

SD43 Day 2 Workshop: Tech and Democracy in SouthEast Asia

Digital Authoritarianism in the Philippines

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TABLE OF CONTENTS

Tech & Democracy in Southeast Asia

Digital Authoritarianism
in the Philippines

1

INTRODUCTION

2

RESTRUCTURING HR VIOLATIONS

3

DOMESTIC LEGAL BASIS

4

INT'L HR LEGAL FRAMEWORKS

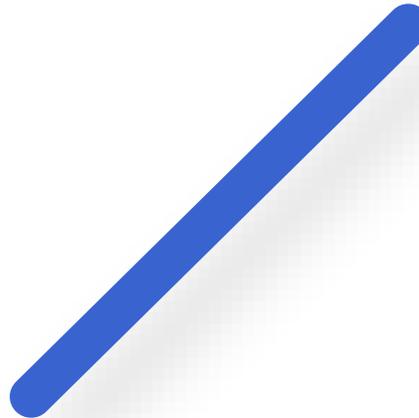
5

RECOMMENDATIONS

A.

RESTRUCTURING HR VIOLATIONS

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RESTRUCTURING HR VIOLATIONS:

How do threats to online freedom **compromise human rights?**

Digital Authoritarianism in the Philippines

* the activities marked with an asterisk also breaches the other two rights

Human Dignity & Right to Life

01

GENOCIDE of media figures, journalists in opposition to the gov't

* the end result of 02, 03 violations, and is buttressed by military force at the disposal of the gov't

Right to Security & Privacy

02

RED-TAGGING and online harassment *

UNWARRANTED ARRESTS of political opponents, gov't critics, pro-democratic individuals *

* due process of law

DIGITAL SURVEILLANCE*

cyberattacks following **SIM CARD REGISTRATION**

Freedom of Expression

03

MEDIA SHUTDOWNS (Rappler, ABS-CBN)

ARREST & PROSECUTION based on cybercrime law (RA #10175)

ONLINE CENSORSHIP (blocking & contentment manipulation)

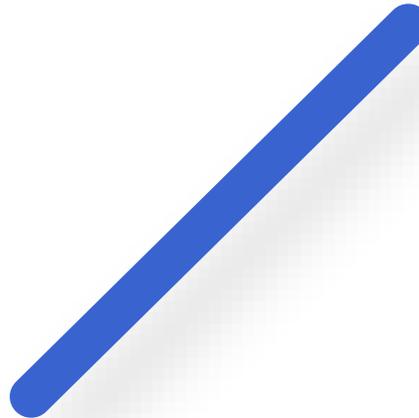
* also infringes upon the right to know & access information

* chilling effect

B.

DOMESTIC LEGAL BASIS

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DOMESTIC LEGAL BASIS:

How does the Philippines' legal system threaten or protect human rights?

Digital Authoritarianism in the Philippines

- In the Philippines, certain legislative systems make viable the violation of the aforementioned human rights.

01 Legislative System

- [DIGITAL SURVEILLANCE] **Anti-Terrorism Act of 2020** Section 16-18 (Surveillance of Suspects and Interception and Recording of Communications and Judicial Authorization) paves the way for online censorship, allowing law enforcement and the military to conduct surveillance of any form on an individual suspected of a terrorist act for 60 days, with a potential extension of 30 days. (Freedom House Report 2023)
- [SIM CARD REGISTRATION] **Subscriber Identity Module (SIM) Registration Act of 2022** mandates users to register SIM cards which places grave restrictions on anonymous communication and privacy protection. Privacy International has raised concerns about the legal void – i.e., absence of privacy · data protection legislation – which may facilitate the tracking and monitoring of users.
- [ARRESTS, PROSECUTION, GENOCIDE] **Cybercrime Prevention Act of 2012** Section 4c (4) “libel” & Section 6 (penalties) unduly assign criminal penalties or civil liability for online activities, the majority of which are protected under international human rights standards. **The Penal Code** Article 142 & 154 imposes prison terms and fines on those who “incite sedition” by means of speeches, proclamations, emblems, cartoons, banners, or other representations, and those who disseminate false news that “may endanger the public order, or cause damage to the interest or credit of the state.”

* Bills mandated during the coronavirus pandemic (RA #11469 “Bayanihan to Heal as One Act,” RA #11494 Bayanihan to Recover as One Act) further facilitate gov’t law enforcement in screening online content

DOMESTIC LEGAL BASIS:

How does the Philippines' legal system threaten or protect human rights?

Digital Authoritarianism in the Philippines

- Meanwhile, social and legal initiatives recognize the need for safeguards against online censorship and harassment.

02 The Constitution of the Republic of the Philippines

- 1) Human Dignity & Right to Life: Article II, section 5 · 11, Article III, section 1
- 2) Right to Security & Privacy: Article II, section 2, Article III, section 3
(vgl. due process of law III-14)
- 3) Freedom of Expression & speech: Article II, section 24, Article III, section 4

> Although the HRs under threat are constitutional, state enforcements – often arbitrary and excessive – cannot ensure these rights. Irene Khan (UN Special Rapporteur on freedom of opinion and expression) raised concerns about the legality of the Anti-Terrorism Act, the Cybercrime Prevention Act and the Penal Code which make possible the abusive “red-tagging” practices, urging the gov’t to adopt the Human Rights Defenders law (OHCHR Preliminary Observations, 02.02.2024.)

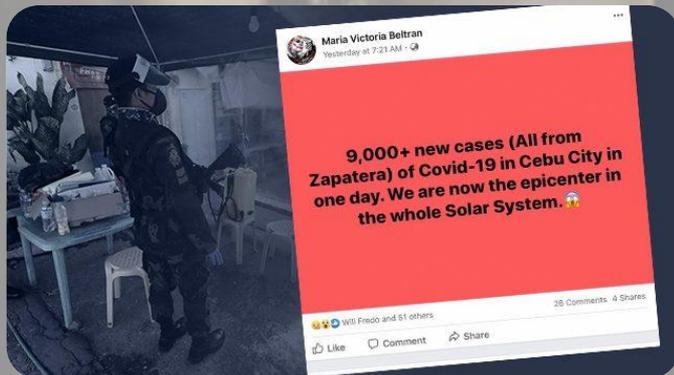
03 Initiatives by governmental bodies, social media and HR defenders

- COMELEC’s House Bill 2820 promotes “fair use of the internet and social media for the holding of free, orderly, honest, peaceful and credible elections.”
- There have been numerous bills and petitions that have sought to repeal the provision on cyberlibel and dispute the constitutionality of the Anti-Terrorism Act (Freedom House Report 2023).

The Case of Bambi Beltran – 1st Arrest

3 types of domestic legislation vs. Constitutional right to security and due process of law

- On 04.19. 2020., Cebu-based artist Maria Victoria “Bambi” Beltran was arrested (without a warrant) for cyber libel, and spreading or providing false information
 - 1) “spreading false information” regarding the Covid-19 crisis on social media and other platforms, such information having no valid or beneficial effect on the population, and are clearly geared to promote chaos, panic, anarchy, etc.” - *Bayanihan to Heal as One Act*, Section 6 (f)
 - 2) “tampering of records or intentionally providing misinformation” - *Mandatory Reporting of Notifiable Diseases and Health Events of Public Health Concern Act*, Section 9 (b)
 - 3) “Libel. — The unlawful or prohibited acts of libel as defined in Article 355 of the Revised Penal Code, as amended, committed through a computer system or any other similar means which may be devised in the future.” - *Cybercrime Prevention Act of 2012*, Section 4c (4)
- On 08.17. 2020., the charge on cyber libel was dismissed for lack of jurisdiction; on 09.15. 2020., Judge Artiaga of the Cebu Municipal Trial Court Branch 3 dismissed the remaining charges for lack of probable cause and violation of Beltran’s “constitutionally protected speech.”

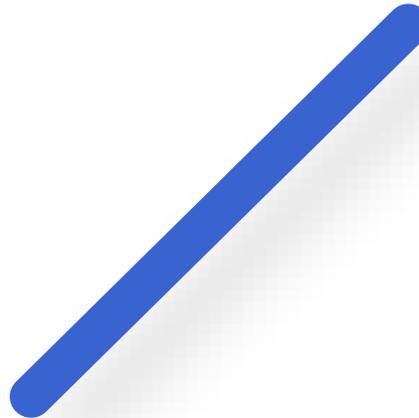


- 1) “The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, (...)” - *The Constitution*, ARTICLE III, Section 2.
- 2) No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances. - *Ibid.*, Section 4.

C.

INT'L HR LEGAL FRAMEWORKS

Digital Authoritarianism
in the Philippines



INT'L HR LEGAL FRAMEWORKS:

What is the international legal norms' take on the Philippines' legal system?

Digital Authoritarianism in the Philippines

RIGHT TO SECURITY, HUMAN DIGNITY AND RIGHT TO LIFE: RED-TAGGING, UNWARRANTED ARRESTS, GENOCIDE

01 CONTEXT

- Individuals have been subject to extra-legal intimidation and physical violence, inter alia, human rights defenders, journalists and rights activists, mainly by red-tagging (publicly accusing individuals through social media posts and official pronouncements).
- NUJP(National Union of Journalists of the Philippines) has reported that not less than 198 journalists have been killed since 1986.

02 Red-tagging, often extra-legal and practiced under the pretext of counter-terrorism strategy, continues to breed surveillance, attacks, and unlawful killings.

- **Article 9.1. of the ICCPR** states that "everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."
- Human Rights Watch(HRW) World Report 2024 and deputy Asia director called upon the Marcos administration to cease "red-tagging, a form of harassment that can lead to deadly abuses, and runs counter to Marcos's pledge to promote human rights"; The UN human rights office (OHCHR) has also denounced the practice of red-tagging as and arbitrary killings of activists and has been cooperating with the gov't in strengthening domestic investigative mechanisms on issues of human rights violations.

NUPL: “Red-tagging is punishable under RA#9851”

3 types of domestic legislation vs. Constitutional right to security and due process of law

- The NTF-ELCAC officials have persistently stressed that “red-tagging” does not constitute a crime or offense for lack of legal definition and penalties, *i.e.*, “is a legally non-existent act or crime.” They have justified labeling as “communist rebels” - not only NUPL members but those who are openly critical of government policies, human rights activists, and who hold progressive views.
- In July 2022, lawyers from National Union of Peoples’ Lawyers (NUPL), in their reply-affidavit filed before the Office of the Ombudsman, claimed that RA #9851 (Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity) penalizes the practice of red-tagging.
 - RA #9851, Section 6. Other Crimes Against Humanity (...) means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
 - (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, sexual orientation or other grounds that are universally recognized as impermissible under international law, (...)
 - Any person found guilty of committing any of the acts specified herein shall suffer the penalty provided under Section 7 of this Act.
- In the 19th Congress, Senator Panfilo M. Lacson - in his Sponsorship Speech for Committee Report 186 Red-Tagging and Red-Baiting(03.01.2021.) – elucidated several “legal recourses” guaranteed to victims of “red-tagging”, one of which was penalization under RA #9851 for violation of human rights. Additionally, the senator suggested the possibility of administrative charges against government officials(RA#6713) and penalization for under RA#3019 for violation of the Anti-Graft and Corrupt Practices Act.
- Thus, “red-tagging” should be construed as being unlawful under domestic law as well as ICCPR 9.1.

INT'L HR LEGAL FRAMEWORKS:

What is the international legal norms' take on the Philippines' legal system?

Digital Authoritarianism in the Philippines

FREEDOM OF EXPRESSION: RED-TAGGING AND THE 3-PART TEST (ICCPR 19, HRC General Comment 27 & 34)

- The HRC General Comment No.34 states that the right to freedom of expression includes "all forms of audio-visual as well as electronic and internet-based modes of expression."
- It should be taken into account that international HR law and standards protect a broad range of "expressions" regardless of their nature (political, scientific, religious), form (audio-visual, electronic), and means of transmission (canvassing, journalism, cultural and artistic expression).

LEGALITY

Restrictive measures must be
"provided by law"
→ precise, public, transparent

01

"The ATA Section 9 draws a vague and overly broad definition of terrorism, permitting warrantless arrests (...)," and "overly broad or vague definitions of terrorist offences in domestic law runs contrary to the human rights principle of legality"

(FreedomHouse Report 2023 & UNODC, Counter-Terrorism in the International Law Context, 2021)

NECESSITY

Must establish a direct and immediate connection between the expression and the threat said to exist

02

"The penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression."

(GC 34)

PROPORTIONALITY

Must be the least intrusive instrument among those which might achieve the desired result

03

"Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19."

(GC 34)

INT'L HR LEGAL FRAMEWORKS:

What is the international legal norms' take on the Philippines' legal system?

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RIGHT TO PRIVACY: COMMUNICATIONS SURVEILLANCE

01 CONTEXT

- surveillance of individuals as well as social media platforms is a growing concern in that the gov't possesses high-tech spying equipment and wiretapping capabilities, usually imported from foreign businesses
- Anti-Terrorism Act of 2020

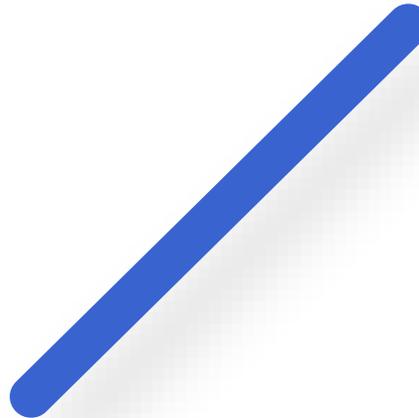
02 Anti-Terrorism Act of 2020 is problematic in that it acquiesces a comprehensive range of surveillance activities

- **Article 12 of the UDHR** states that "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation."
 - **Article 17 of the ICCPR** states that "everyone has the right to the protection of the law against such interference or attacks."
 - **The International Principles** on the Application of Human Rights to Communications Surveillance (collaboratively drafted in 2012, officially launched at UNHRC in 2013) states that the State must - in advance - substantiate the necessity, proportionality, and due process of surveillance to a competent judicial authority.
- * Note that these principles apply *regardless of* the purpose for gov't surveillance - be it enforcing law, national security, gathering intelligence - *i.e.*, "necessity" cannot be given precedence to the right to privacy.

D.

RECOMMENDATIONS

Digital Authoritarianism
in the Philippines



RECOMMENDATIONS

How to harbor **minimum safeguards**?

Digital Authoritarianism in the Philippines

 OHCHR Preliminary Observations, 02.02.2024 / Concluding Observations, CERD/C/PHL/CO/21-25

Legislature-based

01

Abolish the NTF-ELCAC, which serves an outdated purpose and adopt an all-inclusive peace-making platform

02

support the Philippine Plan of Action on the Safety of Journalists (PPASJ) – developed in partnership with UNESCO – and endorse its nationwide implementation

03

guarantee the autonomy of Commission on Human Rights (CHR) in its efforts to propose legislation that defines/prevents “red-tagging”

04

amend/review provisions in ATA concerning expanded surveillance and due process of law to accord with the ICCPR; repeal criminal libel of the Cybercrime Prevention Act & Penal Code

Policy-based

01

ensure that “Protected Information” (with consideration given to the form, scope, and duration of surveillance) is not arbitrarily collected by state authorities, by adopting judiciary or governmental oversight mechanism

02

issue a gov’t executive order denouncing “red-tagging” and set out measures that disincentivize and discipline perpetrators, encourage upcoming peace talks

03

strengthen collaboration between the DoJ, National Police and the National Bureau of Investigation to identify perpetrators of threats and violence; establish a special prosecutor for crimes against journalists and HR defenders