

Prioritizing Public Order Over Public Health: Human Rights Violations in the Context of the Philippine Government Pandemic Policies

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Since the onset of the COVID-19 pandemic, the Philippine government has chosen to continue its focus on public order by employing aggressive, brutal, and militaristic measures to address a public health crisis. This paper examines case studies that illustrate these government interventions and how they led to human rights violations. Likewise, this paper recommends actions that would promote and protect human rights in the time of a pandemic in the Philippine context.

The case studies were gathered by a team of lawyers who were formed to respond to these incidents. The cases are classified as human rights violations if there exists an act or omission committed by persons acting in an official capacity and/or state agents, including warrantless arrests pursuant to quarantine-related violations, infliction of harm, and state negligence in protecting vulnerable groups. The resulting cases showed violations of due process, freedom of expression, and access to justice, serving as a microcosm of the national situation.

The policy recommendations borne out of the case studies are a) Alternative Non-Custodial Measures Against Lockdown Violators, b) Judicial Utilization of Art. 5 of the RPC, c) Raising The Quantum of Evidence for Filing Information, d) Passage of A Bill Penalizing the Crime of Red-Tagging, and e) Community Engagement by Law Enforcers

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List of Abbreviations

AFP	Armed Forces of the Philippines
CLEAR	COVID-19 Legal Assistance and Response for Human Rights
COVID-19	Coronavirus Disease 2019
CPP	Communist Party of the Philippines
DILG	Department of Interior and Local Government
DND	Department of National Defense
HR	Human Rights
HRV	Human Rights Violation
IDEALS	Initiatives for Dialogue and Empowerment through Alternative Legal Services, Inc.
IATF-EID	Inter-Agency Task Force for the Management of Emerging Infectious Diseases
LGU	Local Government Unit
NTF	National Task Force
NTF-ELCAC	National Task Force to End Local Communist Armed Conflict
PNP	Philippine National Police
QRT	Quick Response Team
R.A. No.	Republic Act Number
RPC	Revised Penal Code

Introduction

Even before the COVID-19 pandemic, the Philippine government had a problematic approach to human rights. A UN report on the human rights situation from the years 2015 to 2020 show that since the start of examined period, the primary focus of the Philippine government has been on public order and national security, often at the expense of due process, the right to liberty, and the rule of law.² The pandemic has not changed this approach. Strict lockdown rules, mass arrests, and excessive use of force are used to control the majority and silence dissent. Public order is prioritized rather than public health. However, the strict implementation of lockdown measures pertains only to ordinary citizens, while public officials and the affluent class are exempted.³

By September 2020, or six months after the declaration of the state of calamity, the Joint Task Force COVID Shield⁴ reported that over 100,000 quarantine violators have been arrested.⁵ The same report stated that as of September 2020, the police made most of the arrests based on violations of ordinances and guidelines issued by the Inter-Agency Task Force for the Management of Emerging Infectious Diseases.⁶

Amid the pandemic, Congress prioritized the passage of Republic Act No. 11479, otherwise known as the Anti-Terrorism Act of 2020. This law penalizes the ambiguous offense of “inciting to terrorism” which includes speeches and proclamations.⁷ The law also allows warrantless arrest and detention of suspected terrorists⁸.

In 2021, after a year of inadequate government support, citizens established community pantries to share donated food to those in need.⁹ However, several pantries suspended operations after being red-tagged or accused of having communist affiliations¹⁰ and profiling by State agents.¹¹

² UNHRC, *Situation of human rights in the Philippines: Report of the United Nations High Commissioner for Human Rights*. UNHRCOR, 44th Sess, Supp No 22, UN Doc A/HRC/44/22 (29 June 2020).

³ Elijah Roderos & Ivel John Santos, “VERA FILES FACT CHECK YEARENDER: The two faces of COVID-19 lockdown in the Philippines”, (21 December 2020), online: *VERA Files* <<https://verafiles.org/articles/vera-files-fact-check-yearender-two-faces-covid-19-lockdown>>

⁴ The Joint Task Force COVID Shield refers to the enforcement arm of IATF-EID in the implementation of quarantine rules and protocols.

⁵ Rambo Talabong, “Over 100,000 quarantine violators arrested in PH since March”, *Rappler* (8 September 2020), online: <<https://www.rappler.com/nation/arrested-quarantine-violators-philippines-2020>>

⁶ The IATF-EID was created in 2014 through Executive Order No. 168 and is composed of various government departments and agencies to assess, monitor, contain, control, and prevent the spread of any emerging infectious disease in the Philippines.

⁷ *The Anti-Terrorism Act of 2020*, RA No. 11479, s. 9.

⁸ *Ibid* at s. 29.

⁹ Julie Suzao, “What the community pantry movement means for Filipinos”, *CNN Philippines* (19 April 2021), online: <<https://cnnphilippines.com/life/culture/2021/4/19/community-pantry-filipinos-pandemic.html>>

¹⁰ Patreng Non. “#CommunityPantry” (20 April 2021), online: *Facebook* <<https://www.facebook.com/PatrengNon/posts/2883888128535551>>

¹¹ Jairo Bolledo, “Only days into operation, community pantries now face red-tagging”, *Rappler* (20 April 2021), online: <<https://www.rappler.com/nation/community-pantries-face-red-tagging-april-2021>>

Meanwhile, government officials flout quarantine rules with impunity. An example is Senator Aquilino Pimentel, who breached home quarantine while positive for COVID-19 and exposed the healthcare workers in Makati Medical Center to the virus.¹² Another violator is General Debold Sinas, the former Chief of the PNP, who held a mass gathering for his birthday in May 2020.¹³ The country's contact tracing czar Baguio City Mayor Benjamin Magalong attended a birthday party in violation of multiple health ordinances.¹⁴ Magalong submitted his resignation but this was rejected by the President, stating that "he continues to enjoy the trust and confidence of the National Task Force Against COVID-19."¹⁵

As a signatory to the International Bill of Human Rights, the Philippine government has the obligation to respect, protect, and fulfill human rights.¹⁶ This includes the right to health, defined as a complete state of physical, mental, and social well-being, and not merely the absence of disease or infirmity,¹⁷ which should be given focus in a pandemic. This necessarily entails applying medical and scientific solutions. However, the administration's failure to follow scientific advice resulted in the lowest approval rating for government response among all Southeast Asian countries.¹⁸

This paper will present a selection of cases handled by IDEALS to serve as a microcosm of the national situation, showing how national government policies directly impact ordinary citizens.

Scope and Limitations

In June 2020, the COVID-19 Legal Assistance and Response for Human Rights project under the Human Rights Program of IDEALS was launched to address the urgent legal needs of communities in the areas of Caloocan, Malabon, Navotas, Quezon, Manila, Taytay, Marikina, and Pasig in relation to the COVID-19 pandemic. This project is implemented by the Quick Response Team which serves as first responders to emergency situations, assisting clients with urgent legal needs and helping them secure legal documents.

Project CLEAR is composed of three components: a) inbound investigation, b) outbound legal intervention, and c) research and monitoring. These components cover different stages of response. Inbound investigation covers the escalation or receiving of incident details. After receipt, the team determines the necessary service to the client. Outbound legal intervention is the carrying out of the service and assistance to the client, which may include field work.

¹² Xave Gregorio, "Makati hospital berates Sen. Pimentel for violating quarantine protocols", *CNN Philippines* (25 March 2020), online: <<https://www.cnnphilippines.com/news/2020/3/25/Koko-Pimentel-Makati-Medical-Center-quarantine-protocol.html>>

¹³ Jodesz Gavilan, "Controversies trail Debold Sinas: Mañanita to unresolved killings", *Rappler* (9 November 2020), online: <<https://www.rappler.com/newsbreak/iq/list-controversies-debold-sinas-pnp-chief>>

¹⁴ Rappler, "Tim Yap, KC Concepcion each pay P1,500 for violating health protocols at Baguio party", *Rappler* (29 January 2021), online: <<https://www.rappler.com/entertainment/celebrities/tim-yap-kc-concepcion-pay-fines-violating-covid-19-health-protocols-party-baguio-city>>

¹⁵ Pia Ranada, "Malacañang rejects tracing czar Magalong's resignation", *Rappler* (29 January 2021), online: <<https://www.rappler.com/nation/malacanang-rejects-benjamin-magalong-resignation>>

¹⁶ International Covenant on Civil and Political Rights, 19 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976) [ICCPR].

¹⁷ WHO, *Constitution of the World Health Organization*, WHOOR, UN Doc E/H/17 (19 July 1946) at 2 <[undocs.org/E/H/17](https://www.who.int/docs/default-source/about-us/constitution-of-the-world-health-organization/constitution-of-the-world-health-organization.pdf)>

¹⁸ Pia Ranada, "PH scores lowest among ASEAN countries in gov't pandemic response – survey", *Rappler* (11 February 2021), online: <<https://www.rappler.com/nation/disapproval-government-response-covid-19-pandemic-strongest-philippines-asean>>

Research and monitoring consolidates the learnings from handled cases and analyzes the implementation of government policies to draft recommendations for policymakers and stakeholders. At times, the activities overlap or deviate from the sequence due to the peculiarities attending the case.

Since the launch of the project, the QRT of IDEALS handled 26 incidents and assisted 50 individuals with their legal needs.

As of June 2021, the 26 cases encountered by the QRT may be grouped as follows:

Right Involved	Incidents	Number of Individuals
Due process	14	23
Freedom of expression	7	21
Access to justice	5	6
Total	26	50

The cases classified under the right to due process include arbitrary and/or illegal arrests, prolonged detention due to lockdown measures, and unsanctioned penalties. These are considered violations of the right to due process as the State failed to undergo the legal procedure prior to depriving a person of his rights.

As for the cases under freedom of speech, these include State interference in the lawful exercise of the right to free expression and to assembly. State interference is understood to range from intimidation tactics employed by public authorities and disruption of public assemblies which could dissuade the public from free expression.

The cases categorized as violations of the right to access to justice are those wherein the individual was unable to access legal remedies. This inability to access legal remedies is attributable to the unwillingness or delay of State agents in performing their duties and the insufficiency of State resources.

Methodology

The cases handled by the QRT were referred to IDEALS through the following channels: retained lawyers under the project, the IDEALS *Responde* hotline, referrals from partner organizations, the *Tisya Hustisya* Facebook page, and monitoring of the news. The *Responde* hotline is the emergency service hotline that provides legal counsel over the phone for clients requiring immediate practical advice and instructions on next steps. *Tisya Hustisya* is the online version of the hotline where clients engage with the Facebook page by relating their concerns for legal advice.

These cases were assessed by the team based on an internal classification system on whether the incident involves HRVs. Because there is no legal definition of a human rights violation under the Philippine jurisdiction, case law and the Human Rights Victims Reparation and Recognition Act of 2013¹⁹ are used as guides to determine which acts constitute HRVs. Under the said law, a human rights violation refers to any act or omission committed by persons

¹⁹ *Human Rights Victims Reparation and Recognition Act of 2013*, Republic Act No. 10368.

acting in an official capacity and/or agents of the State.²⁰ For purposes of the project and this paper, these acts include, but shall not be limited to, the following:

- (1) Any search, arrest, and/or detention without a valid search warrant or warrant of arrest issued by a civilian court of law, including any warrantless arrest or detention carried out pursuant to quarantine-related violations and offenses as well as any arrest, detention, or deprivation of liberty, or in any manner that the arrest, detention, or deprivation of liberty was effected;
- (2) The infliction by a person acting in an official capacity and/or an agent of the State of physical injury, torture, killing, or violation of other human rights of any person;
- (3) Any enforced or involuntary disappearance caused upon a person who was arrested, detained, or abducted against one's will or otherwise deprived of one's liberty;
- (4) Any act or series of acts causing, committing, and/or conducting the following:
 - (i) Kidnapping or otherwise exploiting children;
 - (ii) Committing sexual offenses against human rights victims who are detained and/or in the course of conducting police operations; and
 - (iii) Other violations and/or abuses similar or analogous to the above, including those recognized by international law.
- (4) Frivolous suits against Human Rights Defenders for being vocal against human rights violations; and,
- (5) Negligence or inaction of the State in providing protection for the vulnerable groups affected by community quarantine rules and regulations.

Once the case is classified as a human rights violation, a determination is made if the incident is related to pandemic restrictions and measures. The QRT then decides on the appropriate action by considering the available documents, the feasibility of the remedy, and the urgency of the situation. After such assessment, services are provided ranging from legal advice, accompanying clients to government agencies, drafting documents, and filing cases.

For purposes of this paper, primary research was conducted through interviews of the clients and the documentation of their cases. The interviews were done over the phone, through various messaging platforms, and/or face-to-face meetings. Pertinent information taken from the clients include their names, ages, narration of the incidents, State agents and/or public authorities involved in the HRV, and their urgent concerns. The documentation of cases included the collection and examination of documents, such as photographs, criminal complaints/informations, arrest reports, and violation receipts. However, not every case had available documents related to the incident.

From the array of cases handled by the QRT, eleven cases were selected to evince the national situation of HRVs arising from aggressive methods of implementing quarantine rules, stifling free expression, and the difficulty in accessing the justice system.

²⁰ *Ibid*, s 3(b).

Relevant Laws and Case Studies

On Due Process under Philippine Laws

The 1987 Constitution provides that “no person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.”²¹ Under Section 14 of the Bill of Rights, no person shall be held to answer for a criminal offense without due process of law. The State is also obligated to ensure that in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, and to be informed of the nature and cause of the accusation against him.²² Criminal due process requires that the procedure established by law or the rules must be followed to assure that the State makes no mistake in taking the life or liberty of any person except that of the guilty.²³ Thus, in order to validly deprive a person of liberty, the arresting officer must abide by the procedures set down by law.

The procedure in making an arrest is established by the Constitution and the Rules of Criminal Procedure. As a general rule, no one can be arrested without a valid warrant of arrest except in the following circumstances: (a) *in flagrante delicto* arrests or when the person to be arrested has committed, is committing, or is attempting to commit an offense; (b) “hot pursuit” arrests or when an offense has just been committed and there is probable cause, based on the personal knowledge of the arresting officer, that the person to be arrested has committed the offense; and (c) the re-arrest of escaped prisoners.²⁴

In any case, an arrest must be made in connection to a crime or an offense. For an act to constitute a crime or felony, the act or omission must be prohibited and punishable by law.²⁵ No person should be brought within the terms of a crime when the terms are not clear and unambiguous, nor should any act be pronounced criminal which is not clearly proscribed by statute.²⁶ In the Philippines, penal statutes are strictly construed in favor of the accused so that the law will not allow constructive offenses or arbitrary punishments.²⁷

When the lockdown measures were first implemented, Justice Secretary Guevarra announced that quarantine violators may be arrested for violating either Art. 151 of the RPC or R.A. No. 11332.²⁸

Under Art. 151 of the RPC, the act of “resistance and disobedience to a person in authority or the agents of such person” refers to the disobedience of any person directly vested with jurisdiction, whether as an individual or as a member of some court or governmental

²¹ 1987 Philippine Constitution, art III, s 1.

²² *Ibid*, s 14 (2).

²³ Supreme Court, 23 July 2018, *Johanne Labay v. Sandiganbayan*, G.R. Nos. 235937-40 (Philippines).

²⁴ *Rules of Criminal Procedure*, A.M. No. 00-5-03-SC, Rule 113, s 5.

²⁵ *Revised Penal Code*, Act No. 3815, art. 3.

²⁶ Supreme Court, *United States v. Antonio Abad Santos*, 10 February 1917, G.R. No. L-12262 (Philippines).

²⁷ Supreme Court, *People of the Philippine Islands v. Manuel Abuyen*, 2 February 1929, G.R. No. L-30664 (Philippines).

²⁸ Tetch Torres-Tupas, “Enhanced community quarantine violators may be arrested – Guevarra”, *Inquirer* (16 March 2020), online: < <https://newsinfo.inquirer.net/1243294/enhanced-community-quarantine-violators-may-face-arrest-guevarra> >

corporation, board or commission, including *barangay* captains.²⁹ This definition includes members of the IATF-EID. Agents of persons in authority are those who, by direct provision of law, by election, or by appointment by a competent authority, are charged with the maintenance of public order and protection and security of life and property.³⁰ This shall include *barangay kagawad*,³¹ *barangay tanod*,³² and any person who comes to the aid of persons in authority.

The two key elements of resistance and disobedience under the law are: a) that the person in authority or his agent is engaged in the performance of official duty or gives a lawful order to the offender; and b) that the offender resists or disobeys such person or his agent.³³ When a lawful order issued by a person in authority in the performance of their duty is unjustifiably disobeyed or violated by the accused, then there is a violation of Art. 151 of the RPC.

R.A. No. 11332 is a special law enacted in line with the policy of the State to protect and promote the right to health of the people. Under Sec. 9 of the law, the list of prohibited acts are as follows:

- (a) Unauthorized disclosure of private and confidential information pertaining to a patient's medical condition or treatment;
- (b) Tampering of records or intentionally providing misinformation;
- (c) Non-operation of the disease surveillance and response systems;
- (d) Non-cooperation of persons and entities that should report and/or respond to notifiable diseases or health events of public concern; and
- (e) Non-cooperation of the person or entities identified as having the notifiable disease, or affected by the health event of public concern.

This law was enacted only in 2019 and lacks relevant jurisprudence to interpret its provisions. In September 2020, a Municipal Trial Court junked a criminal case for violation of Sec. 9 (e) of R.A. No. 11332 against protesters for lack of basis. The court held that “non-cooperation” has not yet been clearly defined and there was no identification of the activities requiring cooperation; adding “the sweeping generalization that the entire population is affected by such health event of public concern cannot simply be made.”³⁴

Case Studies

In the case of **A, B, and C**,³⁵ they were arrested by *barangay* market officials and charged with violating Art. 151 of the RPC. The arrest occurred on 21 March 2020, a few days after the initial implementation of lockdown measures. On the part of A, the cause of his arrest was refusal to close his store. B and C were arrested for refusing to go home. Based on the official documents, the incident occurred around 5:20 p.m. Caloocan City Ordinance No. 0849, s.

²⁹ *Revised Penal Code*, art 152; A *barangay* captain is the highest elected official or the Chief Executive of the *barangay*, the smallest administrative division in the Philippines.

³⁰ *Ibid.*

³¹ A *barangay kagawad* is an elected official, otherwise known as a *barangay* councilor, who serves on the legislative body of the *barangay*.

³² A *barangay tanod* is the peacekeeping officer in the *barangay* and serves to augment the police in law enforcement.

³³ Supreme Court, *Edmund Sydeco v. People of the Philippines*, 12 November 2014, G.R. No. 202692 (Philippines).

³⁴ Mitchelle Palaubanson, “For lack of merit: Court drops 1 of 3 cases vs ‘Cebu 8’”, *The Freeman* (10 September 2020), online: <<https://www.philstar.com/the-freeman/cebu-news/2020/09/10/2041356/lack-merit-court-drops-1-3-cases-vs-cebu-8>>

³⁵ Names have been anonymized for their security and privacy.

2020 establishes curfew hours to be between 8 p.m. to 5 a.m. when people are prohibited from being in public places without legal or justifiable reason.³⁶

An element of a violation of Art. 151 of the RPC is that a lawful order must be given. The *barangay* officials who advised A, B, and C to go home had no legal basis to support that order as curfew hours begin at 8 p.m. and the incident occurred at 5 p.m. This case is an example of arrest and detention without legal grounds.

In the case of **D and E**, they were *en route* to their place of work when they were arrested by police officers for violating Art. 151 of the RPC and detained for more than three months. They were arrested on 18 April 2020 and released in July 2020. Notably, the maximum duration of imprisonment for the crime is only one month. They were released after their motion to quash the information was granted on the ground that the facts charged do not constitute an offense. Their alleged crime was going out of the house without any home quarantine pass.

Antipolo City Ordinance 2020-940 limits movement to accessing basic necessities and going to and from work. As D and E were on their way to work, they were within their rights to be out of their residence. The act of not having a home quarantine pass cannot be construed as a crime since it is not punishable by any law. The legal principle of *nulla poena sine lege* requires that no punishment may be carried out unless in accordance with a law that is certain and unambiguous. Not only was their arrest without legal basis, they were also detained for an unconscionable duration.

In the case of **F, G, H, I, and J**, they are street vendors arrested last 22 April 2020 for supposedly violating Quezon City Ordinance No. 5063, series of 1962 and R.A. No. 11332. The arresting officers stated that the vendors violated social distancing protocols and obstructed traffic.

However, the arrest affidavit makes no reference to the specific acts constituting a violation of the ordinance. In the document containing the palm prints of the vendors, the charge indicated was a violation of Quezon City Ordinance No. 1364, series of 2003. This ordinance provides for the registration of vendors without stalls. The penalties for its violations are limited to suspension and/or cancellation of permits and a fine. Under the Rules of Court, a warrant of arrest need not be issued if the information or charge was filed for an offense penalized by a fine only.³⁷ It may be stated as a corollary that neither can a warrantless arrest be made for such an offense.³⁸ Thus, the warrantless arrest of these vendors is excessive, unnecessary, and illegal; especially considering that these were poor vendors who relied on daily earnings for basic needs and survival.

Moreover, the complaint also failed to state which specific provision of R.A. No. 11332 was violated by the vendors. The actual charges are now left to conjecture. This is in violation of the right to due process which requires that the person charged is informed of the nature and cause of the accusation against him.³⁹

In the case of **K and L**, they were arrested by a *barangay* official on 22 April 2020 for allegedly not wearing a face mask while outside their house and for shouting invectives at the

³⁶ *Curfew Hours to fight COVID-19 in the City of Caloocan*, Caloocan City Ordinance No. 0849 (2020), s 2(a).

³⁷ *Rules of Criminal Procedure*, Rule 112, s 6.

³⁸ Supreme Court, *Rodel Luz v. People of the Philippines*, 29 February 2012, G.R. No. 197788 (Philippines).

³⁹ *1987 Philippine Constitution*, art III, s14.

officers. The incident was referred to the City Prosecutor for the crime of Unjust Vexation under the RPC⁴⁰ and for violating Sec. 9 of R.A. No. 11332. Based on the narration of L, he was arrested while inside his residence.

In the letter referring the case to the City Prosecutor, it shows that the arresting officers were AO1 and AO2. However, they were not the actual persons who apprehended K and L. Such fact was asserted in the respective counter-affidavits of K and L.

On the charge of Unjust Vexation, the test is “whether the offender’s act causes annoyance, irritation, torment, distress or disturbance to the mind of the person to whom it is directed.”⁴¹ No statement was given by the “arresting officers” on the specific act that caused annoyance or any of the aforementioned. As to the charge of non-cooperation of a person being affected by the health event of public concern, the allegations set forth by the “arresting officers” made no mention of an activity that requires cooperation. Thus, there is no reason to hold K and L liable for a violation of Sec. 9 of R.A. No. 11332.

In March 2021, the City Prosecutor filed a case in court for Unjust Vexation against K and L.

In the case of **M and N**, they are minors who were arrested and detained by a *barangay kagawad* and a police officer last 7 May 2020. According to them, they were apprehended while buying food and brought to the *barangay* hall. Once there, the children were asked to choose their penalty: detention or “exercise” activities. They chose the latter so they were forced to stand under the heat of the sun and roll over cement roads, causing bruises on their bodies.

The incident was reported to the DILG, which referred the case to Col. Lim, the head of the PNP in San Jose del Monte, Bulacan. Col. Lim told the mother of N, that the acts done by the public officials cannot be the subject matter of a complaint because it is allegedly within the mandate of the police.

This incident is a clear showing of abuse through the outright imposition of a penalty not sanctioned by law. Under Art. 78 of the RPC,⁴² no penalty should be executed except by virtue of a final judgment. A penalty should also not be executed in any other form than that prescribed by law, nor with any circumstances or incidents other than those expressly authorized.

⁴⁰ *Revised Penal Code*, art 287; *Light coercions*. — Any person who, by means of violence, shall seize anything belonging to his debtor for the purpose of applying the same to the payment of the debt, shall suffer the penalty of *arresto mayor* in its minimum period and a fine equivalent to the value of the thing, but in no case less than Fifteen thousand pesos (P15,000).

Any other coercions or unjust vexations shall be punished by *arresto menor* or a fine ranging from One thousand pesos (P1,000) to Forty thousand pesos (P40,000), or both.

⁴¹ Supreme Court, *Renato Baleros v. People of the Philippines*, 22 February 2006, G.R. No. 138033 (Philippines).

⁴² *Revised Penal Code*, art 78; *When and how a penalty is to be executed*. — No penalty shall be executed except by virtue of a final judgment.

A penalty shall not be executed in any other form than that prescribed by law, nor with any other circumstances or incidents than those expressly authorized thereby.

In addition to the provisions of the law, the special regulations prescribed for the government of the institutions in which the penalties are to be suffered shall be observed with regard to the character of the work to be performed, the time of its performance, and other incidents connected therewith, the relations of the convicts among themselves and other persons, the relief which they may receive, and their diet.

The regulations shall make provision for the separation of the sexes in different institutions, or at least into different departments and also for the correction and reform of the convicts.

On Freedom of Expression under Philippine Law

Under the 1987 Constitution, it provides that “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.”⁴³ The prohibition includes a ban on “prior restraint” and “subsequent punishment”.⁴⁴ Prior restraint pertains to official government restrictions on the press or other forms of expression in advance of publication. Freedom from prior restraint is understood to be freedom from government censorship in whatever form, by any branch of government. Any law or official that requires any permission before publication, infringes on this constitutional right; while the second prohibition refers to freedom from liability subsequent to publication, which means opinions on public issues cannot be punished merely because the opinions are novel or controversial or because they clash with current doctrines.⁴⁵

On 3 July 2020, The Anti-Terrorism Act of 2020 was enacted expanding the definition of terrorism including the criminalization of “inciting to terrorism”. This includes speech seen to be geared towards: 1) intimidating the public, government or international organization; 2) creating an atmosphere of fear; 3) seriously destabilizing political economic or social structures; and, 4) creating a public emergency or undermining public safety.⁴⁶ Former Supreme Court Justice Carpio raised concerns that citizens will now second-guess whether their actions constitute terrorism, producing a chilling effect on free speech.⁴⁷ In the case of *Disini v. Secretary of Justice*, a chilling effect is defined as government action which creates a tendency to intimidate the free exercise of one’s constitutional rights.⁴⁸

In 2017, President Duterte declared the Communist Party of the Philippines - New People’s Army as a terrorist group.⁴⁹ However, membership in the said organization has not been a crime since the 1957 Anti-Subversion Law was repealed.⁵⁰ Government officials continue to label activists as terrorists or Communists, which is considered highly dangerous given that more than a hundred activists have been killed since 2016 and countless others have been harassed due to red-tagging.⁵¹

Case Studies

In the case of **O**, she was attending a demonstration on 27 July 2020 when her residence was visited by police officers. It seems that the police in her area learned of the rally and the participants in the community. The first visit from police officers occurred while her minor child was alone in the house. Four plainclothes policemen arrived at her house and introduced

⁴³ 1987 Philippine Constitution, art III, s 4.

⁴⁴ Supreme Court, *Francisco Chavez v. Raul M. Gonzales*, 15 February 2008, G.R. No. 168338 (Philippines).

⁴⁵ *Ibid.*

⁴⁶ *The Anti-Terrorism Act of 2020*, RA 11479, s 9.

⁴⁷ Elmor Santos, “Here are the major issues raised against the Anti-Terrorism Act”, *CNN Philippines* (30 January 2021), online: <<https://cnnphilippines.com/news/2021/1/30/Anti-Terrorism-Act-oral-arguments-Supreme-Court.html>>

⁴⁸ Supreme Court, *Disini v. Secretary of Justice*, 11 February 2014, G.R. No. 203335 (Philippines).

⁴⁹ Presidential Proclamation No. 374, 5 December 2017.

⁵⁰ *An Act Repealing RA 1700, as amended*, RA No. 7376 (1992).

⁵¹ Jodesz Gavilan, “Lives in danger as red-tagging campaign intensifies”, *Rappler* (20 February 2020), online: <<https://www.rappler.com/newsbreak/in-depth/lives-in-danger-duterte-government-red-tagging-campaign>>

themselves as police. Two of them entered her home without a warrant. The second visit occurred when O was home and the police officer took down pertinent information such as her address, contact number, and photo.

This case was referred to the Commission on Human Rights for further investigation. O is fearful for the safety of her family as her house is not structurally secure. She has no security system or gate. Her doors have flimsy locks which cannot withstand much pressure.

In the case of **P**, he was arrested by a barangay official while attending a rally in Valenzuela commemorating the declaration of Martial Law. He was apprehended for an alleged violation of Valenzuela City Ordinance No. 673 and released after police officers issued an ordinance violation receipt.

Valenzuela City Ordinance No. 673 is known as the “Stringent Social Distancing Measures and other Precautionary Measures to Prevent and Contain Transmission of COVID-19 in Valenzuela City.” Under this ordinance, mass gatherings, where the number of people attending the event could strain the planning and response resources of the city or municipality, is prohibited.⁵² Despite these ordinances, the constitutional right to assemble and petition the government for redress of grievances remains. Given that the protestors practiced social distancing measures and wore masks, it may be assumed that the haste in making their arrest was because they were protesting.

In the case of **Q**, he operated a community pantry in Marikina City. On 8 May 2021, he was unloading goods for the pantry when he was approached by two uniformed policemen. These men asked for his personal information such as his name, address, and contact number to be written in their logbook. Q questioned the purpose of taking this information, to which the policemen replied that it was merely for their record. Since the policemen insisted on obtaining the information, Q acceded. Q now feels vulnerable since the police has his personal information and he does not know how they will use it. This fear led to the closure of the community pantry until P feels safe to resume operations.

A chilling effect is produced when armed government personnel such as the PNP deliberately surveil and profile community pantries.⁵³ A government act that has a chilling effect on the exercise of free expression is an infringement within the constitutional purview.⁵⁴ The Data Privacy Act of 2012 states that a person has the right to be informed of the purposes for which his personal information is collected and processed, the identity and contact details of the person who shall control and store this information, and to whom this information will be disclosed.⁵⁵ This information should have been furnished prior to the entry of the information in the system. As government agents, the policemen wielded their authority to intimidate Q into giving his information without due regard for his rights under the Data Privacy Act.

On Access to Justice under Philippine Law

⁵² Valenzuela City Ordinance No. 673 (2020), s 20.

⁵³ Jairo Bolledo, “Parlade admits profiling of community pantry organizers”, *Rappler* (20 April 2021), online: <<https://www.rappler.com/nation/ntf-elcac-parlade-admits-profiling-organizers-community-pantries>>

⁵⁴ Supreme Court, *Francisco Chavez v. Raul Gonzalez*, 15 February 2008, G.R. No. 168338 (Philippines), Tinga, J., dissenting and concurring.

⁵⁵ *Data Privacy Act of 2012*, RA No. 10173, s 16.

Under Section 11 of the Bill of Rights, free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.⁵⁶ This provision is a State guarantee that adequate legal assistance is available to the people that is both free of charge and unhindered. However, ordinary citizens choose to turn to non-governmental organizations such as IDEALS for legal assistance. It is especially difficult to find legal assistance offered by the State when the suit will be filed against a State agent or public official.

The Bill of Rights also provides under Section 16 that “all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.” Speedy disposition is a necessarily relative term and the determination of whether this right has been violated depends on several factors such as the length of the delay, the reason for the delay, the assertion of the right to a speedy disposition of the case, and the prejudice caused by the delay.⁵⁷ Philippine law views this right from the perspective of the respondent, in parallel to the right of the accused to a speedy trial.

An option to exact accountability from public officers is through filing complaints with the Ombudsman. The rules of procedure with the Office of the Ombudsman states that a complaint which alleges any act or omission of a public official or employee which is unreasonable, unfair, oppressive, discriminatory, improper, or inefficient should be acted upon immediately upon receipt.⁵⁸

However, given the various factors to be considered in making a determination of “speedy disposition”, a categorical claim of its violation would be premature. It is noted that the delay in the proceedings to hold the government and its agents accountable is in stark contrast to the hastiness in law enforcement and imposing penalties.

Case Studies

In the case of **R**, he is a delivery worker barricaded in his own home by *barangay* authorities last 1 June 2020 due to fear that he could be a COVID-19 carrier. The *barangay* authorities ignored their own ordinance on anti-discrimination against frontline workers and proceeded to illegally detain him within his home.

IDEALS extended assistance by sending a lawyer to accompany R when he filed a criminal case for a violation of the Anti-Discrimination Ordinance⁵⁹ and Arbitrary Detention

⁵⁶ 1987 Philippine Constitution, art III, s 11.

⁵⁷ Supreme Court, *Caballero v. Alfonso, Jr.*, 21 August 1987, G.R. No. L-45647 (Philippines).

⁵⁸ *Rules of Procedure of the Office of the Ombudsman*, Administrative Order No. 7 series of 1990, Rule IV, s 3.

⁵⁹ *Anti COVID-19 Discrimination Ordinance of 2020*, Manila City Ordinance No. 8624 s. 2020, s 3; Unlawful Acts - It shall be unlawful for any person, whether natural or juridical, to commit any act or make utterances which cause or tend to cause stigma, disgrace, shame, humiliation, harassment, or otherwise discriminating against a person infected, under investigation or monitoring due to COVID-19, health worker or frontline as defined under this Ordinance. xxx Any person who shall publicly claim, post on social media, spread or announce that a person is infected, is under investigation or monitoring due to COVID-19 whether or not the same has been confirmed or validated from the list given by the authorized proper health officials, agency or department, shall also be liable under this section. If the person violating is a public officer, the penalty imposed shall be in its maximum and can also be a ground for filing of an administrative case against said official EXCEPT when the patient concerned waived his/her right to privacy and for purposes of contact tracing and other medical purposes.

under the RPC⁶⁰ against the involved *barangay tanod*. An administrative case was also filed against the *barangay* captain for Grave Misconduct⁶¹ with the Office of the Ombudsman.

The administrative case was filed in August 2020, but there has been no action from the Office of the Ombudsman yet. The first hearing on the separate criminal case filed with the court has been reset thrice due to the failure of the prosecutor to appear.

In the case of **S and T**, they were physically assaulted by *barangay* officials last 18 June 2020. The husband and wife were accosted by a *purok* leader⁶² in their community and forcefully brought to the *barangay* hall. Once there, T was locked inside a small cell. Both were subjected to physical assault by the *purok* leader and a number of *barangay tanod*. The threat of transmitting the virus and purposefully violating social distancing measures were used by the *barangay* officials to terrorize the couple.

⁶⁰ Revised Penal Code, art 124. *Arbitrary detention*. – Any public officer or employee who, without legal grounds, detains a person, shall suffer:

1. The penalty of *arresto mayor*, in its maximum period to *prision correccional* in its minimum period, if the detention has not exceeded three days;
2. The penalty of *prision correccional* in its medium and maximum periods, if the detention has continued more than three but not more than fifteen days;
3. The penalty of *prision mayor*, if the detention has continued for more than fifteen days but not more than six months; and
4. That of *reclusion temporal*, if the detention shall have exceeded six months.

The commission of a crime, or violent insanity or any other ailment requiring the compulsory confinement of the patient in a hospital, shall be considered legal grounds for detention of any person.

⁶¹ Section 60, Local Government Code: Grounds for Disciplinary Actions. - An elective local official may be disciplined, suspended, or removed from office on any of the following grounds:

xxx

(c) Dishonesty, oppression, misconduct in office, gross negligence or dereliction of duty

xxx

⁶² A *purok* is a zone within a *barangay*; often, a *purok* leader is designated by the *barangay* captain to aid in the delivery of services and administration.

A criminal complaint was filed in August 2020 against the *barangay* officials for Slight Physical Injuries⁶³ and Slight Illegal Detention, both under the RPC.⁶⁴ There has been no action from the Office of the City Prosecutor yet.

In the case of U, her mother was a nurse who worked at a government health institution who died of COVID-19 last 22 July 2020. Prior to her death, she was frequently exposed to COVID-19 patients; however, no testing protocols were implemented by the administration and protective equipment was insufficient. When she voiced her concerns regarding the lack of protection, she was shouted at by the hospital director.

In October 2020, an administrative case was filed against the hospital director with the Office of the Ombudsman for Gross Neglect of Duty⁶⁵ and violation of the Code of Conduct and Ethical Standards for Public Officers.⁶⁶ Gross neglect of duty stemmed from the failure to comply with government issuances related to the protection of healthcare workers during the pandemic. The violations of the Code of Conduct and Ethical Standards were based on the unprofessional behavior of the hospital director. No action has been received from the Office of the Ombudsman yet.

Conclusion

⁶³ *Revised Penal Code*, art 266. *Slight physical injuries and maltreatment*. — The crime of slight physical injuries shall be punished:

1. By *arresto menor* when the offender has inflicted physical injuries which shall incapacitate the offended party for labor from one to nine days, or shall require medical attendance during the same period.
2. By *arresto menor* or a fine not exceeding Forty thousand pesos (P40,000) and censure when the offender has caused physical injuries which do not prevent the offended party from engaging in his habitual work nor require medical assistance.
3. By *arresto menor* in its minimum period or a fine not exceeding Five thousand pesos (P5,000) when the offender shall ill-treat another by deed without causing any injury.

⁶⁴ Article 268. *Slight illegal detention*. — The penalty of *reclusion temporal* shall be imposed upon any private individual who shall commit the crimes described in the next preceding article without the attendance of any of circumstances enumerated therein.

The same penalty shall be incurred by anyone who shall furnish the place for the perpetration of the crime.

If the offender shall voluntarily release the person so kidnapped or detained within three days from the commencement of the detention, without having attained the purpose intended, and before the institution of criminal proceedings against him, the penalty shall be *prision mayor* in its minimum and medium periods and a fine not exceeding One hundred thousand pesos (P100,000).

⁶⁵ Section 46, Chapter VII, Subtitle A, Title I, Book V, Executive Order 292: Discipline: General Provisions. —

(a) No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process.

(b) The following shall be grounds for disciplinary action:

xxx

(3) Neglect of duty;

xxx

⁶⁶ *Code of Conduct and Ethical Standards for Public Officials and Employees*, RA No. 6713, s 4(b). Norms of Conduct of Public Officials and Employees. - (A) Every public official and employee shall observe the following as standards of personal conduct in the discharge and execution of official duties:

xxx

(b) Professionalism. - Public officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. They shall enter public service with utmost devotion and dedication to duty. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage.

xxx

As cases of COVID-19 infections rise and the economic and health sectors are nearing their breaking points, the Philippines still maintains its reliance on lockdowns as its greatest measure against the pandemic. It is now considered one of the longest lockdowns in the world.⁶⁷ Worsening this situation is the dependence on law enforcement and the exertion of their authority punitively without regard for human rights. The cases discussed involved differing rights, State actors, victim profiles, and areas, but the same themes of abuse of power and a culture of impunity emerges. There are public authorities who impair human rights through the government machinery they control or through the social power they command.

Arrests without legal bases carried out by law enforcers tasked to know the law are imprudent, illegal, and aggravates the crisis. Detention for minor offenses or violations of ordinances do not serve public health; instead, they terrorize the community. Intimidation tactics to prevent the circulation of dissenting views are abusive since fear is instilled via the idea of the almost illimitable power of the State. The difficulty in exacting accountability from these agents demonstrates the enduring government impunity.

The cases handled by IDEALS provide a glimpse into the impact of a militarized implementation of pandemic policies. Arrests and intimidation without due regard to rights are not surprising considering the composition of the government's pandemic response operational arm known as the National Task Force against COVID-19. The NTF was created by the IATF-EID, as the body tasked to implement the guidelines and regulations of the IATF-EID. It is headed by the Department of National Defense.⁶⁸ DND Secretary Delfin Lorenzana is a former commander of the Army Special Operations Command while the chief implementor of the NTF and vaccine czar Carlito Galvez, Jr. is a former chief of the Armed Forces of the Philippines. The appointed contact tracing czar is Baguio City Mayor Benjamin Magalong, a retired deputy chief of PNP operations. The vice-chairman of the IATF-EID itself is Interior Secretary Eduardo Año, a veteran Army intelligence officer and former AFP Chief of Staff. As for the National Action Plan, which is the "overall national strategy to deal with COVID-19 problems and its aftermath,"⁶⁹ its implementation is also assigned to the DND, as well as the AFP, PNP, and the DILG.

Opposition Senator Risa Hontiveros called for an overhaul of the IATF-EID to replace the military officers with public health leaders.⁷⁰ Presidential Spokesperson Harry Roque maintained that military officers are the best people to handle pandemic response "because the

⁶⁷ See, Aie Balagtas, "Rodrigo Duterte Is Using One of the World's Longest COVID-19 Lockdowns to Strengthen His Grip on the Philippines", *TIME* (15 March 2021), online: <<https://time.com/5945616/covid-philippines-pandemic-lockdown/>>

⁶⁸ IATF Resolution No. 24

⁶⁹ JC Gotinga & Sofia Tomacruz, "Govt't to implement 'national action plan' on coronavirus, with DND on the lead", *Rappler* (24 March 2020), online: <<https://www.rappler.com/nation/government-implement-national-action-plan-coronavirus-dnd-lead>>

⁷⁰ Lizelle Soriano Roy, "Hontiveros pushes for IATF overhaul, with public health officers, not military, at helm", *Inquirer* (23 March 2021), online: <<https://newsinfo.inquirer.net/1410304/hontiveros-pushes-for-iatf-overhaul-with-public-health-officers-not-military-at-helm>>

military excels in logistics.”⁷¹ However, this logistical expertise has not been evident in the slow roll-out of vaccines to the population⁷² and the worsening contact tracing systems.⁷³

By framing the pandemic as a war to justify military men enforcing government policies, public health is neglected. This approach also damages the relationship between the people and their government. The enhanced military and police presence serves to instill fear in the populace, not relief, effectively creating a *de facto* martial law State.

Policy Recommendations

Alternative Non-Custodial Measures Against Lockdown Violators

The current trend in law enforcement is to arrest and detain perceived violators of quarantine regulations. Criminal charges are launched against them to justify taking them into custody. Instead of detention, alternative measures that will not require taking a person into custody may be implemented. Issuing ordinance violation receipts would not take as much time and may be settled in administrative offices. In cases where the person cannot afford the fine, community service should be imposed. These penalties enforce the rules and respect the rights of the people while assisting the community.

Under the Rules of Court, the only requirement to commence prosecution for an offense punishable by imprisonment of less than four years, two months, and one day shall be the complaint, affidavits, and other supporting evidence to establish probable cause.⁷⁴ Offenses which carry penalties less than four years, two months, and one day include:

- a) Violations of R.A. 11332 or the Mandatory Reporting of Notifiable Diseases and Health Events of Public Health Concern Act. The acts shall be punishable by a fine and/or imprisonment for one to six months.
- b) Art. 151 of the Revised Penal Code or the resistance and disobedience to a person in authority or the agents of such person — even those of a serious nature. Serious disobedience shall be punishable by imprisonment for one to six months. Slight disobedience shall be punishable by imprisonment for one to thirty days.
- c) Art. 287 of the Revised Penal Code or Unjust Vexation. The penalty shall be one to thirty days.
- d) Violations of most ordinances.

Based on the foregoing, the prosecution for charges against quarantine violators should be commenced without detention, especially in the context of the pandemic. In cases where an arrest is required to record pertinent information of the accused, law enforcers should refrain

⁷¹ Azer Parrocha, “Ex-generals best people to lead Covid response, palace insists”, *Philippine News Agency* (23 March 2021), online: <<https://www.pna.gov.ph/articles/1134594>>

⁷² Sofia Tomacruz, “Long way to go: Months after rollout, PH reaches 1M full vaccinations”, *Rappler* (27 May 2021), online: <<https://www.rappler.com/nation/philippines-reaches-million-full-covid-19-vaccinations-may-25-2021>>

⁷³ Rambo Talabong, “Magalong: Contact tracing is worsening in PH”, *Rappler* (30 March 2021), online: <<https://www.rappler.com/nation/magalong-says-covid-19-contract-tracing-worsening>>

⁷⁴ *Rules of Criminal Procedure*, Rule 112, s 9(a).

from detaining these individuals. The reality of the Philippine situation should be kept in mind as crowding in detention facilities can facilitate viral transmission.

Judicial Utilization of Art. 5 of the RPC

Under Philippine laws, courts are duty-bound to submit a statement whenever strict enforcement of penal laws would result in the imposition of an excessive penalty. Art. 5 of the RPC states that the court shall submit to the President a statement in cases of excessive penalties considering the degree of malice and the injury caused by the offense.

As a part of the system of checks and balances, judges should raise the issue of excessive penalties such as imprisonment for not wearing masks, violating curfews, etc. whenever they encounter such cases. Such penalty has not shown to deter or curb the transmission of COVID-19 and must be considered excessive. It is important to view the offense and the penalty within the context of the COVID-19 pandemic. The exigencies of the times – hunger, loss of employment, purchasing necessities – should play a part in the implementation of the law.

The Judiciary is not only encouraged but required to inform the Executive of the drawbacks and dangers of the strict enforcement of a penal law during a global pandemic. The exercise of this judicial duty should also be advocated for on behalf of the accused.

Raising The Quantum of Evidence for Filing Information

In order to file a case in court, the public prosecutor must determine if there is probable cause⁷⁵ which requires evidence showing it is more likely than not that crime has been committed and it was committed by the respondent.⁷⁶ Meanwhile, the quantum of evidence required to uphold a conviction is proof beyond reasonable doubt or that degree of proof, which, excluding the possibility of error, produces moral certainty.⁷⁷

If the evidential requirement to file a case in court could be raised to one that is higher than probable cause, the number of detainees could be reduced as fewer criminal cases would be filed for lack of preliminary evidence.

Passage of A Bill Penalizing the Crime of Red-Tagging

In the Philippines, there is no definition of red-tagging in any law.⁷⁸ As such, the parameters of the act is not yet firmly determined. Senator Franklin Drilon filed a bill pushing for the criminalization of red-tagging.⁷⁹ Under this bill, red-tagging is defined as the “act of labeling, vilifying, branding, naming, accusing, harassing, persecuting, stereotyping, or caricaturing individuals, groups, or organizations as State enemies, left-leaning, subversives, communists, or terrorists as part of a counter-insurgency or anti-terrorism strategy or program,

⁷⁵ *Rules of Criminal Procedure*, Rule 112, s 1.

⁷⁶ Supreme Court, *Callo-Claridad v. Philip Ronald Esteban*, 20 March 2013, G.R. No. 191567 (Philippines).

⁷⁷ *Rules of Evidence*, A.M. No. 19-08-15-SC, Rule 133, s 2.

⁷⁸ Nearest definition is provided by Associate Justice Marvic Leonen in his dissenting opinion to the case of *Zarate v. Aquino*: Red-tagging is “the act of labelling, branding, naming and accusing individuals and/or organizations of being left-leaning, subversives, communists or terrorists (used as) a strategy...by State agents, particularly law enforcement agencies and the military, against those perceived to be ‘threats’ or ‘enemies of the State.’”

⁷⁹ Christia Marie Ramos, “Senate bill criminalizes red-tagging, proposes jail time of up to 10 years”, *Inquirer* (25 March 2021), online: <<https://newsinfo.inquirer.net/1411177/senate-bill-criminalizes-red-tagging-proposes-jail-time-of-up-to-10-years>>

by any State actor, such as law enforcement agent, paramilitary, or military personnel.”⁸⁰ This bill is meant to address the legal gaps and create accountability for the aforementioned acts by imposing the penalty of imprisonment for ten years and perpetual absolute disqualification to hold public office.

Community Engagement by Law Enforcers

Law enforcers such as the PNP and *barangay* officials are at the forefront of implementing quarantine regulations. They have the most exposure to the community among all other public officials. The success of the government response largely depends on the community itself and their trust in the system. Law enforcement agents must build an environment of legitimacy and public confidence. The concept of police legitimacy implies that the police hold power legitimately to uphold the law and operate in a procedurally just way.⁸¹ The idea of legitimacy of law enforcement cannot be legislated or forced upon the people. It is a cultural mindset wherein the members of the community believe that the system exists to protect them and advance their collective interests. To establish this idea, law enforcers must strictly adhere to procedural due process and engage with compassion.

However, the manner of enforcing public health measures gives rise to the possibility that it will lead to further militarization of law enforcers and to deepening the divide between State authorities and the people. Militarization is not about equipment but rather how law enforcers interact with a “warrior” mindset negating a chance to build relationships with the community.⁸² It has been suggested that law enforcers employ a “guardian” mindset instead, where the law enforcers embrace their role not only to arrest, detain, or restrict but to engage in non-enforcement conversations, educate the public, and aid in solving the problems.⁸³ Research shows that if the police are perceived as a legitimate power holder, community members are more likely to comply and cooperate with police.⁸⁴

Aside from legitimacy, law enforcers must breed a culture of accountability. Impunity arises when States fail to meet their obligations to investigate violations, to take appropriate measures in respect of the perpetrators. Coupled with the over-policing of marginalized communities, this further erodes the trust of the people in the system. To regain that trust, there should be an equal application of the regulations to all citizens. That application must be tempered by the particular situations as well. A collaboration between the people and law enforcers would create a sustainable system: the people being accountable to the law and the law enforcers being accountable to the community. Through this, trust can be built and the ability to enforce the law would be enhanced. The Updated Set of Principles for the protection and promotion of human rights through action to combat impunity provides recommendations for combating impunity for serious crimes under international law. The recommendations include the establishment of truth commissions, documentation and archival, and may also be applied to address any derogation of State obligations in order to exact accountability.

⁸⁰ Senate Bill No. 2121, *An Act Defining and Penalizing the Crime of Red-Tagging*, s 1.

⁸¹ Daniel J. Jones, “The Potential Impacts of Pandemic Policing on Police Legitimacy: Planning Past the COVID-19 Crisis” (2020) 14:3 *Policing: A Journal of Policy and Practice*, online: <<https://doi.org/10.1093/police/paaa026>>

⁸² Radley Balko, *Rise of the Warrior Cop: The Militarization of America's Police Forces*, (New York, US: Public Affairs, 2014).

⁸³ Kyle Peyton, Michael Sierra-Arévalo, & David G. Rand, “A Field Experiment on Community Policing and Police Legitimacy” (2019) 116:40 *PNAS* 19894–19898.

⁸⁴ Anthony Bottoms, Justice Tankebe, “Beyond Procedural Justice: A Dialogic Approach to Legitimacy in Criminal Justice” (2012) 102:1 *J. Crim. L. & Criminology* 119–170.