

(2)

SURVEILLANCE AND COMPLIANCE

Jurisdiction: Philippines

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15 August 2020

1. REGULATORY TIMELINE

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| 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 through Proclamation No. 992. |
| 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. |
| 18 July 2020 | President Duterte signs into law the Anti-Terrorism Act of 2020. |
| 21 July 2020 | In a taped televised public address, President Duterte orders the Philippine National Police to arrest quarantine violators. |

2. INTRODUCTION

Under the regime of President Rodrigo Duterte, the Philippines has experienced a decline in its rule of law index. According to the World Justice Project, the Philippines globally ranks 91st out of 128 countries, and is third to the last in the region in the measure of rule of law (WJP 2020). The rule of law in the Philippines has been severely impacted by what scholars describe as an illiberal democratic order, characterized by the dominance of police and military forces under Duterte's administration (Thompson 2017). Notably, the Duterte regime has employed tactics described by domestic legal experts as "lawfare" or the weaponization of the law to target dissenting voices and increasing opposition (Nonato 2020). The onset of the COVID-19 public health crisis in the Philippines allowed the government to swiftly impose draconian quarantine measures, resulting in mass arrests, establishment of checkpoints, and the increase of possible cases of human rights violations. At the height of the strict lockdowns in the Philippines, Duterte signed the Anti-Terrorism Act of 2020, which contains contentious provisions on detention and surveillance.

3. BODY

3.1 ENFORCEMENT

[1]

With the Presidential declaration of a State of Public Health Emergency, the executive branch of the Philippine government, through the Department of Health, allowed for the enlistment of assistance from the Philippine National Police (PNP) in the implementation of measures to combat the spread of the virus (Proclamation No. 992, Section 3). PNP personnel were deployed to man checkpoints initially throughout the island of Luzon, which was placed under Enhanced Community Quarantine, the most restrictive lockdown classification imposed by the government. Measures that were immediately put into place were curfews (CNN Philippines Staff 2020), checkpoints, ban on public transport, and the mandatory wearing of masks and other protective equipment in public places (Department of Interior and Local Government Memorandum Circular No. 2020-071). Eventually, bans on mass social gatherings of up to ten persons and strict social distancing were imposed in other areas outside of Luzon, as cases increased in those localities (Pulta 2020).

[2]

The strict lockdown measures imposed by the national government and local government units (LGUs) resulted in difficulties with compliance on the part of the population. With the ban on public transport and the closure of businesses, members of the workforce were left with little to no options for their daily survival. This led to protest actions early on from sectors of the urban poor who demanded for government aid in the midst of the pandemic. However, such display of resistance was seen to be a violation of quarantine rules in place, leading to the arrests of the demonstrators (Talabong 2020). In a televised address, President Duterte stated that “*A simple violation of not wearing a mask and [observing] social distancing... can be a serious crime transmitting the [virus]. The theory is that you are a carrier. You should wear a mask so as not to pass on the [virus] to the other guys.*” (Gita-Carlos 2020a) Such pronouncements from the President reinforce the Philippine State’s seemingly repressive policies to contain the virus.

[3]

There are two main pieces of legislation that are constantly invoked by the government in the enforcement of quarantine measures. First is Republic Act No. 11132, or the *Mandatory Reporting of Notifiable Diseases and Health Events of Public Health Concern Act* which penalizes, among others, the “non-cooperation of the person or entities identified as having the notifiable disease, or affected by the health event of public concern” (Section 9, paragraph [e]). The second main law is Republic Act No. 11469, or the *Bayanihan to Heal as One Act*, signed into law containing emergency measures specifically aimed at addressing the COVID-19 public health crisis. This law penalizes, among others, the spread of false information in social media regarding the COVID-19 pandemic. **The imposable penalty is two months imprisonment or a fine ranging from 10,000 to 1,000,000 Philippine pesos (Section 6, paragraph [f]).**

3.2 SURVEILLANCE

[1]

Contact tracing is the main surveillance technique deployed by the Philippine government with respect to the identification of *confirmed, probable, and suspected* COVID-19 cases. In Department Memorandum No. 2020-0189, the DOH laid down the main guidelines for contact tracing. The contact tracing is to be overseen by the Epidemiology Bureau and carried out mainly by Barangay (village) Health Emergency Response Teams (BHRETs). According to the Department Memorandum, contact tracing entails the creation of ‘line lists’ that include “*demographic information and geographic information at barangay and sitio levels, date of first and last exposure or date of contact with the confirmed or probable case, and, for symptomatic close contacts, date of onset of fever, respiratory symptoms, or other significant signs and symptoms.*” Mandatory quarantine facilities were also designated for returning overseas Filipino citizens (Tomacruz 2020). The current mandatory quarantine period is 14 days. While there were initial anecdotal reports on the ban on the use of social media while staying at such facilities, the DOH denied the imposition of any such ban (Sabillo 2020). An app called StaySafe.ph has also been developed by the government to aid its contact tracing efforts. However, a group of experts from the Association for Progressive Communications has flagged potential privacy concerns regarding the app (APC 2020).

[2]

As per the DOH guidelines in the Department Memorandum cited above, contract tracing is to be done through the following measures:

1. *Identify settings where the contacts have visited or social interactions where the contacts have been exposed.*
2. *Identify all social, familial, work, and health care worker contacts who have had contact with a confirmed case from 2 days before symptom onset of the case (use date of sample collection for asymptomatic cases as basis) until the time that said case test negative on laboratory confirmation*
3. *Create a line list, including demographic information and geographic information at barangay and sitio levels, date of first and last exposure or date of contact with the confirmed or probable case, and, for symptomatic close contacts, date of onset of fever, respiratory symptoms, or other significant signs and symptoms;*
4. *Thoroughly document the common exposures and type of contact with the confirmed or probable case for any contact who become infected with COVID-19.*

A COVID-19 information system is the repository of all Case Investigation Forms (CIFs) submitted to the DOH. Local contact tracing teams are mobilized through the different LGUs.

[3]

The executive department, through the DOH with the assistance of the PNP, is tasked with the implementation of relevant laws and rules pertaining to the COVID-19 pandemic. Heightened

police presence, however, was noticeable at the very outset of the imposition of quarantine measures. Despite the public health character of the national emergency, the security forces dominated the enforcement of quarantine measures (Mendez & Tupas 2020). This resulted into more or less 30,000 arrests due to quarantine violations during the first month of the lockdown alone (Santos 2020).

[4]

At some point, the head of the National Task Force against COVID-19 Secretary Eduardo Año encouraged the public to report cases in their respective localities and stated that house-to-house visits will be conducted (Lema & Morales 2020). There were also pronouncements from a local official to enlist the help of “*tsismosas*” (gossipmongers) in each neighborhood to carry out contact tracing (Malasig 2020). The national government, however, disowned such statements (Geducos 2020).

[5]

Despite aggressive contact tracing, the Philippine government is still unable to match the policy with mass testing. In a public address, Presidential Spokesperson Harry Roque said it was up to the private sector to conduct testing of members of the workforce using antibody rapid test kits (Esguerra 2020). The government, however, clarified that COVID-19 testing for returning employees in the private sector is not mandatory (Gita-Carlos 2020b).

[6]

Aside from encouragement from the government to the public to report known cases of COVID-19 in their respective communities, a particular statement made by a high-ranking government official went further to suggest a shame campaign against patients. Interior Undersecretary Martin Diño was quoted as saying “*So now, it may be right for us to have a shame campaign. This COVID is no longer a joke. Just imagine how many [cases] there are now. Let’s not let it grow.*” (Marquez 2020) Diño later on went on record to say that he was misquoted; however, a news agency released a video of his actual interview to show that he actually made the controversial statement. There has also been a reported case of the PNP subjecting to public humiliation members of the LGBT community who violated quarantine measures (Thoreson 2020).

[7]

There have been reports of privacy breaches related to COVID-19 lodged before the Philippines’ National Privacy Commission. Breaches include the publication and circulation of names of COVID-19 positive patients. Alleged violators include local government officers and healthcare workers (Dizon 2020). The Philippines’ data protection regime is embodied in Republic Act No. 10173, or the *Data Privacy Act of 2012*. The National Privacy Commission and the DOH released a Joint Memorandum Circular containing the privacy guidelines to be followed in the processing and disclosure of COVID-19 related data. Personal information must be pseudonymized or anonymized, and written consent must be obtained before disclosure to third parties (DOH-NPC Joint Memorandum Circular No. 2020-0002). With the passage of the Anti-Terrorism Act, however, privacy becomes a more contested issue as the

law allows for court-sanctioned wiretapping of individuals who may be deemed as threats to State security.

[8]

The ‘data drop’ relating to COVID-19 information is centralized within the DOH. While the daily statistics are independently analyzed by individual experts, experts from the UP Resilience Institute have noted discrepancies in the data. In a statement on data integrity, the DOH acknowledged the assistance of “WHO, epidemiologists of the University of the Philippines Manila College of Public Health, and Thinking Machines Data Science for their immense supporting data validation and analysis.” (DOH Statement 2020).

[9]

The Philippine Institute for Development Studies (PIDS) released a study in April 2020 regarding the projected disease transmission of COVID-19, including recommendations for a policy response. Specifically referring to contact tracing, the PIDS study stated that “*The DOH should increase the number of contact tracers coordinating with epidemiology surveillance units (ESUs) at the central and regional level, and provide the necessary support for ESUs in the LGUs.*” However, such should be done alongside other measures such as decongestion of health facilities, providing adequate support to healthcare workers, and a more humane approach to quarantine and isolation measures. (Abrigo et al. 2020) Recently, Philippine medical workers have asked the government for a “time out” amidst the rising cases of COVID-19 and the lack of a comprehensive plan from the national government. The concerns of the medical community bring into light the need to pair surveillance and lockdown measures with health-oriented approaches to addressing the pandemic.

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