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| philippines  CASE PAPER FOR ISEC 3050 – ETHICS AND LAW IN DATA ANALYTICS | MEMBERS  BROWNE, CHERISH  LU, JAMIE  ODEBUNMI, ISLAMIYAT  SMITH, LEEANN |

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# 1.0 INTRODUCTION

This case study profiles the Philippines’ ethical, legislative, cultural, and governing practices in relation to the following:

* Privacy, information privacy and individual rights and freedoms.
* Laws that relate to information privacy.
* Cultural practices that relate to privacy, rights, and freedoms.

The Philippines was claimed in the name of Spain in 1521 by Ferdinand Magellan, a Portuguese explorer sailing for Spain, who named the islands after King Philip II of Spain. They were then called Las Felipinas. The Philippines was ruled under the Mexico-based Viceroyalty of New Spain. After this, the colony was directly governed by Spain. Spanish rule ended in 1898 with Spain's defeat in the Spanish American War. The Philippines then became a territory of the United States.(Wikipedia, 2020)

# 2.0 FILIPINO CULTURE

There are multiple Filipino cultural practices and traits. This includes hospitality, respect, and generosity. Filipinos are also religious, with majority of the country being Roman Catholic. This can even be seen in how the country has shaped its laws. Filipinos are also family-oriented and mostly live with their extended families even into adulthood. Families houses are even sometimes clustered together in one compound. There are a lot of houses that are clustered together in the Philippines, which could be a reason why people are usually so close with their neighbours. It could also be a reason why ***tsismis or gossip,*** has become such a commonly known Filipino trait between Filipinos.

2.1 Tsismis or gossip[[1]](#footnote-2)

This is defined as rumour or idle talk regarding the private or personal affairs of other individuals. It has become sort of like a favorite pastime of some Filipinos, regardless of their social standing. A possible reason why Filipinos love gossip is that because provides high entertainment value for little to no cost. It even goes back to the Spanish colonial era; Spaniards have said to have noticed Filipinos going together in small groups and talking for hours and hours. During the Spanish colonial era, this was a survival mechanism because it helped build relationships and used to disclose trusted information that is vital to their survival and wellbeing.

This is troubling because it greatly impacts how Filipinos understand the idea of privacy. Employees might share private information, regardless if this is done with or without malice, it is still a breach of privacy. Gossip or *tsismis* can quickly turn into the destruction of an individual or organization’s reputation.

Privacy breaches are even said to be committed by health workers, local government units, ordinary citizens, says the National Privacy Commission, which is investigating cases regarding this. (Dizon, 2020)

During the rise of COVID-19 from mid-March to late May, the National Privacy Commission (NPC) had been investigating 22 complaints of privacy breaches involving more than 150 COVID-19 patients, as well as suspected and probable cases.

One case the NPC is looking into, according to Privacy Commissioner Raymund Liboro, was the Cagayan[[2]](#footnote-3) provincial government’s disclosure of the names of the coronavirus positive residents on its official Facebook page all in the name of contact tracing. Michael Masirag, a Cagayan Netizen criticized the provincial government on his personal Facebook account. In his words he said: “Firstly, it’s unfair for the patients. Secondly, it is just illegal. And I don’t think that an office in the provincial government, or any government officer for that matter, can just do whatever it wants. – that they can just disregard a constitutionally-protected right for their convenience,” (Dizon, 2020) But the government said public health and public safety must be weighed against one’s individual rights, hence, you could say that when national security is at stake, it is placed above individual rights.

2.2 Utang na loob or a debt of gratitude[[3]](#footnote-4)

Another Filipino trait, utang na loob or a debt of gratitude, is a person’s sense of obligation to repay a person who has done them a favor. This is a something that has been ingrained in Filipino culture. This can be a good thing as it shows your appreciation for something someone has done for you. However, this could be negatively used as well. This is an issue when it affects a person’s attitude towards another person or when it affects a person’s decision. There are countless instances of *utang na loob* being a negative. For example, when a friend lends you money, and that friend then asks you for a favor that goes against your own principles. Utang na loob will affect your decision making.

Utang na loob can also lead to blind loyalty. This is when the recipients see the benefactors as perfect. A great example of this is a politician granting favors for voters during election time. The voters feel a sense of obligation and thus, affects their decision on who to vote for. This can turn into a form of manipulation that can be used by someone to get ahead.

# 3.0 ETHICS

There were several periods in Philippine history where the head of state placed an area under the control of the armed forces. Known as Martial Law, it is declared when there is violent civil unrest; most countries use a different legal construct such as a “state of emergency”

Martial Law establishes curfews, the suspension of civil law, civil rights, habeas corpus and the application or extension of military law or military justice to civilians. However, during Marcos rule only the writ of habeas corpus was suspended, making civilian and military courts effectively the same. Civilians defying martial law may be subject to military tribunals.

In the beginning of Marcos presidency in 1965 the country was under the 1935 constitution, under which the president would serve a 4-year term and could be re-elected twice. In 1971 a constitutional convention was held to re-write the 1935 constitution. There is much speculation behind the true motive behind this due to the elimination of the term limit for the president. Marcos was a dictator, who under Article 7, section 9 of the 1973 Philippine constitution:

*“The president can suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law.* “ (1971 Constitutional Convention)

Marcos argued that martial law would be necessary as a response to the communist threat by the communist party of the Philippines (CPP), and the sectarian rebellion of the Mindanao Independence Movement (MIM). During martial law along with the suspension of habeas corpus, the 1935 constitution was dissolved, the doors to the Batasang Pambansa were padlocked and both legislative and executive powers were assumed. [[4]](#footnote-5)

February 22 to 25th 1986 the Filipino people held nonviolent demonstrations against the current regime. Known as EDSA or the People, Power, Revolution. The result of this demonstration was the election of President Corazon Aquino. The majority of the laws the Philippines have today were created to rectify the human rights issues from the Marcos era. Aquino drafted the 1987 constitution, establishing 3 governing powers: Executive, Legislative and Judicial branches. Each with limitations and safeguards to ensure a democratic government. The constitution also allowed for the creation of 3 independent constitutional commissions, civil service, elections, and audit, all with the intention of establishing and ensuring an ethical and lawful government.

## 3.1 Philippine Preamble

*“We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution.”* (Philippines, Constitution of the Republic of the Philippines, 1987)

## 3.2 Ethical Regulations

In 1989 the congress of the Philippines released the Republic Act number 6713. This act was created to establish ethical standards and a code of conduct pertaining to all public officials and government employees.

*“declaration of Policies – it is the policy of the state to promote a high standard of ethics in public service. Public officials and employees shall at all times be accountable to the people and shall discharge their duties with the utmost responsibility, integrity, competence, and loyalty, Act with patriotism and justice, lead modest lives and uphold public interest over personal interest.”*

The code of conduct and ethical standards for public officials and employees outlines how government and political employees need to act. Sections 4 through 7 carry a common theme, repeatedly stating that loyalty to the country is to be held above the individual, that employees may never act against a law, must follow public policy, and work with public safety and interest in mind at all times. These ethical guidelines have allowed for the current “war against drugs” and “Anti-terror laws” which by our standards would be non-ethical practices to be carried out by political officials and government employees.

## 3.3 Key Points of the “Code of Conduct and Ethical Standards for Public Officials and Employees”

### Section 4 Norms of conduct of public officials and employees

1. Commitment to public interest
2. Professionalism
3. Justness and Sincerity
4. Political Neutrality
5. Responsiveness to the Public
6. Nationalism and Patriotism
7. Commitment to Democracy
8. Simple Living

### Section 5 Duties of public officials and employees

1. Act Promptly on letters and requests
2. Submit annual performance reports
3. Process documents and papers expeditiously
4. Act immediately on the public’s personal transactions
5. Make documents accessible to the public

### Section 7 Prohibited acts and transactions

1. Financial and Material interest
2. Outside employment and other activities
3. Disclosure and or misuse of confidential information
4. Solicitation or acceptance of gifts

# 4.0 LEGISLATION

The main sources of law in the Philippines are:[[5]](#footnote-6)

1. Philippine Constitution - fundamental and supreme law of the land
2. Statutes - the Acts of Congress, municipal charters and legislations, court rules, administrative rules and orders, legislative rules, and presidential issuances
3. Treaties and conventions – carry the same force of authority as statutes
4. Judicial Decisions – only Supreme court decisions

## 4.1 LAWS

The Philippines has had extrajudicial killings and forced disappearances from previous regimes. During Marcos’ regime, he had a constitutional convention and changed the constitution so he could declare martial law. After he declared martial law, there were cases of extrajudicial killings and forced disappearances. There were no remedies available for these. Once he was ousted, during the time of President Corazon Aquino, a new Philippine constitution was made. This was done to fix the problems created by the previous administration. However, even after the new Philippine constitution was made, the only remedies available before were just to either hire a private investigator, or file a police complaint, which usually does not get anything done.

During the time of the Arroyo administration, it was the height of extrajudicial killings and forced disappearances. Before the writ of Amparo was created, individuals would need to file a criminal case which would require high requirement of proof. They would need to identify an individual or department and prove them guilty beyond reasonable doubt and moral certainty.

The writ of amparo will allow a victim to prove that their right to life or privacy was violated, then the court will be the one to send a summons to the State authorities, and they will be required to exhaust all efforts to locate any alleged victims or missing individuals, and their activities would be closely monitored by the Courts.

This is a significant change and a move towards the right direction because before, state authorities can just deny claims made and are able to get away.

## 4.2 Writ of Amparo[[6]](#footnote-7)

*“Under the Rules of the Supreme Court, the petition for a Writ of Amparo is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. The writ shall cover extralegal killings and enforced disappearances or threats thereof.”* (Patajo-Katipunan, 2019)

* This writ is enforceable anywhere in the Philippines.
* Extralegal killings and enforced disappearances or threats are covered by this writ and can be used as a remedy for it.
* It can be filed by an aggrieved person and must be filed anytime with the Regional Trial Court of the place where the threat was committed.
* There will be no need for payment of docket and any other lawful fees for the petitioner.
* The writ issuance will be ordered by the court or judge not later than 7 days from the date of issuance upon filing of the petition. A clerk of the court who neglected to do this will be penalized by the court, justice, or judge for contempt without prejudice.

### 4.2.1 Interim Reliefs for the petitioner before the final judgement:

#### Temporary protection of order

* + petitioner or aggrieved party and any member of the immediate family will be protected in a government agency or by an accredited person or private institution capable of keeping and securing their safety.

#### Inspection Order

* + The court may order any person in control of a designated land or property to permit entry for the purpose of inspecting, measuring, surveying, or photographing the property upon verified motion.

#### Production Order

* + the court may order any person in possession of any designated documents, papers, books, accounts, letters, photographs, object, or tangible things which constitute or contain evidence relevant to the petition.

#### Witness protection order

* + The court, justice or judge may refer witnesses to the department of justice for admission to the witness protection security and benefit program upon motion.

## 4.3 Writ of Habeas Data[[7]](#footnote-8)

*“The Writ of Habeas Data extends to those engaged in the gathering, collecting, or storing of data or information regarding the person, family, home and correspondence of the aggrieved party.”* (Supreme Court of the Philippines, 2008)

* This writ is enforceable anywhere in the Philippines.
* It is available as remedy to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting, or storing of data or information regarding the person, family, home, and correspondence of the aggrieved party.
* The writ of habeas data can be filed by either the aggrieved person or party, or by an immediate family member if it is the case of extra judicial killings or forced disappearances.
* The court will decide within ten days from the time the aggrieved person or party files the petition. If allegations in the petition are found to be substantial, the court will order the deletion, destruction or rectification of the erroneous data or information.

### 4.3.1 Requirements of verified petition for a writ of habeas data:

1. Personal circumstances of petitioner and respondent
2. How the right to privacy is violated or threatened and how it affects the right to life, liberty, or security of the aggrieved party
3. Measures and remedies taken by the petitioner to secure data.
4. The location of the files, registers or databases, the government office, and the person in charge, in possession, or in control of the data or information must be provided if it is known.
5. Reliefs prayed for, which could include updating, rectifying, supressing, or destroying the information or files kept by the respondent

The writ of Habeas Data intends to protect the image, privacy, honor, information, self-determination, and freedom of information of a person. It can be used to discover what is being held about his or her person, via rectification or destruction of the personal data held. (Patajo-Katipunan, 2019)

## 4.4 Data Privacy Act of 2012[[8]](#footnote-9)

* This is also known as Republic Act No. 10173
* This is the first law in the Philippines that talks about the rights to personal data and imposing responsibility over the entities who process them.
* This safeguards the Right to ensure that information of private sectors and government are secured and protected.
* In section 8 of the law, the Commission must make sure that any personal information in its knowledge or possession must be kept confidential.
* Before information can be shared, there must be a disclosure of information made to the public.
* In section 20, the ones in control of information should make sure that the information is protected from any destruction (accidental or unlawful), altercation, disclosure, and unlawful processing.

### 4.4.1 National Privacy Commission

* an independent body
* created under Republic Act No. 10173 or the Data Privacy Act of 2012
* administers and implements RA 10173
* ensures that the country complies with the international standards for data protection

4.4.2 Penalties

1. Imprisonment ranging from one to three years
2. Fine of not less than five hundred thousand Pesos but not more than two million pesos.

### 4.4.3 Exceptions for data sharing

If it is authorized by law, data sharing has exceptions. However, there are adequate safeguards for data privacy and security.

1. If the data subject consents to the data sharing in private sectors
2. If the data is collected from parties for research purposes
3. If it is between government agencies for public function or provision purposes

## 4.5 Anti-Terror Law[[9]](#footnote-10)

* This law amends the 2007 Human Security Act and imposes as rougher response to terrorism in the Philippines.
* It creates a council, who are appointed by the president, that can designate individuals and groups as terrorists and detain them without charge or warrant for up to 24 days. (Morales, n.d.)
* It allows surveillance and wiretaps, and punishments that include life imprisonment without parole. (Morales, n.d.)
* This law gives a broad definition of terrorist acts as an individual or groups’ intent to cause death and damage property.
* There have been multiple heavy criticisms surrounding the Anti-Terror Law due to its vague definition of terrorism and potential for grave abuse of authority. It can potentially be used to silence any activists or individuals expressing their dissent towards current policies or the current administration. (Asia Pacific Foundation of Canada, n.d.)
* The National Union of People’s Lawyers or NUPL has expressed that the law blatantly disregards the 1987 Constitution, which states that no law shall be passed infringing on the freedom of speech and expression, the freedom of assembly, and the right to petition the government for a redress of grievances. (Asia Pacific Foundation of Canada, n.d.)
* There have also been multiple people, not limited to activists, that have been sharing the hashtag #JunkTerrorLaw online. Some people have even likened it to the period of martial law under Marcos. The International Human Rights watch have even called it a “stealth declaration of martial law.” (Asia Pacific Foundation of Canada, n.d.)

## 5.0CASES

## 5.1 Rodriguez Vs. Macapagal-Arroyo[[10]](#footnote-11)

Noriel Rodriguez is a member of a peasant organization that is affiliated with Kilusang Magbubukid ng Pilipinas (KMP) which is a democratic and militant movement of peasants, farmers, farm workers etc. Under the counterinsurgency campaign put in place by the president at the time, military members were to tag any KMP members as enemies of the state. This made them a target to extra-judicial killings and enforced disappearances.

On September 6, 2009 Rodriguez was walking and was blind sided by someone when four men grabbed him and forced him into a car where more men in civilian clothes were waiting and one was holding a gun. The men started beating him and tried to force him to admit he was a member of the NPA, Rodriguez remained quiet until they reached a Philippine Army camp.

Rodriguez was the victim of more torture and beatings by members of the Philippine Army, they were still trying to get him to admit his NPA involvement and he is forced to sign documents that declare he surrendered.

Around 10 days later Rodriguez’s mother and brother along with members of the Commission on Human Rights (CHR) went to see him and ended up bringing him home. After arriving home two military personnel and a member of the CHR went inside his house and took pictures for 30 minutes.

Some weeks later Rodriguez and his girlfriend notice that suspicious looking men are following them around on the streets and on public transit. On December 7 Rodriguez filed a Petition for the Writ of Amparo, Writ of Habeas Data with Prayers for Protection Orders, Inspection of Place, and Production of Documents and Personal Properties. The petition was filed against the President Arroyo, military personnel, and a member of the CHR.

The respondents claimed that Rodriguez was working under them as an informant to fight against NPA, and Arroyo insisted on her immunity on account of her position as President.

The Supreme Court approved the writs and the Court of Appeals ruled in favor of Rodriguez. Only some of the military personnel were found liable but two were dismissed for lack of merit, and President Arroyo was also dismissed due to her immunity.

The case was dismissed regarding all the respondents. The court concluded that Rodriguez failed to prove through substantial evidence that any of the respondents were responsible or accountable for the violations of his rights to life, liberty, and property.

## 5.2 Secretary of National Defense, Armed Forces of the Philippines’ Chief of Staff (Petitioners) Vs. Raymond Manalo and Reynaldo Manalo (Respondents)[[11]](#footnote-12)

On February 14, 2006 Raymond and Reynaldo Manalo were abducted by members of the Citizens Armed Forces Geographical Unit because they were believed to be supporters or members of the New Peoples’ Army. The Manalo brothers were detained in several locations and also victim to different forms of torture. After being detained and tortured for 18 months the Manalo brothers managed to escape on August 13. 2007.

On August 23, the Manalo brothers filed a petition of prohibition, injunction, and a temporary restraining order to put an end to the military depriving them of their right to liberty and other basic rights. During the same time the petition was pending, the Rule on the Writ of Amparo took effect on October 24, 2007. On this same day, The Manalo brothers filed a Manifestation and Omnibus Motion to treat the existing petition as an Amparo Petition.

On December 26, 2007, the Court of Appeals granted the Manalo brothers the Writ of Amparo, although the petitioners tried to reverse the decision to grant the Writ of Amparo to the Manalo brothers.

The court concluded that the testimony of the brothers along with substantial evidence was true and there was a clear violation of the Manalo brothers right to privacy. The circumstances of the abduction, detention, torture, and escape supported that they could potentially be abducted again.

## 5.3 Secretary Leila De Lima, Director Nonnatus Rojas and Deputy Director Reynaldo Esmeralda (Petitioners) Vs. Magtanggol Gatdula (Respondent)[[12]](#footnote-13)

On February 27, 2012, respondent Magtanggol Gatdula filed a Petition for the Issuance of a Writ of Amparo in the Regional Trial Court of Manila. The Amparo was directed against petitioners Justice De Lima, Director Rojas, and Deputy Esmeralda of the National Bureau of Investigation.

Gatdula wanted De Lima to cease and desist because he claimed he was being framed for a fake ambush incident as false charges of Frustrated Murder were filed against him.

The judge did not decide to issue a Writ of Amparo, but instead issued a summons and ordered De Lima to file an Answer. He also set a case for hearing that was allegedly held to determine whether a temporary protection order is necessary. During the hearing, De Lima expressed that a Return would be more appropriate for an Amparo case, not an Answer.

The Regional Trial Court granted temporary protection, production, and inspection orders. It is unclear from the records how the pieces of evidence would be related to the alleged threat to the life, liberty, or security of Gatdula.

The Nature of Amparo is discussed in the case. It states that the judgment should include measures which the judge deems as necessary for the continued protection of the petitioner in the Amparo case. After these measures have served their purpose, the judgment will be satisfied, but until there is full satisfaction of the judgment, Amparo will allow vigilant judicial monitoring to make sure the constitutional rights are protected.

## 5.4 National Union of People’s Lawyers (NUPL), petitioners Vs. President Rodrigo Duterte, respondent[[13]](#footnote-14)

The NUPL is a nationwide voluntary association of human rights lawyers, law students and legal workers in the Philippines.

The NUPL claim to have been threatened for being members of the NUPL and for handling and representing the cases of political prisoners, peace consultants arrested by state agents, and for pursuing issues regarding extra-judicial killings, among others.

The Supreme Court issued a writ of amparo and habeas data in favor of the National Union of People’s Lawyers (NUPL).

### 5.5 Senator Leila De Lima, petitioner Vs President Rodrigo Duterte, respondent[[14]](#footnote-15)

Senator De Lima filed a petition for a Writ of Habeas Data against President Duterte as Duterte made several speeches that accused the senator of having links to drugs and also called De Lima a “immoral, dirty woman” referencing an alleged affair De Lima had with a former bodyguard.

De Lima requested for the court to compel the respondent to remove the damaging information about her as it violates her rights to privacy.

The court unanimously denied the petition as the President is immune from criminal, civil, and administrative suit.

# 6.0 CONCLUSION

The Philippines is a beautiful country that has gone through multiple colonizers, which Spain and the United States have left the most influence in the country. Government and Laws are somewhat similar with that of the United States. The Philippine Constitution is the highest law of the land and must be upheld above other laws. It prioritizes an individual’s right to life, liberty, and security, and promotes the common good, which is stated in the country’s preamble. The Philippines has gone through a lot as you can tell by its history, with a lot of the country’s cultural traits stemming from the things the country has been through. It is quite interesting to see what will happen with the country in the next couple of years, most especially with regards to privacy and data, and the future of the anti terror law, but one thing is for sure, one thing that will never change, is the resilience of the Filipino people no matter what comes their way.

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1. Referenced from (Web Admin, 2015) [↑](#footnote-ref-2)
2. Cagayan, a province in the Philippines [↑](#footnote-ref-3)
3. Referenced from (Wikipedia, n.d.) and (My Pope Team, 2019) [↑](#footnote-ref-4)
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