issues involving gender and privacy. Consider the following:

Anti-Photo and Video Voyeurism Act of 2009 (AVVA) (Republic Act No. 9995)

The law was crafted in response to the capture and distribution of private photos and videos, mostly of women, without the subjects’ consent. The law penalizes those who take, sell, copy, or even share photos or videos of a person or group of persons performing any similar activity or of the private area of a person or persons without their consent. It makes use of the principle of reasonable expectation of privacy.

Data Privacy Act of 2012 (DPA) (Republic Act No. 10173)

The DPA was enacted with strong backing from the business process outsourcing industry which needed to satisfy the data protection requirements of the European Union and a growing number of countries. It sets out the duties and responsibilities of persons (as either personal information controllers and personal information processors) when handling the personal data of individuals (i.e., data subjects). It proscribes a number of acts, including the unauthorized processing and malicious disclosure of data, and imposes both prison terms and hefty fines as penalties.

32 §1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

33 §2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

34 §3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise, as prescribed by law.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

35 Article II, §11.



Cybercrime Prevention Act of 2012 (CPA) (Republic Act No. 10175)

As the country's first comprehensive anti-cybercrime statute, it aims to protect the integrity of computers, networks, communication systems and databases—as well as the confidentiality, integrity and availability of data stored therein—from any form of unlawful access and use. In contrast to the DPA, it effectively covers all types of data.

Magna Carta of Women (Republic Act No. 9710)

The law is the realization of the government's pledge of commitment to the Convention on the Elimination of All Forms of Discrimination Against Women. Its primary aim is to eliminate discrimination against women by recognizing, protecting, and promoting their rights, especially those in the marginalized sector. It is worth noting, however, that the Act also gives the Commission on Human Rights (CHR), as Gender Ombud, the mandate to document and investigate instances of violence involving people of diverse gender identities and expressions.

Unfortunately, a cursory review of these policies reveals that despite the rise in the number of privacy violations online that target women and LGBTQIA+ members, the local legal system remains largely gender-insensitive and is sometimes even guilty of restricting full expression of one's sexuality. This is particularly true with the CPA which actually classifies as a crime "the willful engagement, maintenance, control, or operation, directly or indirectly, of any lascivious exhibition of sexual organs or sexual activity, with the aid of a computer system, for favor or consideration". Many consider such broad language as unduly restricting an individual's freedom to virtually express his or her sexuality and engage in consensual sexual activities.³⁶

Indeed, many Philippine laws still reflect values that harken back to that age when the perceived inferiority of women and other deviants vis-à-vis the white-heterosexual-male standard was still the norm. How domestic law continues to treat adultery and concubinage differently³⁷ and the way it resolves conflicting opinions between husband and wife when making family-related decisions³⁸ are but a fraction of the proof.

Centuries-old cultural assimilation of a patriarchal worldview, further skewed by restrictions imposed by organized religion, has made Filipino notions and standards of privacy inherently unfair to women and the LGBTQIA+ community. Manifestations abound online as much as they are prevalent in the real world. Women's bodies are still seen as public objects to be commodified and consumed, while LGBTQIA+ members are oddities who are frequently the subject of ridicule or worse (i.e., individuals with an affliction that require a cure). Meanwhile, rules and regulations that are supposed to correct all these and provide long-overdue relief end up exacerbating matters by policing women's control over their own bodies, and by restricting basic freedoms of expression and sexuality.

This needs to change.

End of Part I 

36 SPOT.ph (2012, 2 October). *Digital Martial Law: 10 scary things about the Cybercrime Prevention Act of 2012*. GMA NEWS ONLINE. <www.gmanetwork.com/news/hashtag/content/276434/digital-martial-law-10-scary-things-about-the-cybercrime-prevention-act-of-2012/story/>

37 §333-334, Revised Penal Code, as amended.

38 See: §14, §96, §124, §211 and §225, Executive Order No. 2019 (1987).