



The Philippines

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I. *Dutertian* Rule

President Rodrigo Duterte was elected on a law-and-order campaign promise to end a purported ‘drug epidemic’ in the Philippines.¹³⁶² Since the summer of 2016, what is otherwise a medical problem has been met with a martial answer: the *Oplan Tokhang* – the ‘War on Drugs.’¹³⁶³ Delivering on the electoral pledge to fatten the fish in Manila Bay with the corpses of criminals, Duterte ordered the Philippine National Police (PNP) to ‘shoot them dead.’¹³⁶⁴ Four years and an estimated body count of 30,000 thereafter,¹³⁶⁵ he resorts to the same illiberal rhetoric against a new pandemic: COVID-19. In his 1 April 2020 Nation Address, Duterte exclaimed: ‘I will not hesitate [sic] my soldiers to shoot you. I will not hesitate to order the police to arrest and detain you.’¹³⁶⁶

Through Proclamation No. 922 s. 2020, Duterte placed the Philippines under a State of Public Health Emergency.¹³⁶⁷ Though textually brief, the proclamation’s scope is extensive. From 8 March 2020, all government agencies and Local Government Units (LGUs) have been ‘enjoined’ to assist, to cooperate, and to mobilize necessary resources to ‘curtail and eliminate the COVID-19 threat.’¹³⁶⁸ The proclamation expressly authorizes the Secretary

¹³⁶² [Human Rights Watch](#), ‘License to Kill’ (Mar. 2017) 89.

¹³⁶³ See generally Command Memorandum Circular No. 16-2016: PNP Anti-Illegal Drugs Campaign Plan – Project ‘Double Barrel,’ *Philippine National Police* (1 July 2016).

¹³⁶⁴ F Villamor, ‘Philippine Drug War Logs Deadliest Week Yet: 58 Killed in 3 Days’ (17 Aug. 2017) [The New York Times](#).

¹³⁶⁵ Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Philippines, A/HRC/44/22 (4 June 2020) 20; E Tupas, ‘29,000 deaths probed since drug war launched’ (6 Mar. 2019) [The Philippine Star](#).

¹³⁶⁶ [‘Nation Address of President Rodrigo Roa Duterte on the Coronavirus Disease 2019 \(COVID-19\) Pandemic,’](#) President Rodrigo Duterte (Malacañan Palace, 1 Apr. 2020) 1.

¹³⁶⁷ Proclamation No. 922 s 2020, ‘Declaring a State of Public Health Emergency throughout the Philippines (8 Mar. 2020).

¹³⁶⁸ *Ibid.* at §2.



of the Department of Health (DOH) to 'call upon the Philippine National Police [PNP] and other law enforcement agencies to provide assistance' in responding to the pandemic.¹³⁶⁹

In a matter of days, Duterte declared yet another state of emergency – a State of Calamity – throughout the Philippines for a period of six months¹³⁷⁰ and placed the entirety of Luzon – the largest island in the Philippines of a population of over 60 million people – under Enhanced Community Quarantine (ECQ). The PNP and other 'law enforcement agencies, with the Armed Forces of the Philippines [were thereby] directed to undertake all necessary measures to ensure peace and order in affected areas[.]'¹³⁷¹

Countless DOH issuances have since been passed and a nationwide COVID-response law¹³⁷² has since expired. Many of these measures have not only been medically questioned but also militaristically enforced. Indeed, the Undersecretary of the Department of Interior and Local Government (DILG) – the executive office charged with the control and supervision of the PNP – claimed that human rights were suspended in the time of COVID-19.¹³⁷³ What is more striking, the President himself declared that the national police, the military, and local government officials were ready to shoot those caught disobeying COVID-19 restrictions.¹³⁷⁴

¹³⁶⁹ *Ibid.* at §3.

¹³⁷⁰ Proclamation No. 929 s 2020, 'Declaring a State of Calamity throughout the Philippines due to Corona Virus Disease 2019 (16 Mar. 2020) §1 cf Republic Act No. 10121, 'Philippine Disaster Risk Reduction and Management Act of 2010 (27 May 2010) §3(II). 'State of Calamity - a condition involving mass casualty and/or major damages to property, disruption of means of livelihoods, roads and normal way of life of people in the affected areas as a result of the occurrence of natural or human-induced hazard.

¹³⁷¹ Proclamation 929 (n 9) §4.

¹³⁷² [Republic Act No. 11469](#), 'Bayanihan to Heal as One Act' (24 Mar. 2020).

¹³⁷³ N-A Lagrimas, 'CHR, NUPL contradict DILG's Diño, say human rights remain even during emergencies' (23 Mar. 2020) [GMA News](#). See AM Sison, 'Protecting Rights while Protecting lives: Does Human Rights Give Way to a State of Emergency?' (7 Apr. 2020) [SHAPE-SEA](#). Diño stated 'Wala na hong karapatan. Tandaan niyo, state of emergency ngayon. Ang karapatang pantao ay nawawala pagdating ng state of emergency.' (There are no more rights. Remember, we are in a state of emergency. Human rights disappear in a state of emergency). 'Pagka ho meron tayong state of emergency, 'yung writ of habeas corpus ay nawawala na po yan.' (When under a state of emergency, the privilege of the writ of habeas corpus disappears).

¹³⁷⁴ Nation Address (n 5) 1. See Report of the UNHCHR (n 4) 78; [Amnesty International](#), 'Philippines: President Duterte gives 'shoot to kill' order amid pandemic response' (2 Apr. 2020).



This report assesses the administration's response to COVID-19 from a human rights perspective. Part II briefly lays down the Philippines' regulatory health framework under the 1987 Constitution. Part III summarizes the legislative and regulatory recourse taken by the national government. In the interest of space, the report focuses on two core instruments: (i) the *Omnibus Guidelines on the Implementation of Community Quarantine in the Philippines* of the Inter-Agency Task Force for the Management of Emerging Infectious Diseases (hereinafter, 'IATF Guidelines'), and (ii) Republic Act No. 11469 (hereinafter, the '*Bayanihan to Heal as One Act*' or '*Bayanihan Act*') – the legislative response to the COVID-19 pandemic. Lastly, Part IV illustrates how these policies are militarized in practice. It is observed that by wielding Maslow's Hammer, the Duterte administration treats yet another medical matter with martial stringency.

II. Public Health, Legal Order

a. Philippine Legal Framework

The promotion of public health is codified as a state obligation in the 1987 Constitution.¹³⁷⁵ The DOH is the primary government agency charged with 'the promotion, protection, preservation, and restoration of health of the Filipino people.'¹³⁷⁶ Pursuant to the *Mandatory Reporting of Notifiable Diseases and Health Events of Public Health Concern Act* (RA 11332), the DOH and its local (i.e. provincial, city, and barangay) counterparts are mandated to implement 'specific activities to control [the] further spread of infection, outbreaks or epidemics and prevent re-occurrence.' This includes 'verification, contact tracing, rapid risk assessment, case measures, treatment of patients, risk communication, conduct of prevention activities, and rehabilitation.'¹³⁷⁷

RA 11332 gives the DOH the 'statutory and regulatory authority to... enforce rapid containment, quarantine and isolation, and disease prevention and control measures.'¹³⁷⁸ The Secretary of Health is likewise authorized 'to declare epidemics of national and/or

¹³⁷⁵ 1987 CONST art. XIII §§11, 12, 13, 15. See *Beltran v Secretary of Health*, G.R. No. 133640 (25 Nov. 2005); *Imbong v Ochoa*, G.R. No. 204819 (8 Apr. 2014).

¹³⁷⁶ *Pharmaceutical v Duque*, G.R. No. 173034 (9 Oct 2007).

¹³⁷⁷ Republic Act No. 11332 (26 Apr. 2019) §3.

¹³⁷⁸ *Ibid.* at §6(4)(e).



international concerns except when the same threatens national security.’ On such occasion, the President ‘shall declare a State of Public Health Emergency and mobilize governmental and nongovernmental agencies to respond to the threat.’¹³⁷⁹

A State of Public Health Emergency refers to a situation wherein there is an occurrence or imminent threat of an illness or health condition that is caused by, *inter alia*, an ‘appearance of a novel or previously controlled or eradicated infectious agent or biological toxin’ that poses a high probability of: (i) a large number of deaths, serious injuries, or long-term disabilities in the affected population; (ii) a ‘[w]idespread exposure to an infectious or toxic agent that poses a significant risk of substantial harm to a large number of people in the affected population;’ or (iii) ‘[i]nternational exposure to an infectious or toxic agent that poses a significant risk to the health of citizens of other countries[.]’¹³⁸⁰

RA 11332 criminalizes a number of acts, such as the unauthorized disclosure of private and confidential medical information.¹³⁸¹ Worrisomely, it likewise penalizes the ‘non-cooperation of the person or entities identified as having the notifiable disease, or affected by the health event of public concern’ with a fine of ₱20,000.00 to ₱50,000 and/or imprisonment for a period of one (1) to six (6) months.¹³⁸²

Notably, a ‘State of Public Health Emergency’ under RA 11332 should be distinguished from the ‘State of Calamity’ under RA 10121, the *Philippine Disaster Risk Reduction and Management Act of 2010*. The latter refers to any ‘condition involving mass casualty and/or major damages to property, disruption of means of livelihoods, roads and normal way of life of people in the affected areas as a result of the occurrence of natural or human-induced hazard.’¹³⁸³

¹³⁷⁹ *Ibid.* at §7.

¹³⁸⁰ *Ibid.* at §3(l)(2).

¹³⁸¹ *Ibid.* at §9(a).

¹³⁸² *Ibid.* at §9(e) cf §10.

¹³⁸³ Republic Act No. 10121 (27 May 2010) §3(II).



While the President shall declare a State of Public Health Emergency in the event of an epidemic that threatens national security,¹³⁸⁴ a declaration of a State of Calamity may be issued by the President on the recommendation of the National Disaster Risk Reduction and Management Council (NDRRMC) or by the LGU Council on the recommendation of the Local Disaster Risk Reduction and Management Council (LDRRMC).¹³⁸⁵ The declaration thereof triggers remedial measures against price gauging, profiteering, and hoarding, *inter alia*,¹³⁸⁶ the violation of which would give rise to individual and corporate criminal liability.¹³⁸⁷

Both states of emergencies were declared by Duterte in March 2020. While Proclamation No. 922 sought to 'capacitate government agencies and LGUs to immediately act to prevent loss of life, utilize appropriate resources to implement urgent and critical measures to contain or prevent the spread of COVID-19, mitigate its effects and impact to the community, and prevent serious disruption of the functioning of the government and the community,'¹³⁸⁸ Proclamation No. 929 would 'afford the National Government, as well as LGUs, ample latitude to utilize appropriate funds, including the Quick Response Fund, in their disaster preparedness and response efforts to contain the spread of COVID-19 and to continue to provide basic services.'¹³⁸⁹

The States of Calamity and Public Health Emergency remain enforced as of 7 September 2020.¹³⁹⁰

b. The Inter-Agency Task Force for the Management of Emerging Infectious Diseases (IATF)

In 2014, amidst the emergence of the Severe Acute Respiratory Syndrome (SARS) epidemic, among others, the DOH was designated as the head agency of the IATF in order

¹³⁸⁴ RA 11332 (n 16) §7.

¹³⁸⁵ RA 10121 (n 22) at §16. *See generally* Zabal v Duterte, G.R. No. 238467 (12 Feb. 2019).

¹³⁸⁶ RA 10121 (n 22) at §17.

¹³⁸⁷ Republic Act No. 7581 (27 Mar. 1992) §§14-17 cf RA 10121(n 22) at §20.

¹³⁸⁸ Proclamation 922 (n 6) Recital 7.

¹³⁸⁹ *Ibid.*

¹³⁹⁰ The report was finalized on 7 September 2020.



to ‘assess, monitor, contain, control, and prevent the spread of any potential epidemic in the Philippines.’¹³⁹¹ Six years later, the IATF would again be convened to manage the public health response to SARS-CoV-2 – the COVID-19 pandemic.

By order of the President, all heads of departments, agencies, and instrumentalities of the government – the PNP, Armed Forces of the Philippines (AFP), and the Philippine Coast Guard (PCG), government-owned and controlled corporations (GOCCs), Government Financial Institutions (GFIs), State Universities and Colleges (SUCs), and LGUs¹³⁹² – are directed to adopt, coordinate, and implement all IATF Guidelines.¹³⁹³ The IATF serves as the policy-making body behind the national government’s COVID-19 operations, but it is the National Task Force (NTF) that serves as the IATF’s enforcement arm.¹³⁹⁴

While the IATF is chaired by the Secretary of Health, Dr. Francisco Tiongson Duque III, the NTF is headed by the Secretary of National Defence, retired Major General Deflin Negrillo Lorenzana.

III. Regulatory and Legislative Responses

a. IATF Guidelines

1. The Philippine Transition Plan

¹³⁹¹ Executive Order No. (EO) 168, s 2014 (26 May 2014) Recital 6 cf §1.

¹³⁹² Conversation with Professor RR Bagares (5 July 2020). While the Local Government Code of 1991 (RA 7160) devolves health services from the national government to the LGU, Section 105 of the LGC authorizes the Secretary of Health to temporarily assume direct supervision and control over LGU health services in cases of epidemics and other widespread public health dangers – but only upon the Direction of the President and in consultation with the LGU concerned. The convening of the IATF by Presidential order may swim contrary to RA 7160.

¹³⁹³ [IATF Guidelines](#) (16 July 2020) Recital 5.

¹³⁹⁴ Resolution No. 15 s 2020, ‘Resolutions Relative to the Management of the Corona Virus Disease 2019 (COVID-19) Situation’ (24 Mar. 2020) para A(5)(a).



The *Omnibus Guidelines on the Implementation of Community Quarantine in the Philippines* regulates four phases in COVID-19 life:¹³⁹⁵ the Enhanced Community Quarantine (ECQ),¹³⁹⁶ Modified Enhanced Community Quarantine (MECQ),¹³⁹⁷ General Community Quarantine (GCQ);¹³⁹⁸ and Modified General Community Quarantine (MGCQ).¹³⁹⁹ The IATF-created alphabet soup devises a spectrum of stringency. On one end lies the quarantine measure in its most rigid form: the ECQ ‘lockdown.’ On the other is the MGCQ – the transition phase from life-in-quarantine to the ‘New Normal.’¹⁴⁰⁰

	ECQ	MECQ	GCQ	MGCQ
Populatio n	100% stay at home	100% stay at home	Vulnerable (elderly, those with co-morbidities, etc.)	Vulnerable (elderly, those with co-morbidities, etc.)

¹³⁹⁵ IATF Guidelines (n 33) at §1(3). ‘Community Quarantine - refers to the restriction of movement within, into, or out of the area of quarantine of individuals, large groups of people, or communities, designed to reduce the likelihood of transmission of an infectious disease among persons in and to persons outside the affected area.’ See also P Ranada, ‘Explainer: What’s modified ECQ and modified GCQ?’ (12 May 2020) [Rappler](#).

¹³⁹⁶ *Ibid.* at §1(5). ‘[ECQ] - refers to the implementation of temporary measures imposing stringent limitations on movement and transportation of people, strict regulation of operating industries, provision of food and essential services, and heightened presence of uniformed personnel to enforce community quarantine protocols.’

¹³⁹⁷ *Ibid.* at §1(12). ‘[MECQ] - refers to the transition phase where ECQ limits are relaxed. Stringent limits on movement and transportation of people, strict regulation of operating industries, provision of food and essential services, and heightened presence of uniformed personnel to enforce community quarantine protocols continue to be applied.’

¹³⁹⁸ *Ibid.* at §1(7). ‘[GCQ] - refers to the implementation of temporary measures limiting movement and transportation, regulation of operating industries, and presence of uniformed personnel to enforce community quarantine protocols.’

¹³⁹⁹ *Ibid.* at §1(13) – ‘[MGCQ] - refers to the transition phase between GCQ and the New Normal, when the following temporary measures are relaxed and become less necessary: limiting movement and transportation, the regulation of operating industries, and the presence of uniformed personnel to enforce community quarantine protocols.’

¹⁴⁰⁰ *Ibid.* at §1(14) ‘New Normal - refers to the emerging behaviors, situations, and minimum public health standards that will be institutionalized in common or routine practices and remain even after the pandemic while the disease is not totally eradicated through means such as widespread immunization. These include actions that will become second nature to the general public as well as policies such as bans on large gatherings that will continue to remain in force.’



Exercise	Not allowed	Limited outdoor exercise with safety protocols	and transmitters (youth, etc.) to stay at home. Limited outdoor non-contact sports and exercises	and transmitters (youth, etc.) to stay at home. Limited indoor and outdoor non-contact sports and exercises
			Prohibited: <ul style="list-style-type: none"> • Movie Screenings, Concerts, Sporting Events, and Other Entertainment Activities, Community Assemblies, and Non-essential Work Gatherings • Religious Gathering of up to 10 persons • Public transport allowed, with safe distancing 	Allowed but limited to 50% of the seating/venue capacity: <ul style="list-style-type: none"> • Movie Screenings, Concerts, Sporting Events, and Other Entertainment Activities, Religious Services, and Work Conferences
Gatherings	Not allowed	Highly restricted (max of 5)		
Travel	<ul style="list-style-type: none"> • No public transport • No domestic flights 	<ul style="list-style-type: none"> • No public transport • No domestic flights 	<ul style="list-style-type: none"> • Inter-island travel allowed, with safety protocols 	<ul style="list-style-type: none"> • Public transport allowed, with safe distancing • Inter-island travel allowed, with safety protocols



	<ul style="list-style-type: none"> • Limited international flights • No inter-island travel 	<ul style="list-style-type: none"> • Limited international flights • No inter-island travel 		
Schools	School premises closed	School premises closed	Skeletal workforce to process requirements from students	Limited face-to-face or in-person classes may be conducted, subject to guidelines
Government	Skeletal onsite; Work-from-home arrangement encouraged	Skeletal onsite; Work-from-home arrangement encouraged	May be fully operational or Alternative work arrangements (40-hour weeks; 4-day work weeks)	May be fully operational or Alternative work arrangements (40-hour weeks; 4-day work weeks)

Figure 1: Different levels of community quarantine defined in the IATF Guidelines.¹⁴⁰¹

Under the ECQ, *everyone* is required to stay at home. Outdoor exercise, travel, school, and all public gatherings – including religious celebrations – are prohibited. The ‘100% stay at home’-plan continues under the MECQ, although limited outdoor exercise is allowed. Schools remain closed, but public gatherings of a maximum five (5) persons is permitted. Finally, under the GCQ, only vulnerable persons and COVID ‘transmitters’ are required to stay at home. Exercise restrictions are eased, public gatherings are subject to a 10-person

¹⁴⁰¹ *Ibid.* See ‘Refresher: Guidelines for MECQ reimposed on Metro Manila, nearby provinces’ (3 Aug. 2020) [The Philippine Star](#).



cap, and the skeleton workforce of schools are allowed to resume, but only to conclude the previous school year and prepare for the forthcoming academic term.¹⁴⁰²

Luzon was placed under ECQ as of 16 March 2020. The ECQ was originally scheduled to last until April 12 but was subject to a number of extensions. Metro Manila only finally transitioned to GCQ on 1 June 2020, bringing to ease what has come to be one of the world's longest lockdowns.¹⁴⁰³ Within a month thereafter, the number of recorded cases doubled from 18,552¹⁴⁰⁴ to 38,127.¹⁴⁰⁵ By 1 August 2020, the number of COVID-19 cases ballooned to 97,265.¹⁴⁰⁶

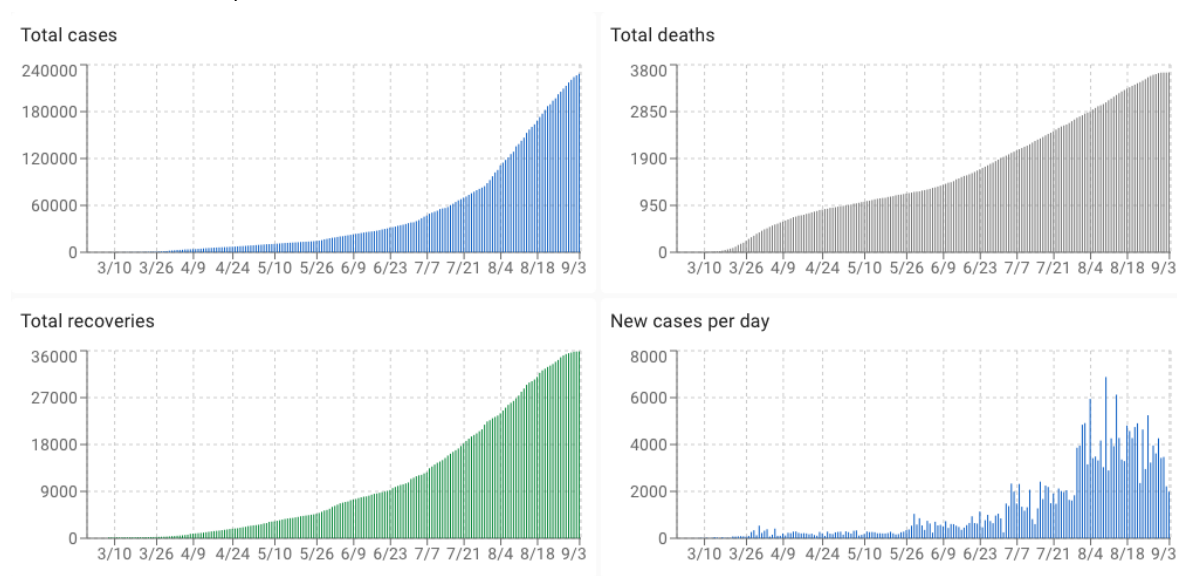


Figure 2: DOH tally of cases, deaths and recoveries¹⁴⁰⁷

Amidst the dramatic spike of COVID-19 cases,¹⁴⁰⁸ members of the medical community called for a 'time out.'¹⁴⁰⁹ The Philippine Medical Association and Philippine College of

¹⁴⁰² ['New MECQ Rules Presented by Harry Roque'](#) (13 May 2020); ['ECQ and GCQ Guidelines'](#); P Ranada (n 30).

¹⁴⁰³ J Gomez and A Favila, 'Philippines virus cases soar past 50,000 as lockdown eases' (8 July 2020) [ABC News](#).

¹⁴⁰⁴ [Philippine COVID-19 Dashboard](#), 'Epidemiological Data' (3 Sept. 2020).

¹⁴⁰⁵ *Ibid.*

¹⁴⁰⁶ *Ibid.*

¹⁴⁰⁷ *Ibid.*

¹⁴⁰⁸ [Philippine COVID-19 Dashboard](#), 'Security: Timeline of Government Policies and Actions' (3 Sept. 2020).

¹⁴⁰⁹ *Ibid.*



Physicians invited Duterte to reimplement stricter ECQ lockdown measures in the capital for two weeks so as to allow authorities to regroup and refine pandemic control strategies.¹⁴¹⁰ Come 3 August, on the approval of the President, Metro Manila and neighbouring cities Bulacan, Cavite, Laguna and Rizal reverted to the stricter MECQ from 4 to 18 August.¹⁴¹¹

2. 'Fair and Humane' Punishment

The IATF Guidelines directs LGUs to enact curfew ordinances that will enforce and penalize, 'in a fair and humane manner, violations of the restrictions on the movement of people as provided under these Omnibus Guidelines.' The failure to wear face masks, face shields, or other protective equipment whenever out of residence is similarly subject 'fair and humane penalties or punishments.'¹⁴¹²

Further, to its credit, the Guidelines expressly prohibit acts of discrimination against healthcare workers, repatriated Overseas Filipino Workers (OFWs) and non-OFWs, and COVID-19 patients, whether confirmed, recovered, or undergoing treatment, as well as suspect and probable cases. The problem, however, is how discriminatory acts, 'coercion, libel, slander, physical injuries and the dishonor of contractual obligations such as contracts of lease or employment' are also dealt with criminally. LGUs are thus 'enjoined to issue the necessary executive orders and/or enact ordinances prohibiting and penalizing these discriminatory acts[.]'¹⁴¹³

As will be shown in Part III, what is 'fair and humane' in principle is time and again perverted in practice. But the government's carceral tendencies reveal a larger issue at play: an over-reliance on penal law as a tool for regulation. The failure to comply with quarantine measures are punished with imprisonment of up to 30 days, while acts of

¹⁴¹⁰ *Ibid.*

¹⁴¹¹ A Romero and E Regalado, 'Timeout: Metro Manila back to MECQ August 4 to 18' (3 Aug. 2020) [The Philippine Star](#).

¹⁴¹² IATF Guidelines (n 33) §8(5).

¹⁴¹³ *Ibid.* at §8(7).



discrimination have been threatened with jailtime of up to six months.¹⁴¹⁴ Indeed, Duterte himself characterizes the spreading of COVID-19 as a ‘serious crime.’¹⁴¹⁵

b. The *Bayanihan to Heal as One Act*

1. General Provisions

‘Bayanihan’ is the Tagalog term for ‘the spirit of communal unity, work and cooperation to achieve a particular goal.’¹⁴¹⁶ Pursuant to Section 23, Article VI of the 1987 Constitution,¹⁴¹⁷ the Philippines Congress passed the *Bayanihan to Heal as One Act*, which codifies yet another crisis paradigm: a State of National Emergency.¹⁴¹⁸

The *Bayanihan Act* is the first national health emergency legislation passed by the Philippine Congress under the 1987 Constitution.¹⁴¹⁹ It elevates itself as the *lex superior* in COVID life by expressly superseding all ‘other laws, statutes, orders, rules or regulations,’ save for the Constitution.¹⁴²⁰

¹⁴¹⁴ R Abatayo, ‘Danao penalizes discrimination of PUMs, COVID-19 patients, frontliners’ (20 May 2020) [Cebu Daily News](#).

¹⁴¹⁵ N Corrales, ‘Not wearing face masks may land you in jail Read more’ (23 July 2020) [Philippine Daily Inquirer](#).

¹⁴¹⁶ University of the Philippines Law Center Institute of Human Rights, ‘COVID-19 Emergency Powers Law Q&A Series’ (24 Mar. 2020) 1.

¹⁴¹⁷ 1987 CONST. art. VI §23. ‘In times of war or other national emergency, the Congress may, by law, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof.’

¹⁴¹⁸ RA 11469 (n 11) §2. This should be distinguished from a ‘National Emergency’ as contemplated by 1987 CONST. art. VI §23 and art XII §17. See University of the Philippines Law Center Institute of Human Rights Primer (n 56) 8; GB Fernandez, ‘Within the Margin of Error: Derogations, Limitations, and the Advancement of Human Rights’, 92 PHIL. L.J. 1, 4 (2019); AM Sison, ‘Protecting Rights While Protecting Lives: Permissible Derogations of Human Rights in the COVID-19 Pandemic Philippine State of Emergency’, 93 (Special Online Feature) [PHIL. L.J.](#) 155 (2020).

¹⁴¹⁹ University of the Philippines Department of Political Science, ‘Bayanihan to Heal as One Act of 2020: A Primer’ (2020) 5.

¹⁴²⁰ RA 11469 (n 11) §7.



During the State of National Emergency – but only for a period of three months, unless extended or withdrawn by Congress¹⁴²¹ – the President is granted the ‘power to adopt ... temporary emergency measures to respond’ to the pandemic.¹⁴²² Much of these ‘powers’ fall within the residual executive function and would not have necessarily required special legislation¹⁴²³ and thus, in the interests of space, will not be herein addressed.

However, there are choice provisions worth highlighting. For example, the President is afforded the power to adopt and implement the guidelines and best practices of the World Health Organization (WHO)¹⁴²⁴ and to expedite and streamline the accreditation of COVID-19 testing facilities. He is also authorized to move statutory deadlines and timelines for the filing of official documents, the payment of taxes, bank fees, and residential rent.¹⁴²⁵

The Act was particularly celebrated for the social amelioration package granted to low income households (a mere ₱5,000-8,000, around \$100-170, per month), public health workers (through a ‘Special Risk Allowance’), and both public and private health workers who may ‘contract severe COVID-19 infection while in the line of duty’ or ‘should die while fighting the COVID-19 pandemic’ (₱100,000 and ₱1,000,000, respectively), among

¹⁴²¹ RA 11469 (n 11) §9 cf §3. ‘Declaration of Policy. [...] [T]here is a need to: (a) mitigate and contain the transmission of COVID-19; (b) immediately mobilize assistance for the provision of basic necessities to families and individuals affected by the enhanced community quarantine, especially the poor; (c) undertake measures to prevent the overburdening of the country’s healthcare system; (d) immediately provide ample healthcare, including medical tests and treatments, to COVID-19 patients, persons under investigation (PUIs) and persons under monitoring (PUMs); (e) undertake a recovery and rehabilitation program as well as social amelioration program and other social safety nets to all affected sectors; (f) ensure adequate, sufficient, and readily available funds to undertake the above- stated measures and programs; (g) partner with the private sector and other stakeholders in the quick and efficient delivery of these measures and programs; and (h) promote and protect the collective interests of all Filipinos.’

¹⁴²² See generally RA 11469 (n 11) §4.

¹⁴²³ For eg, Section 4(h) authorizes the President to direct the operation of any privately-owned hospitals and medical and medical and health facilities to house health workers, serve as quarantine areas, quarantine centers, medical relief and aid distribution. This power is already conferred through Section 17, Article XII of the 1987 Constitution. Section 4(s) empowers the President ‘[r]egulate traffic on all roads, streets and bridges, and access thereto.’ See University of the Philippines Law Center Institute of Human Rights Primer (n 56) p2.

¹⁴²⁴ RA 11469 (n 11) §4(a).

¹⁴²⁵ *Ibid.* at §4(aa).



others.¹⁴²⁶ The Act grants this final compensation benefit 'retroactive application from February 1, 2020'¹⁴²⁷

Finally, the *Bayanihan Act* contains a catch-all provision authorizing the President to '[u]ndertake such other measures as maybe reasonable and necessary to enable [him] to carry out the declared national policy. Section 4(ee) limits this broad authority by adding that such measures are 'subject to the Bill of Rights and other constitutional guarantees.'¹⁴²⁸ This assurance is echoed through Section 7 of the Act, which provides that '[n]othing [t]herein shall be construed as an impairment, restriction or modification of the provisions of the constitution.'

The President is required to submit a weekly report to Congress on the acts performed pursuant to RA 11469. The report is reviewed by a Joint Congressional Oversight Committee.¹⁴²⁹

1. **Constitutional Tests**

Cooperation and aid being but facets of the Act, the short title *Bayanihan to Heal as One Act* is quite misleading.¹⁴³⁰ This part briefly explores provisions of the statute which are of questionable constitutional validity.

i. Freedom of Contract

¹⁴²⁶ *Ibid.* at §4(c, d, e).

¹⁴²⁷ *Ibid.* at §4f.

¹⁴²⁸ *Ibid.* at §4(ee) cf 1987 CONST art III.

¹⁴²⁹ RA 11469 (n 11) §5.

¹⁴³⁰ University of the Philippines Law Center Institute of Human Rights Primer (n 56) 1. 'The complete title of the law, after all, is 'An Act Declaring the existence of a National Emergency arising from the Coronavirus disease 2019 (COVID-2019) situation and a national policy in connection therewith, and authorizing the President of the Republic of the Philippines for a limited period and subject to restriction, to exercise powers necessary and proper to carry out the declared national policy and for other purposes.'



Sections 4(r) and 4(t) authorize the President to require businesses to prioritize and accept contracts, subject to fair and reasonable terms¹⁴³¹ and to '[c]ontinue to authorize alternative working arrangements for employees and workers' in both the public and private sectors.¹⁴³² At the outset, it is worth noting that these sections contemplate different situations: while Section 4(r) refers to the creation of a new contract, Section 4(t) is more akin to the amendment of an existing one.

These powers may be argued to impede the freedom of contract guaranteed under the Bill of Rights.¹⁴³³ The Constitution recognizes the making of contracts are of private concern and should thus be free of governmental interference.¹⁴³⁴ However, like most rules, the freedom of contract is subject to exceptions. It has thus been jurisprudentially recognized that Section 10, Article III of the Constitution 'must yield to the loftier purposes targeted by the Government.'¹⁴³⁵ This is especially applicable with regard to Labour Contracts, which are 'impressed with public interest and subjected to extra-contractual limitations.'¹⁴³⁶

It is thus permissible to amend terms of employment.¹⁴³⁷ Indeed, as observed by the University of the Philippines Institute on Human Rights, a similar emergency power had been granted to President Corazon Aquino through RA 6826. Having affected property rights, Section 4(t) is pitted against the *rational basis* constitutional test, which requires the law to merely 'rationally further a legitimate governmental interest' to be upheld.¹⁴³⁸

¹⁴³¹ RA 11469 (n 11) §4(r).

¹⁴³² *Ibid.* at 4(t).

¹⁴³³ 1987 CONST. art. III §10.

¹⁴³⁴ *Oposa v Factoran*, G.R. No. 101083 (30 July 1993).

¹⁴³⁵ *Philippine Association of Service Exporters Inc v Drilon*, G.R. No. 81958 (30 June 1988) *citing* *Heirs of Juancho Ardon v Reyes*, G.R. Nos. L-60549, 60553-60555 (26 Oct. 1983).

¹⁴³⁶ *Innodata Philippines, Inc v Ynarcs-Santiago*, G.R. No. 162839, (12 Oct. 2006); *Pakistan Airlines Corp v Ople*, G.R. No. L-61594 (28 Sept. 1990). *See* RLA Pangalangan, *The Blurring of the Public/Private Distinction: Obsolescence of the State Action Doctrine*, 90 PHIL L.J. 84 (2016) 116 *citing* Civil Code, art. 1700.

¹⁴³⁷ *San Miguel Brewery Sales Force Union v Ople*, G.R. No. L-53515 (1989); *Autobus Workers' Union v NLRC*, G.R. No. 117453 (1998).

¹⁴³⁸ *White Light v City of Manila*, G.R. No. 122846 (20 Jan. 2009).



However, whether the state may *compel* a contract is a different story altogether. Section 4(r) can thus be characterized as a matter of consent (ie liberty) rather than of contract (ie property), and thus subject to higher levels of scrutiny, such as intermediate and strict scrutiny.¹⁴³⁹ This is of particular relevance considering that the ‘refusal to prioritize or accept contracts for materials and services necessary for the quarantine’ is threatened with criminal penalties under the *Bayanihan Act*.¹⁴⁴⁰

ii. *Freedom of Expression*

The *Bayanihan Act* criminalizes the ‘creating, perpetrating, or spreading [of] false information regarding the COVID-19 crisis on social media and other platforms,’ but only when ‘such information [would have] no valid or beneficial effect on the population, and are clearly geared to promote chaos, panic, anarchy, fear, or confusion.’¹⁴⁴¹

This is not the first law regulating the proliferation of fake news in Philippine legal order. The Revised Penal Code of 1930 – the Philippines’ *lex generalis* on crime – punishes the ‘*Unlawful Use of Means of Publication*.’ The penal provisions are comparable. Like Section 4(6) of the *Bayanihan Act*, Article 154 imposes imprisonment of up to six months or a fine upon ‘[a]ny person who by [...] means of publication, shall maliciously publish as news any false news which may endanger the public order or cause damage to the interest or credit of the State[.]’¹⁴⁴²

Presidential Spokesperson Harry Roque, defending the *Bayanihan Act*’s constitutionality, argues that the right to free expression is not ‘absolute.’¹⁴⁴³ Indeed, Philippine jurisprudence adopts a *fact-opinion distinction* that may serve as a basis to regulate false

¹⁴³⁹ *Fernando v St Scholastica’s College*, G.R. No. 161107 (12 Mar. 2013).

¹⁴⁴⁰ RA 11469 (n 11) §6(d).

¹⁴⁴¹ RA 11469 (n 11) §6(f).

¹⁴⁴² Revised Penal Code of the Philippines, Act No. 3815 (1930).

¹⁴⁴³ A Parrocha, ‘Palace Warns Fake News Peddlers Anew’ (16 Apr. 2020) [Philippine News Agency](#) cf *Abrams v United States* (1919) 250 US 616.



speech.¹⁴⁴⁴ However, considering that the *Bayanihan Act* defines neither 'fake news' nor the constituent elements of chaos, panic, anarchy, fear, and confusion, the provision is of questionable constitutional validity. The obscure law runs the risk of causing a 'chilling effect' in speech under the doctrine of overbreadth. As it is vague, it should have been declared void.¹⁴⁴⁵

A similar criticism has been hurled against the Anti-Terror Act (ATA), which was certified as urgent by President Duterte, passed by Congress in record speed, and signed into law on 3 July 2020.¹⁴⁴⁶ The ATA is criticised for drawing a 'vague and overly broad definition of terrorism, permit[ing] warrantless arrests and allow[ing] authorities to hold individuals for weeks without charge'.¹⁴⁴⁷ While it is not a COVID-19 statute *per se*, the ATA is viewed by civil rights advocates as a 'crackdown on dissent and free speech'¹⁴⁴⁸ conveniently legislated at a time when the public's discontent over the government's management of the pandemic was at its peak yet, due to quarantine measures, the chance of public protest was less probable.¹⁴⁴⁹

Like the IATF Guidelines, both the ATA and the now-expired *Bayanihan Act* reveal the Philippine infatuation with the criminal law remedy. But as will be shown in Part III, these public health regulations do not only rely on the law's coercive force but are likewise coercively enforced.

2. Constitutional Contest before the Supreme Court

¹⁴⁴⁴ Borjal v CA, G.R. No. 126466 (14 January 1999). See GB Fernandez, RR Tugade and RLA Pangalangan, 'Marcosian Atrocities: Historical Revisionism and the Legal Constraints on Forgetting', (2018) 19 ASIA-PAC. J. ON HUM. RTS. & L. 140.

¹⁴⁴⁵ Romualdez v Sandiganbayan, G.R. No. 152259 (29 July 2004) cf 1987 CONST art. III §4. '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.'

¹⁴⁴⁶ [Republic Act No. 11479](#) (3 July 2020).

¹⁴⁴⁷ R Ratcliffe, 'Duterte's anti-terror law a dark new chapter for Philippines, experts warn' (9 July 2020) *The Guardian*.

¹⁴⁴⁸ R Dancel, 'Duterte signs controversial anti-terror law in the Philippines' (3 July 2020) [The Straits Times](#).

¹⁴⁴⁹ See C Venzon, 'Duterte signs controversial Philippine anti-terror bill into law' (3 July 2020) [Nikkei Asian Review](#).



On 2 June 2020, Jaime Ibañez, the former Dean of the Laguna State Polytechnic University College of Law, filed a petition questioning the constitutionality of the *Bayanihan Act* and several presidential issuances. The petition asked the Supreme Court to:

- (i) Annul the Act and Proclamations 922 and 929 for being 'partly unconstitutional' in so far as the imposition of the ECQ constituted an undue exercise of delegated legislative power;
- (ii) Annul the IATF guidelines for being an invalid delegation of legislative authority and for violating the Due Process and Equal Protection clauses of the 1987 Constitution;
- (iii) Annul Executive Order No. 112 s. 2020 and Resolution No. 37 s. 2020 for being unconstitutional; and
- (iv) Prohibit the IATF from further implementing or enforcing its guidelines on Community Quarantine for having constituted an invalid delegation of legislative authority and for having violated individual liberties guaranteed under the due process and equal protection clauses of the Bill of Rights.¹⁴⁵⁰

The petition is mostly grounded in the doctrine of separation of powers rather than a breach of fundamental rights *per se*. Indeed, though the *Bayanihan Act* has consistently been assessed from a rights-perspective, much of the controversies voiced refer to the power of the purse and the institutional independence of the executive *from* legislative oversight.¹⁴⁵¹

¹⁴⁵⁰ Ibañez v Nograles, G.R. No. 232167 (2 June 2020) p 9.

¹⁴⁵¹ See [University of the Philippines College of Law](#), 'Reflections on the Bayanihan Act or Republic Act No. 11469 ("the Act") with Matrix of Presidential Powers Under Existing Laws to Meet Emergencies, Including the Covid-19 Crisis' (30 Mar. 2020).



Without a Congressional extension having been granted, the *Bayanihan Act* expired on 24 June 2020.¹⁴⁵² A week later, on 1 July 2020, the *Ibañez* petition was dismissed outright for having ‘failed to show grave abuse of discretion[.]’¹⁴⁵³

IV. Militar, Hindi Medikal (Martial, Not Medical)¹⁴⁵⁴

The Philippines has long grappled with bridging principle with practice. The COVID-19 regulations are no exception. Though these are laws of general application, some have it better than most. Certain ‘VIPs’ were able to obtain state COVID-test kits despite their scarcity¹⁴⁵⁵ and ahead of patients and front-liners awaiting testing.¹⁴⁵⁶ While the city was under ECQ, the PNP’s Metro Manila Chief Maj. General Debold Sinas flouted the metropolitan-wide ban on mass gatherings through a fête attended by dozens of National Capital Region Police Office (NCRPO) officers.¹⁴⁵⁷ At that same point in time, an estimated 120,000 Filipinos had been arrested for violating lockdown guidelines.¹⁴⁵⁸

But perhaps even more worrisome: the Philippines’ legislative and regulatory responses, amidst all its flaws, are applied not only unequally but inequitably.

Both the drug ‘epidemic’ and the COVID-19 pandemic are medical issues met with militarized force. That martial ethos, however, is manifested not necessarily through legislative provisions but executive practices. Indeed, a month into the states of emergencies, the Duterte administration had arrested almost as many people for violating

¹⁴⁵² A *Bayanihan II Act* and the ARISE Stimulus Package are pending before Congress. See C Mendez, ‘Duterte may still need Bayanihan 2 – Palace’ (26 June 2020) [The Philippine Star](#); House Bill No. 6815, ‘Accelerated Recovery and Investments Stimulus for the Economy (ARISE)’ (2020).

¹⁴⁵³ BK Hosaka, Supreme Court Spokesperson (1 July 2020). See L Buan, ‘Supreme Court Junks Petition Questioning Duterte’s Bayanihan Law’ (1 July 2020) [Rappler](#).

¹⁴⁵⁴ LA Aquino, ‘Solusyong Medikal, Hindi Aksyong Militar’ (18 Mar. 2020) [Rappler](#).

¹⁴⁵⁵ K Aguilar, ‘Duque: VIPs made requests to be tested for COVID-19 (24 Mar. 2020) [Inquirer](#).

¹⁴⁵⁶ A Rey, ‘Pimentel tests Positive for Coronavirus (25 Mar. 2020) [Rappler](#).

¹⁴⁵⁷ CM Ramos, ‘Sinas not off-the-hook yet for ‘mañanita’ mess despite Duterte support — Lacson’ (21 May 2020) [Inquirer](#).

¹⁴⁵⁸ ‘Toxic lockdown culture’ of repressive coronavirus measures hits most vulnerable’ (27 Apr. 2020) [UN News](#).



COVID-19 restrictions as it had tested for the COVID-19 virus.¹⁴⁵⁹ The country's COVID-19 response continue to be stringently enforced. The Human Rights Watch reported:

In Cavite province, two children were locked in a coffin on March 26 as punishment for violating curfew. On March 20, officials in Santa Cruz town, Laguna province, locked five young people inside a dog cage. In Binondo, Manila, village officials arrested four boys and four girls on March 19 for violating curfew. They forcibly cut the hair of seven of the children while the one who resisted was stripped naked and ordered to walk home.¹⁴⁶⁰

The Philippines' medical woes continue to be met with militaristic solutions. One need not go beyond the earliest presidential issuances to notice the martial colour in the country's COVID-19 response. Proclamations 922 and 929 immediately invokes the PNP and AFP in battling the pandemic. What is more, while the IATF is headed by the Secretary of Health, its policies are enforced by the Secretary of National Defence. Indeed, the NTF is commanded by Delfin Lorenzana, Eduardo Año, and Carlito Galvez Jr – all retired military officials.¹⁴⁶¹ Duterte himself has likewise threatened to impose a 'martial law-like lockdown'¹⁴⁶² and has said to have directed his men to shoot quarantine violators.¹⁴⁶³

With military minds at the helm of the NTF, the Philippines continues on a course of heavy-handed restriction. Indeed, the PNP-Special Action Force (PNP-SAF), garbed in fatigue and armed with large firearms, were deployed to implement a 14-day quarantine in the streets of Navotas City.¹⁴⁶⁴ Officers of the PNP-SAF rolled into Navotas on armoured personnel carriers (APCs) – 'battle buses' – on 16 July 2020.

¹⁴⁵⁹ D Nakpil, 'More than 75,000 individuals arrested for curfew violations – officials', (7 Apr. 2020) [CNN Philippines](#).

¹⁴⁶⁰ [Human Rights Watch](#), 'Philippine Children Face Abuse for Violating COVID-19 Curfew' (3 Apr. 2020).

¹⁴⁶¹ JC Gotinga, 'In this order: Lorenzana, Año, Galvez to lead task force vs coronavirus' (27 Mar. 2020) [Rappler](#).

¹⁴⁶² R Robles, 'Coronavirus: is Covid-19 task force Duterte's 'Rolex 12' in plan for Marcos-style martial law in the Philippines?' (28 Apr. 2020) [South China Morning Post](#).

¹⁴⁶³ Nation Address (n 5) 1. Report of the UNHCHR (n 4) 78.

¹⁴⁶⁴ M Pelayo, 'SAF troopers sent to man Navotas City lockdown' (16 July 2020) [UNTV](#).



That same week, Secretary Eduardo Año announced a policy that would authorize the PNP to go on ‘house-to-house’ searches for COVID-19 patients. The policy was heavily criticized to be ‘patently unconstitutional’ not only for literally unlocking the door to warrantless searches of homes, but opening ‘the proverbial floodgates to other human rights violations.’¹⁴⁶⁵

Presidential Spokesperson Harry Roque later clarified that ‘local health workers are the ones who will lead the transfer of COVID-19 positive patients.’ The PNP, however, maintains that it would continue to play ‘a supporting role in the house-to-house tracing.’¹⁴⁶⁶ The metes and bounds of the ‘house-to-house’ policy remains to be seen.

V. Conclusion

As of 1 September 2020, the Philippines has reported 224,200 total cases¹⁴⁶⁷ — surpassing Indonesia, which outpopulates the Philippines more than 2:1,¹⁴⁶⁸ and thereby becoming the worst coronavirus outbreak in the Southeast Asian region. The numbers only continue to climb, yet the President continues to wage a ‘war’ with the wrong weapons.¹⁴⁶⁹ When not spinning grand tales of miracle vaccines,¹⁴⁷⁰ Duterte wields Maslow’s Hammer of

¹⁴⁶⁵ [University of the Philippines Institute on Human Rights](#), ‘Search and Forced Transfer of Asymptomatic COVID-19 Patients’ (20 July 2020).

¹⁴⁶⁶ ‘Officials Back Off: Health Workers, Not Police To Search For COVID-19 Patients; House-To-House Plan Unclear’, (16 July 2020) [One News](#).

¹⁴⁶⁷ [Department of Health](#), ‘COVID-19 Tracker’ (1 Sept. 2020).

¹⁴⁶⁸ [Center for Strategic & International Studies](#), ‘Southeast Asia Covid-19 Tracker’. See M Walden and A Herr, ‘How did the Philippines overtake Indonesia as the COVID-19 epicentre of South-East Asia?’ (18 Aug. 2020) [ABC News](#).

¹⁴⁶⁹ PL Quintos, ‘Policy Paper: The Philippines’ COVID-19 Response: Symptoms of Deeper Malaise in the Philippine Health System’ (2020) 4. ‘[T]he lockdown period should be used to raise the capacity of the healthcare system to test, trace and treat COVID-19 patients as well as attend to the non-COVID related health needs of the population. On this point, the government’s response appears inadequate because while the lockdown and social distancing measures may have slowed down the spread of new cases, the country’s health system is bursting at the seams.’

¹⁴⁷⁰ R Robles, ‘Duterte asks Filipinos to ‘endure’ coronavirus curbs until December, pins hopes on China vaccine’ (31 July 2020) [South China Morning Post](#).



military force.¹⁴⁷¹ Like the 'drug epidemic', *Dutertian* rule treats those with an illness that must be cured as threats that must be quashed.

VI. Summary Evaluation

Best Practices
<ul style="list-style-type: none">• Express recognition of constitutional supremacy in legislative response.• Non-discrimination and privacy Rights recognized in law.• Sunset clause clearly set out in <i>Bayanihan Act</i>.• Oversight committee provided by law.
Concerns
<ul style="list-style-type: none">• Delayed action in relation to Coronavirus.• Unequal application of benefits and restrictions.• Excessive use of force and abuse in implementing COVID-19 regulations.• Militarisation of COVID-19 response through NTF leadership.• Vague Fake News crime, recourse to criminal sanctions, disproportionate penalties.• House-to-House policy threatens security and privacy.• Over-reliance on upcoming vaccine, rather than focusing on effective measures that can be undertaken in the present.

¹⁴⁷¹ A Maslow, 'The Psychology of Science: A Reconnaissance' (Harper Collins, 1966) 15.