

(1)  
STATE OF EXCEPTION  
Jurisdiction: Philippines  
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## 1. REGULATORY TIMELINE

23 January 2020	Imposition of ban on incoming flights from Wuhan, China.
28 January 2020	The Department of Health (DOH) convenes the Inter-Agency Task Force (IATF) for the Management of Emerging Infectious Diseases.
30 January 2020	First COVID19 case in the Philippines is confirmed.
01 February 2020	DOH announces the first COVID19 death in the Philippines. Travelers from Mainland China and its Special Administrative Regions are banned from entering the Philippines.
08 March 2020	President Rodrigo Duterte declares a State of Public Health Emergency.
15 March 2020	Enhanced Community Quarantine in Luzon begins.
24 March 2020	Republic Act No. 11469, or the <i>Bayanihan to Heal as One Act</i> is signed into law, granting emergency powers to the President.
07 April 2020	President Duterte extends the Luzon lockdown to April 30.
01 June 2020	Metro Manila eases into less restrictive General Community Quarantine.
25 June 2020	The effectivity of <i>Bayanhian to Heal as One Act</i> expired.

## 2. INTRODUCTION

President Rodrigo Duterte was elected in 2016 and ran on a populist campaign, promising governance with an iron fist (Dressel & Bonoan 2020). Scholars have made the observation that the Duterte administration has propped up an illiberal democratic order, commanding through police and military might (Thompson 2017). The Philippine government's answer to the COVID19 pandemic has followed the same tack, with police and military actors leading the forefront in decision-making and on-the-ground implementation. Early on in the country's response to the public health crisis, the executive department rationalized the appointment of former military generals as primary implementers of the national action plan against COVID19 (PCOO 2020a). The militaristic strategy adopted by the Philippine government drew comparisons to its earlier anti-drug campaign, which has already resulted in allegations of widespread human rights violations (Robertson 2020). The call of civil society in the midst of the COVID19 response has been "*solusyong medikal, hindi militar*" (medical solutions, not military ones), in opposition to the draconian tactics employed by State forces. Republic Act No. 11469 (*Bayanihan To Heal As One Act*), a law granting emergency powers to the President, was passed by the Philippine legislature on March 2020 to address the rising cases of COVID19 infections in the country. As of writing, the emergency powers have expired by operation of

law. However, the heavy-handed approach of the Philippine government has *de facto* remained in place.

### 3. BODY

#### 3.1 DIVISION OF POWER

[1]

The 1987 Philippine Constitution provides for a tripartite government structure. Legislative power is lodged in the House of Representatives and the Senate; executive power is lodged in the Executive Department headed by the President; judicial power is lodged in the court system, with the Supreme Court occupying the top of the hierarchy. Emergency powers may be wielded by the President, subject to authorization and limits imposed by Congress through law. Article VI, Section 23 of the Constitution states: *“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.”* The House of Representatives and the Senate had their respective versions of a COVID19 emergency response bill. The House version was passed on a 284-9 vote (Mercado 2020) while the Senate version was passed unanimously (Ramos & Lalu 2020). President Duterte signed R.A. No. 11469 into law on March 24, 2020.

[2]

R.A. No. 11469 contained a provision for a rule of statutory construction. According to Section 7 of the law, nothing in its text shall be interpreted as an impairment, restriction, or modification of the provisions of the Constitution. Section 5 of the law also mandates the President to submit a report to Congress every Monday for the whole duration of the law’s effectivity, with a Joint Oversight Committee in Congress established for this purpose. **The Congress constitutes the Legislative, a co-equal branch of the Executive.**

[3]

The policy declaration in Section 3 of R.A. No. 11469 cited the following justifications for the enactment of the law and the grant of emergency powers to the President: (1) the mitigation and containment of COVID 19; (2) provision of immediate assistance to families most affected by the pandemic; (3) adoption of measures to prevent the overburdening and overloading of the Philippine healthcare system; (4) provision of healthcare to individuals through testing and treatment; (5) social amelioration, rehabilitation, and recovery for affected sectors of society; (6) making available funding to accomplish the government response; (7) establishing partnerships with the private sector; and (8) promoting and protecting the “collective interest” of Filipinos throughout the duration of the public health crisis.

[4 & 5]

Under Section 4 of R.A. No. 11469, the President is granted with the power to adopt temporary emergency measures to address the COVID19 situation in the Philippines. Specifically, several of these measures have been identified by the law. These include the following: designation of facilities and institutions for isolation and treatment; allocating funds for emergency subsidies and allowances; ascertaining compliance by Local Government Units (LGUs) to national government directives; procurement of medicines and medical equipment; ensuring the availability of essential goods; regulating the flow of traffic in all thoroughfares; authorizing a grace period for the payment of loans; and the undertaking of other necessary measures “subject to the Bill of Rights and other constitutional guarantees”. The law likewise declares certain acts unlawful and provides for their penalties. Notable among these measures is the regulation of speech through the penalization of the spread of false information through social media and other platforms (Section 6, paragraph [f]).

[6]

The powers granted by the law to the President shall be in full force and effect for only three months from its date of effectivity, unless otherwise withdrawn by Congress. **The law expired on June 25, 2020 due to the law’s built-in ‘sunset provision’ and without any extension granted through another law (Marquez 2020).**

[7]

The penal provisions of the law attracted criticism from various sectors of society. For instance, the Constitutional Law Cluster of the University of the Philippine College of Law released a document that reflects on the effects and implications of R.A. No. 11469. The penalty of perpetual or temporary disqualification to be imposed on erring public officials was seen to be “prone to abuse”, given the proximity of the next election cycle (UP College of Law 2020). In the same document, legal academics also criticized the penalty which the law imposes on private hospitals and medical facilities in case of failure to comply with executive directives. The legal scholars state that criminalization of conduct is unnecessary in light of the President’s authority to takeover such medical facilities. Opposition leaders such as Senator Risa Hontiveros were vocal in their criticism to the President’s militaristic and ‘heavy-handed’ approach to the health crisis (Philippine Senate 2020).

[8]

The Philippine government has adopted strict measures aiming to contain the spread of COVID19, with the world’s currently longest-running lockdown (The Economist 2020). Despite this, the Philippines leads in terms of number of cases in Southeast Asia as of writing (Esguerra 2020). The imposition of the heavy lockdown has attracted criticism from international experts and observers like United Nations High Commissioner for Human Rights Michell Bachelet. In the implementation of quarantine measures, such experts have noted that human rights have been compromised in favor of health measures (CNN Philippines 2020a).

[9]

With the imposition of a strict lockdown leading to arrests, together with notable pronouncements from President Duterte, it is quite visible that the Philippine government’s

militaristic approach to the global pandemic comes at the cost of respecting human rights standards. President Duterte ordered law enforcement to shoot to death persons who violate the government's COVID19 measures, further creating a climate of fear (Amnesty International 2020). UN High Commissioner for Human Rights Michell Bachelet cited the 120,000 arrests in the Philippines being intimately linked to the military-style approach (UN News 2020). These arrests are potentially violative of domestic law provisions on arbitrary detentions and unlawful arrests and the constitutionally-guaranteed Bill of Rights.

### 3.2 COMPETENCIES

[1]

Under the present constitutional design of the Philippines, the power to implement laws is vested in the Executive Department of the national government headed by the President. The country is made up of different territorial and political subdivisions, namely: provinces, cities, municipalities, and *barangays*. These subdivisions, known as LGUs, enjoy local autonomy. Article X, Section 4 of the 1987 Constitution defines the relationship between the national government and LGUs. It states that “*The President of the Philippines shall exercise general supervision over local governments.*” As defined by Philippine domestic jurisprudence, supervision “means overseeing or the power or authority of an officer to see that the subordinate officers perform their duties.” (*Taule v. Santos* 1991) Supervision is in contrast to the power of control, which enables the President to substitute his judgment over the LGU's decision.

[2]

R.A. No. 11469 specifically lays out the powers that the President may exercise in relation to LGUs. Section 5, paragraph [g] of the law empowers the President to “ensure that Local Government Units are acting within the letter and spirit of all the rules, regulations, and directives issued by the National Government pursuant to this Act.” Moreover, the law penalizes LGU officials who may be found to be disobedient to the directives of the National Government in the imposition of community quarantine schemes (Section 6, paragraph [a]). A notable case of tension between the National Government and an LGU came with the summons addressed by the National Bureau of Investigation to Pasig City Mayor Vico Sotto, for allegedly violating restrictions on public transportation (Gotinga 2020). However, the acts imputed on Mayor Sotto were from days before the effectivity of R.A. No. 11469. The law does not apply retroactively. **Examples of such tensions between the national and local government add an additional obstacle to the smooth and streamlined implementation of COVID-19 measures.**

[3]

LGUs and their Local Chief Executives, being under the general supervision of the Executive Department, acted on the guidance of the Department of Interior and Local Government (DILG). On January 31, 2020, the DILG issued Memorandum Circular No. 2020-018, denominated as the “Guide to Action Against ‘Coronavirus’”, which set the early response of LGUs in the prevention and containment of COVID19. Later on, the DILG issued more

detailed guidelines in light of R.A. No. 11469 and the community quarantines imposed by the President. In particular, DILG Memorandum Circular No, 2020-062 gave LGUs the responsibility of setting up checkpoints in their territorial jurisdiction to prevent the spread of COVID19. While LGUs are vested with local autonomy by the Constitution, the pandemic response of the National Government seemed to have commanded strict compliance under pain of criminal sanctions.

[4]

A petition was filed before the Supreme Court challenging R.A. No. 11469, which was later on dismissed (CNN Philippines 2020b). The Supreme Court did not find any grave abuse of discretion on the part of the respondents to the petition. Two Supreme Court justices registered their dissent to the main decision.

### 3.3 ROLE OF EXPERTISE

[1]

President Duterte convened the Inter-Agency Task Force for the Management of Emerging Infectious Diseases (IATF-EID) during the first half of March 2020. Pursuant to an earlier Executive Order signed by former President Benigno S. Aquino III to respond to SARS, MERS-CoV, and Ebola, the IATF-EID as it is presently constituted is composed of executive departments identified in this executive directive. The IATF-EID is chaired by the Department of Health, led by Dr. Francisco Duque III. The other component agencies of the IATF-EID are: Department of Agriculture, Department of Budget and Management, Department of Foreign Affairs, Department of Information and Communications Technology, Department of Justice, Department of Labor and Employment, Department of Social Welfare and Development, Department of the Interior and Local Government, Department of Tourism, Department of Trade and Industry, and the Department of Transportation (Executive Order No. 168, s. 2014). The medical community in the Philippines has since asked for a “time out” from the government due to the seeming lack of a comprehensive plan when it came to combatting the pandemic (Lopez 2020).

[2]

A National Task Force Against COVID-19 (NTF) was specifically organized in response to the pandemic. Notably, the leader of the NTF is Secretary Carlito Galvez, the Presidential Advisor on the Peace Process and former Chief of Staff of the Armed Forces of the Philippines. With other ex-military officers joining Galvez in the NTF, observers were quick to point out a military strategy as the primary tactic of the national government, instead of a scientifically-informed approach (Esmaquel 2020).

Different ‘czars’ were later on designated to tackle the different aspects of the pandemic: Bases Conversion and Development Authority President and CEO Vivencio Dizon as ‘Chief Testing Czar’, Baguio City Mayor Benjamin Magalong as ‘Chief Tracing Czar’, Department of Public Works and Highways Secretary Mark Villar as ‘Chief Isolation Czar’, and Department of Health Undersecretary Leopoldo “Bong” Vega as ‘Chief Treatment Czar’ (PCOO 2020b). A

majority of these ‘czars’ are not medical professionals. Dr. Tony Leachon, former special advisor to the NTF, resigned on June 17, 2020 and expressed his disappointment over the Department of Health’s response to the crisis (Gonzales 2020).

[3]

President Duterte announced the imposition and subsequent modifications of categories of lockdowns during his weekly press conferences, which were conducted at late hours of the day. Metro Manila, for instance, was initially classified as under Enhanced Community Quarantine, later modified to General Community Quarantine, and then to Modified Enhanced Community Quarantine. Confusion on the part of the public has since arisen from these classifications.

From the strictest Enhanced Community Quarantine in Luzon island, several provinces were classified to be under the less-restrictive General Community Quarantine, depending on the severity of cases in each locality.

The Department of Health is tasked with the handling and release of information to the public with respect to the number of daily cases. However, institutions such as the University of the Philippines criticized the data being released by the DOH for noticeable discrepancies and lapses (Lalu 2020).

#### 4. CONCLUSION

The Philippine government’s answer to the COVID19 crisis follows the iron-fisted approach of its President Rodrigo Duterte when it comes to the enforcement of public order. With bureaucrats of military or non-medical backgrounds at the helm of the institutional response to the global health crisis, the consequent allegations of abuse and human rights violations no longer came with surprise.

The Philippine Congress, made up of a majority of the President’s allies, was able to easily muster the numbers needed to craft and pass a law granting the executive emergency powers. Republic Act No. 11469 provided a menu of broad powers that can be exercised by the President. And while the *de jure* effectivity of the law was no longer extended by legislative fiat, President Duterte continues to wield a militaristic approach to the pandemic through the sheer weight of his pronouncements.

The strategy chosen by the Philippine government is starting to yield its effects: with numbers rising by the day and containment still not within reach, the country languishes compared to its neighbors in the region in terms of its effectivity.

## BIBLIOGRAPHY

- Amnesty International (2020, April 02). President Duterte gives "shoot to kill" order amid pandemic response. Retrieved from <https://www.amnesty.org/en/latest/news/2020/04/philippines-president-duterte-shoot-to-kill-order-pandemic/>
- CNN Philippines. (2020, April 29). UN sounds alarm on PH's 'highly militarized' lockdown response. Retrieved from <https://www.cnnphilippines.com/news/2020/4/29/Philippines-COVID-19-quarantine-police-military.html>
- CNN Philippines (2020, July 01). SC junks petition vs. constitutionality of Bayanihan Act. Retrieved from <https://www.cnn.ph/news/2020/7/1/Supreme-Court-Bayanihan-Act-COVID-19-.html>
- Dressel, B., & Bonoan, C. R. (2019). Southeast Asia's Troubling Elections: Duterte versus the Rule of Law. *Journal of Democracy*, 30(4), 134-148.
- Esguerra, D. (2020, August 07). PH now has most COVID-19 cases in Southeast Asia. Retrieved from <https://globalnation.inquirer.net/190091/ph-now-has-most-covid-19-cases-in-southeast-asia>
- Esmaguél, P. (2020, August 13). Soldiers trump science in pandemic laggards Philippines, Indonesia. Retrieved from <https://rappler.com/newsbreak/in-depth/soldiers-trump-science-pandemic-laggards-philippines-indonesia>
- Gonzales, C. (2020, June 17). Tony Leachon no longer special adviser to national COVID-19 task force. Retrieved from <https://newsinfo.inquirer.net/1293086/tony-leachon-no-longer-special-adviser-to-national-task-force-against-covid-19>
- Gotinga, J. (2020, April 01). Vico Sotto on NBI summons: We complied with all directives. Retrieved from <https://rappler.com/nation/vico-sotto-response-nbi-summons-april-1-2020>
- Lalu, G. (2020, May 13). Lapses in DOH patients' data uncovered. Retrieved from <https://newsinfo.inquirer.net/1273838/lapses-in-doh-patient-data-uncovered>
- Lopez, D. (2020, August 01). Philippine Doctors Urge Time-Out as Coronavirus Cases Surge. Retrieved from <https://www.bloomberg.com/news/articles/2020-08-01/philippine-doctors-urge-time-out-as-coronavirus-cases-surge>
- Marquez, C. (2020, June 07). Bayanihan Law effective until June 25 due to 'sunset provision' – Palace. Retrieved from <https://newsinfo.inquirer.net/1287360/bayanihan-law-effective-until-june-25-due-to-sunset-provision-palace>
- Mercado, N. (2020, March 24). House OKs bill granting Duterte 'necessary' powers due to COVID-19 crisis. Retrieved from <https://newsinfo.inquirer.net/1246872/house-approves-bill-declaring-national-emergency-due-to-coronavirus>

Presidential Communications Operations Office [PCOO]. (2020, March 27). On the raison d'etre on the President's appointment of ex-military men to lead the implementation of the national Policy against Covid-19. Retrieved from <https://pcoo.gov.ph/OPS-content/on-the-raison-d-etre-on-the-presidents-appointment-of-ex-military-men-to-lead-the-implementation-of-the-national-policy-against-covid-19/>

Presidential Communications Operations Office [PCOO] (2020, July 13). Gov't assigns PH anti-COVID czars. Retrieved from [https://pcoo.gov.ph/news\\_releases/govt-assigns-ph-anti-covid-czars/](https://pcoo.gov.ph/news_releases/govt-assigns-ph-anti-covid-czars/)

Philippine Senate (2020, July 01). Press Release - Hontiveros asks gov't to rethink heavy-handed strategy vs covid-19 Robust health response needed as cases exceed 50,000, Senator says. Retrieved from [http://www.senate.gov.ph/press\\_release/2020/0709\\_hontiveros1.asp](http://www.senate.gov.ph/press_release/2020/0709_hontiveros1.asp)

Ramos, C., & Lалу, G. (2020, March 24). Senate OKs bill granting Duterte special powers to fight COVID-19. Retrieved from <https://newsinfo.inquirer.net/1247363/senate-oks-bill-granting-duterte-special-powers-to-fight-covid-19>

Robertson, P. (2020, July 15). Philippines Uses 'Drug War' Tactics to Fight Covid-19. Retrieved from <https://www.hrw.org/news/2020/07/15/philippines-uses-drug-war-tactics-fight-covid-19>

The Economist (2020, June 11). The Philippines' fierce lockdown drags on, despite uncertain benefits. Retrieved from <https://www.economist.com/asia/2020/07/11/the-philippines-fierce-lockdown-drags-on-despite-uncertain-benefits>

Thompson, M. R. (2017, August). Duterte's illiberal democracy. In *East Asia Forum*.

United Nations News (2020, April 27) [UN News]. 'Toxic lockdown culture' of repressive coronavirus measures hits most vulnerable. Retrieved from <https://news.un.org/en/story/2020/04/1062632?fbclid=IwAR3XIWVpwLY9c5ZWZRjSuo5s6IHKiHpG32W-brlSScOrXdKvowRFu0K1YZ0>

University of the Philippine College of Law [UP College of Law] (2020, March). 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. Retrieved from <https://law.upd.edu.ph/wp-content/uploads/2020/03/Reflections-on-the-Bayanihan-Act-30March2020.pdf>