

# HUMAN RIGHTS AND THE PHILIPPINE DIGITAL ENVIRONMENT

## JOINT SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF THE PHILIPPINES

For consideration at the 27th session of the Working Group to be held April-May 2017

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### I. Introduction

1. The Foundation for Media Alternatives (FMA) welcomes the opportunity to contribute to the third cycle Universal Periodic Review (UPR) of the Philippines. This submission focuses on the Philippines' compliance under international human rights law on the promotion, protection and fulfillment of rights particularly in the Internet.

2. A consultation meeting with other internet rights advocates was convened by FMA in preparation for this submission.<sup>1</sup> Representatives from six (6) civil society organizations were present during the said consultation. Prior to the consultation, FMA had been conducting broad consultations all over the country on human rights online. A Philippine Declaration on Internet Rights and Principles was evolved and launched; it looked into ten (10) core rights and principles: Internet access for all; democratizing the architecture of the Internet; freedom of expression and association online; right to privacy and protection of personal data; gender equality on the Internet; openness and access to information, knowledge and culture; socio-economic empowerment and innovation; ICT education and digital literacy; liberty, safety and security on the Internet; and, Internet and information and communications technologies (ICTs) for environmental sustainability.<sup>2</sup>

3. In previous submissions, there has only been one report that mentioned human rights in relation to ICTs and/or the Internet, and this is specifically on the issue of ICT-related violence against women.<sup>3</sup> Following the two cycles of UPR, a few laws and policies relating to ICTs, including the internet, were enacted, with the hope of addressing violations of human rights in digital environments: technology-mediated, and occurring over telecommunication network and on the internet

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<sup>1</sup> The organizations that were represented during the consultation called by FMA on September 9, 2016 were the following: Internet Society (ISOC) Philippine Chapter; Philippine Internet Freedom Alliance (PIFA); Marindukanon; 8 Layer Technology; Philippine Network Foundation.

<sup>2</sup> The consultation for the Philippine Declaration on Internet Rights and Principles started in March 2015 and it was launched as an official document, signed by 23 Philippine-based organizations, on November 4, 2015. Available in <http://internetrightsdeclaration.fma.ph>. Also, see Annex A

<sup>3</sup> The Women's Legal and Human Rights Bureau in 2011 made a submission on the UPR on Women's Access to Justice that had a section on ICT-related VAW as an emerging form of VAW

online/cyberspace. This submission presents information about recent developments as they relate to individual's rights online.

4. FMA observes the following areas of concern in relation to human rights and the Internet:

- Freedom of Expression and online libel;
- Freedom of expression and sexual rights
- Online gender-based violence;
- Online Child Sex Trafficking and Child Pornography; and
- Right to privacy in digital environments

## II. Legal Framework

5. The Internet was first introduced in the Philippines in 1994 and since then the number of Filipinos connected has increased exponentially. In 2016, it is estimated that 43% of the total Philippine population of about 102 million or about 44.47 million Filipinos are online.<sup>4</sup>

6. With these developments, laws and policies pertaining to the Internet have been enacted to address new developments, especially in relation to technology. Some of these laws include, among others, the E-Commerce Act of 2000 (RA 8792), the Anti-Child Pornography Act of 2009 (RA 9775), the Anti-Photo and Video Voyeurism Act of 2009 (RA 9995), the Data Privacy Act of 2012 (RA 10173), the Cybercrime Prevention Act of 2012 (RA 10175), and the Expanded Anti-Trafficking in Persons Act of 2012 (RA 10364). There are also a number of executive issuances related to legacy telecommunications regulation by the National Telecommunications Commission (NTC).<sup>5</sup>

7. The Department of Information and Communications Technology (DICT) was recently established in 2016<sup>6</sup> as the *"primary policy, planning, coordinating, implementing, and administrative entity of the Executive Branch of the government that will plan, develop, and promote the national ICT development agenda."*<sup>7</sup> Attached to the DICT is the newly created National Privacy Commission (NPC) also established in 2016,<sup>8</sup> as well as the NTC.<sup>9</sup> Prior to the establishment of the DICT, all

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<sup>4</sup> See <http://www.internetlivestats.com/internet-users/philippines/>. Depending on the survey, Internet penetration may be higher. For instance, in We are Social, Internet penetration in the Philippines as of January 2016 is at about 46% of the total population.

<sup>5</sup> The NTC was the legacy regulatory agency for telecommunications in the country created in 1979 by virtue of Executive Order 546

<sup>6</sup> Established through Republic Act 10844, An Act creating the Department of Information and Communications Technology defining its powers and functions and appropriating funds therefor and for other purposes

<sup>7</sup> Section 5 of RA 10844

<sup>8</sup> By virtue of RA 10173 or the Data Privacy Act

ICT policy and Internet governance matters were handled under the ICT Office under the Department of Science and Technology,<sup>10</sup> even as the NTC was under the Office of the President. In specific sectoral cases, ICT-related concerns are also within the purview of national bodies such as the Philippine Commission on Women (PCW), the National Council on Disability Affairs (NCDA); and the Department of Health (i.e., for e-health).

8. The country also adopts generally accepted principles of international law as part of the law of the land.<sup>11</sup> A Bill of Rights as enshrined in the 1987 Philippine Constitution promotes the rights of all individuals<sup>12</sup> as embodied in the United Nations (UN) Universal Declaration of Human Rights. The Philippines is a long-time member of the UN (since 1945) and has ratified eight of the nine core international human rights instruments.<sup>13</sup> Accordingly, it is duty-bound to observe the rights, as enshrined in such international legal instruments.

### **III. Philippine Compliance with Its International Human Rights Obligations**

9. The Internet today has become a space where individuals can express their freedom of speech and expression, as enshrined in Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR). As former UN Special Rapporteur Frank La Rue said, the Internet has become an “enabler” of rights.<sup>14</sup> The internet is a new environment that continues to evolve with constant technological advances, and remains an uncharted terrain for many, especially in the realm of law, policy and governance. Thus at times, both governments and non-State actors still struggle to adjust to this new environment. This has sometimes resulted in confusion with unfamiliar contexts, as ICTs and the Internet may be used both to advance human rights, or to enable violations of these same rights.

10. Human rights are universal, indivisible, interrelated, and interdependent. Every person has inherent rights no matter where one is, even in the realm of

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<sup>9</sup> Prior to the creation of the DICT, the NTC existed as a quasi-judicial body under the Office of the President.

<sup>10</sup> The ICT Office was created through Executive Order 47, series of 2011.

<sup>11</sup> 1987 Philippine Constitution, Article II, §2.

<sup>12</sup> Article III of the 1987 Philippine Constitution

<sup>13</sup> The Philippines has signed the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW), and the Convention on the Right of Persons with Disabilities (CRPD), but NOT the International Convention for the Protection of All Persons from Enforced Disappearance (CPED).

<sup>14</sup> In Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue A/HRC/17/27

cyberspace. Activities that are done online or in digital spaces may seem virtual, but they are also very real. Therefore these same rights that people have offline must also be protected online. This was established with UN Human Rights Council (HRC) Resolution 20/8 in June 2012<sup>15</sup>. Follow-up HRC resolutions on the enjoyment of human rights and the internet in 2014 and 2016, as well as HRC and UN General Assembly Resolutions on the right to privacy in the digital age expanded on this fundamental principle.<sup>16</sup> All human beings for example, have their rights to privacy extended online; similarly, the importance of a rights-based approach to achieving universal access to the Internet is affirmed.<sup>17</sup>

Given these international standards and national constitutional and statutory mandates, the following areas of concern are raised.

### ***Freedom of expression and online libel***

11. Libel is being decriminalized by many States. The UN Human Rights Committee, in a communication to the Philippine government declared that libel is "excessive" and "incompatible" with the ICCPR, which the country ratified in 1986, and recommended that *"States parties should consider the decriminalization of defamation and, in any case the application of criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty."*<sup>18</sup> Libel in some cases is used to hinder freedom of expression, often to silence investigative journalists or potential whistleblowers.

12. Article III Section 4 of the Philippine Constitution of 1987 states that *"No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances."* However, the crime of libel or defamation has been used as a means to suppress freedom of expression and freedom of the press in the Philippines. Cases of government officials and influential people filing cases against the media have produced a chilling effect and could lead to self-censorship.<sup>19</sup> The fear of imprisonment or the imposition of fines has prevented media from criticizing government officials.

13. With the Internet, libel has also found its way into the Cybercrime Prevention Act of 2012. Section 4(c)4 of the said Act defines libel as *"the unlawful or prohibited*

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<sup>15</sup> See A/HRC/RES/20/8, A/HRC/RES/26/13, and A/HRC/RES/32/13

<sup>16</sup> See A/HRC/RES/28/16, A/RES/68/167, and A/RES/69/166

<sup>17</sup> See A/HRC/RES/26/13, and A/HRC/RES/32/13

<sup>18</sup> UNHRC Communication No. 1815/2008 on the case of Alexander Adonis vs The Philippines.

Available in [http://www.bayefsky.com/pdf/philippines\\_t5\\_ccpr\\_1815\\_2008\\_scan.pdf](http://www.bayefsky.com/pdf/philippines_t5_ccpr_1815_2008_scan.pdf)

<sup>19</sup> One case in point is the filing of criminal libel by the husband of former President Gloria Arroyo of 11 libel suits against 46 journalists and demanding approximately PhP140 million in damages (although the all cases have been dropped in 2007). Other examples include the Tiongco vs PCIJ libel and sedition cases, the Yuchengco vs PEF Coalition libel case, and Drilon vs Mejerada libel case

*acts of libel as defined in Article 355 or the Revised Penal Code, as amended, committed through a computer system or any other similar means which may be devised in the future.*" Further, punishment of online libel under RA 10175 is one degree higher than offline libel, effectively decreeing heavier sanctions for "cyberlibel".<sup>20</sup>

### ***Freedom of expression and sexual rights***

14. Section 4(c)1 of Republic Act 10175 or the Cybercrime Prevention Act of 2012 defines cybersex as *"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."* This was one of the provisions questioned by civil society groups when the law was passed in 2012, questioning its constitutionality.<sup>21</sup>

15. The scope of Section 4(c)1 is overly broad and vague. Neither the law, nor its implementing rules and regulations, defines what a "lascivious exhibition" is or what "sexual organ or sexual activity" are. The law does not even clarify whether works of art that depict nude individuals, sold in whatever form or posted on the internet, would fall under this category. The very wording of the provision may therefore "empower law enforcers to pass off their very personal standards of their own morality," according to the dissenting opinion of one Associate Justice of the Supreme Court.<sup>22</sup>

16. Women's groups in the Philippines have long criticized the aforementioned "cybersex provision" in the law as being *"anti-women, focusing on 'criminalization, unmindful of its possible effects and without clear understanding of the inherent nature and characteristics of ICTs relating to violence committed against women'".*<sup>23</sup> Rather than recognize a person's agency to express sexuality online, it criminalizes such online behavior. It was noted that the provision also failed to address the underlying causes of violence against women and compromised the potential of

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<sup>20</sup> Section 6 of RA 10175 states that "All crimes defined and penalized by the Revised Penal Code, as amended, and special laws, if committed by, through and with the use of information and communications technologies shall be covered by the relevant provisions of this Act: *Provided*, That the penalty to be imposed shall be one (1) degree higher than that provided for by the Revised Penal Code, as amended, and special laws, as the case may be."

<sup>21</sup> Fifteen organizations filed cases with the Supreme Court questioning the constitutionality of the law. As a result, a temporary restraining order (TRO) was released by the High Court. In February 2014, the TRO was lifted and several provisions were stricken down. However, Sec. 4(c) 1 or the cybersex provision, as well as Sec. (4(c)4 or the cyber libel provision were retained.

<sup>22</sup> Associate Justice M. Leonen's dissenting opinion. See <https://www.scribd.com/document/209317714/Leonen-Libel-Dissenting-Cybercrime-Law>

<sup>23</sup> In 2012, a group of women's organizations and human rights advocates came up with a Statement on the Cybercrime Prevention Act of 2012. Available in <http://www.genderit.org/feminist-talk/delete-undo-retrieve-statement-cybercrime-prevention-act-2012>

ICTs to empower women. It would therefore be prudent for government to repeal this section of the law and to implement and strengthen existing laws that protect women against violence.

### ***Online Gender-Based Violence***

17. Violence against women (VAW) refers to *"any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or in private life."*<sup>24</sup> It likewise encompasses, among others, physical, sexual and psychological violence. With the advances in technology, new forms of VAW have emerged. Even the Commission on the Status of Women (CSW) has noted that the internet in particular has become *"a site of diverse forms of violence against women, in the form of pornography, sexist games and breaches of privacy."*<sup>25</sup> What makes electronic VAW different from offline VAW are universally accepted as part of the cyberspace's nature: the anonymity it affords the abuser; how the action of the abuser may be perpetrated 'at a distance'; the affordability and ubiquity of technologies; and, the impact of automation and sheer speed of propagation using various digital platforms.

18. All forms of gender-based violence, whether committed offline or online, are forms of discrimination and a violations of human rights. The right to privacy and bodily integrity are violated with online VAW.<sup>26</sup>

19. From 2012 to mid September 2016, FMA has mapped one hundred sixty (160) cases of online gender-based violence in the Philippines.<sup>27</sup> These include cases of online harassment; cyber bullying; digital stalking; monitoring and tracking; identity theft (including deleting, changing and faking personal information); sexual (verbal) assault, threats and abusive comments; and uploading of photos and videos (often of an intimate nature) without consent. Findings from the cases mapped include the following:

- Majority of the reported cases (53%) were perpetrated by someone known to the VAW survivor;
- Facebook (50%) and mobile phones (39%) are the platforms where most violations occurred;<sup>28</sup>

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<sup>24</sup> Section 4 (k) of Republic Act 9710 or the Magna Carta of Women

<sup>25</sup> Thematic working group report on discrimination against women in public spaces, 2013

<sup>26</sup> APC (2011) "Voices from digital space: Technology-related violence against women," p. 28

<sup>27</sup> FMA was able to map 160 cases of online gender-based violence from 2012 to the first half of 2016. These included reports published by media, those reported to FMA during forums with various groups, and individual submissions from those who have been victimized online. For further details see [ph.tbtt.apc.org](http://ph.tbtt.apc.org)

<sup>28</sup> Percentages based on 160 reported cases where multiple platforms per case were used

- 60% reported having their email or social networking account compromised or taken over by someone else without permission (i.e., unauthorized photo and video sharing, changing of personal information);
- 81% reported cases of repeated harassment, cyberstalking, monitoring and tracking;
- 37% reported having received threats of violence, blackmailing and abusive comments
- Almost 3 in 4 women (73%) aged 18-30 years old and below are more likely to experience online violence, based on the FMA data.

20. Emotional harm is another impact of VAW that may be difficult to quantify. Its effects may not manifest immediately. Such harm can lead to depression, post-traumatic stress disorder, sleep difficulties, eating disorders, emotional distress and suicide attempts.<sup>29</sup> In the cases mapped by FMA, emotional harm (67%), harm to reputation (58%), sexual harm (43%), and physical harm (33%) were reported in majority of the cases and were also found to impede women's full participation online and offline.<sup>30</sup>

21. The last few years has seen the rise in abuses to the Lesbian/Gay/Bisexual/Transgender/Queer/Intersex (LGBTQI) community, in the form of hate speech, harassment, bullying, etc., in the online world.<sup>31</sup>

- Social media pages demanding justice for the death of transwoman Jennifer Laude and all other victims of hate crime have received online bashing/hate speech from netizens who refuse to recognize a person's sexual orientation and gender identity/expression (SOGIE).
- In 2013, a second-year (Grade 8) high school student from Batangas province committed suicide due to depression, following incidents of bullying by his classmates, both offline and online, accusing him of being gay.<sup>32</sup>
- Pronouncements of public officials against LGBTQIs have exacerbated the already strong misogynistic animosity that some people feel about the LGBTQI community. For instance, then Sarangani congressman and now Senator Manny Pacquiao (the famous boxer) was quoted in media saying couples in same-sex partnerships were "*worse than animals*".<sup>33</sup>

<sup>29</sup> In "Violence against women: Intimate Partner & Sexual Violence against Women Fact Sheet," Available <http://www.who.int/mediacentre/factsheets/fs239/en/>

<sup>30</sup> Based on 160 reported cases where multiple harms per case were reported

<sup>31</sup> We would like to acknowledge the contribution of the ASEAN SOGIE Caucus for this section

<sup>32</sup> See <https://sg.news.yahoo.com/teen-kills-self-in-batangas-over-bullying-103134550.html>. The Philippines has an Anti-Bullying law passed in 2013 (Republic Act No. 10627) that protects children from cyber-bullying, among others

<sup>33</sup> "Manny Pacquiao provokes storm by calling gay people 'worse than animals'". The Guardian, February 16, 2016. Retrieved from: <https://www.theguardian.com/sport/2016/feb/16/manny-pacquiao-gay-people-worse-than-animals>; "Pacquiao: Couples in same-sex unions 'worse than animals'". Rappler, February 16, 2016. Retrieved from: <http://www.rappler.com/move-ph/122620-pacquiao-lgbt-same-sex-unions-worse-animals>

## ***Online Child Sex Trafficking, Online Child Pornography***

22. The Convention on the Rights of the Child (CRC) recognizes the right of the child to be protected from all forms of harm, including sexual harm and exploitation, and that it is the duty of adults to guide the children.<sup>34</sup> As a signatory to the Convention, the Philippines has joined the community of nations with a protection framework for children, as well as institutional structures to implement initiatives to fight abuse against children.<sup>35</sup> In 2009, the Philippines passed the Anti-Child Pornography Act (RA 9775), which penalizes *"any public or private representation, by whatever means, of child engaged or involved in real or simulated explicit sexual activities,"*<sup>36</sup> and this includes child pornography material "including real-time internet communications or written text."<sup>37</sup> However, in recent years cybersex operations in the Philippines involving children are still prevalent.<sup>38</sup> Police raids have been conducted, arrests have been made, cases have been filed in court, and local government units have passed local ordinances,<sup>39</sup> but the practice of using children in cybersex continues unabated. Children, sometimes as young as two years old are being used by cyberpornography operators, some of whom are parents and relatives of the children themselves.<sup>40</sup> Children are often also molested by the operators, forced to have sex with each other, and are forced to expose themselves in front of a camera, while being broadcast over the Internet.<sup>41</sup>

23. In a report presented by the Inter-Agency Council Against Child Pornography (IACACP)<sup>42</sup> at the ITU-ASEAN Workshop on Child Online Protection held in September 2016,<sup>43</sup> the IACACP reported the following accomplishments, to name a few:

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<sup>34</sup> Section 34 of the Convention on the Rights of the Child also states that States Parties should take all appropriate measures to prevent (1) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; (c) the exploitative use of children in pornographic performances and materials.

<sup>35</sup> The Philippines has an Anti-Child Pornography Act. Child cyber pornography is also a crime in the Cybercrime Prevention Act of 2012.

<sup>36</sup> Sec. 3(b) of Republic Act 9775

<sup>37</sup> Sec. 3(c) of Republic Act 9775

<sup>38</sup> See <http://iacat.gov.ph/index.php/108-cebu-couple-using-own-kid-in-cybersex-operations-arrested>

<sup>39</sup> See, among others, In "Cordova LGU mulls reward system to address cybersex problem," in <http://r07.pia.gov.ph/index.php?article=1061391048187#sthash.pEj9W3p8.dpuf> 30 January 2014; Also Ursal, Charisse. "Cyberporn thrives, along with poverty," Philippine Daily Inquirer, 7 June 2013

<sup>40</sup> See <http://www.sunstar.com.ph/cebu/local-news/2016/09/09/4-rescued-child-pornography-cordova-496613>; Also <http://cebudailynews.inquirer.net/77292/cordova-couple-charged-for-trafficking-of-minors>

<sup>41</sup> See <http://www.bloomberg.com/news/articles/2014-12-21/how-jailed-cyberporn-queen-molested-daughter-for-profit>

<sup>42</sup> The IACACP is composed of 12 line agency members and 3 non-government organizations

<sup>43</sup> The workshop was held on September 13-14, 2016 in Quezon City.



- from January to September 2015, it handled 129 cases and requested 314 websites for blocking;
- the Philippine Center for Transnational Crime (PCTC), a member of the IACACP, received 71 cases from Interpol involving child pornography;
- the Department of Social Welfare and Development (DSWD) received a total of 121 reports of child pornography cases in 2014.

It is not clear in the report though, if there was overlap in the reports presented.<sup>44</sup>

24. RA 9775 requires all internet service providers (ISPs) to notify the Philippine National Police (PNP) or the National Bureau of Investigation (NBI) of any form of child pornography being committed using its server or facility; *"preserve evidence for purpose of investigation and prosecution"*; and, *"install available technology, program or software to ensure that access to or transmittal of any form of child pornography will be blocked or filtered."*<sup>45</sup> This is akin to government deputizing and empowering ISPs and telcos to conduct mass surveillance on its subscribers, a practice that has been questioned by HR advocates. However, telcos reluctant to comply within the provision for legal or cost considerations, cite contradictions in the law.<sup>46</sup>

25. Although it is not an excuse, poverty is said to be one of the reasons why people engage in prostitution, including cyberpornography. The lack of available decent jobs and livelihood encourage parents to engage in or use their children in cyberpornography. The poverty incidence in the Philippines for the last several years has been a double digit.<sup>47</sup> The challenge is for government, both local and national, to address poverty in the country, for the reported recent economic gains of the country have yet reach those at the lowest economic strata.

### ***Right to privacy in digital environment***<sup>48</sup>

26. We note that FMA will also submit a UPR report on "The Right to Privacy in the Philippines", jointly with Privacy International, and will not go into much detail

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<sup>44</sup> Concerns also have been raised by FMA about the effectiveness of current processes which lead to blocking particular sites, as well the lack of proper oversight mechanisms.

<sup>45</sup> Sec. 9 of RA 9775

<sup>46</sup> in the same section, it states that *"[n]othing in this section may be construed to require an ISP to engage in the monitoring of any user, subscriber or customer, or the content of any communication of any such person,"* an indication of the law "contradicting itself according to Atty Roy Ibay, a regulatory affairs attorney for the PLDT company, one of the country's top ISPs, to the FMA Director, 13 September 2016.

<sup>47</sup> According to the Philippine Statistics Authority, poverty incidence in the country during the first semester of 2015 was at 26.3%. For details, see <https://psa.gov.ph/content/poverty-incidence-among-filipinos-registered-263-first-semester-2015-psa>

<sup>48</sup>

about Privacy concerns in this document. However, given the interrelatedness of the issues and concerns, this report summarizes some of the major issues cited in that separate submission: Data Protection, Digital Surveillance, and Privacy and Social Media.

### *Data Protection*

27. Though the Data Privacy Act (DPA) was enacted in 2012, the National Privacy Commission, the agency tasked to administer and implement the DPA and to monitor and ensure compliance of the country with international standards set for data protection, was appointed only in March 2016. This means that prior to 2016, there had been no government mechanism in place to monitor and protect data privacy in the country. Government agencies that collect and process information remained unregulated for a long period of time as to its handling of citizen's personal information, contributing to weak privacy and cyber security policies in certain government agencies. This has given rise to several hacking incidents over the years.

28. In March 2016, the Philippines fell prey to what has been dubbed as the biggest breach in history concerning government-held data. Two groups hacked the website of the Commission on Elections (COMELEC).<sup>49</sup> Personal information belonging to 55 million registered Philippine voters was compromised. The incident has exposed those in the list to the possibility of identity theft and more. This incident shed further light and directed much-needed attention to the extent of personal information being collected and held by government authorities, as well as their capabilities (or the lack thereof) in securing such information. It caused a stir in both local and global news and has developed into the first case for the NPC, with FMA being the entity filing a formal letter-complaint to the Commission.<sup>50</sup>

### *Digital surveillance*

29. The Philippines generally prohibits wiretapping and other violations of the privacy of communication, but it allows lawful interception when such activity is authorized by a written court order in relation to cases involving specific crimes (i.e., treason, espionage, provoking war and disloyalty in case of war, piracy, mutiny in the high seas, rebellion, sedition, and kidnapping).<sup>51</sup> In 2007, this policy was relaxed.<sup>52</sup>

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<sup>49</sup> Anonymous Philippines and LulzSec Pilipinas were reported to have hacked the website of the COMELEC in March 2016. See Rappler.com, *Comelec data leaked by hackers*, RAPPLER (Apr. 04, 2016, 11:46 AM), <http://www.rappler.com/nation/politics/elections/2016/127315-comelec-data-hackers>.

<sup>50</sup> As of this writing, the NPC is still to conclude its independent investigation of the breach, but is docketed as NPC Case 16-001 ("Investigation of the Security Incident Involving COMELEC Website and/or Data Processing System")

<sup>51</sup> Republic Act No. 4200 (Anti-Wire Tapping Act), §3.

<sup>52</sup> Republic Act No. 9372, §7. The exception now includes communication between members of "a judicially declared and outlawed terrorist organization, association, or group of persons or of any person

30. The Philippines has several intelligence agencies, which include, among others the National Security Council (NSC), the Office of the National Security Adviser (ONSA), the National Intelligence Coordinating Agency (NICA), and the Intelligence Service of the Armed Forces of the Philippines (ISAFP). However, there is a lack of transparency and there are no oversight mechanisms in place to oversee the mandate and activities of these agencies. In 2010 and again in 2013, bills in Congress proposing oversight of the intelligence agencies were filed but never passed into law.

31. Cases of wire-tapping are not uncommon in the Philippines. In 2004, the controversial "Hello Garci" scandal, which wiretapped a conversation between then President Gloria Arroyo and an election officer from the COMELEC prior to the May 2004 elections, illustrated the shortcomings of safeguards that need to be in place.<sup>53</sup> Recently, the current President of the Philippines Rodrigo Duterte said he received intercepted conversations between incumbent Senator Leila De Lima and her driver that supposedly revealed the Senator's connections to illegal activities involving the drug trade while the latter was Secretary of Justice.<sup>54</sup> The conversation is being used as evidence—illegal according to current law—to discredit the Senator for her opposition stance.

### *Privacy and Social Media*

32. The right to privacy is guaranteed by the Philippine Constitution. Pursuant thereto, it affords Filipinos protection against unreasonable searches and seizures,<sup>55</sup> and renders inviolable the privacy of their communication and correspondence, except where there is a lawful court order or when prescribed by law.<sup>56</sup> However, developments in technology have brought about more challenges to informational privacy - the person's right to control information about himself/herself.

33. In the context of social media this would imply a person's selective control over who accesses his/her private information, and control over the contexts in which the information can be used. In the Philippines as in the rest of the world, several violations of privacy in social media using multiple platforms have been reported. These include the circulation of private images and videos without a

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*charged with or suspected of the crime of terrorism or conspiracy to commit terrorism" as among those that may be subject to surveillance, despite there being no pending case against the concerned individuals". More exceptions are being contemplated.*

<sup>53</sup> Facts of the case available in <http://pcij.org/stories/web-of-threats/>

<sup>54</sup> See <http://www.gmanetwork.com/news/story/578670/news/nation/de-lima-maintains-innocence-despite-duterte-s-alleged-wiretap-atm-evidence>

<sup>55</sup> Article III, Section 2 of the 1987 Philippine Constitution

<sup>56</sup> Article III, Section 3 of the 1987 Philippine Constitution

person's consent. Women and girls are mostly the victims of such online violations, that include the identity theft, unauthorized posting of images and video, etc.<sup>57</sup>

34. In early 2012, a famous case involving five students from a private Catholic school for girls were not allowed to march in their graduation ceremonies for posting provocative pictures on Facebook, which were then accessed by school officials. The parents of the girls filed a case against the school for invasion of privacy, a case that ultimately reached the Philippine Supreme Court. ruled that the school did not violate the privacy rights of the girls because posting on Facebook, even when only the user's friends can access the user's posts does not afford him/her a 'reasonable expectation of privacy". The decision of the court puts the burden of safeguarding the privacy of the online users and expects them to exercise due, or even unnecessary diligence in their online enacted after the original case was filed. (A more complete discussion on the case is documented in the FMA submission on the Right to Privacy).

35. New technologies present new legal challenges. Cyber-related crimes such as violence against women and invasion of privacy online have implications on legal jurisdiction (e.g., in online pornography, for instance, the perpetrator may not be based in the Philippines thus who holds jurisdiction over the case) and sometimes the definition of the crime is not adequately defined or it is not defined at all. Many laws in the Philippines pre-date the Internet. Thus, some violations were not contemplated and this presents a legal challenge on which law to apply.

### ***The Philippine environment in 2016: Emerging Issues***

36. One emerging rights-based discourse deals with the question of whether citizens in a technology-enabled "information society" should have the right to the Internet (similar to a right to education, for example). Though this document does not deal with that concern here, it is an emergent issue given how the "digital divide" impacts certain sections of the Philippine population, and constitutes a diminution of their rights to access information and other rights.

37. Specifically for gender, there is recognition of the role of ICTs for women empowerment and exercise of their agency. But at the same time, barriers to women's access and participation in the online world have to be addressed. These barriers include improving women's access to affordable Internet, digital skills, access to relevant and local content, and digital safety.<sup>58</sup>

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<sup>57</sup> Some cases from the Philippines were reported by FMA in [ph.tbtt.apc.org](http://ph.tbtt.apc.org). See Annex B for some short snippets of cases

<sup>58</sup> The barriers mentioned in this submission were part of the report card developed by the World Wide Web Foundation, in partnership with ten countries that included the Philippines. FMA is the Web Foundation's partner for the Philippines in this project. For the report card, see

38. New issues, including internet rights, privacy violations online, and ICT related VAW are not taught as part of the formal educational system. Thus, the Philippines' legal ecosystem is also not ready or ill-prepared to deal with human rights abuses in the digital age.

39. The Administration of the newly-elected President of the Philippines is pushing for an all-out war on drugs that has resulted in the death of 3,295 individuals since July 1, 2016.<sup>59</sup> In relation to this, some lawmakers have already filed bills in Congress that allow wiretapping, interception, listening, to surveillance and recording of communications, conversations and messages in order to establish if there has been violation of the Comprehensive Dangerous Drugs Act of 2002.<sup>60</sup> In such a case, there is a conflict in the invasion of a person's right to privacy and abuse of authority. It remains to be seen how the technology, including the Internet, will be used to promote or suppress human rights.

#### **IV. Recommendations**

40. In light of the above issues, we call on the UN member states to make the following recommendations to the government of the Philippines:

On freedom of expression and online libel

- Review the implementing rules and regulations of the Cybercrime Prevention Act of 2012 and take immediate steps to repeal or amend the law especially those that criminalize online freedom of expression
- Repeal Section 4(c)4 of RA 10175 on online libel

On freedom of expression and sexual rights

- Recognize women's rights online and how ICTs can help promote agency and women empowerment
- Repeal Section 4(c)1 of RA 10175 on the cybersex provision and implement and strengthen existing laws that protect women against violence.

On online violence against women

- Recognize that gender-based violence in whatever form, whether offline or online, is a human rights violation
- Strengthen and implement laws that promote respect, protect and fulfill women's rights offline and online

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<http://webfoundation.org/2016/09/five-barriers-to-womens-online-empowerment-new-digital-gender-audit-released/>

<sup>59</sup> See "In Numbers: The Philippines' War on Drugs," Rappler, September 20, 2016. Available in <http://www.rappler.com/newsbreak/iq/145814-numbers-statistics-philippines-war-drugs>

<sup>60</sup> Examples of Bills proposed recently relative to this are Senate Bill No. 21; Also House Bills No. 289, 587, 1868, and 3406.

- Review existing laws and policies to see if they are still relevant and adequate in responding to new developments involving ICTs
- Ensure women's access to justice by having redress mechanisms in place, including an enabling environment, not just legal, that is able to address women's issues on VAW, including technology-based VAW
- Build the capacities of judges, prosecutors and law enforcers to ensure that Philippine laws protect and promote human rights in the face of a rapidly changing technologies, while at the same time ensuring gender-sensitivity in handling cases
- Ensure that policies in schools are in place to respond to incidences of bullying offline and online and consider the inclusion in the school curricula of emerging issues such as cyber bullying and online gender-based violence
- Strengthen the role of the Philippine Commission on Women in mainstreaming gender issues, including ICT-related VAW
- Ensure that women's, including those from the sectors of persons with disabilities (PWDs), indigenous peoples (IPs), and LGBTQIs, representation and meaningful participation in policy discussions and decision-making

#### On children's rights

- Promote, protect and fulfill the rights of children in the Internet
- Strengthen mechanisms for the protection of children from harm and abuse, including sexual abuse online
- Review Sec. 9 of RA 9775 and ensure that this is not used for collecting data or for mass surveillance
- Provide decent jobs and livelihood, especially to parents, so that they are able to care for and provide for the needs of children

#### On privacy and the digital environment

- Ensure that privacy, data collection and surveillance laws do not target, directly or indirectly, marginalized or vulnerable groups, including human rights defenders
- Strengthen the role of the NPC as an independent body to monitor and provide redress for human rights violations concerning the right to privacy
- For the NPC to conduct regular privacy audit on key, if not all, government offices
- Ensure that all government officers found to have contributed to the negligence that caused the COMELEC breach are held liable and accountable
- Ensure that all government agencies comply with the provisions of the Data Privacy Act regarding security and technical measures and recommend necessary action in order to meet minimum standards for protection of personal information
- Ensure that all government authorities permitted to undertake communications surveillance are subject to independent oversight and comply with international transparency standards