

GLOBAL INFORMATION SOCIETY WATCH 2013

Women's rights, gender and ICTs



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Lori Nordstrom

Publication production

Mallory Knodel

Proofreading

Valerie Dee
Lori Nordstrom

Graphic design

Monocromo
info@monocromo.com.uy
Phone: +598 2400 1685

Cover illustration

Matías Bervejillo

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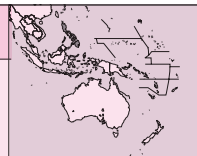
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PHILIPPINES

Violence against women and children online



Foundation for Media Alternatives (FMA)

Nina Somera

www.fma.ph

Introduction

It is not uncommon to see movie producers, talent managers and television hosts and newscasters become political kingmakers. But rarely do we find show business influencing policy making, especially around women's human rights and gender equality – and this in less than six months.

Back in 2009, the country was gripped by yet another spectacle that involved personalities whose glamorous lifestyles alone had been fodder for conversations of admiration, awe and resentment, especially given the everyday context of poverty and inequality. Yet this spectacle was out of the ordinary. A dashing doctor, Hayden Kho, who was then in a relationship with another celebrity dermatologist and business magnate, who was two decades his senior, was found to have had trysts with at least three younger women actors and models. These were revealed in videos which were uploaded and distributed online, allegedly by former buddies who had grudges against him.

The incident exposed too much of the public personalities' private lives, demeaning anyone's sense of dignity, besmirching reputations and careers and, in the end, resulting in Republic Act 9995, otherwise known as the "Anti-Photo and Anti-Voyeurism Act of 2009".

The Hayden Kho controversy is just one of the more obvious manifestations of the link between women and information and communications technologies (ICTs), yet violence against women (VAW) and discrimination are ripe for discussion in any analysis of access to technologies and access to justice. Moreover, the presence of power relationships online brings to the fore the otherwise intellectual discourses around body and control. For Filipino women, these are less intellectual than practical choices.

Policy and political background

The cases involving Hayden Kho are somehow instructive in the development of policies in general. Back in the 1990s, news on VAW involving wives, partners, parents against their own children, Filipino domestic

workers abroad, "mail order brides", young girls, among others, had influenced the crafting of national laws which are specific for women and girls. It also helped that the 1990s was a decade of conferences – and at least three of these have had a profound impact on women's human rights discourses. These conferences include one on human rights in 1993, where the resulting Vienna Declaration affirmed that women's rights are human rights and in no way could culture be used to deny a woman's exercise of her rights. The others were the 1995 World Conference on Women (Beijing Conference), which is responsible for the gender and development (GAD) framework and the recognition of the "girl child"; and the 1993 International Conference on Population and Development (ICPD) that affirmed sexual and reproductive health and rights. The Philippines played a key role in the drafting of the Beijing Platform of Action and, much earlier, in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹

In the Philippines, these have been translated into several legal measures which include the 1992 Women in Development and Nation Building Act, the Anti-Rape Law of 1997, the Anti-Sexual Harassment Act of 1995, the Mail Order Bride Act, and later, the Anti-Trafficking of Persons Act of 2003, the Anti-Violence Against Women and Their Children Act of 2004, and the Special Protection of Children Against Abuse, Exploitation and Discrimination Act.²

- 1 Patricia Licuanan, currently the head of the Philippine Commission on Higher Education (CHED), was the co-chair of the Beijing Conference, while Senator Leticia Ramos Shahani was with the Philippine Department of Foreign Affairs (DFA) when she together with her Russian counterpart wrote the first drafts of CEDAW back in the 1970s.
- 2 Republic Act 6955: Mail Order Bride Law, 24 July 1989. www.pcw.gov.ph/sites/default/files/documents/laws/republic_act_6955.pdf, Republic Act 7192: Women in Development and Nation Building Act, 22 July 1991. www.pcw.gov.ph/sites/default/files/documents/laws/republic_act_7192.pdf, Republic Act 7610: Special Protection of Children Against Abuse, Exploitation and Discrimination Act, 22 July 1991. www.pcw.gov.ph/sites/default/files/documents/laws/republic_act_7610.pdf, Republic Act 7877: Anti-Sexual Harassment Act of 1995, 25 July 1995. www.pcw.gov.ph/sites/default/files/documents/laws/republic_act_7877.pdf, Republic Act 8353: Anti-Rape Law of 1997, 28 July 1997. www.pcw.gov.ph/sites/default/files/documents/laws/republic_act_8353.pdf, Republic Act 8505: Rape Victim Assistance and Protection Act of 1998, 28 July 1997. www.pcw.gov.ph/sites/default/files/documents/laws/republic_act_8505.pdf, Republic Act 9208: Anti-Trafficking in Persons Act, 22 July 2003. www.pcw.gov.ph/sites/default/files/documents/laws/republic_act_9208.pdf, Republic Act 9262: Anti-Violence Against Women and their Children Act of 2004, 8 March 2004. www.pcw.gov.ph/law/republic-act-9262

The 1992 Women in Development and Nation Building Act confers equal rights and opportunities for both women and men, supporting the right of women to enter into contracts and workplaces, including the government, and to enrol at educational institutions including the Philippines Military Academy. The law also mandates government offices to allot a substantial portion of official development assistance to projects for women. The Anti-Rape Law of 1997 amends the former definition of rape as a crime against chastity into a crime against the person, punishable by up to 30 years imprisonment or death. The law also covers marital rape. In support of the Anti-Rape Law of 1997, RA 8505, or the Act Providing Assistance and Protection for Victims, was approved. RA 8505 mandates the establishment of crisis centres in every province and city that would provide medical, psychological and other kinds of assistance to rape survivors. The Anti-Sexual Harassment Act of 1995 prohibits sexual harassment in workplaces, educational and training institutions.³ The Mail Order Bride Act prohibits practices of matching Filipino women to foreigners for marriage. It also bans the advertisement of women for this market.

The Anti-Trafficking of Persons Act of 2003 penalises the “recruitment, transportation, transfer or harboring, or receipt of persons” resulting in exploitation such as forced labour and sexual slavery. In trafficking, recruitment involves deceit, as victims are usually made to believe they have prospects of employment. Persons operating this business may receive punishment of up to 15 years imprisonment and fines ranging from PHP 500,000 (around USD 11,500) to PHP 1,000,000 (USD 23,000). Persons who engage the services of trafficked persons are likewise held liable under this law.

The Anti-Violence Against Women and Their Children Act of 2004 covers various forms of violence. Aside from consolidating provisions from the Anti-Rape Law of 1997 and the Family Courts Act of 1997, the law also includes provisions on economic abuse or acts which make women financially dependent on perpetrators as well as harassment. Under the law, women who are found to be suffering from “battered wife syndrome” or those who experience a “scientifically defined pattern of psychological and behavioral symptoms found in women living in battering relationships as a result of cumulative abuse” are not denied custody of their children. The Special Protection of Children Against Abuse, Exploitation and Discrimination Act

prohibits all forms of child-targeted abuse, specifically addressing child prostitution, including child pornography.

While the law imposes stringent penalties on various forms of child abuse, its weakness manifests in child pornography over the internet. Cases against operators of online pornography may only be filed with the physical presence of children who are involved. A different but allied dilemma is faced in cases involving women who were involved in so-called online sex dens, which in the earlier days were run mostly by expatriates who could afford computers and fast internet connections. The women who were involved were usually arrested and charged for obscenity, while foreign operators could easily slip out of the country.

The year 2009 indeed marked a change in these laws with the Anti-Photo and Video Voyeurism Act and the Anti-Child Pornography Act (RA 9779), which now covers online pornography involving children. Until the cases involving Kho, stories of women whose nude pictures and sexual acts had been shot without their consent remained mere montages which had been packaged into DVDs and inconspicuously sold among pirated movies. On several occasions, these “scandals” had been linked to universities where the parties were allegedly enrolled as students or where the acts supposedly happened. After being talked about and, at times, reported in mainstream media, none of the masterminds, particularly in instances when women did not give their consent, were prosecuted, much less punished.

It was also in the same year that the Philippine Congress passed RA 9710 or the Magna Carta of Women (MCW), which is meant to serve as a framework for all laws related to women and girls. The salient points of MCW include the renaming of the National Commission for the Role of Filipino Women (NCRFW) to the Philippine Commission on Women (PCW), which signals a shift from a women in development (WID) paradigm into one that suggests women’s sense of ownership of a space within the bureaucracy. The MCW also provides equal access and elimination of discrimination in education, scholarships and training. This provision prohibits any school from dismissing and expelling students who became pregnant out of wedlock.

Analysis

These laws are indeed a boon to many women and girls across the country. However, there is a big gap between the fine print and the implementation of laws on the ground, which entails the adequate

3 Unfortunately, this law is quite limited in scope as it does not cover sexual harassment that takes place outside workplaces and schools even as power relationships are involved.

infrastructure, clear processes and genuine political will. The three laws passed in 2009 – the Anti-Photo and Video Voyeurism Act, the Anti-Child Pornography Act and the MCW – were crafted and processed at a time when people’s confidence in the government was at its lowest and, as a result, the administration had the tendency to redeem itself from time to time based on what was popular.

Take for instance the MCW. While this was legislation that was obviously for women and girls, its authors chose not to define “gender”, which is critical particularly in addressing the power relationships that develop between the sexes, and foster gender-based discrimination and violence. Such a glaring lack has been attributed to the interventions by the Catholic hierarchy in the legislative process – earlier texts of the legislation referred to same-sex partnerships and reproductive health. As her administration was wracked by crisis around legitimacy, Gloria Macapagal-Arroyo had the tendency to both court and appease the religious orders. As Ana Maria Nemenzo of WomanHealth expressed: “I am so disgusted and frustrated with the intervention of the church in corrupting a secular and credible legislative process.”

Meanwhile, the Anti-Child Pornography Act was easily lauded by child rights groups but its content and implementation can potentially curtail communication rights, as the law provides for content filtering that can also be used for censorship. Such finer aspects of the law were hardly deliberated.

It is important to note that it was the Arroyo administration that oversaw the passage of several laws related to ICTs, including the creation of institutions such as the Department of ICT. However, the administration, being a staunch ally of the right-wing government of US President George W. Bush, is also known for having attempted to curtail basic communication rights including freedom of expression, freedom of association and the right to privacy. For instance, in 2005, Arroyo ordered the authorities to exercise a “calibrated pre-emptive response” in managing street protests. Two years later, she supported the passage of the Human Security Act, which provides for warrantless arrests and surveillance as a means to deter terrorism. The earlier versions of the now controversial Cybercrime Law were likewise introduced during her administration.

Access to justice

It is still too early to judge the efficacy of the Anti-Photo and Video Voyeurism Act. At the moment, a number of cases have been filed and

some are being heard in courts.⁴ Nonetheless, hopes are high that it will be effective. The law forbids the recording of an individual without one’s knowledge, especially in compromising situations such as when one is nude or scantily clad, and the copying and distribution of such content, whether without a cost or for sale. The controversial Cybercrime Law, which has been widely criticised for its “take down” provisions or those which allow government agents to block libellous content, has provisions around protection of one’s privacy.

However, for the women’s political party, Gabriela, these supposedly protective provisions of the Cybercrime Law and the Anti-Photo and Video Voyeurism Act as a whole are not enough to address VAW online. For Gabriela, the latter only covers images despite there being other ways where ICTs can violate women’s human rights. Because of this, the party’s representatives in Congress filed a bill that amends the Anti-Violence Against Women and Their Children Act of 2004 to include “electronic violence against women” or e-VAW. In the bill, e-VAW is defined as “any acts or omissions that involve the use or exploitation of information and communications technology (ICT) which causes or is likely to cause mental, emotional or psychological distress or suffering to the victim.”⁵

Aside from the limitations of existing laws, partly owing to the very history of how these have been crafted, there remain the more practical and immediate barriers in the country’s judicial system. Laws are still written in English, which is not accessible to the majority despite claims of the Philippines’ relatively high proficiency rates compared to other parts of Southeast Asia.⁶ Moreover, tapping legal services is quite expensive and in the long haul can be equally damaging, especially in the absence of ancillary services such as counselling. Although the government has agencies which provide free legal advice and services as well as social work, the services needed in a VAW case are not comprehensive enough in terms of both frame-

4 The case filed against Kho was dismissed twice and with finality, as there was insufficient evidence to support that he was the one who uploaded the sex video that involves another actress. *Philippine Daily Inquirer* (2012) Hayden wins anew vs. Katrina, *Philippine Daily Inquirer*, 16 August. newsinfo.inquirer.net/251392/hayden-wins-anew-vs-katrina

5 Gabriela Women’s Party Representatives Emmi De Jesus and Luzviminda C. Ilagan (2013) House Bill 6815, filed at the 15th Congress of the House of Representatives of the Philippines. www.congress.gov.ph/download/basic_15/HBo6815.pdf

6 Mendoza, S. (2012) PH: Best in the best business English, *Yahoo! News*, 25 April. ph.news.yahoo.com/ph--world-s-best-country-in-business-english.html

work and implementation.⁷ Feminist legal theory and practice are not mainstreamed enough, particularly at the legislative and judicial branches of the government. Similarly, psycho-social services, especially those which account for the economic needs of survivors of violence at a time when they are emotionally rehabilitating themselves and pursuing legal recourse, are not quite established.

Morality in modernity

The relationship between gender and ICTs is likewise informed by morality as much as modernity. At the outset, the uproar over the controversy resulting from the sex videos which featured Hayden Kho and several women signified awareness over women's human rights. Sympathy for actress Katrina Halili – one of the women involved – was overwhelming, as her body and her sexual desires were exposed almost in a very permanent manner as it is quite possible to store and play the images of her trysts with Kho for generations to come. As one senator who used to be an actor described the series of events, the images “ruined the dignity and honour of this hapless woman.”

But this seems to be an overstatement that tends to belittle one's agency. To a certain extent, the support for Halili was backhanded, especially as she was seen as a desirable subject who seduced Kho who was in a relationship with a more than 50-year-old celebrity dermatologist who owns a PHP 1-billion business empire. Hence Halili was both a victim and a villain to the public that consumed the spectacle.

With this lens, the consensus over the violence against Halili is distorted, in that the focus was on her honour rather than her choice, which defines the boundary between pleasure and violence, between what she permitted and what she did not. It is interesting to note Halili's formal complaints against Kho were isolated to the act of uploading the videos, not the recording of them.

For the public, it still appears that there must be no room for pleasure, that if indeed it exists, it must be invested with love.⁸ As Alankaar Sharma put it in *in plainspeak*: “It may be difficult to wrap our brain around this idea due to connotative values of the

two concepts. (...) Abuse is negative while pleasure is positive. (...) Pleasure is a terribly complex and multi-dimensional concept that refuses to fit so neatly into boxes.”⁹ But the recognition of pleasure is actually critical in understanding the impact of violence on a body.

In many ways, the idea of morality still dictates how a sense of agency can be appreciated, particularly women's exercise of individual human rights, especially those related to their body, control and mobility and their supposed obligation to a community, especially through marriage and family life. Although “public morality” has been part of international human rights standards such as the Universal Declaration of Human Rights (UDHR),¹⁰ it has never been defined objectively. Instead, its interpretation has relied on the dominant patriarchal and political order in a particular place at a particular time.¹¹ This also explains the evasion of the most intrinsic issues for women as well as gender and sexual minorities in the MCW. Aside from refusing to define “gender”, the final text did not bolster the chances of a progressive law on reproductive health, where women and girls are given the chance to obtain information on sexual and reproductive health and rights and plan and manage their pregnancies. It was only in early 2013, after 16 long years of advocacy and campaigning, that a reproductive health bill was passed.¹² Yet, at the time of writing, this new law is still being challenged in the country's Supreme Court.

Rethinking agency online and offline

The controversy surrounding Hayden Kho indeed shows different dimensions in assessing the link between gender and ICTs and its corresponding policy processes. The haste in passing the Anti-Photo and Video Voyeurism Act can be read as a policy-making process that aims to catch up with the developments in technology. Narrowing the gap between the efficacy of laws and the pace of technology and subsequent updating also has implications for feminist and other social movements.

For several years now, women and young girls have outrun their male counterparts in education and

7 Defensor-Santiago, M. (2010) The Praxis of Gender Justice in the Philippines: Implications for Lawmaking, paper presented at the *Parliamentarians for Global Action (PGA) Panel on Gender Justice and Women's Rights, Istanbul, Turkey, 24 October*. miriam.com.ph/newsblog/?p=489

8 This also brings to mind the Karen Vertido rape case, which was dismissed by local courts because Vertido, who was already married and a mother, was found not to fit the image of a “rapable” woman. After all national remedies were exhausted, the case was elevated to the United Nations CEDAW Committee, which found the Philippine state remiss in administering justice.

9 Alankaar Sharma (2007) Focusing on the sexual in child abuse, *in plainspeak*, Issue 4.

10 Article 29.

11 Yuval-Davis, N. (1997) *Gender and Nation*, Sage, New York and London.

12 Analysts often say that unlike his predecessor, President Benigno Simeon Aquino III has political capital, beginning with his reputation, since he has never been implicated in any corruption case and other scandals, making him relatively more resilient and less dependent on some traditional power brokers such as the Catholic church.

employment. While science courses are still roughly dominated by men, there are far more women who finish high school and reach tertiary level. Cheaper communication tools such as Android phones, coupled with faster services, have made it easier for more people to be connected to the internet.

Such access has enabled more and more Filipino women to develop relationships with men online and later migrate to marriage. The dynamics remain essentially the same: women are typically younger while men are older, mostly blue collar workers in their own countries. However, there has been a significant change in the medium and reach of this way of communicating. The webcam has been quite a strategic tool in facilitating intimacy between parties. Placement agencies which process fiancé visas and marriage permits have heavily tapped this resource.

But the women tend to be more informed in using technologies compared with the previous generation, and have a better chance of obtaining information from the other party involved. In fact, even more educated and middle-class Filipino women such as Al Jazeera host Veronica Pedrosa and Broadway singer Lea Salonga have engaged in this form of courting. Meanwhile, men are no longer limited to the English-speaking Western countries such as the United States, Australia and some parts of Europe. Older men from East Asia are increasingly participating in online courting.

Moreover, the phenomenon challenges perspectives around migration, which becomes coupled with

so-called migratory “push factors” and marriage as a sacred institution. For years, the dominant discourse on labour migration has described women as devoid of agency because of the daunting responsibility of providing for their families. But there is reason to believe that migration, even urban migration, is increasingly becoming a choice – even when displacement and disempowerment occurs.

Similarly, one’s entry into a marriage is not necessarily informed by love but rather one’s own strategy in exercising mobility and uplifting one’s life. The latter is facilitated by better ways of accessing information and therefore calculating risks.

Action steps

The agency women exercise in engaging in internet-facilitated migration in order to marry tests the victim approach of existing laws, such as those on mail-order brides and even trafficking, as well as feminist perspectives, including those on prostitution and sex work. As Tesa de Vela, former deputy director of Isis International asserts: “Development players are not here to judge why women go into marriage migration. The job of governments is to ensure that the rights and welfare of women are protected. The job of NGOs is to look into ways of supporting women wherever they may be. One way of achieving this is to accept the challenge to broaden or create multiple frames of analysis that is reflective of what women want and the life they choose.”¹³ ■

13 Rina Jimenez David (26 October 2008). “Migrant women: wives and workers.” services.inquirer.net/mobile/08/10/26/html_output/xmlhtml/20081026-168473-xml.html