

Philippines in the Time of Corona: Protecting Human Rights in the Midst of the COVID-19 Pandemic

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I. INTRODUCTION

Without public health and the lives it protects and promotes, no other rights would be possible. Whether caused by an individual lack of curative care or a collective lack of public health, the resulting morbidity and mortality suffered represents a gross violation of human rights.

— Benjamin Mason Meier & Larisa M. Mori¹

In the face of a dreadful pandemic, tension arises between individual human rights and effective government health measures. With global travel and free trade perpetuating State borders, “a health problem in any part of the world can rapidly become a health threat to many or all.”² Ergo, despite the proliferation of global epidemics, the “differential risk for health threats endures through economic privilege.”³ This conflict between freedoms and State action vis-à-vis tension between individual and collective health rights has yet to be clearly resolved in light of necessary trade-offs.

To examine the inherent intricacies of this certain juxtaposition, one remembers the Constitution which, as enunciated by Dean Vicente G. Sinco, is “the basic political creed of the nation [which] lays down the policies that government is bound to observe.”⁴ The Constitution strongly advocates and adheres to the protection of human rights — putting these rights as guiding pillars in its declaration of principles and State policies.⁵ More particularly, it reveres the right to life,⁶ human dignity,⁷ and due process of law.⁸ In relation to these provisions, the Constitution also provides the protective guarantee to the right of the people to enjoy the highest attainable standard of health,⁹ to the extent that the State is mandated by the Constitution to “adopt an integrated and comprehensive

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1. Benjamin Mason Meier & Larisa M. Mori, *The Highest Attainable Standard: Advancing a Collective Human Right to Public Health*, 37 COLUM. HUM. RTS. L. REV. 101, 146 (2005).
 2. *Id.* at 106 (citing Jonathan M. Mann, *Preface* to LAURIE GARRETT, *THE COMING PLAGUE* xi–xii (1994)).
 3. Meier & Mori, *supra* note 1, at 106.
 4. VICENTE G. SINCO, *PHILIPPINE POLITICAL LAW: PRINCIPLES AND CONCEPTS* 116 (1962).
 5. See PHIL. CONST. art. II, §§ 11–18 & 22.
 6. PHIL. CONST. art. III, § 1.
 7. PHIL. CONST. art. II, § 11.
 8. PHIL. CONST. art. III, § 1.
 9. PHIL. CONST. art. II, § 15.

approach to health development which shall endeavor to make essential goods, health, and other social services available to all the people at affordable cost.”¹⁰

Notwithstanding such ardent and noble declarations in the Constitution, there is a persisting dilemma in resolving the discord between the enhanced measures implemented to quell COVID-19 vis-à-vis the protection of human rights. It cannot be denied that the solutions chosen by the current administration have clear repercussions in the implementation of laws and its effects on the Philippine people.

A. Looking Deeper Into the COVID-19 Pandemic

Coronavirus disease 2019 (COVID-19) is an ailment brought about by a novel coronavirus, more commonly known at present as severe acute respiratory syndrome coronavirus 2 or SARS-CoV-2, and previously referred to as the 2019-nCov.¹¹ Coronaviruses form part of “a large family of viruses[,]” which can be transferred to people from varying species of animals, “including camels cattle, cats, and bats.”¹² SARS-CoV-2 was initially “identified [after] an outbreak [in Wuhan, Hubei, China in December 2019, detected from cases] of [severe] respiratory illness.”¹³ In line with this, last January 2020, the World Health Organization (WHO) declared the COVID-19 outbreak as a public health emergency of international concern, mainly due to its risk of adversely affecting the

10. PHIL. CONST. art. XIII, § 11.

11. World Health Organization, Naming the coronavirus disease (COVID-19) and the virus that causes it, *available at* [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it#:~:text=ICTV%20announced%20%E2%80%9Csevere%20acute,on%2011%20February%202020](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it#:~:text=ICTV%20announced%20%E2%80%9Csevere%20acute,on%2011%20February%202020) (last accessed Aug. 15, 2020) & Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19): Frequently Asked Questions, *available at* <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Basics> (last accessed Aug. 15, 2020).

12. Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19): Situation Summary, *available at* <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html> (last accessed Aug. 15, 2020).

13. World Health Organization, *supra* note 11.

developing countries.¹⁴ Subsequently, after careful assessment and a noticeable rise in emerging cases, the WHO recognized and identified COVID-19 as a pandemic.¹⁵ As per the WHO, “this is the first pandemic caused by a coronavirus[,]” and its threat necessitates stringent measures to preserve millions of lives.¹⁶

A pandemic is defined as a global outbreak of disease affecting various countries all over the world.¹⁷ Such pandemics arise during the emergence of a new virus or during the re-emergence of pre-existing viruses with mutated strains.¹⁸ Such viruses, when undetected by the immune system, cause widespread infection on a very rapid or sustained level.¹⁹ It is said that “[p]andemics of respiratory disease follow a certain progression outlined in a ‘Pandemic Intervals Framework.’”²⁰ Such “[p]andemics begin with an investigation phase, followed by recognition, initiation, and acceleration phases.”²¹ As of 19 April 2020, there have been a total of 2,332,471 reported cases worldwide.²² The havoc of COVID-19 involved more than 190

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14. World Health Organization, WHO Timeline – COVID-19, *available at* <https://www.who.int/news-room/detail/08-04-2020-who-timeline---covid-19> (last accessed Aug. 15, 2020).
15. Dr. Tedros Adhanom Ghebreyesus, World Health Organization Director-General, Remarks at the Media Briefing on COVID-19 (Mar. 11, 2020) (transcript *available at* <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (last accessed Aug. 15, 2020)).
16. *Id.*
17. World Health Organization, What is a pandemic?, *available at* https://www.who.int/csr/disease/swineflu/frequently_asked_questions/pandemic/en (last accessed Aug. 15, 2020).
18. WORLD HEALTH ORGANIZATION, MANAGING EPIDEMICS: KEY FACTS ABOUT MAJOR DEADLY DISEASES 19 (2018).
19. See Arman Azad, Undetected infections may have driven “rapid dissemination” of coronavirus, modeling shows, *available at* https://edition.cnn.com/world/live-news/coronavirus-outbreak-03-18-20-intl-hnk/h_0351133bc96c559b800bfd15ff4a68 (last accessed Aug. 15, 2020).
20. Centers for Disease Control and Prevention, *supra* note 12.
21. *Id.*
22. Worldometer, COVID-19 Coronavirus Pandemic Confirmed Cases of Deaths by Country, Territory, or Conveyance, Worldometer Information, *available at* <https://www.worldometers.info/coronavirus> (last accessed Aug. 15, 2020) & ArcGis, Coronavirus COVID-19 Global Cases, Center for Systems Science and

countries and has claimed more than 160,700 lives as of this writing, with around 600,006 recoveries.²³

The extent of its geographical expansion coupled with the exponential increase in daily cases has overwhelmed various public and private health institutions around the globe.²⁴ Unwittingly incognizant of the deadliness of this virus, it was initially underestimated²⁵ and compared merely with the common flu.²⁶ Nonetheless, the virus has demonstrated greater virulence and transmission rates than what was expected from the initial analysis by the WHO.²⁷ In fact, most of the inflicted patients were from the 30 to 79 year old age group — sparing no one, neither young nor elderly, from this disease.²⁸ It is important to note that those with higher risk of having poor

Engineering, available at <https://www.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6> (last accessed Aug. 15, 2020).

23. *Id.*

24. See, e.g., Prachi Singh, et al., COVID-19 | Is India's health infrastructure equipped to handle an epidemic?, available at <https://www.brookings.edu/blog/up-front/2020/03/24/is-indias-health-infrastructure-equipped-to-handle-an-epidemic> (last accessed Aug. 15, 2020); Michael Nedelman, 'That's when all hell broke loose': Coronavirus patients start to overwhelm US hospitals, available at <https://edition.cnn.com/2020/03/25/health/coronavirus-covid-hospitals/index.html> (last accessed Aug. 15, 2020); Ryusei Takahashi, Are Tokyo's hospitals and health care system ready for a COVID-19 storm?, available at <https://www.japantimes.co.jp/news/2020/04/01/national/japan-prepared-coronavirus/#.XqWnkS2B1QI> (last accessed Aug. 15, 2020); & Nicole Winfield & Colleen Barry, Italy's health system at limit in virus-struck Lombardy, available at <https://abcnews.go.com/Health/wireStory/italys-health-system-limit-virus-struck-lombardy-69331977> (last accessed Aug. 15, 2020).

25. Ola Nilsson, Spread of coronavirus underestimated, review finds, available at <https://www.sciencedaily.com/releases/2020/02/200214111519.htm> (last accessed Aug. 15, 2020).

26. See Beth Mole, Experts demolish studies suggesting COVID-19 is no worse than flu, available at <https://arstechnica.com/science/2020/04/experts-demolish-studies-suggesting-covid-19-is-no-worse-than-flu> (last accessed Aug. 15, 2020).

27. Nilsson, *supra* note 25.

28. Zunyou Wu & Jennifer M. McGoogan, *Characteristics of and Important Lessons from the Coronavirus Disease 2019 (COVID-19) Outbreak in China*, JAMA, Volume No. 323, Issue No. 13, at 1239 (2020).

outcomes from COVID-19 are the older age groups and those with underlying conditions such as diabetes, cardiovascular disease, and cancer.²⁹

The SARS-CoV-2 spreads particularly through human-to-human transmission.³⁰ “The incubation period ... is currently estimated to be between one and 14 days[,]”³¹ with more than half of carriers being asymptomatic.³² Once symptomatic, infected persons will show flu-like symptoms such as high fever, dry cough, dyspnea, muscle pain, and fatigue,³³ but they may also show gastrointestinal symptoms such as intestinal colic or diarrhea.³⁴ The transmission is frequently spread from one individual to another via respiratory droplets induced by coughing.³⁵ However, fecal-to-oral transmission have been reported as an alternative transmission pathway, which can significantly affect the younger age groups.³⁶ In later stages of the disease, pneumonia and acute respiratory distress syndrome can occur,³⁷ as well as cytokine storms — which potentially led to the demise of

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29. World Health Organization, Coronavirus disease 2019 (COVID-19) Situation Report — 51 at 2, *available at* <https://apps.who.int/iris/bitstream/handle/10665/331475/nCoVsitrep111Mar2020-eng.pdf> (last accessed Aug. 15, 2020).
30. European Centre for Disease Prevention and Control, Q & A on COVID-19, *available at* <https://www.ecdc.europa.eu/en/novel-coronavirus-china/questions-answers> (last accessed Aug. 15, 2020).
31. *Id.*
32. See Katherine Harmon Courage, How people are spreading Covid-19 without symptoms, *available at* <https://www.vox.com/2020/4/22/21230301/coronavirus-symptom-asymptomatic-carrier-spread> (last accessed Aug. 15, 2020).
33. European Centre for Disease Prevention and Control, *supra* note 30.
34. Rachael Rettner, Diarrhea is first sign of illness for some COVID-19 patients, *available at* <https://www.livescience.com/coronavirus-diarrhea-symptoms.html> (last accessed Aug. 15, 2020).
35. World Health Organization, Q & A on coronaviruses (COVID-19), *available at* <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses> (last accessed Aug. 15, 2020).
36. Jinyang Gu, et al., COVID-19: Gastrointestinal Manifestations and Potential Fecal-Oral Transmission, *Gastroenterology*, *available at* [https://www.gastrojournal.org/article/S0016-5085\(20\)30281-X/pdf](https://www.gastrojournal.org/article/S0016-5085(20)30281-X/pdf) (last accessed Aug. 15, 2020).
37. See Chaomin Wu, et al., Risk Factors Associated With Acute Respiratory Distress Syndrome and Death in Patients With Coronavirus Disease 2019

the patients³⁸ and which have contributed greatly to the six to seven percent crude fatality rate of COVID-19.³⁹ As of this time, there is still no known vaccine or antiviral drug that can prevent or treat SARS-CoV-2 infection.⁴⁰ The recovery of some patients can be attributed to supportive health care and immune system recuperation,⁴¹ as well as to other non-modifiable protective factors such as age.⁴²

B. The Philippines Amidst the COVID-19 Pandemic

Since the first announced death relating to COVID-19 outside of China, which occurred in the Philippines last 2 February 2020, Filipino citizens have rallied together calling for action from the Duterte administration.⁴³ This large outcry from the public has instigated the government to implement stringent measures in addressing the pandemic and, together with the Department of Health (DOH), to implement strict measures that included travel restrictions,⁴⁴ lockdown policies,⁴⁵ enhanced community

Pneumonia in Wuhan, China, *available at* <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2763184> (last accessed Aug. 15, 2020).

38. *See generally* Randy Cron & W. Winn Chatham, How doctors can potentially significantly reduce the number of deaths from Covid-19, *available at* <https://www.vox.com/2020/3/12/21176783/coronavirus-covid-19-deaths-china-treatment-cytokine-storm-syndrome> (last accessed Aug. 15, 2020).
39. Centers for Disease Control and Prevention, Clinical Care: Coronavirus disease 2019 (COVID-19), *available at* <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html> (last accessed Aug. 15, 2020).
40. Nicoletta Lanese, When will a COVID-19 vaccine be ready?, *available at* <https://www.livescience.com/coronavirus-covid-19-vaccine-timeline.html> (last accessed Aug. 15, 2020).
41. University of Melbourne, COVID-19: The immune system can fight back, *available at* <https://www.sciencedaily.com/releases/2020/03/200317103815.htm> (last accessed Aug. 15, 2020).
42. *See* Brian Resnick, Scientists are trying to figure out why Covid-19 hits some young, healthy people hard, *available at* <https://www.vox.com/science-and-health/2020/4/8/21207269/covid-19-coronavirus-risk-factors> (last accessed Aug. 15, 2020).
43. Nick Aspinwall, Filipinos Turn on Duterte as Coronavirus Fears Spread, *available at* <https://foreignpolicy.com/2020/02/10/wuhan-china-philippines-tsinoy-filipinos-turn-on-duterte-as-coronavirus-fears-spread> (last accessed Aug. 15, 2020).
44. *Id.*

quarantine (ECQ) regulations,⁴⁶ military checkpoints,⁴⁷ curfews,⁴⁸ and the closing of government offices⁴⁹ and business establishments.⁵⁰ However, many have raised concerns on the earlier downplaying of the disease's virulence and its impact on the country early in January,⁵¹ which many have argued to have influenced the initially lax policies of the government on travels to mainland China⁵² as well as the late implementation of social distancing.⁵³ Arguably, corrections were made only as a reactive measure to eventual reports of foreign countries, including Australia, Japan, and Taiwan,

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45. Vince Ferreras, Lockdown saves PH from large-scale community outbreak, WHO says, *available at* <https://www.cnnphilippines.com/news/2020/4/8/WHO-PH-lockdown-prevent-large-scale-community-quarantine.html> (last accessed Aug. 15, 2020).
 46. Office of the President, Declaring a State of Calamity Throughout the Philippines due to Coronavirus Disease 2019, Proclamation No. 929 [Proc. No. 929] (Mar. 16, 2020).
 47. Chiara Zambrano, Soldiers deployed in COVID-19 frontlines, ready to face unseen enemy, *available at* <https://news.abs-cbn.com/news/03/15/20/soldiers-deployed-in-covid-19-frontlines-ready-to-face-unseen-enemy> (last accessed Aug. 15, 2020).
 48. Xave Gregorio, Six Metro Manila cities enact COVID-19 curfew, *available at* <https://cnnphilippines.com/news/2020/3/15/Makati-Navotas-Metro-Manila-curfew-COVID-19.html> (last accessed Aug. 15, 2020).
 49. ADB, select gov't offices shut down for disinfection, *available at* <https://www.cnnphilippines.com/news/2020/3/12/ADB-government-offices-disinfection.html> (last accessed Aug. 15, 2020).
 50. Department of Trade and Industry, Prescribing Implementing Guidelines for IATF Resolution No. 12 Issued by the Inter-Agency Task Force for the Management of Emerging Infectious Diseases on Social Distancing, Memorandum Circular No. 20-04 [Memo. Circ. 20-04] (Mar. 15, 2020).
 51. Rappler, Video, *President Duterte at a briefing on the novel coronavirus*, Feb. 3, 2020, YOUTUBE, *available at* <https://www.youtube.com/watch?v=UmzXNuSTl5Q> (last accessed Aug. 15, 2020).
 52. Aspinwall, *supra* note 43.
 53. See Jenny Lei Ravelo, To contain the spread of coronavirus, Manila grapples with lockdown, *available at* <https://www.devex.com/news/to-contain-the-spread-of-coronavirus-manila-grapples-with-lockdown-96823> (last accessed Aug. 15, 2020).

that persons from international flights contracted COVID-19 after a recent travel history to the Philippines.⁵⁴

Still, the unimaginable extent and contagion of this new virus, despite initial lockdown measures, have inevitably extended the period of the ECQ — which was initially effective 17 March 2020 to 13 April 2020⁵⁵ — to 30 April 2020, in accordance with the recommendations of the Inter-Agency Task Force for the Management of Diseases (IATF).⁵⁶ This measure was “necessary in order for the government to determine the impact of the ECQ and [to] further increase health capacity in Luzon and other areas, including the ramping up of COVID-19 testing to 8,000 to 10,000 tests per day with a turnaround time of 24 hours[.]”⁵⁷ since the effects on transmission of the initial ECQ was hardly known in the absence of mass testing.

Last 18 April 2020, the reappointed Presidential Spokesperson Harry Roque admitted the possibility of another extension of the ECQ period if circumstances necessitate or the geographically-based implementation of a modified ECQ,⁵⁸ which posits a grim and harrowing omen of persisting burden on labor, healthcare, and the economy.

The foregoing policies have also raised many concerns involving human rights in light of the COVID-19 pandemic.⁵⁹ The United Nations has called

54. Two people who visited PH tested positive for COVID-19 in Australia, *available at* <https://cnnphilippines.com/news/2020/3/13/coronavirus-philippines-australia.html> (last accessed Aug. 15, 2020).

55. Office of the President, Community Quarantine Over the Entire Luzon and Further Guidelines for the Management of the Coronavirus Disease 2019 (COVID-19) Situation, Memorandum from the Executive Secretary, at ★1 (Mar. 16, 2020).

56. Office of the President, Extension of the Enhanced Community Quarantine Over the Entire Luzon until 30 April 2020, Memorandum from the Executive Secretary (Apr. 7, 2020).

57. Virgil Lopez, Duterte extends Luzon-wide quarantine to April 30 — IATF, *available at* <https://www.gmanetwork.com/news/news/nation/732935/iatf-recommends-extension-of-luzon-wide-quarantine-to-april-30/story> (last accessed Aug. 15, 2020).

58. Consuelo Marquez, *Beyond April 30: Enhanced quarantine extension or modification likely*, PHIL. DAILY INQ., Apr. 18, 2020, *available at* <https://newsinfo.inquirer.net/1260905/beyond-april-30-enhanced-quarantine-extension-or-modification-likely-roque> (last accessed Aug. 15, 2020).

59. See Anadolu Agency, UN calls for respecting human rights in COVID-19 fight, *available at* <https://www.aa.com.tr/en/latest-on-coronavirus-outbreak/un-calls->

on countries all over the world to combat the pandemic with particular attention to the implementation of restrictions “undertaken within a valid legal framework.”⁶⁰ Such security measures “should be guided by human rights principles and should not, in any circumstances, be an excuse to quash dissent.”⁶¹ Questions on labor rights have also entered the picture.⁶² Business leaders are worried on how to satisfy business needs, conduct contract crisis management, and deliver employee compensation despite the cancellation of labor operations.⁶³

From the international law perspective, States are entitled to “limit the exercise of specific rights, or to ‘derogate’ from some obligations in particular circumstances.”⁶⁴ For instance, in a pandemic involving a serious communicable disease in the likes of COVID-19, “[S]tates are permitted to take steps that temporarily restrict rights such as freedom of movement or privacy to achieve public health objectives, such as by isolating the spread of disease through quarantine or compulsory tracing of patient contacts.”⁶⁵ Despite this, governments should still exert utmost effort in promoting transparency amidst the spread of the virus — providing accurate information and statistics which can help the people in actively preserving their health.⁶⁶

The challenge posed by the COVID-19 pandemic remains to this day — how can States protect human rights in the face of a life-threatening

for-respecting-human-rights-in-covid-19-fight/1777604 (last accessed Aug. 15, 2020).

60. Office of the High Commissioner, UN Human Rights Treaty Bodies call for human rights approach in fighting COVID-19, *available at* <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25742&LangID=E> (last accessed Aug. 15, 2020).

61. *Id.*

62. *See generally* Kimmy Baraoidan & Maricar Cinco, *Lockdown shuts 700 Luzon factories*, PHIL. DAILY INQ., Mar. 21, 2020, *available at* <https://newsinfo.inquirer.net/1245942/lockdown-shutters-700-luzon-factories> (last accessed Aug. 15, 2020).

63. Scott Jerbi, *Contending with the Coronavirus - What Should we Expect of Business During Global Health Emergencies?*, Institute for Human Rights and Business, Mar. 2, 2020, *available at* <https://www.ihrb.org/other/china/commentary-contending-with-the-coronavirus> (last accessed Aug. 15, 2020).

64. *Id.*

65. *Id.*

66. *Id.*

infection that necessitates the exercise of governmental powers, which may limit basic freedoms? The call for the implementation of an effective public health strategy vis-à-vis balancing the needs of other strategic players in society within the framework of human rights continues to be a delicate yet interesting issue for all States. The next step to be undertaken in halting the outbreak is as crucial as the quelling of the virus itself.

Ergo, a clash is evident — human rights are argued to inevitably be maligned by the stringent measures imposed amidst this contagion and yet, the denial of its existence is averse to the recognition of human rights of people who are infected by SARS-CoV-2. How then can one remedy an apparent clash between rights, in relation to the deadly COVID-19 pandemic?

II. CONSTITUTIONAL POWERS IN A TIME OF CRISIS

In the face of this pandemic and against the backdrop of a national crisis, the issue of immediately providing solutions to looming societal, health, and economic dilemmas necessitates an equally immediate and expeditious governmental action. It is of vital necessity that government units “fulfill the collective rights of its people to health,”⁶⁷ so that it can breathe spirit to the aspirational provisions of the Constitution⁶⁸ and bring realization to the fulfillment of international human rights laws as decreed in the Universal Declaration of Human Rights (UDHR).⁶⁹ In times of national emergency, especially where the lives of thousands, even millions, of Filipino lives are at risk, the imminent crisis provides an impetus for the laying down of guidelines concerning the preservation of the State.⁷⁰ The perplexing quandary now becomes a tug-of-war between the exercise of emergency powers vis-à-vis protecting the human rights and political liberties of the people. Legal scholar Raymundo Armovit was able to explain this in clear and apprehensible language, emphasizing the vitality of the State’s

67. Meier, *supra* note 1, at 121.

68. PHIL. CONST. art. XIII, § 11 & art. II, § 15.

69. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217 (III) (Dec. 10, 1948).

70. See An Act Declaring the Existence of a National Emergency Arising From the Coronavirus Disease 2019 (COVID-19) Situation and a National Policy in Connection Therewith, and Authorizing the President of the Republic of the Philippines for a Limited Period and Subject to Restrictions, to Exercise Powers Necessary and Proper to Carry out the Declared National Policy and for Other Purposes [Bayanihan to Heal as One Act], Republic Act No. 11469 (2020).

preservation while, at the same time, safeguarding the people's rights, thus

[I]n all crisis decisions and measures, controversies in respect to their validity, whether ventilated in press discussions, articles and radio commentaries, or debated in court litigations, usually center around the conflicting claims of state authority and private individual rights. There is involved the problem of harmonizing two fundamental principles lying at the base of every democratic constitutional system: *first*, in Rosseau's formulation, 'the people's first intention is that that the State shall not perish[;]' and *second*, in the language of our Constitution, 'No person shall be deprived of his life, liberty or property without due process of law[.]' And if that democratic ideal of a 'government of the people, by the people and for the people,' is to be achieved or at least approximated, then, in equating these two conflicting values of state authority and individual rights, due regard must be given in every case to the 'civil liberties guaranteed by the Constitution' which imply the existence of an organized system maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses[.]⁷¹

However, despite the declaration in *Garcia v. Commission on Elections*⁷² that "[t]he 1987 Constitution is borne of the conviction that people power can be trusted to check excesses of government[,]"⁷³ the effects of a crisis-stimulating phenomenon cannot be ignored. The importance of making split-second decisions, which may inevitably hurdle some essential civil rights, brings this pernicious issue to the fore. As earlier argued and further reinforced, "[S]tates are permitted to take steps that temporarily restrict rights such as freedom of movement or privacy to achieve public health objectives, such as by isolating the spread of disease through quarantine or compulsory tracing of patient contacts."⁷⁴ This, however, does not give States unbridled license in the face of a national emergency to unwittingly step on the human rights of its constituents.⁷⁵ A delicate balance must arise between the exercise of State power and the safeguard of human rights, and while abrupt decision-making exacerbates the risk of tipping this balance, there must exist a conscious effort to prevent unconstitutional directives or to self-correct errors in the event that certain rights are violated as an effect

71. Raymundo A. Armovit, *Emergency Powers*, 29 PHIL. L.J. 686, 687 (1954) (emphasis supplied).

72. *Garcia v. Commission on Elections*, 237 SCRA 279 (1994).

73. *Id.* at 282.

74. Jerbi, *supra* note 63.

75. *Id.*

of rash decision.⁷⁶ Armovit further notes, drawing from the penchant provisions of the Constitution, that

[t]o be sure, a democratic constitutional government must be strong in normal times and stronger still in abnormal times. It must be equal to any and every type of crisis that may confront it. In peace and in war, in internal tranquility and rebellious uprisings, in business booms and in economic depressions, in Nature's calm and disaster, and generally, in normal and abnormal times, a government must assert its authority and function as a sovereign organ of the state, if the ends and aims of its existence as clearly set forth in the Philippine Constitution — 'to conserve and develop the patrimony of the nation, promote general welfare, and secure to themselves and their posterity the blessings of independence — are to be realized.

...

But, at the same time, a democratic constitutional government must be responsive and considerate to the needs and necessities of the people's welfare and must recognize and respect human personality and liberty. The clear mandate of the Philippine Constitution on this point is that the government must institute and maintain 'a regime of justice, liberty[,] and democracy.'⁷⁷

This juxtaposition of principles and State powers has all the more become a primary concern. Notably and painstakingly so, governments must remember that despite its present constraints, the rejection of the application of a human rights framework in the time of a deluding crisis is also a "rejection of our common humanity."⁷⁸ Article 4 (2) of the International Covenant on Civil and Political Rights (ICCPR) states that even in times of emergency or crisis, there must be no derogation of Articles 6, 7, 8 paragraphs (1) and (2), 11, 15, 16, and 18⁷⁹ — the foregoing pertaining to the (a) right to life;⁸⁰ (b) right against torture or to cruel, inhumane, or degrading treatment or punishment;⁸¹ (c) right against slavery and

76. See Robert Jackson, *Wartime Security and Liberty Under Law*, 1 BUFF. L. REV. 103, 103-05 (1951).

77. Armovit, *supra* note 71, at 687-88 (citing PHIL. CONST. pmb.).

78. Agnes S. Callamard, *A Call for Commitment to Drug Policy Reform in the Philippines under a Human Rights Framework*, 90 PHIL. L.J. 761, 766 (2017).

79. International Covenant on Civil and Political Rights art. 4 (2), *adopted* Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

80. *Id.* art. 6 (1).

81. *Id.* art. 7.

servitude;⁸² (d) right against imprisonment for failure to fulfill contractual obligations;⁸³ (e) right against *ex post facto* punishment;⁸⁴ (f) right to recognition;⁸⁵ and (g) right to freedom of thought, conscience, and religion.⁸⁶ It is for this evident conflict between emergency State powers and preservation of human rights that the framers of the 1987 Constitution ensured that the provisions of the latter would make it legally feasible for government to exercise emergency powers when encountering a crisis without stumbling upon basic human dignity. All these measures ensure the “smooth and prompt transition from a normal to a crisis government[.]”⁸⁷ with the aim of restoring back the country to a state of normalcy.

The Author asserts that the government has a duty and solemn obligation to serve the people, and to ensure their right to health amidst the COVID-19 pandemic, as supported by both municipal and international legislation, and this duty must at times be accomplished not only by government officials but also by those who enforce the law. The 1987 Constitution provides in Article II, Section 15 that “[t]he State shall protect and promote the right to health of the people and instill health consciousness among them.”⁸⁸ Moreover, as a signatory to the Universal Declaration of Human Rights, the Philippines must be mindful of Article 25 of the UDHR, which states that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family[.]”⁸⁹ This is likewise reinforced by the country’s obligation brought about by its commitment to the International Covenant on Economic, Social, and Cultural Rights which emphasizes in Article 12 the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”⁹⁰

These provisions are not merely meaningless platitudes but are embedded with the imprimatur of the Philippine government. The duty to

82. *Id.* art. 8.

83. *Id.* art. 11.

84. *Id.* art. 15.

85. ICCPR, *supra* note 79, art. 16.

86. *Id.* art. 18.

87. Armovit, *supra* note 71, at 689.

88. PHIL. CONST. art. II, § 15.

89. Universal Declaration of Human Rights, *supra* note 69, art. 25 (1).

90. International Covenant on Economic, Social and Cultural Rights art. 12 (1), *adopted* Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

fulfill the people's inherent right to health, even with and despite the exercise of emergency powers, is the true cornerstone of this democratic and republican State.

A. The Law in a Time of Crisis: Chartering the President's Emergency Powers

In legal parlance, the President, as the commander-in-chief and head of the executive branch of government, may be bestowed upon by “*direct constitutional grant ... [and] by constitutional statutory grant*”⁹¹ with extraordinary powers, which can be potently exercised in times of national crisis or emergency. Such emergency powers must be exercised with strict caution and regard, and must be necessarily aimed at the “maintenance of peace and order, the protection of life, liberty and property, and the promotion of the general welfare” of the Filipino people as clearly enunciated in Article II, Section 5 of the 1987 Constitution.⁹² Dean Sedfrey M. Candelaria and Ma. Carmel M. Baquilod explained the State principles upon which the emergency powers of the President, as chief executive, are rooted, thus—

The emergency powers of the President are rooted in the State's principles of ‘renunciation of war,’ the supremacy of civilian authority, the government's prime duty of serving and protecting the people, the ‘maintenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare.’ In times of international or domestic conflict, the President has the option to exercise any of the powers defined by the Constitution, in the hope that it will be the least destructive response to antagonistic forces.⁹³

While the framers of the 1987 Constitution endeavored that the executive department, through the President, and the Congress, work jointly in a time of crisis, they also acknowledged that the provisions on the President's power to suspend the privilege of the writ of habeas corpus and place the Philippines or any part thereof under martial law⁹⁴ imply that the President is the “captain of the team.”⁹⁵ This doctrinal pronouncement was

91. Armovit, *supra* note 71, at 694.

92. PHIL. CONST. art. II, § 5.

93. Sedfrey M. Candelaria & Ma. Carmel M. Baquilod, *Testing Constitutional Waters IX: The Constitutional Parameters of the Exercise of Executive Powers in Non-International Armed Conflict Situation*, 62 ATENEO L.J. 352, 356–57 (2017) (citing PHIL. CONST. art. II, §§ 2–5).

94. PHIL. CONST. art. VII, § 18, para. 1.

95. Armovit, *supra* note 71, at 691–92.

embodied in the case of *Kulayan v. Tan*,⁹⁶ which stated that the President's emergency powers are "balanced only by the legislative act of Congress"⁹⁷ as provided for in Article VI, Section 23 of the Constitution.⁹⁸ In relation to this, the emergency powers of the chief executive include those delegated by Congress,⁹⁹ the President's calling out powers,¹⁰⁰ the power to suspend the privilege of the writ of habeas corpus,¹⁰¹ and the power to declare martial law.¹⁰² It is without reservation that even though the President may enact and implement measures as part of his emergency powers, Congress ultimately "retains the power to withdraw such emergency powers through a resolution."¹⁰³ This is notwithstanding the fact that the extent, duration, and coverage of the President's emergency powers are contingent and appurtenant to the discretion of Congress.¹⁰⁴ This was discussed in-depth in *Kulayan*, wherein the Supreme Court expounded on the exceptional character of the Commander-in-Chief powers of the President as well as the graduation of the given emergency powers of the chief executive, *viz.* —

Springing from the well-entrenched constitutional precept of One President is the notion that there are certain acts which, by their very nature, may only be performed by the president as the Head of the State. One of these acts or prerogatives is the bundle of Commander-in-Chief powers to which the 'calling-out' powers constitutes a portion. The President's Emergency Powers, on the other hand, is balanced only by the legislative act of Congress, as embodied in the second paragraph of Section 23, Article 6 of the Constitution:

Article [VI], Sec. 23 (2). 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.

96. *Kulayan v. Tan*, 675 SCRA 482 (2012).

97. *Id.* at 497.

98. PHIL. CONST. art. VI, § 23 (2).

99. PHIL. CONST. art. VI, § 23 (2).

100. PHIL. CONST. art. VII, § 18, para. 1.

101. PHIL. CONST. art. VII, § 18, para. 1.

102. PHIL. CONST. art. VII, § 18, para. 1.

103. Candelaria & Baquilod, *supra* note 93, at 360 (citing PHIL. CONST. art. VI, § 23 (2)).

104. PHIL. CONST. art. VI, § 23 (2). *See also* JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 903 (2009 ed.).

Article [VII], Sec. 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

The power to declare a state of martial law is subject to the Supreme Court's authority to review the factual basis thereof. By constitutional fiat, the calling-out powers, which is of lesser gravity than the power to declare martial law, is bestowed upon the President alone. As noted in *Villena*, '[t]here are certain constitutional powers and prerogatives of the Chief Executive of the Nation which must be exercised by him in person and no amount of approval or ratification will validate the exercise of any of those powers by any other person. Such, for instance, is his power to suspend the writ of habeas corpus and proclaim martial law[.]'

...

*The distinction places the calling out power in a different category from the power to declare martial law and the power to suspend the privilege of the writ of habeas corpus, otherwise, the framers of the Constitution would have simply lumped together the three powers and provided for their revocation and review without any qualification.*¹⁰⁵

105. *Kulayan*, 675 SCRA at 497-500. (citing PHIL. CONST. art. VI, § 23 (2) & art. VII, § 18; *Villena v. Secretary of Interior*, 67 Phil. 451, 462-63 (1939); & JOAQUIN G. BERNAS, S.J., *THE 1987 PHILIPPINE CONSTITUTION: A COMPREHENSIVE REVIEWER* 314-15 (2006)) (emphases supplied).

From the foregoing, it is clear that the “sequence of the graduated powers of the President” is reflected in Article VII, Section 18.¹⁰⁶ The calling-out powers of the chief executive, the first among these powers, is an expansive power to “call out such armed forces to prevent or suppress lawless violence, invasion[,] or rebellion[.]”¹⁰⁷ Such power relies on the full discretion of the President and his judgment is therein subject to judicial review.¹⁰⁸ Furthermore, the Constitution placed stringent safeguards with regard to the exercise of the power to suspend the writ of *habeas corpus* as well as the power to declare martial law.¹⁰⁹ It empowered both the legislative and judicial departments by ensuring that the acts of the President have the imprimatur of Congress through statutory grant and is subject to judicial review by the Supreme Court.¹¹⁰ Article VII, Section 18, paragraph 1 specifically states that the “Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President.”¹¹¹ Moreover, the Supreme Court was empowered by law in the same provision and was granted the authority to “review the sufficiency of the factual basis” of the suspension or proclamation through an appropriate proceeding filed by any citizen.¹¹²

In the same vein, the Supreme Court in the case of *Marcos v. Manglapus*¹¹³ also recognized the *residual powers* of the President in times of emergency in order to effectively lead the State against external and internal threats to its existence, thus —

The power of the President to keep the peace is not limited merely to exercising the commander-in-chief powers in times of emergency or to leading the State against external and internal threats to its existence. The President is not only clothed with extraordinary powers in times of emergency, but is also tasked with attending to the day-to-day problems of

106. Candelaria & Baquilod, *supra* note 93, at 361 (citing 2 RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, No. 42, at 409 (1986)).

107. PHIL. CONST. art. VII, § 18, para. 1.

108. Candelaria & Baquilod, *supra* note 93, at 361 (citing Integrated Bar of the Philippines v. Zamora, 338 SCRA 81, 107 (2005)).

109. PHIL. CONST. art. III, § 15 & art. VII, § 18, para. 1.

110. PHIL. CONST. art. VII, § 18, para. 1 & 3.

111. PHIL. CONST. art. VII, § 18, para. 1.

112. PHIL. CONST. art. VII, § 18, para. 3.

113. *Marcos v. Manglapus*, 177 SCRA 668 (1989).

maintaining peace and order and ensuring domestic tranquility in times when no foreign foe appears on the horizon.¹¹⁴

Such residual powers of the President were rooted in his duty to preserve and defend the Constitution.¹¹⁵ As explained by legal scholar Jose Nolleto, the President is “enjoined to do justice to every man [and must] consecrate himself to the service of the Nation.”¹¹⁶ From his solemn obligation comes this plethora of powers implicit in his duty to ensure that the laws are faithfully executed.¹¹⁷

Ergo, do the needs of the present crisis provide a rational supposition to granting emergency powers to the President? In terms of calling-out powers to facilitate the provision of pressing needs in this pandemic, it is perhaps rational. In addition, due to the emerging need of the country for resources, which without urgent provision may lead to unrest, it is also rational to grant emergency powers to the President in order for the executive branch to provide supplementary monetary support for government relief operations. This also applies to the implementation of measures designed to preserve security and stability, such as precise directives for the protection of patient rights. This and other issues will be discussed in detail.

In short, the Author affirms that amidst the COVID-19 pandemic, the emergency powers of the President are vital and necessary for the preservation of the nation and for the swift implementation of restrictions and regulations; however, this plenitude of powers must be exercised within a human rights framework wherein the rights and liberties of the Filipino people are respected and guaranteed. After all, without the people, there can be no State.

B. Traversing Republic Act No. 11469: The Bayanihan to Heal as One Act

I. Authorized Powers of the President

In order to address the issues brought about by COVID-19, a supposed ₱275 billion emergency fund was provided via realignment of the budget from the executive branch,¹¹⁸ which was done to augment the emergency powers

114. *Id.* at 694.

115. PHIL. CONST. art. VII, § 5.

116. JOSE NOLLETO, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES 168 (2009).

117. PHIL. CONST. art. VII, § 17.

118. Bayanihan to Heal as One Act, § 4. *See also* Catalina Ricci S. Madarang, ‘Where did the budget go?’ Duterte asked a week after he signed anti-COVID

granted to the President by Congress. The law that grants this, made effective 25 March 2020, was Republic Act No. 11469 or more commonly known as the Bayanihan to Heal as One Act (Bayanihan Act), which was derived from Article VI, Section 23 (2) of the 1987 Constitution that grants the Congress the power, by law, to authorize the President, for a limited period of time and subject to such restrictions it may prescribe, to “exercise powers necessary and proper to carry out a declared national policy” in times of war or other national emergency.¹¹⁹ This law affirms a state of national emergency¹²⁰ in light of the ECQ or Luzon-wide lockdown, and previous government declarations of a state of calamity and a state of public health emergency in the Philippines.¹²¹ As stated in Section 2 of the Bayanihan Act, the Philippines was declared to be under a “State of Public Health Emergency ... due to ... COVID-19” together with the pronouncement that “the Code Alert System [of DOH] was raised to Code Red Sublevel [] 2, in accordance with the recommendation of the [IATF].”¹²² In addition, Section 2 also provides that by virtue of Presidential Proclamation No. 929, series of 2020, the Philippines was declared to be under a State of Calamity.¹²³

The validity of the Bayanihan Act is for three months unless such is extended by the Congress or terminated earlier via a concurrent resolution or through a presidential proclamation.¹²⁴ In order to properly analyze its repercussions on human rights, it is of vital significance to examine the powers granted by the foregoing law to the Chief Executive. Section 4 of the Bayanihan Act enumerates the authorized powers of the President. Some provisions which are worth noting are, in digested form:

‘Bayanihan’ act, available at <https://www.interaksyon.com/politics-issues/2020/03/30/165359/where-did-the-budget-go-duterte-asked-a-week-after-he-signed-anti-covid-bayanihan-act> (last accessed Aug. 15, 2020).

119. PHIL. CONST. art. VI, § 23 (2).

120. Bayanihan to Heal as One Act, § 2.

121. Sofia Tomacruz, *Duterte signs law granting himself special powers to address coronavirus outbreak*, RAPPLER, Mar. 24, 2020, available at <https://www.rappler.com/nation/255718-duterte-signs-law-granting-special-powers-coronavirus-outbreak> (last accessed Aug. 15, 2020).

122. Bayanihan to Heal as One Act, § 2.

123. *Id.*

124. *Id.* § 9.

- (1) adopt guidelines issued by the WHO in order to prevent or suppress further transmission of the COVID-19 virus;¹²⁵
- (2) “[p]rovide an emergency subsidy to around [] 18 million low income households” amounting to a minimum of ₱5,000.00 to a maximum of ₱8,000.00 a month for [two] months;¹²⁶
- (3) provide all public health workers a COVID-19 special risk allowance;¹²⁷
- (4) “[e]nsure that all Local Government Units (LGUs) are acting within the letter and spirit of all the rules, regulations, and directives issued by the National Government, ... while allowing LGUs to continue exercising their autonomy in matters undefined by the National Government or are within the parameters [the latter] has set[;]”¹²⁸
- (5) “direct the operation of privately-owned hospitals and medical and health facilities including passenger vessels and other establishments to house health workers, serve as quarantine areas, quarantine centers, medical relief and aid distribution locations, or other temporary medical facilities;”¹²⁹
- (6) “[c]ontinue to enforce measures to protect the people from hoarding [and] profiteering[;]”¹³⁰
- (7) “ensure that the donation, acceptance, and distribution of health products intended to address the COVID-19 public health emergency are not unnecessarily delayed[;]”¹³¹
- (8) “[e]nsure the availability of credit to the productive sectors of the economy especially in the countryside through measures such as ... lowering the effective lending rates of interest and reserve requirements of lending institutions[;]”¹³²

125. *Id.* § 4 (a).

126. *Id.* § 4 (c).

127. *Id.* § 4 (d).

128. Bayanihan to Heal as One Act, § 4 (g).

129. *Id.* § 4 (h).

130. *Id.* § 4 (i).

131. *Id.* § 4 (j).

132. *Id.* § 4 (n).

- (9) “[r]equire businesses to prioritize and accept contracts, subject to fair and reasonable terms, for materials and services necessary to promote the [] declared national policy[;]”¹³³
- (10) “[r]egulate and limit the operation of all sectors of transportation through land, sea or air, whether private or public[;]”¹³⁴
- (11) “[c]ontinue to authorize alternative work arrangements for employees and workers in the Executive Branch, and whenever it becomes necessary, in other independent branches of government and constitutional bodies, and the private sector;”¹³⁵
- (12) “[m]ove statutory deadlines and timelines for the filing and submission of any document, payment of taxes, fees, and other charges required by law, and the grant any benefit in order to ease the burden on individuals under Community Quarantine;”¹³⁶
- (13) “[d]irect all banks, quasi-banks, financing companies, lending companies, and other financial institutions, public and private, including the Government Service Insurance System, Social Security System, and Pag-IBIG Fund, to implement a minimum of a [30]-day grace period for the payment of all loans ... and credit card payments, ... without incurring interests, penalties, fees, or other charges[;]”¹³⁷
- (14) “[p]rovide for a minimum of [30]-day grace period on residential rents falling due within the period of the enhanced community quarantine, without incurring interests, penalties, fees, and other charges;”¹³⁸
- (15) “[i]mplement an expanded and enhanced Pantawid Pamilya Program, ... whether in cash or non-cash, whichever is more practicable, ... of an amount adequate to restore capacity to

133. *Id.* § 4 (q).

134. Bayanihan to Heal as One Act, § 4 (r).

135. *Id.* § 4 (t).

136. *Id.* § 4 (z).

137. *Id.* § 4 (aa).

138. *Id.* § 4 (bb).

purchase basic food and other essential items during the duration of the quarantine[;]"¹³⁹ and

- (16) “[u]ndertake such other measures as may be reasonable and necessary to enable the President to carry out the declared national policy subject to the Bill of Rights and other constitutional guarantees.”¹⁴⁰

Despite some lingering public hesitation on the operational framework of how the ₱275 billion emergency fund will be spent and on the extent such powers vis-à-vis the possible squelching of people’s right to dissent, there is merit to the grant of emergency powers in order to swiftly combat the pernicious effects of the highly transmissible and deadly virus. The Author asserts, however, that some of the aforementioned emergency powers may be inherently exercised by the chief executive even without the need for a constitutional statutory grant through sufficient legislation. Some of these powers include: (a) expediting the accreditation of test kits, prompt testing of the public, and provision of medical care and treatment to COVID-19 infected patients; (b) the implementation of alternative working arrangement or more commonly known as work from home schemes; (c) protecting consumers from pernicious practices affecting supply and distribution as well as sheltering the people from hoarding and profiteering mechanisms due to the previous enactment of Republic Act No. 7581 or An Act Providing Protection to Consumers by Stabilizing the Prices of Basic Necessities and Prime Commodities and by prescribing measures Against Undue Price Increases during Emergency Situations and Like Occasions; and (d) adopting guidelines issued by the WHO in order to prevent or suppress further transmission of COVID-19.

2. Dissecting the Bayanihan Act in View of Human Rights

The 1987 Constitution allows the temporary taking-over of the operations of privately-owned public utilities, enterprises and industries if deemed necessary during a national emergency, to wit —

In times of national emergency, when the public interest so requires, the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately owned public utility or business affected with public interest.¹⁴¹

139. *Id.* § 4 (cc).

140. Bayanihan to Heal as One Act, § 4 (ee).

141. PHIL. CONST. art. XII, § 17.

This Article is juxtaposed with the provision in the Bayanihan Act which states that the President, when public interest so requires, may direct the operation of any privately-owned hospital and medical or health facility to serve as quarantine areas or as aiding facilities for the benefit of COVID-19 patients and of the dedicated frontline healthcare workers, thus —

Section 4 (h). Consistent with Section 17, Article XII of the Constitution, when the public interest so requires, direct the operation of any privately-owned hospitals and medical and health facilities including passenger vessels and, other establishments, to house health workers, serve as quarantine areas, quarantine centers, medical relief and aid distribution locations, or other temporary medical facilities; and public transportation to ferry health, emergency, and frontline personnel and other persons: *Provided, however*, That the management and operation of the foregoing enterprises shall be retained by the owners of the enterprise, who shall render a full accounting to the President or his duly authorized representative of the operations of the utility or business as basis for appropriate compensation: *Provided, further*, That reasonable compensation for any additional damage or costs incurred by the owner or the possessor of the subject property solely on account of complying with the directive shall be given to the person entitled to the possession of such private properties or businesses after the situation has stabilized or at the soonest time practicable: *Provided, finally*, That if the foregoing enterprises unjustifiably refuse or signify that they are no longer capable of operating their enterprises for the purpose stated herein, the President may take over their operations subject to the limits and safeguards enshrined in the Constitution.¹⁴²

From the foregoing, it is clear that the President, in his discretion and if he deems it necessary, may direct the operations of any hospital, medical facility, or privately-owned business to effectively respond to COVID-19; however, the government must provide “compensation for [] damage or costs incurred [by the private institution] ... after the situation has stabilized or at the soonest time practicable[.]”¹⁴³ In addition, the same provision grants the President powers to direct transportation to assist the health workers.¹⁴⁴ The Author maintains that, at this time of the pandemic, such a power can prove necessary in the event that hospitals and medical institutions designated as COVID-19 referral centers eventually lack space in accommodating the influx of both COVID-19 and non-COVID-19 patients, which situation will then necessitate the President to designate private institutions as quarantine facilities or referral hospitals regardless of

142. Bayanihan to Heal as One Act, § 4 (h).

143. *Id.*

144. *Id.*

their reservation. This power has the Constitution's imprimatur and may prove to be one of the most essential powers of the President during this time of crisis.¹⁴⁵

The crafting of the law and how they are to be ideally enforced are grounded on the principle that despite the exigency for immediate decisions and measures, the people's right to health, right to information, and right to life, liberty, and property are not merely basic precepts of needlessly long aspirations but are fundamental to the safeguarding of human rights.

Another provision of concern in the Bayanihan Act is the regulation of *fake news* during the course of its effectivity.¹⁴⁶ Lawyer and former Kabataan Partylist Representative Terry Ridon argued that “[w]hat is most dangerous at this point is the provision on fake news, as this was never even in the original draconian bill as proposed by Malacañang.”¹⁴⁷ This burden stems from the following provision of the Bayanihan Act which states that

[i]ndividuals or groups creating, perpetrating, or spreading false information regarding the COVID-19 crisis on social media and other platforms, such information having no valid or beneficial effect on the population, and are clearly geared to promote chaos, panic, anarchy, fear, or confusion; and those participating in cyber incidents that make use or take advantage of the current crisis situation to prey on the public through scams, phishing, fraudulent emails, or other similar acts.¹⁴⁸

The Author argues that this provision of the Bayanihan Act is rather broad and non-specific, and may be subject to differing interpretations by those who enforce the law. There are no clear guidelines as to what constitutes *information having no beneficial effect* to the public or those which are *geared to cause panic, anarchy, fear, or confusion*. Many Filipinos post on social media merely to express their sentiments, opinions, or personal dissents without the intention of usurping power from the government, and even if such posts may prove to challenge those in position, they are made visible to the public and hence may have questionable influences and intentions. This ambiguity can cause a chilling effect on free speech and may even be a hurdle to the people's constitutionally guaranteed right to freedom

145. PHIL. CONST. art. XII, § 17.

146. Bayanihan to Heal as One Act, § 6 (f).

147. Lian Buan, *Bayanihan Act's sanction vs 'false' info the 'most dangerous'*, RAPPLER, Mar. 29, 2020, available at <https://www.rappler.com/nation/256256-sanctions-fake-news-bayanihan-act-most-dangerous> (last accessed Aug. 15, 2020).

148. Bayanihan to Heal as One Act, § 6 (f).

of expression¹⁴⁹ — one of the most valuable liberties in the human rights arsenal.

Meanwhile, legal scholar and professor Antonio La Viña and lawyer Joy Reyes argue that the summons served to Pasig City Mayor Victor “Vico” Sotto had no constitutional basis and that President Duterte’s “shoot to kill order” may be considered a violation of the Bill of Rights.¹⁵⁰ Regarding the first point, the National Bureau of Investigation (NBI) issued a summons to Mayor Sotto for a possible violation of the Bayanihan Act due to disobedience to national government policies and directives.¹⁵¹ This was brought about by the Mayor’s act of allowing tricycles to operate in his city to assist healthcare workers and patients with emergencies after conducting the proper risk assessment and arguing for the continuance of such operations despite the contrary directives of the national government.¹⁵² However, this seems to hold no water or constitutional basis. Article III, Section 22 of the Constitution states that “[n]o *ex post facto* law or bill of attainder shall be enacted.”¹⁵³ This means that the government cannot punish an act that was legal and not considered criminal at the time of its commitment.¹⁵⁴ This is the basic precept in constitutional law that penal laws cannot be made retroactive.¹⁵⁵ This concept is embodied in the legal maxim *nullum crimen nulla poena sine lege* which means that there is no crime where there is no law punishing it.¹⁵⁶ While the NBI later on clarified that their invitation to the mayor did not pertain to the Bayanihan Act but instead to possible violations of a memorandum issued by Executive Secretary Salvador Medialdea on imposing a mass transport ban during the

149. PHIL. CONST. art. III, § 4.

150. Antonio La Viña & Joy Reyes, *Constitutional basics in a pandemic*, RAPPLER, Apr. 3, 2020, available at <https://www.rappler.com/thought-leaders/256852-opinion-constitutional-basics-pandemic> (last accessed Aug. 15, 2020).

151. *Id.*

152. Lian Buan, *NBI summons Vico Sotto for ‘violating’ Bayanihan Law*, RAPPLER, Apr. 1, 2020, available at <https://www.rappler.com/nation/256660-nbi-summons-vico-sotto-violating-bayanihan-law-coronavirus> (last accessed Aug. 15, 2020).

153. PHIL. CONST. art. III, § 22.

154. See BERNAS, *supra* note 104, at 618–19.

155. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, art. 21 (1930).

156. BERNAS, *supra* note 104, at 619. See also LUIS REYES, *THE REVISED PENAL CODE: CRIMINAL LAW BOOK ONE 599–600* (2017 ed.).

ECQ,¹⁵⁷ the Author believes that no sanctions were in place at the time and hence, the investigation remains futile.

Similarly, the Author agrees with Professor La Viña's proposition that President Duterte's order to the police and military men to "kill quarantine violators and trouble-makers" may be considered an outright violation of Article III, Section 1 and may, in fact, be unconstitutional.¹⁵⁸ No life can be taken nor can liberty be deprived with due process of law, which is a right guaranteed in the constitutionally enshrined Bill of Rights and "reigns supreme" and cannot thus be unwittingly disregarded by government officials.¹⁵⁹ This has been clarified by former Presidential Spokesperson Salvador Panelo, who said that the President instead referred to the use of lethal violence in the presence of harm, which he says "is a universal law anchored on the principle of self-preservation[.]"¹⁶⁰ Nonetheless, the Author maintains the danger of such a statement, upon which the principle of extrajudicial killings (EJKs) masked by self-defense is derived. Incidents in this context have more than once been shown as staged, such as the cases of Kian Delos Santos, Carl Arnaiz, and Reynaldo de Guzman.¹⁶¹ Caution must therefore guide the President in imposing his speeches and directives.

Lastly, in Section 4 (c) of the Bayanihan Act, it states that the government must aim to provide a cash subsidy amounting to a minimum of ₱5,000.00 to a maximum of ₱8,000.00 a month for two months to around 18 million low income families during the pandemic.¹⁶² However, as per

157. Llanesca T. Panti, NBI says Vico Sotto violated Palace memo vs. public transport, *available at* <https://www.gmanetwork.com/news/news/metro/732338/nbi-says-vico-sotto-violated-palace-memo-vs-public-transport/story> (last accessed Aug. 15, 2020).

158. La Viña & Reyes, *supra* note 150.

159. *Id.*

160. Darryl John Esguerra, *Palace: Duterte 'shoot to kill' order not a crime, allowed for 'self-preservation'*, PHIL. DAILY INQ., Apr. 3, 2020, *available at* <https://newsinfo.inquirer.net/1253398/palace-says-duterte-shoot-to-kill-order-not-a-crime-violence-allowed-for-self-preservation> (last accessed Aug. 15, 2020).

161. Marc Jayson Cayabyab, *Families mark first year since Kian, Carl, 'Kulot' slain by police*, PHIL. STAR, Aug. 17, 2018, *available at* <https://www.philstar.com/nation/2018/08/17/1843199/families-mark-first-year-kian-carl-kulot-slain-police> (last accessed Aug. 15, 2020).

162. Bayanihan to Heal as One Act, § 4 (c).

reports, government agencies have initially met delays with finalizing a consolidated database containing the family beneficiaries, coupled with the fact that the target release date of such a database remained unclear.¹⁶³ This is despite the crucial fact that the country was entering into the third week of the ECQ, with the people in hunger and unrest fomenting.¹⁶⁴ Online news website Rappler then reported that there had not yet been a specific date for when the database mapping out the beneficiaries of such cash subsidies will be completed.¹⁶⁵ Aside from this, it had also been reported that, as of 31 March 2020, the special risk allowance for public health workers was still awaiting the final release of guidelines by the Department of Budget and Management (DBM).¹⁶⁶

These instances sparked a campaign by citizens online for more transparency as to how the ₱275 billion emergency fund was being utilized and divided among the various programs of the government.¹⁶⁷ Eventually, cash subsidies were given to both formal workers and vulnerable populations, via the Department of Labor and Employment (DOLE)¹⁶⁸ and Department of Social Welfare and Development (DSWD),¹⁶⁹ respectively, but provisions by the former were suspended due to depleting funds and

163. Aika Rey, *Cash aid for 18 million poor families in limbo as gov't works on database*, RAPPLER, Mar. 31, 2020, available at <https://www.rappler.com/nation/256531-cash-aid-poor-families-in-limbo-government-works-database-coronavirus-crisis> (last accessed Aug. 15, 2020).

164. *Id.*

165. *Id.*

166. *Id.*

167. Erwin Colcol, *Solon demands transparency in budget realignments for COVID-19 response*, available at <https://www.gmanetwork.com/news/news/nation/731416/solon-demands-transparency-in-budget-realignments-for-covid-19-response/story> (last accessed Aug. 15, 2020).

168. Department of Labor and Employment, *200k workers get DOLE aid*, available at <https://www.dole.gov.ph/news/200k-workers-get-dole-aid> (last accessed Aug. 15, 2020).

169. CNN Philippines Staff, *DSWD eyes complete distribution of COVID-19 emergency subsidy before weekend*, available at <https://cnnphilippines.com/news/2020/4/8/dswd-eyes-complete-distribution-covid-emergency-subsidy-before-weekend.html?fbclid=IwAR1GD2yNGjHVmiGM-VSSSchOJwP4RojF3gLpxFOpjui2sQrGMdk8zCleeho> (last accessed Aug. 15, 2020).

those of the latter were limited to “the poorest of the poor,” as will be discussed.¹⁷⁰

To this end, the Author asserts that people have the right to information as to how the funds are being spent, as well as to other information relating to the pandemic. This right to information is supported by both municipal and international law, wherein Article 19 of the ICCPR provides that everyone has the right to “receive and impart information,”¹⁷¹ while Article III, Section 7 of the Constitution emphasizes the right of the people “to information on matters of public concern.”¹⁷² How the people’s money is being spent by the government in such a crucial time where a pandemic continues to devastate economies and human lives is of utmost importance and vitality to the survival of the State and of its people.

In line with this, during the extended period of the ECQ, problems surrounding the DSWD social amelioration program continued to abound. Last 9 April 2020, CNN Philippines reported that as efforts to distribute the cash aid continued, issues arose from the LGUs’ claim that the number of beneficiaries approved by DSWD “is lower than the actual count [of qualified families] in their communities.”¹⁷³ This gap between needs and resources, owing partly to a lack of a clear mechanism in distribution and conflicting information received from varying sources, is certainly incompatible with any attempt to extend the ECQ. Unfortunately, this incongruence may lead to human rights violations if the government continues with its militaristic approach in dealing with a public health problem.¹⁷⁴ This may partly explain recent violations of quarantine

170. CNN Philippines Staff, Applications for workers’ aid suspended as funding for program ‘close to being depleted’, *available at* <https://www.cnnphilippines.com/news/2020/4/16/DOLE-COVID-Adjustment-Measures-Program-application-suspended.html> (last accessed Aug. 15, 2020).

171. ICCPR, *supra* note 79, art. 19 (2).

172. PHIL. CONST. art. III, § 7.

173. Catherine A. Modesto, DSWD eyes improved cash aid distribution after noting ‘shortcomings’, *available at* https://cnnphilippines.com/news/2020/4/9/dswd-shortcoming-social-amelioration.html?fbclid=IwAR2KgSUawcl214sLvGEi2bvsqAYSSZsgJZzG1-sHfaIToXOQMf7dcUH_46M (last accessed Aug. 15, 2020).

174. *See* Ana P. Santos, Poverty punished as Philippines gets tough in virus pandemic, *available at* <https://www.aljazeera.com/news/2020/04/poverty-punished-philippines-tough-virus-pandemic-200413063921536.html> (last accessed Aug. 15, 2020).

protocols, as reflected by the 40,000 violators of protocols in Luzon, that raises an issue beyond discipline and comprehension.¹⁷⁵

To address these issues legally, certain concerns in relation to human rights are raised by the Author as Republic Act No. 11469 is dissected and discussed. These included possible violations to the right to dissent, right to information, right to health, right to life, right to liberty, and right to property. Ergo, it is of utmost importance that the national government and LGUs take caution and conscious effort in maintaining the value and free exercise of these rights vis-à-vis the provisions of the Bayanihan Act, which should not limit these rights even under the circumstances of the pandemic. It is understandable that swift exercise of the law is prone to error and that prioritizing the crisis may limit some of these rights. However, there must be a conscious effort by government officials to correct what was overlooked and to compensate for what was taken so that human rights are preserved, and there must be a brave disposition to take responsibility for such errors, if any, as prescribed by the rigors of law.

III. DISPLACEMENT OF THE UNDERSERVED

Under threat of or during a pandemic, it is necessary that governments of affected States ensure the provision of adequate healthcare services, timely medical support, and unwavering dedication in servicing COVID-19 related concerns to every single one of its citizens, whether infected by the virus or not, and whether served or underserved.

With this in mind, it is important to note the words of Michelle Bachelet, the United Nations (UN) High Commissioner for Human Rights, who said that “[t]o effectively combat the outbreak means ensuring everyone has access to treatment, and is not denied health care because they cannot pay for it or because of stigma.”¹⁷⁶ Reinforcing this notion involves a core understanding that a rights-based approach to public health, especially in times of a pandemic, strives towards equity, universality, and non-discrimination.¹⁷⁷ It is pertinent to establish health as a human right which

¹⁷⁵. *Id.*

¹⁷⁶. Commission on Human Rights, Coronavirus: Human rights need to be front and centre in response, says Bachelet, *available at* <http://chr.gov.ph/coronavirus-human-rights-need-to-be-front-and-centre-in-response-says-bachelet> (last accessed Aug. 15, 2020).

¹⁷⁷. World Health Organization, Human rights and health, *available at* <https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health>

“creates a legal obligation on States to ensure access to timely, acceptable, and affordable healthcare of appropriate quality as well as to providing for the underlying determinants of health.”¹⁷⁸ The varying determinants of health in this sense cover a wide array of factors — all intermingling in the social community — which includes “safe and potable water, sanitation, food, housing, health-related information and education, and gender equality.”¹⁷⁹

A closer look at the displacement of the underserved in a society which focuses on catering to its more economically prosperous members reveals that the most vulnerable patients in the face of a pandemic are the poor and the marginalized, *viz.* —

Disadvantage and marginalization serve to exclude certain populations in societies from enjoying good health. ... [T]he world’s most fatal communicable diseases ... disproportionately affect the world’s poorest populations, and in many cases are compounded and exacerbated by other inequalities and inequities including gender, age, sexual orientation or gender identity and migration status. Conversely the burden of non-communicable diseases — often perceived as affecting high-income countries — is increasing disproportionately among lower-income countries and populations, and is largely associated with lifestyle and [behavior] factors as well as environmental determinants, such as safe housing, water and sanitation that are inextricably linked to human rights.

A focus on disadvantage also reveals evidence of those who are exposed to greater rates of ill-health and face significant obstacles to accessing quality and affordable healthcare, including indigenous populations. While data collection systems are often ill-equipped to capture data on these groups, reports show that these populations have higher mortality and morbidity rates, due to non-communicable diseases such as cancer, cardiovascular diseases, and chronic respiratory disease. These populations may also be the subject of laws and policies that further compound their marginalization and make it harder for them to access healthcare prevention, treatment, rehabilitation and care services.¹⁸⁰

In such a devastating scenario where the poor are constrained to receive less than adequate services, can human rights really thrive amidst the spread of COVID-19? Instituting a public healthcare system which allocates

(last accessed Aug. 15, 2020) [hereinafter World Health Organization, Human rights and health].

178. *Id.*

179. *Id.*

180. *Id.*

sufficient effort to provide unwavering support to the most vulnerable members of society must “[e]nsure access to free or affordable screening, testing[,] and care[,]”¹⁸¹ apart from the emergence of vital humanitarian operations resulting from the COVID-19 pandemic.¹⁸² In resource-restricted settings, testing is of course subject to the fair and proper medical impression of healthcare practitioners in the scenario of triaging, but whether testing is subject to triage or not may not limit such an access to healthcare but only provides priority to the more diseased, while providing screening to all other patients in need of care. This is indeed considered only if the government is unable to fully implement mass testing as provided by law, and under such restrictions, the right to healthcare can be arguably preserved since right to healthcare does not imply indiscriminate access to it, except if the law mandates testing for all regardless of risk.

Notwithstanding, in the event that a patient requests access to testing, screening at the first encounter through clinical assessment of travel history, contact exposure, and signs and symptoms is, in many ways, already a practice of accessible healthcare for all. The practice of screening prior to testing, in which asymptomatic patients with no history of travel and exposure are not to be given access to the diagnostic tests, is in accordance with the WHO recommendations and is not by itself a violation of healthcare access but rather an exercise of best practices that all patients deserve. However, an asymptomatic patient with a history of travel or exposure or a symptomatic patient with or without relevant history must obtain access to diagnostic tests as mandated by Republic Act No. 11469, lest a violation of rights occur. In the event that a patient is diagnosed to have COVID-19, proper access to admission and quarantine must be provided. This is a controversial and ongoing scenario in many places in the Philippines, as a result of a lack of hospital allocation and government willpower. In Quezon City, for instance, around 14 patients diagnosed with COVID-19 but with mild symptoms have been sent home under strict

181. UNAIDS, Rights in the time of COVID-19 — Lessons from HIV for an effective, community-led response. at 1, available at https://reliefweb.int/sites/reliefweb.int/files/resources/human-rights-and-covid-19_en.pdf (last accessed Aug. 15, 2020).

182. See United Nations Development Programme, UNDP response, available at <https://www.undp.org/content/undp/en/home/coronavirus.html#undprespo> nse (last accessed Aug. 15, 2020).

quarantine, to prioritize the sickly and those with severe symptoms or poor prognoses due to lack of hospital space.¹⁸³

Ideally, the severity of disease must not preclude the provision of an adequately supervised quarantine, especially under the circumstances of this disease, which greatly risks transmission when unguarded. While strict home quarantine can be acceptable if done properly, risks can be minimized if LGUs cooperate with healthcare workers through the provision of quarantine tents that can house a significant number of mildly-symptomatic positives, to ensure that no human rights are violated in concession to resource limitation. This and other issues on resource allocation will be discussed shortly in this Article.

In the thick of the fray, it is thus inevitable that a human rights-based approach to public health be instituted, all within a legal framework, to provide a set of lucid principles for “setting and evaluating health policy and service delivery, targeting discriminatory practices and unjust power relations that are at the heart of inequitable health outcomes.”¹⁸⁴ In addition, the issue of non-discrimination with regard to treatment and sanction of those who are found to violate the COVID-19 restriction protocols has potently induced public outcry against violations of human rights and evident discriminatory treatment,¹⁸⁵ which reflects even more the gap between the powerful and the marginalized.

A. Guarantee of Fundamental Human Rights to Non-COVID-19 Patients

The UDHR elucidates that “[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in [the UDHR] can be fully realized.”¹⁸⁶ This resounds the echoes of the Alma Ata

183. Rambo Talabong, *14 coronavirus patients in Quezon City staying at home*, RAPPLER, Mar. 23, 2020, available at <https://amp.rappler.com/nation/255551-coronavirus-patients-quezon-city-staying-home> (last accessed Aug. 15, 2020).

184. World Health Organization, *Human rights and health*, *supra* note 177.

185. Mario Casayuran, *Filipinos shouldn't discriminate because it is not right — Gatchalian*, MANILA BULL., Feb. 15, 2020, available at <https://news.mb.com.ph/2020/02/15/filipinos-shouldnt-discriminate-because-it-is-not-right-gatchalian> (last accessed Aug. 15, 2020).

186. Universal Declaration of Human Rights, *supra* note 69, art. 28. As noted by Mann, “[a]lthough the UDHR is not a legally binding document, nations (states) have endowed it with great legitimacy through their actions, including its legal and political invocation at the national and international levels.”

Declaration, which demands the provision of universal healthcare through the primary health care approach, in order to ensure that all persons receive care based on need and that they are empowered through participatory roles provided by their respective communities.¹⁸⁷ Under the circumstances of COVID-19, the foregoing becomes even more essential considering the easy transmission of such a contagious and potentially fatal disease. In line with this, legal scholars Meier and Mori magnanimously pronounced —

Under this new, globalized risk of disease, divisions between region and government no longer guarantee protection. The rapid transmission of disease among populations cannot be stymied at the local, or even national, level. Where once quarantines and other public health measures were effective in safeguarding a state from infectious disease, infectious diseases have reemerged in force through globalization, emasculating even the most advanced national health controls.

...

Despite this universalization of infectious disease, differential risk for health threats endures through economic privilege. The spread of many diseases is abetted by socioeconomic conditions conducive to pathogen transmission and unequal access to health resources.¹⁸⁸

In the same vein, Philippine law and jurisprudence also provide clear bases for the protection of the people's right to health. Article II, Section 15 of the 1987 Constitution provides that "[t]he State shall protect and promote the right to health of the people and instill health consciousness among them."¹⁸⁹ Hand in hand with this provision is Article XIII, Section 11, which involves the perpetuation of social justice and human rights.¹⁹⁰ The foregoing provision declares that

[t]he State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and

Jonathan M. Mann, et al., *Health and Human Rights, in* HEALTH AND HUMAN RIGHTS IN A CHANGING WORLD 18 (Michael Grodin, et al., eds., 2013).

187. International Conference on Primary Health Care, Alma Ata, USSR, Sep. 6-12, 1978, Declaration of Alma Ata: International Conference on Primary Health Care, Alma Ata, art. V.

188. Meier & Mori, *supra* note 1, at 106-07 (citing ANTHONY GIDDENS, THE CONSEQUENCES OF MODERNITY 125 (1990) & Bruce Link & Jo Phelan, *Social Conditions as Fundamental Causes of Disease*, 35 J. HEALTH & SOC. BEHAV. 80, 81 (1995)).

189. PHIL. CONST. art. II, § 15.

190. PHIL. CONST. art. XIII, § 11.

other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.¹⁹¹

Furthermore, in the case of *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*,¹⁹² the Supreme Court held that “[i]t is a matter of common knowledge that there is a great social need for adequate medical services at a cost which the average wage earner can afford.”¹⁹³ It is thus a requisite condition imposed by no less than the highest law of the land and supported by jurisprudential pronouncements that the right of Filipino citizens to health and healthcare services — with no iniquitous regard to status nor gender — is inviolable.¹⁹⁴

In the Philippines, the pandemic proves to affect not only COVID-19 patients but also non-COVID-19 patients and local citizens with regard to their access to healthcare, basic freedom of movement, and economic sources of livelihood during and after the imposition of the ECQ. It has been recognized that the virus not only affected the people’s health but also became a form of “economic contagion”¹⁹⁵ — inducing unpredictable changes in the economy resulting in exacerbated destitution or labor and hunger issues. This is a recognized “‘chilling effect’ ... on the economic demand and supply”¹⁹⁶ in the country. In order to combat these effects, the Philippine government “announced a [₱27.1 billion] stimulus package, but business groups have countered by asking for a counter-COVID-19 response over 10 times larger than what the government mustered[.]”¹⁹⁷ However, it is not only the business owners who are suffering such an economic contagion but more particularly the manual work laborers and minimum wage earners.¹⁹⁸ For daily wage earners, “no work means no pay so no

191. PHIL. CONST. art. XIII, § 11.

192. *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*, 600 SCRA 413 (2009).

193. *Id.* at 448.

194. PHIL. CONST. art. XIII, § 11.

195. Manuel M. Dayrit and Ronald U. Mendoza, COVID-19: Countering the Economic Contagion, available at <https://thediplomat.com/2020/03/covid-19-countering-the-economic-contagion> (last accessed Aug. 15, 2020).

196. *Id.*

197. *Id.*

198. Ana P. Santos, Coronavirus: Philippines quarantines island of 57 million people, available at <https://www.aljazeera.com/news/2020/03/coronavirus-philippines->

choice.”¹⁹⁹ This scenario makes it challenging, if not impossible, to maintain physical and social distancing measures without appropriate governmental relief and assistance. Families can die of hunger without a sufficient means of livelihood during the lockdown period. It is thus of much importance to note that the poor have to take the lion’s share of the detrimental effects resulting from such restrictions, thus —

To be sure, few disagree that restrictions are needed to deal with the pandemic. But they took the country by surprise. With little warning, millions who eke out a hardscrabble existence in the city’s underground economy were left without any means of support as businesses closed and people were ordered off the streets. The government focused on enforcing the quarantine; little thought was given to mitigating its impact on the most vulnerable. While cops and soldiers were out on the streets, social workers were told to stay home.

...

Those who work among the poor fear the havoc the coronavirus will likely wreak in Manila’s shantytowns. Many there don’t have running water How can they even wash their hands? They can barely afford to eat, much less buy hand [sanitizers]. Shacks no bigger than a flatbed truck house large families whose members sleep side-by-side on wooden or cement floors. In the slums, where people are packed like bees in a hive, there is no such thing as social distancing.²⁰⁰

In the past, the Philippines ratified the International Covenant on Economic, Social, and Cultural Rights (ICESCR),²⁰¹ which, in practice, has come short time and time again. Article 12 (1) of the ICESCR provides that “[t]he States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”²⁰² This provision is juxtaposed with the subsequent guideline enunciated in Article 12 (2) (d) that “[t]he steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for ... the creation of conditions which would assure to all medical service and medical attention in the event of

quarantines-island-57-million-people-200316161225532.html (last accessed Aug. 15, 2020).

199. *Id.*

200. Shiela Coronel, Philippines: Covid-19 will devastate the poor, *available at* <https://www.lowyinstitute.org/the-interpretor/philippines-covid-19-will-devastate-poor> (last accessed Aug. 15, 2020).

201. See ICESCR, *supra* note 90.

202. *Id.* art. 12 (1).

sickness.”²⁰³ In practice, the implementation of the law — especially amidst the pandemic — has come short as a result of the government hastily approving the lockdown and ECQ measures without sufficient plans on how the marginalized members of society can keep up with efficient distancing measures under a temporary stoppage of livelihood. It has been said that “the COVID-19 pandemic is hitting the poor the hardest and exposing the gaping inequities in access to food, shelter, and health care.”²⁰⁴ In a way, whether the government is “fighting crime ... or battling a pandemic, Duterte rules with a heavy hand, and with little care for the consequences.”²⁰⁵

To reinforce the need for a human-rights based approach within a valid legal framework, Amnesty International, an international organization which closely monitors government responses to crisis, provided the obligations of and guidelines for governments worldwide in relation to the COVID-19 pandemic.²⁰⁶ Some of these that deserve emphasis include government assurance that all COVID-19 infected patients are given adequate treatment and are admitted to hospitals,²⁰⁷ proper healthcare equipment are provided to frontliners,²⁰⁸ transparency with regard to information and statistics relating to the pandemic are ensured,²⁰⁹ government aid for local communities are provided as soon as possible,²¹⁰ and labor rights amidst work from home arrangements are properly integrated and implemented.²¹¹ It is suggested by the Author that the Philippines follow these recommendations and ensure the following rights to its constituents in the face of the continuing global health crisis.

203. *Id.* art. 12 (2) (d).

204. Coronel, *supra* note 200.

205. *Id.*

206. See generally Amnesty International, Europe at Crossroads: Do’s and Don’ts for Authorities When Responding to the COVID-19 Pandemic, *available at* <https://www.amnestyusa.org/wp-content/uploads/2020/04/Europe-at-a-Crossroads.pdf> (last accessed Aug. 15, 2020).

207. *Id.* at 4-5.

208. *Id.* at 9.

209. *Id.* at 5 & 11.

210. *Id.* at 8.

211. *Id.* at 9.

1. The People's Right to Health

The Philippines is a signatory to the Universal Declaration of Human Rights (UDHR), which was drafted by the United Nations in the year 1948.²¹² As a signatory to the UDHR, the Philippines adheres to the principles and the protection of human rights, including the preservation of the right to health, and considers such rights as fundamental and inalienable rights.²¹³ It is clear that the right to health includes the “prevention, treatment[,] and control of epidemic, endemic, occupational[,] and other diseases.”²¹⁴

Thus, from an international law perspective, “an obligation to take all steps necessary for the prevention, treatment[,] and control of diseases” arises.²¹⁵ Amnesty International specifies that “[i]n the context of a spreading epidemic, this means ensuring that preventive care, goods[,] and services are available to everybody.”²¹⁶ This unqualifiedly includes all of its citizens, even non-COVID-19 patients.²¹⁷ If global health policy necessitates the use of protective health equipment, alcohol, face masks, and disinfectants, then the Philippine government should also be able to provide these necessities to its citizens in coordination with the LGUs.

It is thus of concern when non-COVID-19 patients, who regularly seek medical advice and care from their usual healthcare practitioners, are displaced by concentrated efforts to contain the spread of COVID-19.²¹⁸ As aforementioned, the designation of COVID-19 referral hospitals exhausts not only hospital space, but also healthcare workforce, medical equipment

212. Universal Declaration of Human Rights, *supra* note 69.

213. See United Nations Population Fund, Human Rights Principles, *available at* <https://www.unfpa.org/resources/human-rights-principles> (last accessed Aug. 15, 2020).

214. ICESCR, *supra* note 90, art. 12 (2) (c).

215. Amnesty International, COVID-19: How human rights can help protect us, *available at* <https://www.amnesty.org/en/latest/news/2020/03/coronavirus-how-human-rights-help-protect-us> (last accessed Aug. 15, 2020).

216. *Id.*

217. See Amnesty International, Responses to COVID-19 and States' Human Rights Obligations: Preliminary Observations, *available at* https://www.amnestyusa.org/press-releases/responses-to-covid-19-and-states-human-rights-obligations-preliminary-observations/#cite_note-23 (last accessed Aug. 15, 2020).

218. See, e.g., Janess Ann J. Ellao, PGH as COVID-19 center: Capacities and Implications, *available at* <https://www.bulatlat.com/2020/04/04/pgh-as-covid-19-center-capacities-and-implications> (last accessed Aug. 15, 2020).

and supplies, and hospital funding.²¹⁹ In addition, the presence of such a contagious disease burdens patients with anxieties to protect themselves, thus demotivating their health-seeking behaviors and even displacing them at the mercy of other healthcare practitioners who may not provide affordable services. These problems are accentuated by the designation of government hospitals as COVID centers, from which the patients displaced are the less fortunate and the underserved.²²⁰ In these events, it has become clear how the rights of non-COVID-19 patients are either violated or limited in their exercise, and certain measures must be put in place, as will be discussed.

Despite the passage of the Universal Healthcare (UHC) Law,²²¹ which may prove vital in addressing pertinent healthcare concerns of millions of Filipinos, House Minority Leader and Iloilo Representative Janette Garin has emphasized that such a law must be amended.²²² This is due to the fact that “[a]ccess to anti-COVID-19 drug Fapilavir is not guaranteed for any Filipino who might be infected by the deadly virus in the country[.]”²²³ This was further reinforced by Marikina City Representative Stella Luz Quimbo who also backed the suggestion to amend the law.²²⁴ If medicines necessary to combat the pandemic are not made part of the benefits readily received by Filipino citizens, then the UHC Law becomes nothing more than empty rhetoric in the face of a frightening pandemic. The UHC Law has also been criticized due to its heavy reliance on membership to PhilHealth,²²⁵ which does not guarantee healthcare for all, or at least a full subsidy to treatment of many diseases, noted examples being a partial subsidy

219. See generally Vernise L. Tantuco, *IN NUMBERS: What hospitals need to treat COVID-19 patients*, RAPPLER, Mar. 28, 2020, available at <https://www.rappler.com/newsbreak/in-depth/256133-numbers-what-hospitals-need-treat-coronavirus-patients> (last accessed Aug. 15, 2020).

220. Ellao, *supra* note 218.

221. An Act Instituting Universal Health Care for all Filipinos, Prescribing Reforms in the Health Care System, and Appropriating Funds Therefor [Universal Health Care Act], Republic Act No. 11223 (2019).

222. Ben Rosario, *Universal health care law needs to be amended — solon*, MANILA BULL., Feb. 19, 2020, available at <https://news.mb.com.ph/2020/02/19/universal-health-care-law-needs-to-be-amended-solon> (last accessed Aug. 15, 2020).

223. *Id.*

224. *Id.*

225. PhilHealth, *Universal Health Care Act assures cover for all — PhilHealth*, available at https://www.philhealth.gov.ph/news/2019/uhc_act.php (last accessed Aug. 15, 2020).

for the dialysis of kidney failure patients totaling 90 sessions a year,²²⁶ as well as the non-flexibility of packages in the event that personalized medicine is needed. In relation to COVID-19, it has been reported that only a meager amount — an isolation package of ₱14,000 and a maximum pneumonia package of ₱32,000 — is shouldered by PhilHealth for patients who are admitted at hospitals for COVID-19,²²⁷ who pay not only for medicines but also for hospital admission good for at least two weeks, charges for the daily equipment of frontliners, and other miscellaneous fees. PhilHealth has attempted to cover all medical expenses of COVID-19 patients in the first few weeks of April, but has informed the public that it can only do so until 14 April 2020, after which a recomputed case rate is applied, as per PhilHealth Advisory No. 2020-022.²²⁸

2. The Right to Information

As a signatory to the ICESCR, the Philippines has the obligation to ensure that the public is provided with “education and access to information concerning the main health problems in the community, including methods of preventing and controlling them[.]”²²⁹ The Human Rights Watch emphasized that a rights-respecting response to COVID-19 necessitates an assurance that “accurate and up-to-date information about the virus, access to services, service disruptions, and other aspects of the response to the outbreak are available and accessible to all.”²³⁰ Only through proper dissemination of information to the people can the government and its

226. See PhilHealth, PhilHealth Extends Dialysis Coverage to 90 Days, *available at* https://www.philhealth.gov.ph/news/2015/extends_dialysis.html (last accessed Aug. 15, 2020).

227. Bonz Magsambol, *Lack of PhilHealth rules on coronavirus expenses leaves patient's family in limbo*, RAPPLER, Mar. 31, 2020, *available at* <https://www.rappler.com/nation/256501-son-coronavirus-patient-worry-hospital-expenses-philhealth> (last accessed Aug. 15, 2020).

228. PhilHealth, Until a new case rate package is introduced: We will pay “full cost of treatment” for COVID-19 patients — PhilHealth, *available at* https://www.philhealth.gov.ph/news/2020/will_pay.php (last accessed Aug. 15, 2020).

229. U.N. Committee on Economic, Social, and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, ¶ 44 (d), U.N. Doc. E/1992/23 (Dec. 23, 1991).

230. Human Rights Watch, Human Rights Dimensions of COVID-19 Response, *available at* <https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response> (last accessed Aug. 15, 2020).

citizens establish a united action in combating the further spread of this virulent pandemic.

The Philippines has likewise ratified the ICCPR. It is clearly declared in Article 19 that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive[,] and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”²³¹ The right of the people to information accessibility is a key factor in mitigating risks and avoiding deathly consequences with regard to the spread of the virus, *viz.* —

All affected individuals and communities are entitled to easy, accessible, timely and meaningful information concerning the nature and level of the health threat, the possible measures to be taken to mitigate risks, early warning information of possible future consequences and information on ongoing response efforts. Information should be available in the languages necessary to meet the various needs of those affected, and through media and in formats that can be easily understood and accessed, so that those affected can fully participate and take informed decisions in the response efforts.

In order to effectively contain the spread of the virus, provide medical care for those who need it, and avoid harmful misdirection of resources, trust is essential. But for the public to have that trust, the affected communities need to be contacted in time and have to have access to all relevant and available information to understand the nature of the health crisis. Where possible, this should be done with community participation and through early partnerships with local authorities. Failures to do so can heighten the sense of helplessness, anger and frustration, undermine the public health response, put the health of others at risk, and may constitute human rights violations. When states’ responses to COVID-19 are based on restrictions of information, a lack of transparency and censorship, they risk undermining the rights mentioned above. They also risk making it harder for people to take adequate actions to protect themselves from infection, and for all stakeholders to obtain a realistic picture and coordinate and take effective action to combat the spread of the virus.²³²

It is therefore mandatory for the Philippine government to recognize that “[a]ccess to health-related information is also a crucial part of the right to health.”²³³ In the face of a dreaded pandemic, the best defense is to make

231. ICCPR, *supra* note 79, art. 19 (2).

232. Amnesty International, *supra* note 217.

233. *Id.* at 4.

certain that everybody is provided with the right and accurate information in relation to the threats posed by COVID-19 and the current state of its transmission on both the local and the national level, with particular regard, of course, to the provisions of Republic Act No. 10173 or the Data Privacy Act of 2012.

There are several examples of how the right to information was questionably exercised in light of the COVID-19 pandemic, two of which will be discussed. In the early months of the outbreak, information on the first COVID-19-positive cases, including age, location, and health conditions, were initially kept confidential by the DOH in accordance with Republic Act. No. 10173.²³⁴ However, this decision received backlash from the general community who called for disclosure to avoid further contact at possible areas of transmission, which at that time was thought to be at crossroads with data privacy.²³⁵ Eventually, the DOH revealed such information, and has made it a practice to date which, as the Author argues, is not at all in violation of the Data Privacy Act of 2012, since there is still non-disclosure of vital patient information including name, religion and exact place of residence if patient consent was not previously obtained.

Meanwhile, during the outbreak and the implementation of the ECQ in the National Capital Region (NCR), reports have surfaced regarding several persons under investigation (PUIs) who have succumbed to their diseases while seeking confirmation of their diagnoses or awaiting their test results for COVID-19.²³⁶ While the right to information of the family may not have been violated by the eventual disclosure of the results, the right of the patient, once deceased, will not have been clearly and unequivocally exercised. This instance may be accidental, due to the limitation of current techniques to diagnose infection under a set amount of time, but such nature has been contested by several doctors and popular figures citing an anecdotal report from the staff of the Research Institute for Tropical Medicine (RITM) that the diagnosis of a doctor who succumbed to COVID-19 was

234. See Raymond Carl Dela Cruz, DOH cautious in releasing info of Covid-19 patients, *available at* <https://www.pna.gov.ph/articles/1096181> (last accessed Aug. 15, 2020).

235. See generally ABS-CBN News, Doctors, lawyers urge COVID-19 patients to waive confidentiality of medical condition, *available at* <https://news.abs-cbn.com/news/04/05/20/doctors-lawyers-urge-covid-19-patients-to-waive-confidentiality-of-medical-condition> (last accessed Aug. 15, 2020).

236. The Inquirer Bureaus, *PUIs die in regions without test results*, PHIL. DAILY INQ., Mar. 24, 2020, *available at* <https://newsinfo.inquirer.net/1247303/puis-die-in-regions-without-test-results> (last accessed Aug. 15, 2020).

delayed due to requests of certain “very important persons” (VIPs) to have their testing prioritized,²³⁷ in which case the delay was non-accidental and was clearly a deliberate violation of the law.

In addition, almost half of the test results among those who succumbed to COVID-19 were reportedly delayed, creating suspicion as to whether diagnostic protocols for COVID-19 are naturally this inefficient or if VIP testing is causing a delay in the dissemination of test results.²³⁸ Briefly, some of the patients who died due to COVID-19 received their diagnoses approximately one to eight days after their death²³⁹ — a clear violation of the right to information, and which also makes contact tracing even more difficult. Even if the delays are indeed purely accidental and are inevitably so, it remains a duty of the government to quickly revise and improve its protocols so that the right to information of patients is not violated by the current inefficiency of dissemination.

3. Citizens’ Labor Rights

Previously, it was discussed how the Philippine government implemented several measures in order to quell further transmission of COVID-19, which included the imposition of city-wide lockdowns, work from home arrangements, and afternoon curfews.²⁴⁰ While these measures can in theory become effective in minimizing transmission, inevitable concerns will eventually emerge regarding the citizens’ right to work, which is likely to be adversely affected. Those who depend on manual or seasonal labor as their source of livelihood and are covered under the “no work, no pay” scheme have no other source of income to depend on, unlike those who are regular workers and those who can easily transit to an electronic platform to accomplish their daily tasks. More often than not, “[w]orkers in these sectors

237. CNN Philippines Staff, Duque: Some ‘VIPs’ directly requested for COVID-19 testing, *available at* <https://www.cnnphilippines.com/news/2020/3/24/Philippines-coronavirus-COVID-19-VIP-test.html> (last accessed Aug. 15, 2020) [hereinafter CNN Philippines Staff, VIP testing].

238. Kristine Sabillo, Almost half of COVID-19 fatalities in PH got results on day of or after death, *available at* <https://news.abs-cbn.com/news/03/25/20/almost-half-of-covid-19-fatalities-in-ph-got-results-on-day-of-or-after-death?fbclid=IwAR16wADMtDOVJw8BYjPfmQDpnwZ6NnrX11JIV7Gq7VRjoxMybepvzBBMvEY> (last accessed Aug. 15, 2020).

239. *Id.*

240. Aspinwall, *supra* note 43; Ferreras, *supra* note 45; Zambrano, *supra* note 47; & Gregorio, *supra* note 48.

often do not get adequate, or any social security benefits, meaning they lose wages when they are quarantined and have no sick pay.”²⁴¹

Article 7 of the ICESCR provides that “States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and [favorable] conditions of work.”²⁴² Circulated news articles have recognized the perennial need for employment assistance especially in cases of possible layoffs due to COVID-19 restrictions and regulations.²⁴³ The chairperson of the Senate Labor Committee, Senator Joel Villanueva, urged the Department of Labor and Employment (DOLE) to prepare mechanisms in order to mitigate the effects of disruptions caused by COVID-19 restrictions as well as for the certain “spike in unemployment cases as COVID-19 continues to disrupt business operations.”²⁴⁴ The Senator further suggested that DOLE can utilize its “Tulong Panghanapbuhay sa Ating Disadvantaged/Displaced Workers (TUPAD) program, which grants emergency employment for displaced workers, seasonal workers, and even the underemployed, for 10 to 30 days based on the nature of the work given.”²⁴⁵

Several Senators have also raised similar concerns, one of whom being Senator María Imelda Josefa “Imee” Marcos who expressed “concern over minimum wage earners in industries most affected by the global pandemic.”²⁴⁶ This sets a clear tone for the lack of proper legislations and a lack of foresight in the crafting of labor laws. Furthermore, she suggested that the “funds of government agencies that were marked ‘for later release’ can be used to augment the DOLE’s ₱140 million emergency funds”²⁴⁷ — despite raising some concerns regarding unconstitutional cross-border transfer of funds as enunciated by the Court in the case of *Araullo v.*

241. Amnesty International UK, UK: Government’s coronavirus Bill explained, available at <https://www.amnesty.org.uk/coronavirus/uk-coronavirus-bill-explained> (last accessed Aug. 15, 2020).

242. ICESCR, *supra* note 90, art. 7.

243. Vanne Elaine Terrazola & Charissa Luci-Atienza, *Employment assistance pushed for possible layoffs due to COVID-19 restrictions*, MANILA BULL., Mar. 14, 2020, available at <https://news.mb.com.ph/2020/03/14/employment-assistance-pushed-for-possible-layoffs-due-to-covid-19-restrictions> (last accessed Aug. 15, 2020).

244. *Id.*

245. *Id.*

246. *Id.*

247. *Id.*

Aquino.²⁴⁸ It is of merit that she recognized the funds of DOLE as “‘inadequate,’ noting that only 7,000 workers will benefit from the said emergency fund if each receives ₱20,000.00 in aid”²⁴⁹ — further reiterating that such will not work in case the ECQ is extended and the COVID-19 pandemic worsens in the Philippines.

Clearly, it is necessary for the government to take good care of its burdened workers, especially those whose sources of income have been halted during the lockdown period. The Author is under the impression that the government does not have enough laws put in place that can enable it to efficiently tackle these emerging problems, such as the adverse loss of jobs and livelihood at this time of crisis. This is a certain loophole in legislation, which the government has remedied by developing regulations for local workers, but which was only done during the emergence and spread of COVID-19 in the country. The pandemic and its imminent effects were definitely not foreseen, or perhaps not acknowledged, as reactive measures will tell us, and it might be evident for legislators that new legislation is needed to address this ongoing dilemma.

In the export industry, some companies have implemented temporary forced leaves, affecting around five to ten percent of their workforce “due to the decline in the supply of raw materials as a result of the closure of establishments in China.”²⁵⁰ Furthermore, minimum wage factory workers were allegedly “forced to take leaves without pay after the COVID-19 lockdown shuts factories” in the Philippines.²⁵¹ Concerns regarding layoffs, forced leaves, and loss of livelihood have been prolific during the first few months of the COVID-19 crisis. Labor rights were hampered and companies had to come up with solutions to begin implementing work from home arrangements.²⁵² Business owners of non-essential goods have also

248. *Araullo v. Aquino*, 737 Phil. 457 (2014).

249. Terrazola & Luci-Atienza, *supra* note 243.

250. *Id.*

251. Kimmy Baraoidan & Maricar Cinco, Philippines: Minimum wage factory workers are allegedly forced to take leaves without pay after COVID-19 lockdown shuts factories, *available at* <https://www.business-humanrights.org/en/philippines-minimum-wage-factory-workers-are-allegedly-forced-to-take-leaves-without-pay-after-covid-19-lockdown-shutters-factories> (last accessed Aug. 15, 2020).

252. ABS-CBN News, Gov’t implements work from home to fight COVID-19 spread, *available at* <https://news.abs-cbn.com/news/03/17/20/govt-implements-work-from-home-to-fight-covid-19-spread> (last accessed Aug. 15, 2020).

found it difficult to pay business rent during the lockdown period.²⁵³ Employers and employees alike were placed in a seemingly inescapable labor dilemma. Does one expect this scenario to take a turn for the better in the next few months? Indeed, subsequent extensions of the ECQ in Luzon, or even an imposition of a modified version, if not secured by an equally strong legislation to support laborers and employers, can lead to a chain of bankruptcies, starvation, and an inevitable economic disaster.

To this end, the Author suggests that the Labor Code be amended to secure the rights of displaced workers, casual employees, and seasonal workers at the time of this pandemic and after. Provisions concerning employer rights must also be considered, since necessary expenses like rent of business space are usually paid for even in the event of closure due to lockdown, without laws in place that will grant grace periods or a waiving of these fees. Provisions of healthcare benefits to workers as well as an acceptable salary and hazard pay for services rendered must be given to frontliners and medical professionals, who are one of the laborers most affected by this crisis, and who are in dire need of government support.

Lastly, in order to ensure that similar events do not happen in the future in case another virulent pandemic emerges, it would be more prudent for the legislative branch of government to enact new laws and to amend the current Labor Code to reflect such necessary changes. The recently approved Republic Act No. 11469 or the Bayanihan to Heal as One Act included a minimum of 30-days grace period for paying residential rents, without penalties or charges within the period of the enhanced community quarantine,²⁵⁴ which the Author lauds with approval. In addition, the Department of Trade and Industry (DTI) imposed a similar moratorium on business and residential rent payments for small businesses for the entire duration of the ECQ extension,²⁵⁵ which the Author believes has eased the burden on many local businesses for the time being. These and other laws will be discussed in this Article.

253. CNN Philippines Staff, Tenants may enjoy extended deadline to pay rent under 'Bayanihan' law, *available at* <https://cnnphilippines.com/news/2020/3/25/extended-residential-fees-bayanihan-act-coronavirus.html> (last accessed Aug. 15, 2020).

254. Bayanihan to Heal as One Act, § 4 (bb).

255. Darryl John Esguerra, *DTI imposes 30-day grace period for residential, commercial rent payment*, PHIL. DAILY INQ., Apr. 6, 2020, *available at* <https://newsinfo.inquirer.net/1254708/dti-imposes-30-day-grace-period-for-residential-commercial-rent-payment> (last accessed Aug. 15, 2020).

4. Right Against Non-discrimination

This probably comes as one of the highlighted issues in this pandemic. Differences in treatment of the privileged and the marginalized members of society, in case of violation of laws put in place by the government to restrict movement, has attracted the attention of the Philippine public in recent weeks. Last 25 March 2020, Senator Aquilino “Koko” Pimentel breached protocols when he unwittingly went to Makati Medical Center (MMC) despite testing positive for COVID-19, which although done without knowledge of his results at that time, was against the strict home quarantine protocols laid out for persons under investigation (PUIs).²⁵⁶ The hospital management in a statement released on the same date expressed disappointment for “unduly exposing health care workers to COVID-19 ... [as] he violated his home quarantine [and] exposed health workers to possible infection”²⁵⁷ — all of which were “reckless and unacceptable.”²⁵⁸

Senator Pimentel’s untoward actions can actually provide a cause of action for numerous violations of several legislation. The senator’s non-disclosure of his status as a PUI or as a COVID-19 patient can be considered a violation of Section 9 (e) of Republic Act 11332 referring to the “non-cooperation of the person or entities identified as having the notifiable disease, or affected by the health event of public concern.”²⁵⁹ In addition, Senator Pimentel may also be held liable under Section 93 in relation to Section 97 of the Rules of the Senate²⁶⁰ which refers to the suspension or expulsion of a member of the Senate for unparliamentary behavior. This violation may be in conjunction with a violation of Republic Act No. 3019, Section 3 (e) for “causing undue injury to any party ... [through] gross

256. Xave Gregorio, Makati hospital berates Sen. Pimentel for violating quarantine protocols, *available at* <https://www.cnnphilippines.com/news/2020/3/25/Koko-Pimentel-Makati-Medical-Center-quarantine-protocol.html> (last accessed Aug. 15, 2020).

257. *Id.*

258. *Id.*

259. An Act Providing Policies and Prescribing Procedures on Surveillance and Response to Notifiable Diseases, Epidemic, and Health Events of Public Health Concern, and Appropriating Funds Therefor, Repealing for the Purpose Act No. 3573, Otherwise Known as the “Law on Reporting of Communicable Diseases” [Mandatory Reporting of Notifiable Diseases and Health Events of Public Health Concern Act], Republic Act No. 11332, § 9 (e) (2019).

260. Senate, Rules of the Senate, rule XXXIV, §§ 93 & 97 (2020).

inexcusable negligence.”²⁶¹ Furthermore, Senator Pimentel, as a member of the Philippine Bar, can also face complaints for disbarment or suspension of membership under the Code of Professional Responsibility, particularly for transgressing Canon 1²⁶² and Rule 7.03.²⁶³

Despite such transgression, Department of Justice (DOJ) Secretary Menardo Guevarra seemed rather immovable in his opinion that the law must be tempered with human compassion, thus saying “during abnormal times like this, when people are prone to commit mistakes or violations of the law, the DOJ will temper the rigor of the law with human compassion.” However, it is important to note that “compassion” is not considered as a justifying, exempting, or mitigating circumstance in any of the abovementioned laws. Such a scenario is clearly a contradiction to the circumstances faced by marginalized members of society in case they breach COVID-19 restriction protocols, which has been evidenced by recent charges filed and sanctions implemented against the poor and the general public for violating protocols on quarantine. Furthermore, issues of politicians needlessly using the limited supply of testing kits for their own benefit dubbed by the public as “VIP testing”²⁶⁴ has taken its toll on other citizens in dire need of such testing kits, in order to cater to baseless testing of politicians and other high-ranking government officials.²⁶⁵

Juxtaposing the two, it seems that the powerful get compassion, while the underserved are punished — with little to no regard for their reasons of violating quarantine measures. In a news report, Mang Arturo Lostreno was captured by police forces after being seen still continuing his tint business amidst the enhanced community quarantine.²⁶⁶ He was arrested along with 30 men and was made to stay in a covered court in Barangay Tatalon, Quezon City, to serve as a reminder that he cannot violate community quarantine protocols.²⁶⁷ This was despite Mang Lostreno’s explanation that he only did so because he has no money to feed his family.²⁶⁸ In a report

261. Anti-Graft and Corrupt Practices Act, Republic Act No. 3019, § 3 (e) (1960).

262. CODE OF PROFESSIONAL RESPONSIBILITY, Canon 1 (1988).

263. *Id.* Rule 7.03.

264. CNN Philippines Staff, VIP testing, *supra* note 237.

265. *Id.*

266. Jay Nelz, Cops Punished Old Man Who Continue to Work Amid Luzon Lockdown, *available at* <https://philnews.ph/2020/03/26/cops-punished-old-man-continue-work-amid-luzon-lockdown> (last accessed Aug. 15, 2020).

267. *Id.*

268. *Id.*

published by Rappler, 69-year-old Dorothy Espejo, a homeless senior citizen living in the streets of Leveriza, Malate, Manila was arrested by police officers and faced three charges including “violation of Article 151 of the Revised Penal Code prohibiting resistance and disobedience to authority.”²⁶⁹ Even more staggering is that curfew violators during the Enhanced Community Quarantine in Parañaque were made to sit under the sun as punishment.²⁷⁰ It is not that the law should not be followed. On the contrary, it must be imposed — and imposed strikingly across all social classes and regardless of power, and must not pave the way to abuse of authority or torture. The astonishing difference in the application of “compassion” is gravely dissimilar between a national politician and a humble citizen with limited sources of income.

This double standard has confounded the masses and caused a great public outcry for mass testing and a wide dissent against “VIP testing”²⁷¹ and “legal compassion” for politicians.²⁷² This Author firmly believes that this societal ill must be addressed by both legislation, through adequate laws supporting non-discrimination in the face of a pandemic, and strong executive political will in the implementation of such suggested pieces of legislation. Without these, an exercise of mere judiciousness is actually effective and warranted. Recently, a subpoena was filed by the Department of Justice (DOJ) to summon Senator Pimentel due to his alleged breach of quarantine protocols, which was put into motion by the complaint filed by Atty. Rico Quicho based on an alleged violation of Republic Act No.

269. Lian Buan, *Cops arrest homeless Lola who shouted at tanods warning about curfew*, RAPPLER, Mar. 17, 2020, available at <https://r3.rappler.com/nation/254926-cops-arrest-homeless-lola-shouted-tanods-warning-about-curfew> (last accessed Aug. 15, 2020).

270. Rambo Talabong, *In Parañaque, curfew violators sit under the sun as punishment*, RAPPLER, Mar. 24, 2020, available at <https://www.rappler.com/nation/255645-barangay-san-isidro-paranaque-curfew-violators-punished-sit-under-sun-curfew> (last accessed Aug. 15, 2020).

271. Julia Mari Ornedo, *Politicians slammed for skipping protocol on COVID-19 testing*, available at <https://www.gmanetwork.com/news/news/content/730344/politicians-slammed-for-skipping-protocol-on-covid-19-testing/story> (last accessed Aug. 15, 2020).

272. Robertzon Ramirez, *DOJ changes tune on Koko*, PHIL. STAR, Mar. 28, 2020, available at <https://www.philstar.com/headlines/2020/03/28/2003933/doj-chief-changes-tune-koko> (last accessed Aug. 15, 2020).

11332.²⁷³ This move is lauded by the Author, who believes that “tempering the rigor of law with human compassion” is inapplicable in this case, since the rigor of law or its tempering must be justly applied to princes and paupers who violate the law alike.

Surprisingly, law implementation in the country amidst the COVID-19 pandemic can be seen as following a vague and fluid course — attributing even a hierarchy among the political elites. As mentioned in the discussion above, DOJ Secretary Guevarra called for compassion in the case of Senator Koko Pimentel.²⁷⁴ In clear contrast, the Presidential Security Group stated that they are considering filing a legal case against Congressman Eric Yap, following his violation of strict palace protocols when he failed to disclose accurate health information before he attended a special meeting in Malacañang Palace.²⁷⁵

It is not surprising for Amnesty International to suggest that “States should take concrete, deliberate[,] and targeted measures to address this discrimination and stigma, including implementing strategies, policies and plans of action to address actions by public and private actors, and to protect all individuals from mistreatment.”²⁷⁶ It is evident that discrimination exists, and this divergence and schism between societal groups in the implementation of the law must be equalized. The Author emphasizes that one of the core principles of human rights includes equality and non-discrimination, which seeks

to guarantee that human rights are exercised without discrimination of any kind based on race, color, sex, language, religion, political, or other opinion, national or social origin, property, birth or other status such as

273. Mike Navallo, DOJ summons Koko Pimentel over ‘quarantine breach’, *available at* <https://news.abs-cbn.com/news/04/14/20/doj-to-subpoena-to-koko-pimentel-over-quarantine-breach> (last accessed Aug. 15, 2020).

274. Lian Buan, ‘Compassion’: DOJ not investigating Pimentel quarantine breach without complaint, *RAPPLER*, Mar. 25, 2020, *available at* <https://www.rappler.com/nation/255879-doj-will-not-investigate-pimentel-coronavirus-quarantine-breach-without-complaint> (last accessed Aug. 15, 2020).

275. Arianne Merez, COVID-positive congressman could face raps for breach of Palace protocol: PSG, *available at* <https://news.abs-cbn.com/news/03/26/20/covid-positive-congressman-could-face-raps-for-breach-of-palace-protocol-psg> (last accessed Aug. 15, 2020).

276. Amnesty International, *supra* note 217.

disability, age, marital and family status, sexual orientation and gender identity, health status, place of residence, economic and social situation.²⁷⁷

This must be followed truthfully by all government officials and enforcers of law if human rights are to be preserved.

B. Flipping the Coin: A Look into COVID-19 Patient Rights

It is a basic precept of human rights law that the concept of human rights equates with the terms “inalienable, universal, interdependent, and indivisible.”²⁷⁸ The obligation to care for human rights is a binding obligation in international law, most especially in a time of a national emergency. In line with this, the United Nations Programme on HIV/AIDS (UNAIDS) released its guidelines containing effective and community-led responses during a health crisis, which also maintain that COVID-19 patients must be given proper supportive care.

More vulnerable populations should be identified in a non-stigmatizing manner and efforts should be tailored to reach hard to reach populations and provide care. Countries should ensure that health-care professionals have the information they need to prioritize such communities and individuals, such as women, people living in poverty, people with existing illnesses, people in rural areas, key populations, people with a disability, people in detention, people in informal settlements and homeless people. It is critical to remember that vulnerable populations include health-care workers themselves, who are on the front lines of the epidemic, and that their safety and protection should be a priority.

COVID-19 diagnostics and care must be accessible, available, affordable and above all of good quality. Vulnerable populations should be identified and reached through a targeted approach.

Funding for a global epidemic should not come at the expense of other health services and efforts must be made to search for funding outside existing health budgets.

...

[Governments must] ensure continuing access to health services and medicines, including providing multi-month prescriptions for medication,

277. World Health Organization, Non discrimination, *available at* <https://www.who.int/gender-equity-rights/understanding/non-discrimination-definition/en> (last accessed Aug. 15, 2020).

278. UNAIDS, *supra* note 181, at 5.

and continue funding and resourcing for other health services, particularly people-centered services for people who are most vulnerable.²⁷⁹

As per the WHO, patients' rights are treated differently in varying countries and in different jurisdictions, "often depending upon prevailing cultural and social norms[.]"²⁸⁰ thus sparking a debate as to how to best address patient rights. However, there seems to be a consensus among varying jurisdictions that all patients are entitled to the "fundamental right to privacy, to the confidentiality of their medical information, ... and to [information] about the relevant risk[s] to them of certain medical procedures[.]"²⁸¹ *viz.* —

Patients' rights vary in different countries and in different jurisdictions, often depending upon prevailing cultural and social norms. Different models of the patient-physician relationship — which can also represent the citizen-state relationship — have been developed, and these have informed the particular rights to which patients are entitled. In North America and Europe, for instance, there are at least four models which depict this relationship: the paternalistic model, the informative model, the interpretive model, and the deliberative model. Each of these suggests different professional obligations of the physician toward the patient. For instance, in the paternalistic model, the best interests of the patient as judged by the clinical expert are valued above the provision of comprehensive medical information and decision-making power to the patient. The informative model, by contrast, sees the patient as a consumer who is in the best position to judge what is in her own interest, and thus views the doctor as chiefly a provider of information. There continues to be enormous debate about how best to conceive of this relationship, but there is also growing international consensus that all patients have a fundamental right to privacy, to the confidentiality of their medical information, to consent to or to refuse treatment, and to be informed about relevant risk to them of medical procedures.²⁸²

This policy of the WHO is also recognized by the DOH, with certain additional rights also recognized as patient rights within the Philippine legal framework.²⁸³ The DOH acknowledges and supports the following 13

279. *Id.* at 11-12.

280. World Health Organization, Patients' rights, *available at* <https://www.who.int/genomics/public/patientrights/en> (last accessed Aug. 15, 2020).

281. *Id.*

282. *Id.*

283. Department of Health, Patients Rights, *available at* <http://samch.doh.gov.ph/index.php/patients-and-visitors-corner/patients-rights> (last accessed Aug. 15, 2020).

patient rights: (1) right to appropriate medical care and humane treatment; (2) right to informed consent; (3) right to privacy and confidentiality; (4) right to information; (5) right to choose health care provider and facility; (6) right to self-determination; (7) right to religious belief; (8) right to medical records; (9) right to leave; (10) right to refuse participation in medical research; (11) right to correspondence and to receive visitors; (12) right to express grievance; and (13) right to be informed of his rights and obligations as a patient.²⁸⁴ Of particular importance and presently at issue in the face of a dreaded pandemic are the rights in the following discussion.

1. Right to Appropriate Medical Care and Humane Treatment

This right is upheld by the DOH in establishing its standards for healthcare providers and workers in conjunction with the international law concept that “[e]very person has a right to health and medical care corresponding to his state of health, without any discrimination[.]”²⁸⁵ This includes the right of the patient to appropriate, efficient, and adept medical care specifically proficient at treating viral disease.²⁸⁶ It is important to note that this right contemplates the situation where healthcare providers cannot give immediate treatment medically necessary to the concerned patient, in which case the patient must be “informed of the reason for the delay[, and] patients in emergency [situations] shall be extended immediate medical care and treatment without any deposit, pledge, mortgage or any form of advance payment for treatment.”²⁸⁷

In the Philippines where the policy is that “coronavirus-positive patients who are not showing symptoms or only have mild flu-like signs will be advised to stay at home for quarantine” as well as those who are found to be merely asymptomatic or suffering from some symptoms but are not confirmed COVID-19 patients,²⁸⁸ a dilemma arises which directly contradicts the right to appropriate medical care and humane treatment — how can severity of symptoms be an appropriate indication for ending the doctor-patient relationship? As aforementioned, this controversial yet at times acceptable measure may be minimized in favor of patient rights if the

284. *Id.*

285. *Id.*

286. *Id.*

287. *Id.*

288. CNN Philippines Staff, DOH revises hospital admission rules for COVID-19 patients, *available at* <https://cnnphilippines.com/news/2020/3/16/Hospital-admission-coronavirus.html> (last accessed Aug. 15, 2020).

government will cooperate by providing quarantine tents. However, this does not address the health concerns of the COVID-19 positive patients' relatives, who are among the most likely to be infected. For other communicable diseases that already have a cure, such as meningococemia, relatives are given drugs for prophylaxis.²⁸⁹ For families of pneumonia or tuberculosis patients, chest X-ray (CXR) screening for the household is implemented, followed shortly by diagnosis of presumptive cases and treatment of confirmed positives.²⁹⁰ While it is understandable for COVID-19 to not have such guidelines, family-oriented care must be put in place if this disease is to be contained. For instance, strict home quarantine of all family members is not sufficient, because at some point in the two-week quarantine of a PUI, the family will have to go out to buy their needs. Likewise, they will have to interact with barangay health workers (BHWs) when goods are rationed.

Measures must therefore be put in place to ensure that not only patients but also families have their needs provided and prioritized to ensure that quarantine protocols are met. Similarly, quarantine tents must provide not only hospital space but also quality healthcare. This includes comfortable bed space, ventilation, and adequate equipment in the event of complications, as well as good doctor-to-patient and nurse-to-patient ratios. To do all these, salary and hazard pay must be provided by the LGUs, if not the DOH, in addition to funding to ensure continuous and effective healthcare-supervised quarantines. Further, healthcare workers other than doctors and nurses must be recognized, such as radiology and medical technologists and midwives, if the provision of compensation is to be effective and equitable. Otherwise, these concerns may further exacerbate the problem and may dilute current efforts to flatten the curve of infection in the country.

2. Right to Choose Healthcare Provider

In recognition of the universality of human health rights, the DOH also adheres to the principle that “[t]he patient is free to choose the health care provider to serve him as well as the facility ... [with certain exceptions like]

289. *See generally* Medicines for Children, Rifampicin for meningococcal prophylaxis, available at <https://www.medicinesforchildren.org.uk/rifampicin-meningococcal-prophylaxis> (last accessed Aug. 15, 2020).

290. Mayo Clinic, Pneumonia, available at <https://www.mayoclinic.org/diseases-conditions/pneumonia/diagnosis-treatment/drc-20354210> (last accessed Aug. 15, 2020) & Centers for Disease Control and Prevention, Diagnosing Latent TB Infection & Disease, available at <https://www.cdc.gov/tb/topic/testing/diagnosingltbi.htm> (last accessed Aug. 15, 2020).

when the patient expressly waives this right in writing.”²⁹¹ These circumstances provide the patient with the option to consult the doctor of his choice as well as the right to seek for a second opinion in the event that the patient desires to verify the results of his medical condition with other reputable medical professionals in the healthcare community.²⁹² This right, however, goes hand in hand with certain obligations. Notable is a provision in Republic Act No. 11332 which requires all persons to provide truthful information about their health condition and possible exposure.²⁹³ This is due to the fact that a patient’s medical history is of crucial importance to frontliners in treating a disease or a set of diseases, and is of paramount importance in appropriately protecting healthcare workers in case it points to an exposure to COVID-19. A neglect of this obligation has led to the death of many doctors and nurses in recent months.²⁹⁴

Further reiterating this obligation, patients who lie about their current medical conditions have aggravated and worsened the condition of frontliners facing the pandemic.²⁹⁵ Last 22 March 2020, a promising cardiologist fellow working at the Philippine Heart Center passed away due to the COVID-19 virus after interacting with an allegedly dishonest patient who did not disclose all medical information to the health workers.²⁹⁶ This drove the DOH to investigate reports about the patient who “lied about their medical condition and history of travel or exposure in relation to the coronavirus disease 2019.”²⁹⁷ Another circumstance of concern is once again

291. Department of Health, *supra* note 283.

292. *Id.*

293. Republic Act No. 11332, § 3 (i).

294. Ma. Angelica Garcia, Filipino health workers dying due to COVID-19 ‘worrisome’ — WHO, *available at* <https://www.gmanetwork.com/news/news/nation/735190/filipino-health-workers-dying-due-to-covid-19-worrisome-who/story> (last accessed Aug. 15, 2020).

295. CNN Philippines Staff, Lying COVID-19 patients caused deaths among doctors, DOH says, *available at* <https://www.cnnphilippines.com/news/2020/3/27/COVID-19-lying-patients-doctor-deaths.html> (last accessed Aug. 15, 2020).

296. Niña V. Guno, ‘Young trainee with a bright future’: PH Heart Center doctor succumbs to COVID-19, PHIL. DAILY INQ., Mar. 22, 2020, *available at* <https://newsinfo.inquirer.net/1246434/young-trainee-with-a-bright-future-ph-heart-center-doctor-succumbs-to-covid-19> (last accessed Aug. 15, 2020).

297. Julia Mari Ornedo, DOH probing death of doctor allegedly due to patient’s dishonesty, *available at* <https://www.gmanetwork.com/news/news/nation/>

the displacement of patients in COVID-referral hospitals, where certain areas such as the outpatient department in the Philippine General Hospital (PGH) are closed.²⁹⁸ Patients have not only lost their existing doctor-patient relationship in the outpatient setting, but were also forced to look for other physicians to cater to their pressing needs, who may offer healthcare at a more expensive price and may be beyond the capability of patients to pay. Cancer patients have also lost access to the Cancer Institute at PGH, due to its recent closure after designating PGH as a COVID-19 referral hospital.²⁹⁹ While there is news that the Institute will reopen for its patients soon, this sudden closure has delayed the chemotherapy and radiotherapy of cancer patients, and this has increased the risk of aggravation or relapse.

C. When Hospitals Go Full: Maintaining the Rights of Parties

In Italy, despite its world-class and state-of-the-art healthcare system, the COVID-19 pandemic has invaded its hospitals and “pushed it to the breaking point.”³⁰⁰ At the onset, Italy was assured of the fact that it was prepared to combat the virus despite its initial transmission in January 2020.³⁰¹ However, the coronavirus outbreak tore through Italy and “has turned a nation that usually donates medical expertise and equipment abroad into a country in need,”³⁰² initially referring to the circumstance as “not a wave [but] a tsunami.”³⁰³ It is a saddening reality that Italy’s healthcare

730821/doh-probing-death-of-doctor-allegedly-due-to-patient-s-dishonesty/story (last accessed Aug. 15, 2020).

298. Joahna Lei Casilao, PGH asks public to refrain from consulting OPD unless necessary, *available at* <https://www.gmanetwork.com/news/news/nation/729786/pgh-asks-public-to-refrain-from-consulting-opd-unless-necessary/story> (last accessed Aug. 15, 2020).

299. Celeste Ann Castillo Llaneta, UP-PGH preparing to operate as COVID-19 referral center, *available at* <https://www.up.edu.ph/up-pgh-preparing-to-operate-as-covid-19-referral-center> (last accessed Aug. 15, 2020).

300. Denise Chow & Emmanuelle Saliba, Italy has a world-class health system. The coronavirus has pushed it to the breaking point, *available at* <https://www.nbcnews.com/health/health-news/italy-has-world-class-health-system-coronavirus-has-pushed-it-n1162786> (last accessed Aug. 15, 2020).

301. *Id.*

302. Nicole Winfield, ‘Not a wave, a tsunami.’ Italy hospitals at virus limit, *available at* <https://www.pbs.org/newshour/health/not-a-wave-a-tsunami-italy-hospitals-at-virus-limit> (last accessed Aug. 15, 2020).

303. *Id.*

system “groans under [the weight of the] coronavirus [epidemic]”³⁰⁴ and this medical situation offers a glimpse of what other countries battling with COVID-19 may experience if they cannot flatten the curve. As of 3 April 2020, COVID-19 cases in Italy have reached an approximate number of 119,827 infected people, with around 85,388 active cases, and 14,681 deaths.³⁰⁵ Hospitals are full of patients and medical institutions are declaring that they have saturated their hospital bed availability and are experiencing trouble sending patients away considering the fact that all the “intensive care units in the regions are full.”³⁰⁶

In the Philippines, the lack of appropriate medical facilities and equipment has made it more difficult for frontliners to combat the exponentially increasing numbers of infected citizens. Last 11 March 2020, Undersecretary of Health Maria Rosario Vergeire disclosed to media that all hospitals in the country, whether the hospital is private or public, simply “[do not] have the right to refuse” patients,³⁰⁷ in order to assure that such medical institutions lend a hand in aiding the government amidst the spread of the pandemic.³⁰⁸ In addition, last 16 March 2020, the DOH released a new statement revising hospital admission rules for COVID-19 patients.³⁰⁹ Vergeire told CNN that the DOH is revising its guidelines for hospital

304. Jason Horowitz, *Italy's Health Care System Groans Under Coronavirus — a Warning to the World*, N.Y. TIMES, Mar. 12, 2020, available at <https://www.nytimes.com/2020/03/12/world/europe/12italy-coronavirus-health-care.html> (last accessed Aug. 15, 2020).

305. xinhuanet.com, Italy registers 119,827 coronavirus infections, death toll at 14,681, available at <https://newsghana.com.gh/italy-registers-119827-coronavirus-infections-death-toll-at-14681> (last accessed Aug. 15, 2020).

306. Giorgia Orlandi, Bergamo hospitals full as Italy's coronavirus nightmare worsens, available at <https://www.euronews.com/2020/03/19/bergamo-hospitals-full-as-italy-s-coronavirus-nightmare-worsens> (last accessed Aug. 15, 2020).

307. Kristine Sabillo, DOH: Hospitals cannot refuse patients with COVID-19 symptoms, available at <https://news.abs-cbn.com/news/03/11/20/philippine-coronavirus-doh-says-hospitals-cant-refuse-patients> (last accessed Aug. 15, 2020).

308. *Id.*

309. CNN Philippines Staff, DOH revises hospital admission rules for COVID-19 patients, available at <https://cnnphilippines.com/news/2020/3/16/Hospital-admission-coronavirus.html> (last accessed Aug. 15, 2020).

admission amidst the rising confirmed cases in the country.³¹⁰ The policy is that “coronavirus-positive patients who are not showing symptoms or only have mild flu-like signs will be advised to stay at home for quarantine and strict monitoring by health workers[]”³¹¹ with the correlative policy that “elderly patients, those with underlying conditions, high-risk pregnant women, even with mild symptoms [were] advised [] for admission already.”³¹² This was implemented due to the rising number of COVID-19 patients vis-à-vis limited healthcare facilities and medical professionals.³¹³ To remedy this dilemma, lawmaker Senator Francis Tolentino gave the suggestion, which received polarizing opinions from the community, that the medical board exam be waived in light of the pandemic in order to allow over 1,500 medical student graduates to help in the battle against COVID-19.³¹⁴

In such an event where medical professionals are at a crossroads, with the dilemma of choosing who to treat and diagnose despite being sworn under the Hippocratic oath, it is of utmost importance to consider the underlying factors that affect morbidity and mortality. COVID-19 patients aged 61 years old and above or those patients under 36 months of age, those immersed in immunosuppressive therapy, those who have cancer, diabetes, or hypertension, as well as coronary artery disease, lung disease, HIV/AIDS, or end-stage renal disease must be properly assessed of their chances of recovery, despite any clinical impression of low survival. This consideration goes hand in hand with the principle that human rights “apply to everyone without discrimination and are indivisible [—] one set of rights cannot be sacrificed for the sake of others.”³¹⁵

310. *Id.*

311. *Id.*

312. *Id.*

313. *Id.*

314. CNN Philippines Staff, Tolentino appeals medical board exam waiver, allow grads to help fight COVID-19, *available at* <https://cnnphilippines.com/news/2020/3/23/francis-tolentino-waive-medical-licensure-exam.html?fbclid=IwAR1gWgFYR0xoJC8rQdIp9eoZqxqyMDDi6arLjCeCjIFYPNkgqMQY85vLq7U> (last accessed Aug. 15, 2020).

315. Advocacy Network Africa, COVID-19- Human rights lessons from UNAIDS sponsored HIV-response Interventions, *available at* <https://advocacynetworkafrica.blogspot.com/2020/03/covid-19-human-rights-lessons-from.html> (last accessed Aug. 15, 2020).

From this, an unavoidable clash ensues. Considering the case of Italy depicting a case of shortage of medical supplies and hospital beds due to an exponential rise of COVID-19 infected patients,³¹⁶ is choosing who will live and die violative of human rights?

One may look for efficient spaces in the Philippines, with some suggesting the World Trade Center as a place to be converted into a medical quarantine facility equipped with hospital beds and attended by medical professionals.³¹⁷ Legislators can also enact a law providing for better compensation and benefits to frontliners and healthcare providers to incentivize all medical professionals that involve themselves in the battle against the pandemic. This is in connection with the doling out of benefits to aggrieved families of brave medical frontliners in case of casualties or death involved in the fight against COVID-19. The State should treat the medical frontliners equivalently with the State's valiant soldiers — having their families cared and well-provided for. After all, the new heroes in the face of this crisis are the dedicated healthcare professionals who continually choose to devote their lives in healing their fellow countrymen.

IV. HUMAN RIGHTS VIOLATIONS OF HEALTHCARE WORKERS AND SCIENTISTS

Before tackling in-depth the rights of healthcare workers, especially in case of a pandemic, it is inevitable that a definition is adopted for this extensive terminology. According to medical scholars Bobby and Merlyn Joseph, “[a] healthcare worker is one who delivers care and services to the sick and ailing either directly as doctors and nurses or indirectly as aides, helpers, laboratory technicians, or even medical waste handlers.”³¹⁸ This can include doctors, nurses, medical technologists, and the like. In relation to providing adequate

316. Haven Orecchio-Egresitz, A shortage of medical supplies and hospital beds in Italy is forcing doctors to choose which coronavirus patients to save — and they're said to be choosing the young, *available at* <https://www.businessinsider.com/italys-doctors-are-forced-to-prioritize-saving-the-young-2020-3> (last accessed Aug. 15, 2020).

317. Racquel Quieta, Instant Hospitals: Rizal Memorial Sports Complex, PICC, and the World Trade Center are being converted into quarantine facilities, *available at* <https://www.gmanetwork.com/entertainment/celebritylife/health/61606/instant-hospitals-rizal-memorial-sports-complex-picc-and-the-world-trade-center-are-being-converted-into-quarantine-facilities/story> (last accessed Aug. 15, 2020).

318. Bobby Joseph & Merlyn Joseph, *The health of the healthcare workers*, INDIAN J. OCCUP. ENVIRON. MED, Volume No. 20, Issue No. 2, at 71 (2016).

protection to healthcare workers, the WHO recognized the following obligations of employers in medical facilities:

- (1) “assume overall responsibility to ensure that all necessary and preventive measures are taken to minimize occupational safety and health risks;”³¹⁹
- (2) “provide information [] and training on occupational safety and health[;]”³²⁰
- (3) “provide adequate ... PPE supplies[;]”³²¹
- (4) familiarize personnel with technical updates on COVID-19 and provide appropriate tools to assess, triage, test and treat patients[,] and to share infection prevention and control information with patients and the public;”³²² and
- (5) provide appropriate security measure for personal safety, among many others.³²³

These obligations are protocols involved in assessing, triaging, and treating patients.³²⁴ The Author is of the belief that the same standards must be imposed in the protection of healthcare workers in the Philippines as will be discussed below.

In 2014, the World Medical Association (WMA) published the WMA Declaration on the Protection of Health Care Workers in Situations of Violence,³²⁵ impressing that the primary and pertinent obligation of medical

319. World Health Organization, Coronavirus Disease (COVID-19) Outbreak: Rights, Roles, and Responsibilities of Health Workers, including Key Considerations for Occupational Safety and Health at *1, *available at* https://www.who.int/docs/default-source/coronaviruse/who-rights-roles-respon-hw-covid-19.pdf?sfvrsn=bcabd401_0 (last accessed Aug. 15, 2020) [hereinafter World Health Organization, Key Considerations].

320. *Id.*

321. *Id.*

322. *Id.* at *2.

323. *Id.*

324. *Id.*

325. World Medical Association, WMA Declaration on the Protection of Health Care Workers in Situation of Violence, *available at* <https://www.wma.net/policies-post/wma-declaration-on-the-protection-of-health-care-workers-in-situation-of-violence> (last accessed Aug. 15, 2020) [hereinafter World Medical Association, WMA Declaration].

professionals, particularly physicians, involves ethical responsibilities to preserve the people's health and to save human lives in situations of conflicts.³²⁶ With such an obligation comes complementary rights to be enjoyed by healthcare professionals. These were principally put in place in the WMA Regulations in Times of Armed Conflict and Other Situations of Violence.³²⁷ Notably, the Author argues that this declaration may not be deemed applicable during a global health crisis as it caters specifically to healthcare services in case of impending war or conflict; however, the principles may be argued to extend similarly to cases necessitating the protection of rights of healthcare workers, especially during the COVID-19 pandemic.

As a corollary to this declaration, it is deemed essential to “ensure the safety and personal security of healthcare workers in order to enable the provision of the highest standard of care to patients.”³²⁸ This is owing mainly to the inevitable fact that “[i]f healthcare workers are not safe, they might not be able to provide care, and patients will suffer.”³²⁹ The WHO recognizes the significant role that healthcare workers play in the quality of services received by various suffering patients through accentuating the idea that such “[h]ealth professionals play a central and critical role in improving access and quality healthcare for the population.”³³⁰ It was thus an appropriate action for the WMA to call on all governments around the world to adhere to a suggested plan of action in cases of conflict in order to ensure the safety of healthcare workers.³³¹ Of primary importance are the following: (1) “to ensure the safety, independence and personal security of healthcare personnel at all times[;]”³³² and (2) to “[r]aise awareness of international norms on the protection of healthcare workers and [to]

326. *Id.*

327. *Id.*

328. *Id.*

329. *Id.*

330. World Health Organization, Health professions networks, *available at* <https://www.who.int/hrh/professionals/en> (last accessed Aug. 15, 2020) [hereinafter World Health Organization, Health professions networks].

331. World Medical Association, World Health Professionals Calling Governments to Prioritise Support for Healthcare Workers in the Front Line Against Coronavirus, *available at* <https://www.wma.net/news-post/world-health-professionals-calling-governments-to-prioritise-support-for-healthcare-workers-in-the-front-line-against-coronavirus> (last accessed Aug. 15, 2020).

332. World Medical Association, WMA Declaration, *supra* note 325.

cooperate with different actors to identify strategies to tackle threats to healthcare.”³³³

Given the difficult, multifarious hurdles constantly faced by medical professionals, the “59th World Health Assembly adopted Resolution WHA59.23 which recognized the ‘centrality of human resources for health for the effective operation of country health systems’ and called for the use of innovative strategies to maximize health professionals’ contributions.”³³⁴ In this regard, it is significant to note that “[t]he dedicated healthcare worker is possibly the most vital element in the recovery or stability of a patient’s health.”³³⁵ Without a team of equipped and well-trained medical professionals, any health issue a country is facing may as well lead to a complete demise. The clear lack of adequate government assistance in various countries around the world has sparked outcry regarding the under-investment of States in the welfare of the healthcare workers — thereby exacerbating the challenges they face in performing their occupation, *viz.* —

Health systems can only function with health workers; improving health service coverage and realizing the right to the enjoyment of the highest attainable standard of health is dependent on their availability, accessibility, acceptability and quality.

WHO estimates a projected shortfall of 18 million health workers by 2030, mostly in low- and lower-middle income countries. However, countries at all levels of socioeconomic development face, to varying degrees, difficulties in the education, employment, deployment, retention, and performance of their workforce.³³⁶

In the Philippines, there are various disincentivizing factors for workers in the medical profession — long hours, low compensation, and high risks. As particularly stated in the DOH’s publication, *National Objectives for Health in the Philippines (2017-2022)*, a recurring problem in the country’s health system is the “[a]vailability, accessibility[,] and affordability of quality

333. *Id.*

334. World Health Organization, Health professions networks, *supra* note 330.

335. Angela Stevens, What Role Do Healthcare Workers Play in Determining Quality Care, *available at* <http://blog.sunbeltstaffing.com/medical-ethics/what-role-do-healthcare-workers-play-in-determining-quality-care> (last accessed Aug. 15, 2020).

336. World Health Organization, Health workforce, *available at* https://www.who.int/health-topics/health-workforce#tab=tab_1 (last accessed Aug. 15, 2020) [hereinafter World Health Organization, Health workforce].

healthcare”³³⁷ — owing to the archipelagic nature of the country and varying levels of economic growth in different regions.³³⁸ This dilemma creates further strains of issues which affect the benefits enjoyed by the healthcare workers in that there is inadequate local and national support with regard to health services packages and facilities. This apparent lack of resources and medical equipment in the country’s health facilities coupled with long hours of compensable work is truly disconcerting. Considering the risk factors involved in caring for infected COVID-19 patients, how then should healthcare workers be compensated and treated in the face of a pandemic?

A. Financial and Healthcare Provision to Frontliners

1. Paid Service or Gratis? The Legal Basis of DOH Volunteerism in COVID-19 Referral Hospitals

It is no secret that healthcare systems around the world can only function at maximum potential with the aid and support of health workers. The WHO recommends “improving health service coverage”³³⁹ especially for healthcare workers who are exposed to infected patients during frontline service. This is with the realization that “the right to the enjoyment of the highest attainable standard of health is dependent on their availability, accessibility, acceptability, and quality.”³⁴⁰

In servicing numerous infected patients, the risks and hazards faced daily by these healthcare workers continue to increase. Employees in this medical industry are constantly exposed to a “complex variety of health and safety hazards in the course of their work[.]”³⁴¹ which may inevitably be aggravated by heavy exposure to pathogens at the workplace and reinforced by poor infection control measures presently implemented in hospitals and laboratories³⁴² — necessitating the need for ardent and timely assistance, thus

337. Department of Health, National Objectives for Health: Philippines 2017-2022 at 13, available at <https://www.doh.gov.ph/sites/default/files/publications/NOH-2017-2022-030619-1.pdf> (last accessed Aug. 15, 2020).

338. *Id.*

339. World Health Organization, Health workforce, *supra* note 336.

340. *Id.*

341. Joseph & Joseph, *supra* note 318.

342. *Id.*

A healthcare worker is in need of protection from these workplace hazards just as much as any other category of workers such as miners or construction workers. The World Health Report 2006 — Working Together for Health — reported a severe healthcare workforce shortage especially in 57 countries, mostly in Africa and Asia. Fear of contracting infectious diseases is primarily responsible for high attrition rates among health care workers.

...

Several action points come to mind. It is important that we devote adequate time to education — not only of ourselves but of those who work at different levels of the healthcare industry. Our approach to preventive programs, such as vaccinations, requires special attention and may need to be undertaken on a war[]footing. There is a paucity of research into the hazards faced by healthcare workers in our country and we need to expand the scope of this research from single [center] studies to the analysis of data from multiple [centers]. This alone will provoke interventions that are designed for large scale implementation.

The need of the hour is to prioritize occupational health of health workers and ensure that the workforce is adequately trained and healthy. As humanitarians, it is our duty to help the most vulnerable sections but we should not end up paying the price of our lives for it. The way forward is no longer ‘Physician heal thyself’ but ‘Physician protect thyself.’³⁴³

At the onset of the COVID-19 pandemic in the Philippines, the need to provide assistance to healthcare workers and frontliners — not only in terms of medical supplies but also in terms of compensation — is evident and clear. Yet, the hazard to which they expose themselves and their families is too great in comparison to the relatively minimal compensation and hazard pay offered by the government today for their valuable and dedicated service, if any. In fact, in the recent series of programs spearheaded by the DOH to combat COVID-19 and address transmission, ranging from testing to contact tracing to caring for hospitalized PUMs/PUIs and COVID-positive patients, volunteerism was the overarching theme of their call.

An example is hereby provided: the Philippine government, in recognition of the dwindling numbers of available healthcare workers and an equally exponential increase in the number of infected COVID-19 patients, called for volunteer health workers with the tasks of working in one of the four NCR COVID-19 referral hospitals (i.e., Lung Center of the Philippines, Philippine General Hospital, Las Piñas General Hospital, and

343. *Id.*

Dr. Jose N. Rodriguez Memorial Hospital).³⁴⁴ This volunteer work, according to reports, will be compensated with accommodation, food, and monetary allowance for the one-month stint amounting to ₱500.00 a day.³⁴⁵ This move by the DOH has instigated a huge public outcry against such policy with the people emphasizing the health risks and hazards that come with the supposed voluntary work of battling against the deadly and infectious COVID-19 pandemic.³⁴⁶ Further, although the one-month commitment comprises 14 days' worth of duties and another 14 days of quarantine, the nature of the work that exposes the frontliner to greater-than-normal risks, as well as the time allotted by practitioners to caring for these high-risk patients, demands no sideline. Such a time-consuming task disallows doctors and other healthcare workers to attend to their patients or usually employed tasks and effectively forces them to focus on this task alone, while the quarantine period isolates them from family and friends which effectively maims their skill-based profession and burdens their social interactions.

Ergo, a daily allowance of ₱500.00 essentially acts as the volunteers' wages and are obviously insufficient, which in fact also does not cover for specialty or experience, minimum grade salaries, or risks of exposure. This dilemma is further aggravated by the fact that, for instance, the minimum wage for non-professional workers in the National Capital Region (NCR) amounts to ₱537.00, which is not even met by the daily allowance so provided. This rather unfair treatment was done despite the DOH's recognition that there has been a "worldwide shortage of personal protective equipment or PPEs, the main protective clothing in the health sector."³⁴⁷

In other words, healthcare workers are sent to the frontlines of the war against the coronavirus with limited and lacking medical supplies, equipment, and protection. This may not be in line with the rights which

344. Bonz Magsambol, *DOH asks for volunteer health workers vs coronavirus, to be paid P500 a day*, RAPPLER, Mar. 27, 2020, available at <https://www.rappler.com/nation/256101-volunteer-health-workers-philippines-compensation-fight-coronavirus> (last accessed Aug. 15, 2020).

345. *Id.*

346. *Id.*

347. Catalina Ricci S. Madarang, *DOH is offering a P500 daily allowance for 'volunteer' health workers and people are outraged*, available at <https://www.interaksyon.com/politics-issues/2020/03/27/165270/why-people-are-outraged-at-dohs-daily-allowance-for-volunteer-health-workers> (last accessed Aug. 15, 2020).

must be duly accorded to healthcare workers in light of the risks they come face to face with —

Health workers are at the front line of any outbreak response and as such are exposed to hazards that put them at risk of infection with an outbreak pathogen (in this case COVID-19). Hazards include pathogen exposure, long working hours, psychological distress, fatigue, occupational burnout, stigma, and physical and psychological violence.³⁴⁸

Some healthcare workers saw this offer as “a pittance and an insult”³⁴⁹ to their profession. In a reported incident, Dr. Ronnie Baticulon of the Philippine General Hospital (PGH) viewed this an “insult to an already demoralized and exhausted workforce.”³⁵⁰ Complementing the previous statement, Dr. Geneve Reyes, the secretary-general of Health Action for Human Rights, stated that “altruism has no price. But if you put a tag on it, make sure it is not insulting.”³⁵¹ The clear backlash this policy has received from the health sector and circle of medical professionals who are ready to risk their lives has acquired outrage from the general citizenry.³⁵²

Recognizing the backlash from the initial proposal, the DOH apologized to the public after allocating a meager ₱500.00 daily allowance to healthcare frontliners volunteering to fight the COVID-19 pandemic in the country, coupled with a promise that the Department will craft measures to increase the initial compensation for health worker volunteers.³⁵³ DOH Undersecretary Vergeire clarified that the amount of ₱500.00 was set on the basis that the same amount was given as allowance to healthcare workers in previous outbreaks.³⁵⁴ As of date, there is yet to be an announcement as to

348. *Id.* (citing World Health Organization, Key Considerations, *supra* note 319, at *1).

349. Kristine Sabillo, Doctors, health workers outraged at DOH’s P500 daily allowance for COVID-19 hospital volunteers, *available at* <https://news.abs-cbn.com/news/03/27/20/doctors-health-workers-outraged-at-dohs-p500-daily-allowance-for-covid-19-hospital-volunteers> (last accessed Aug. 15, 2020).

350. *Id.*

351. *Id.*

352. *Id.*

353. David Tristan Yumol, DOH apologizes for COVID-19 volunteer health professionals’ P500 daily allowance, *available at* <https://cnnphilippines.com/news/2020/3/28/doh-apologizes-volunteer-health-professionals-daily-allowance.html> (last accessed Aug. 15, 2020).

354. *Id.*

the final compensation for daily allowance and hazard pay of medical frontliners.

To wit, another clash is seemingly arising: the right to health, adequate protection, and ample compensation of healthcare workers are argued to be imminently maligned by the noxious measures imposed by the government amidst the undeniable risk of virus transmission faced daily by these healthcare workers.

i. Salary, Hazard Pay, and Death Benefits to the Frontliners

The right to a living wage is enshrined in international human rights law. Article 23 (3) of the UDHR declares that “everyone who works has the right to just and [favorable] remuneration ensuring for himself and for his family an existence worthy of human dignity[.]”³⁵⁵ Scholars advocating for adequate living wage argue that “wage is more than just compensation for labor”³⁵⁶ in that it is more of a “means of securing a living, [and] it leads to public policies that address both the level of the wage as well as the fairness and [its] decency[.]”³⁵⁷ A living wage is deemed different from the concept of bare minimum wage. The former includes the amelioration of a person’s quality of life while the latter is considered as the price floor for labor or work performed.³⁵⁸ Moreover, scholar John Ryan advocates the view that living wage forms part of the human rights framework. He argues that living wage is a right that all laborers are entitled to “from the common bounty of nature.”³⁵⁹

355. Universal Declaration of Human Rights, *supra* note 69, art. 23 (3).

356. World Heritage Encyclopedia, Living Wage, *available at* http://webcache.googleusercontent.com/search?q=cache:JjJE2ZSwdqEJ:self.gutenberg.org/articles/Living_wage+&cd=1&hl=en&ct=clnk&gl=ph&client=safari (last accessed Aug. 15, 2020).

357. Betsy Jane Clary, *Smith and Living Wages: Arguments in Support of a Mandated Living Wage*, AM. J. ECON. & SOC., Volume No. 68, Issue No. 5, at 1065 (2009).

358. Liz Alderman, Fast Food in Denmark Serves Something Atypical: Living Wages, *available at* http://www.tdu.org/media_fast-food-denmark-serves-something-atypical-living-wages (last accessed Aug. 15, 2020). *See also* Julia Kagan, Living Wage, *available at* https://www.investopedia.com/terms/l/living_wage.asp (last accessed Aug. 15, 2020).

359. JOHN A. RYAN, A LIVING WAGE: ITS ETHICAL AND ECONOMIC ASPECTS 27 (1912).

In recognizing the need for the services offered by medical professionals and healthcare frontliners, the United Nations continually advocates for the protection of “healthcare heroes” from COVID-19,³⁶⁰ including not only providing adequate protective equipment, but also commensurate compensation. The living wage of these medical professionals who soldier on against the pandemic in an effort to save as many lives as possible is a proper attribute of their human rights as healthcare professionals. The rising number of casualties worldwide in the healthcare workers sector must not be taken for granted.³⁶¹ In China, where doctors are dying due to infection and fatigue³⁶² and as hospital workers are left “unprotected, overworked[,] and increasingly vulnerable,”³⁶³ similar with the experiences of other countries globally, their State has continuously bolstered support for their medical healthcare workers by giving them higher salaries and a “‘martyr’ title.”³⁶⁴ Only with the adept assistance of healthcare frontliners can countries stand a fighting chance against this dreaded pandemic.

Amidst this mortifying situation, calls for higher compensation for healthcare workers in the Philippines are still waiting to be heard.³⁶⁵ Devastatingly, as of 28 March 2020, the Philippine Medical Association has reported that 12 doctors have died while serving in the frontlines of the battle against the COVID-19 pandemic, a part of it owing to the fact they,

360. UN News, Protect ‘healthcare heroes’ from COVID-19, urges UN rights expert, available at <https://news.un.org/en/story/2020/03/1060502> (last accessed Aug. 15, 2020).

361. See generally Sharon Braithwaite, 45 doctors with coronavirus are dead in Italy, available at https://edition.cnn.com/world/live-news/coronavirus-outbreak-03-27-20-intl-hnk/h_67fa3aecc6e5c93016db9a82b8478e05 (last accessed Aug. 15, 2020) & Alice Su, *Doctors and nurses fighting coronavirus in China die of both infection and fatigue*, L.A. TIMES, Feb. 25, 2020, available at <https://www.latimes.com/world-nation/story/2020-02-25/doctors-fighting-coronavirus-in-china-die-of-both-infection-and-fatigue> (last accessed Aug. 15, 2020).

362. Su, *supra* note 361.

363. *Id.*

364. *Id.*

365. See, e.g., Lisa Marie David, *Nurses protest to call for higher salary, better working conditions*, RAPPLER, Nov. 9, 2019, available at <https://www.rappler.com/nation/244509-nurses-protest-call-for-higher-salary-better-working-conditions> (last accessed Aug. 15, 2020).

the health workers, were not receiving adequate protection³⁶⁶ and another due to lack of information caused by lying patients regarding the latter's medical history.³⁶⁷ Among the medical professionals who passed away while battling the COVID-19 pandemic are “Pampanga health chief Dr. Marcelo Jaochico, cardiologist and internist Dr. Raul Jara, young cardiologist Israel Bactol of the Philippine Heart Center, anesthesiologist Dr. Gregorio Macasaet III of Manila Doctors Hospital, Dr. Sally Gatchalian, then president of the Philippine Pediatric Society, Dr. Francisco Avelino Lukban, geriatric cardiologist, [and] Dr. Rose Pulido of the San Juan de Dios Hospital.”³⁶⁸

Even more disconcerting is that this number is forecasted to increase as the number of infected COVID-19 patients are on the rise. These and other doctors bravely face the scare, risks, and hazards that come with the pandemic even with clear acknowledgement that there is a possibility that they will leave their families behind in the event they contract the deadly SARS-CoV-2. To make matters more burdensome, “hundreds of medical staff are no longer accepting patients because they are undergoing 14-day self-quarantines after suspected exposure,”³⁶⁹ thereby further dwindling down the number of available healthcare workers to combat the pandemic. This dilemma is coupled with the issue that as of 26 March 2020, three large hospitals in Manila, namely the Makati Medical Center, The Medical City, and St. Luke's Hospitals in Quezon City and Bonifacio Global City, announced that they had already reached full capacity and can no longer accept new coronavirus patients.³⁷⁰

The DOH affirmed the statement of the Private Hospital Association of the Philippines that there is difficulty in securing supplies of personal protective equipment (PPE) due to a “global shortage as other countries

366. Agence France-Presse, *9 Filipino doctors die fighting at front lines vs coronavirus*, RAPPLER, Mar. 26, 2020, available at <https://www.rappler.com/nation/255981-philippine-doctors-die-fighting-front-lines-vs-coronavirus-march-26-2020> (last accessed Aug. 15, 2020).

367. CNN Philippines Staff, *Lying COVID-19 patients caused deaths among doctors*, DOH says, available at <https://cnnphilippines.com/news/2020/3/27/COVID-19-lying-patients-doctor-deaths.html> (last accessed Aug. 15, 2020).

368. *Id.*

369. Magsambol, *supra* note 344.

370. *Id.*

scramble to get hold of these safety gear for their own frontliners,”³⁷¹ thereby encouraging campaigns from the private sector to help in securing such PPEs or in crafting alternatives to such medical devices.

Despite this, in order to bravely serve the Philippines and their countrymen, these modern-day heroes have volunteered their support in the fight against the COVID-19 pandemic. As of 28 March 2020, there have been around 600 doctors and nurses who answered the call of the DOH for support in servicing COVID-19 infected patients.³⁷² These health warriors will be assigned in any of the three government hospitals designated by the DOH for COVID-19 patients.³⁷³ Recognizing their valor and unswerving devotion, the Author advocates that it is only right for the national government and LGUs to properly compensate these healthcare volunteers with a monthly salary and hazard pay, on top of free transportation, accommodation, and living allowance. Their monthly salary should take into account their professional background and medical training expertise — their service is definitely not merely equal to minimum wage considering the risks factors involved in their respective duties.

2. Pandemic Checkmate: The Inevitable Deferring of Mass Testing

Legal scholars Meier and Mori emphasize that the right to health cannot be complete without quixotically advancing appropriate medical solutions to issues requiring deeper societal change and satisfactory public health policies, to wit —

The right to health has been advanced in the ICESCR as an individual right, focusing on individual access to health care at the expense of collective health promotion and disease prevention programs. This limited, atomized right to health has not been effective in forcing states to recognize individual health as a fundamental human right, with individuals lacking even the basic international legal standing to hold states accountable for their failure to uphold the right to health. This failure of the right to health has left in its wake deteriorating national health systems that lack the ability to address an expanding set of societal health claims, damaging vulnerable populations through its reliance on curative medical care rather than basic public health services. Despite developments in public health since the original drafting of the ICESCR, the right to health remains

371. *Id.*

372. ABS-CBN News, Nearly 600 doctors, nurses volunteer for COVID-19 fight in PH, *available at* <https://news.abs-cbn.com/news/03/28/20/nearly-600-doctors-nurses-volunteer-for-covid-19-fight-in-ph> (last accessed Aug. 15, 2020).

373. *Id.*

mired in a curative or clinical model of health, quixotically advancing individual medical solutions to problems requiring societal change through public health programs. These dichotomized medicine-public health discourses have contributed to the ambiguity in implementing the right to health, stymieing efforts to operationalize the right to health through public health programs.³⁷⁴

It is with this notion that people regard policies to public health, especially in times of a pandemic, of vital global and national significance. One such policy which many people around the world has shown strong support for is the need for mass testing. According to an article published by Foreign Policy, “[w]ithout mass testing, the coronavirus pandemic will keep spreading[.]”³⁷⁵ and a known exemplar of the effectivity of such a public health policy is South Korea which, in a short span of time, has managed to bring their country-wide cases to a steady decline and to bring recoveries at a higher pedestal than deaths.³⁷⁶ The key to their success has reportedly been “speed and an early push toward mass testing, rigorous contact tracing, and mandatory quarantine for anyone near a carrier of the virus.”³⁷⁷ It is no wonder that even the WHO advocated to countries around the world to “ramp up their testing programs to fight the pandemic.”³⁷⁸ In the

374. Meier & Mori, *supra* note 1, at 117-18 (citing David P. Fidler, *International Law and Global Public Health*, 48 U. KAN. L. REV. 1, 40 (1999); Aart Hendriks, *The Right to Health in National and International Jurisprudence*, 5 EUR. J. HEALTH L. 389, 391-92 (1998); J.K. Mapulanga-Hulston, *Examining the Justiciability of Economic, Social and Cultural Rights*, INT’L J. HUM. RTS., Winter 2002, at 29; Lynn Freedman, *Strategic Advocacy and Maternal Mortality*, 11 GENDER & DEV. 97, 103-04 (2003); Maria Stuttaford, *Balancing Collective and Individual Rights to Health and Health Care*, 7 L. SOC. JUST. & GLOBAL DEV. 5, 8 (2004); & Audrey Chapman, *Core Obligations Related to the Right to Health*, in CORE OBLIGATIONS: BUILDING A FRAMEWORK FOR ECONOMIC, SOCIAL, AND CULTURAL RIGHTS 187 & 213 (Audrey Chapman & Sage Russel, eds. 2002)).

375. Devi Sridhar, *Without Mass Testing, the Coronavirus Pandemic Will Keep Spreading*, available at <https://foreignpolicy.com/2020/03/23/coronavirus-pandemic-south-korea-italy-mass-testing-covid19-will-keep-spreading> (last accessed Aug. 15, 2020).

376. *Id.*

377. *Id.*

378. Catalina Ricci Madarang, *With COVID-19 cases rising in the Philippines, concerned groups are calling for ‘mass testing’ and have given suggestions how this can be done*, available at <https://www.interaksyon.com/special-features/2020/03/23/164834/with-covid-19-cases-rising-in-the-philippines->

Philippines, as cases of infected patients are on the rise, the call for mass testing in the country was initiated — with around 14,000 scientists, healthcare workers, and laypersons signing the petition for the government to conduct of mass testing for COVID-19.³⁷⁹ The call is for the national government to “implement free mandatory mass testing nationwide and mobilize local government units (LGUs) to set-up local testing centers.”³⁸⁰ In addition, their call included an end to the so-called ‘VIP testing’ of politicians and their staff who, in spite of being asymptomatic, are tested with results prioritized. In view of this, the public resorted to online campaigns with the hashtags #MassTestingNowPH and #NotoVIPtesting.³⁸¹

In a report published by CNN Philippines, Dr. Tony Leachon, an internist at the Manila Doctors Hospital, stated that if mass testing is conducted by the government, patients can easily be isolated and need not reach the emergency rooms of hospitals where they can possibly expose around five to 10 healthcare workers to the risk of contracting the disease.³⁸² Furthermore, he “underscored the importance of mass testing, noting that the numbers presented by health officials do not reflect the real health situation because only selected people are tested for COVID-19 due to limited test kits.”³⁸³ This supports the data that almost half of the COVID-19 fatalities in the Philippines received their results after their deaths.³⁸⁴ In detecting early, through mass testing, the accurate number of COVID-19 infected patients, healthcare workers can be protected from unnecessary exposure, the patients can receive appropriate treatment, and the people can know accurate information and vital statistics relating to the spread of the virus. Foreign Policy advocates five reasons as to why mass testing matters:

concerned-groups-are-calling-for-mass-testing-and-have-given-suggestions-how-this-can-be-done (last accessed Aug. 15, 2020).

379. Rosalie Abatayo, *Online call for mass testing draws support*, CEBU DAILY NEWS, Mar. 23, 2020, available at <https://cebudailynews.inquirer.net/296478/online-call-for-mass-testing-draws-support> (last accessed Aug. 15, 2020).

380. *Id.*

381. Julia Mari Ornedo, Robredo urges mass testing for COVID-19, available at <https://www.gmanetwork.com/news/news/nation/730841/robredo-urges-mass-testing-for-covid-19/story> (last accessed Aug. 15, 2020).

382. CNN Philippines Staff, Doctor calls for COVID-19 mass testing in Philippines, available at <https://www.cnnphilippines.com/news/2020/3/27/Philippines-mass-testing-coronavirus.html> (last accessed Aug. 15, 2020).

383. *Id.*

384. Sabillo, *supra* note 238.

First, people generally seem much more likely to isolate themselves if they are confirmed as a virus carrier. Government advice has been for individuals to isolate themselves for [seven] or 14 days (depending on the country) in order not to spread the virus beyond their household. [...]

Second, to break chains of transmission, public health officials need to know where the virus is and who has been exposed to it. [...]

Third, as local authorities scramble to allocate hospitals the right amount of personal protective equipment for staff, appropriate equipment such as ventilators and oxygen and beds, and even personnel, they need to predict how many people will be arriving in intensive care units in the coming days. By testing who has COVID-19 at an early stage, and by having existing data on what percentage of these people will require further care in hospitals, officials can make these decisions based on more precise and accurate data so that resources can flow appropriately.

Fourth, [...] by actively testing, public health authorities could see where new hot spots are emerging, and inside those hot spots, the role of super spreading events where numerous people become infected in one place, such as during church services or eating at restaurants. [...]

Finally, the World Health Organization is producing daily reports noting the number of confirmed cases per country in order to track the evolution of the outbreak, but the accuracy of these numbers is reliant on actually doing tests. Without widespread testing of all cases including those with mild symptoms or those who are asymptomatic virus carriers, no one knows how large the problem is.³⁸⁵

However, a checkmate seems to be inevitable. Despite the discernable need for mass testing to protect patients and doctors alike, there is a present lack of laboratory capacity and support for science in the Philippines. The DOH declared that, as of 25 March 2020, the conduct of mass testing for coronavirus infections is still “not an option for now because of the country’s limited testing kits and laboratory capacity[.]”³⁸⁶ DOH Undersecretary Maria Rosario Vergeire stated that while the country has around 100,000 available testing kits, this amount is not enough to conduct a nationwide scale mass testing for COVID-19.³⁸⁷

385. Sridhar, *supra* note 375 (emphases supplied).

386. Alexis Romero, *COVID-19 mass testing still not an option*, PHIL. STAR, Mar. 25, 2020, available at <https://www.philstar.com/headlines/2020/03/25/2003403/covid-19-mass-testing-still-not-option-says-doh> (last accessed Aug. 15, 2020).

387. *Id.*

While the advocacy for mass testing is indeed necessary and commendable, and while it must be implemented as per Section 4 of Republic Act No. 11469,³⁸⁸ it is also equally true that the country's resources are limited — limited laboratories and limited experts, such as molecular biologists and physician-scientists. It is certainly challenging to implement in the present, even amidst a pandemic, as there are only a reserved number of molecular laboratories in the Philippines with a requisite biosafety level of two or more in order to be accredited as a testing laboratory.³⁸⁹ “Biological Safety Levels (BSL) are a series of protections to autoclave-related activities that take place in particular biological [laboratories.]”³⁹⁰ More adept is that these BSLs are “individual safeguards designed to protect laboratory personnel, as well as the surrounding environment and community”³⁹¹ — a matter definitely not to be taken lightly especially in the face of a pandemic, and especially if there are plans to have LGUs independently set them up. In addition to this, the 100,000 and more testing kits to be donated to the various hospitals around the country have to be re-validated first due to varied sensitivities and specificities, and have to be certified by DOH and RITM as having acceptable accuracies aligned with the WHO recommendations.

As of 18 April 2020, the DOH has certified 17 subnational laboratories to cover for mass testing, with 12 of these laboratories situated in the NCR.³⁹² The ever-increasing capacity of the country to test suspect cases of COVID-19 is an absolute win — however, this is far from the spirit of true mass testing, as Section 4 of Republic Act No. 11469 mentions prompt testing of not only PUIs but also of PUMs, that latter being asymptomatic.³⁹³ An Administrative Order from the DOH³⁹⁴ has recently

388. Bayanihan to Heal as One Act, §§ 4 (b) & 4 (k) (1).

389. See ABS-CBN News, RITM: COVID-19 highly contagious; not all labs can be testing centers, *available at* <https://news.abs-cbn.com/news/03/26/20/ritm-covid-19-highly-contagious-not-all-labs-can-be-testing-centers> (last accessed Aug. 15, 2020).

390. Arthur Trapotsis, Do You Know The Difference in Laboratory Biosafety Levels 1, 2 , 3 & 4?, *available at* <https://consteril.com/biosafety-levels-difference> (last accessed Aug. 15, 2020).

391. *Id.*

392. Department of Health, COVID-19 Tracker, *available at* <https://www.doh.gov.ph/covid19tracker> (last accessed Aug. 15, 2020).

393. Bayanihan to Heal as One Act, § 4 (b).

394. Department of Health, Revised Administrative Order No. 2020-0012 “Guidelines for the Inclusion of the Coronavirus Disease 2019 (COVID-19) in

modified the COVID-19 classification to classify patients into suspect, probable, and confirmed COVID-19 cases, the first two, suspect and probable, being PUIs delineated only by the presence or absence of testing.³⁹⁵ With the virtual lack of recognizing PUMs in the new classification, Section 4 of Republic Act No. 11469³⁹⁶ can no longer be fully implemented, which begs the question of whether or not the memorandum by DOH violates the said law. It can be argued that with the persistence of local transmission of COVID-19, essentially all persons can be regarded as a PUM, and this may defeat the priorities held in place for the testing of patients, or may in fact make true mass testing as an unattainable ideal. However, the Author argues that the testing of asymptomatic patients is crucial for a number of reasons:

- (1) the DOH cannot override an existing Republic Act, and must call for legislators to amend it if certain provisions are deemed futile or unattainable;
- (2) studies have shown that 5%-80% of COVID-19 patients are asymptomatic, ergo testing solely of PUIs can never end local transmission of COVID-19;³⁹⁷
- (3) classification of asymptomatic persons as PUMs can be refined in a way that mass testing is attainable, by including information such as travel history, contact with a PUI or a COVID-19 positive patient, or residence in a community with established local transmission of COVID-19, and
- (4) the effects of the ECQ on flattening the epidemic curve of transmission may only be appropriately analyzed if true mass testing is in place.

the List of Notifiable Diseases for Mandatory Reporting to the Department of Health” dated March 17, 2020, Administrative Order No. 2020-0013 [A.O. 2020-0013] (Apr. 9, 2020).

395. Franco Luna, *‘PUMs’ should still be tracked, health group says of new COVID-19 classification scheme*, PHIL. STAR, Apr. 13, 2020, available at <https://www.philstar.com/headlines/2020/04/13/2006979/pums-should-still-be-tracked-health-group-says-new-covid-19-classification-scheme> (last accessed Aug. 15, 2020).

396. Bayanihan to Heal as One Act, § 4 (b).

397. Carl Heneghan, et al., COVID-19: What proportion are asymptomatic?, available at <https://www.cebm.net/covid-19/covid-19-what-proportion-are-asymptomatic> (last accessed Aug. 15, 2020).

For one, the Author argues that the current inability to fully implement true mass testing may be attributed to the small potential seen for career advancement in the field of molecular medicine in the Philippines. For a sustained period of time, a career in molecular medicine has been regarded as a privilege — with limited effort from science institutions in the country to deeply integrate such field and make its services affordable to the Filipino masses. Because of the foregoing, the possibility of mass testing in the country amidst the COVID-19 pandemic has been difficult because most medical fields which necessitate the services covered by such a field are only recognizing its use outside the laboratory for the first time, not merely as a thesis requirement or a graded laboratory experiment, but as a crucial and indispensable tool in altering health policy.

This is not to mention the limited number of virology laboratories the country currently hosts. All of these backlogs have made the country's response to the coronavirus pandemic short of futile, in that while the probability of transmission heightens, an inevitable delay in increasing testing capacity is seen, which not only disallows a truthful evaluation of the effects of mass quarantines on transmission and health service but also minimizes the capability of the health sector to detect the infected before they transmit further and to provide early treatment before irreversible complications arise. This may prove to be a costly expense for the Philippines in this time, and the Author believes that the mass testing being currently implemented since 14 April 2020 is at best *pro forma* — nothing but a symbolic implementation of true mass testing with limited coverage and effect. Legislators are invited to examine the incongruence between DOH Administrative Order No. 2020-0013 and Section 4 of Republic Act No. 11469 to address this dilemma.

In addition, the capability of local scientists to discover a cure or vaccine for COVID-19 is also an issue. The resources and funding available to Filipino scientists may not be up to par with that of the other countries. This is further aggravated by the fact that the protocols implemented by the Food and Drug Administration (FDA) require lengthy periods of time for testing, which may not fare well with the pressing needs of combating pandemics. Notably, however, the FDA has issued policies which aim to secure faster approval for testing kits nationwide, and may be able to do the same in case a treatment candidate is discovered by a Filipino.³⁹⁸ It is said that the time to get a COVID-19 vaccine to the marketplace would take around at least 18

398. See Food and Drug Administration, COVID-19 FDA Updates, *available at* <https://www.fda.gov/ph/covid-19-fda-updates> (last accessed Aug. 15, 2020).

months.³⁹⁹ This is already fast considering that the average time for vaccines to be perfected range between five to fifteen years, as it may cover years of usual lab experiments with vertebrate animals, notably rodents, followed by recruitment of participants and three phases of clinical trials.⁴⁰⁰ It is a requisite that vaccines are “rigorously tested to ensure they not only work but will not cause other dangerous side-effects[,]”⁴⁰¹ thus —

Most of the vaccines we rely on today took between five and 15 years to perfect.

A DNA-based vaccine for Zika virus, which was declared a public health emergency by the World Health Organization in 2016, was ready for clinical trials seven months after it was designed, but that is unusual.

There are already at least 35 companies and academic institutions racing to make a COVID-19 vaccine, with at least four candidates in the animal-testing phase. And one will enter human trials soon. But that’s just one hurdle cleared.

Vaccines must be rigorously tested to ensure they not only work but will not cause other dangerous side-effects.

The trial methodology consists of three phases:

- (1) Testing on a small number of healthy adults;
- (2) Testing on a larger number of adults in an area where the disease has spread; and
- (3) Testing on thousands of people in an area where the disease has spread.

Each of these steps can last between six and eight months, but even if the vaccine candidate gets that far — many are abandoned or fail before then — they must then be studied by regulators before approval is granted.

‘Constricting the whole timeline of going from concept to a product that can be distributed into a year or two is really a herculean [endeavor.]’⁴⁰²

No matter how noble the intentions may be, the space for action remains constricted. The Author ardently proposes that in order to combat future outbreaks or pandemics, the State must learn from this experience.

399. Mark McCord, Coronavirus vaccine: how soon will we have one?, *available at* <https://www.weforum.org/agenda/2020/03/vaccine-covid-19-coronavirus-pandemic-healthcare> (last accessed Aug. 15, 2020).

400. *Id.*

401. *Id.*

402. *Id.*

There must be a conscious and active investment in science research and funding, the promotion of molecular medicine, and the setting up of requisite laboratories with adequate capability — not merely when the pandemic is already at bay but as an act of foresight for pandemics to come.

V. ON LABOR INTERESTS, MANAGEMENT PREROGATIVE, AND
CONTRACT CRISIS MANAGEMENT DURING COVID-19

The Constitution was drafted in order to pave the way for government to exercise a form of control over the governed, but in the same vein, to oblige itself to exercise control over its own affairs.⁴⁰³ Arguing in the same breadth, the Bill of Rights assimilates in its provisions what the government can and cannot do.⁴⁰⁴ The Bill of Rights, therefore, was devised to establish fundamental human rights above and beyond “the vicissitudes of political controversy”⁴⁰⁵ with little to no regard to its visage.⁴⁰⁶ In the case of *Philippine Blooming Mills Employment Organization v. Philippine Blooming Mills Co.*,⁴⁰⁷ the Supreme Court magnanimously emphasized, thus:

- (1) In a democracy, the preservation and enhancement of the dignity and worth of the human personality is the central core as well as the cardinal article of faith of our civilization. The inviolable character of man as an individual must be protected to the largest possible extent in his thoughts and in his beliefs as the citadel of his person.
- (2) The Bill of Rights is designed to preserve the ideals of liberty, equality and security against the assaults of opportunism, the expediency of the passing hour, the erosion of small encroachments, and the scorn and derision of those who have no patience with general principles.⁴⁰⁸

403. Raul C. Pangalangan, *Property as a Bundle of Rights*, 70 PHIL. L.J. 141, 152 (1996) (citing THE FEDERALIST NO. 51, at 321).

404. *Id.* at 144.

405. *Id.* at 147 (citing *Philippine Blooming Mills Employment Organization v. Philippine Blooming Mills Co.*, 51 SCRA 189, 201 (1973)).

406. Raphael Lorenzo A. Pangalangan, *The Blurring of the Public/Private Distinction: Obsolescence of the State Action Doctrine*, 90 PHIL. L.J. 84, 87 (2016).

407. *Philippine Blooming Mills Employment Organization v. Philippine Blooming Mills Co.*, 51 SCRA 189, 201 (1973).

408. *Id.* at 200–01 (citing *American Communications, Assn. v. Douds*, 339 U.S. 382, 421 (1950); BENJAMIN N. CARDOZO, *THE NATURE OF JUDICIAL PROCESS* 90–93 (1921); & Lorenzo M. Tañada & Enrique M. Fernando, *CONSTITUTION OF THE PHILIPPINES* 71 (1952 ed.)).

In relation to the crafting of the Bill of Rights, the 1987 Constitution expanded the coverage of the social justice provisions of the supreme law,⁴⁰⁹ with the tenacious attempt to “cover all phases of national development” as given credence in Article II, Section 10.⁴¹⁰ As originally intended, the 1987 Constitution, in the enshrinement of the Bill of Rights, sought to protect the marginalized labor sector. In its attempt to do so, it “echoed the interventionist position of the Government when it adopted the State protection to labor as a policy enunciated in not one but two articles: the Declaration of Principles and State Policies and Social Justice and Human Rights.”⁴¹¹ The basic creed of the nation mandates —

Article II, Sec. 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.⁴¹²

Article XIII, Sec. 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.⁴¹³

Hence, albeit the underhanded placement of the labor sector vis-à-vis management power, the Constitution places the protection of labor as one of its key tenets. These provisions apply no less amidst a pandemic than in

409. PHIL. CONST. art. XIII.

410. PHIL. CONST. art. II, § 10.

411. Hans Leo J. Cacdac, *Justice Sarmiento and State Protection to Labor: The Rule of Compassionate Law*, 37 ATENEO L.J. 116, 120 (1993).

412. PHIL. CONST. art. II, § 18.

413. PHIL. CONST. art. XIII, § 3.

peacetime. If not, the social justice provisions of the Constitution would be relegated to mere demagoguery, thus:

These constitutional creeds should not be dwarfed by deeds. A contrary posture would convert these creeds as ‘meaningless constitutional patter.’ The principle of social justice was not embedded in the fundamental law for demagoguery. It was meant to be a vital, articulate compelling principle of public policy. Social justice should be a living reality and not a mere high ideal abstraction. Thus, while the Constitution must be read as a whole, even if we do not invoke its Due Process Clause, the coherent application of the separate constitutional creeds on social justice and labor is enough to uphold the workers’ constitutional right to work and their subsequent right to job security.⁴¹⁴

Thus, Justice Reynato Puno argued that the Court should give “meaning and substance to the constitutional postulates in favor of the workingman.”⁴¹⁵ In order to progress further as a democratic society and in order to adhere to constitutional mandate, the protection of the labor sector remains of primary importance and must be considered together with those that protect businesses, especially if decisions which must favor one over the other are to be made, as such in this pandemic. However, the social justice provisions of the Constitution must not be interpreted to mean that there is a class conflict between labor and capital.⁴¹⁶ In his published article, Professor Alberto Muyot elucidates clearly on this matter, *viz.* —

The Welfare State system is simply and essentially a *system of State charity*, where the State taxes the rich to distribute goodies to the dispossessed. And charity of any kind undermines the spirit of self-reliance and self-respect of the people. It can only provide *temporary benefit*, for it does not solve the problem of dependence at its roots. The distribution of goodies in the form medicare, family allowances, social insurance, is made necessary, for those who are not well-to-do. But the system perpetuates the need for State charity. It does not attempt to make property owners and well-to-do of the recipients of the goodies. It does not liberate them from the need of continued dependence on welfare measures.

414. *Agabon v. National Labor Relations Commission*, 442 SCRA 573, 634-35 (2004) (J. Puno, dissenting opinion) (citing *Philippine Blooming Mills Employees Organization*, 51 SCRA at 210 & *Magnolia Corporation v. National Labor Relations Commission*, 250 SCRA 332, 340 (1995)).

415. *Agabon*, 442 SCRA at 634 (J. Puno, dissenting opinion).

416. Lawrence Gerard T. Ortiz, *Enrichment Pending Appeal: Re-Examining Article 229 [223] of the Labor Code*, 90 PHIL. L.J. 890, 891 (2017).

Thus, the system provided by the Welfare State perpetuates the division of classes of capitalist and entrepreneurs on one side and workers and employees on the other. The result is *continued tensions* between the two classes, and the continued demand for increases in wages and salaries — the root cause of chronic problems of inflation which affect even the well developed countries.⁴¹⁷

Inevitably, the social justice provisions of the Constitution advocate the eradication of inequality and inequity in order to “diffuse wealth by giving every Filipino economic power.”⁴¹⁸ Amidst the threat of a deadly virus and the subsequent implementation of lockdown measures over Luzon, around 11 million workers and informal sector earners are threatened to be displaced.⁴¹⁹ The realization of these provisions is most vital in the time of a pandemic where countless Filipinos stand to lose their sources of livelihood. A profound understanding of the law may give the impression that government interventions such as the provision of basic necessities to all persons are nothing but charity, which are by themselves a discrete violation of the spirit of the Constitution with regard to labor and the perpetuation of classism. However, this may well be more than a concession to inequality, and rather, a way to fill the hunger and quench the thirst of many workers who, by virtue of their professions, disallow them to continue their work or, by the unfortunate and meager status of the company at which they work, provision of benefits without revenue is deemed impossible. Furthermore, such a provision may not at all be charitable, since government funds are used as its main source — from taxes which are paid by everyone, ergo everyone is deemed deserving of such provisions.

417. Alberto T. Muyot, *Social Justice and the 1987 Constitution: Aiming for Utopia?*, 70 PHIL. L.J. 310, 340 (1996) (citing Salvador Araneta, *State Capitalism, Welfare State and Puhunang Panglahat*, in PHILCONSA READER ON CONSTITUTIONAL AND POLICY ISSUES (An Anthology of Writings from the Official Publications of the Philippine Constitutional Association Concerning the National Polity) 176-67 (Augusto Cesar Espiritu ed., 1979)).

418. Muyot, *supra* note 417, at 339-40.

419. IBON Media, Luzon lockdown threatens livelihoods of 11M workers, informal sector earners, *available at* <https://www.ibon.org/luzon-lockdown-threatens-livelihoods-of-11m-workers-informal-sector-earners> (last accessed Aug. 15, 2020).

A. Labor Rights vis-à-vis No Work No Pay Policy

1. Tilting the Scales in Favor of Labor: Laborers in the Time of a Pandemic

Due to the lockdown restriction as well as the enhanced community quarantine measure implemented by the government in order to contain COVID-19 and prevent its further transmission, businesses in various industries were required to restrict movement and suspend business operations — only allowing those who are part of vital industries (i.e., healthcare, banks, groceries, and the media) to report to work.⁴²⁰ In addition, there was also a temporary stoppage of school operations.⁴²¹ To try and minimize the impact of such a quarantine to the workforce, the government has sanctioned work from home arrangements from 17 March 2020 until 13 April 2020.⁴²² In light of the enhanced community quarantine over Luzon, numerous workers whose only source of income come from performing manual labor and are under the *no work, no pay* scheme are worried as to where they can get the money to sustain their families during the enhanced community quarantine period — ensuing collective panic and fear among the populace. Drastically, the impact to the destitute members of the community hits hard.⁴²³ The social group IBON reinforced this dilemma by asserting the number of laborers who will be affected by this plight, *viz.* —

[W]hile government is correct to take all necessary measures to stop the spread of the COVID-19 virus, it is failing to do this in a way that protects the poorest and most vulnerable Filipinos.

...

420. Department of Trade and Industry, Prescribing Implementing Guidelines for IATF Resolution No. 12 Issued by the Inter-Agency Task Force for the Management of Emerging Infectious Diseases on Social Distancing and Business Operations, Memorandum Circular No. 20-04 [Memo. Circ. 20-04] (Mar. 15, 2020).

421. Sofia Tomacruz, *Duterte suspends classes, work in gov't in Metro Manila until April 12*, RAPPLER, Mar. 12, 2020, available at <https://www.rappler.com/nation/254278-duterte-suspends-classes-government-offices-metro-manila-until-april-12-2020-coronavirus-threat> (last accessed Aug. 15, 2020).

422. *Id.*

423. Elizabeth Ruth Deyro, *Life Asks: What about the laborers who can't work from home*, available at <https://cnnphilippines.com/life/culture/2020/3/13/laborers-covid-pandemic.html> (last accessed Aug. 15, 2020).

Given the structure of economic activity, the biggest number of affected jobs are going to be in the following sectors: 2.4 million construction jobs (assuming almost all affected); 2.4 million wholesale and retail trade jobs (50% affected); 1.5 million transport and storage jobs (75%); 891,000 accommodation and food service jobs (75%); and 832,000 other service jobs (50%).

These are followed by: 731,000 information & communication and administrative & support service jobs (50% affected); 618,000 manufacturing jobs (25%); 395,000 agricultural jobs (assuming 10% affected from a skeletal workforce in agricultural establishments); 381,000 real estate and professional, scientific & technical jobs (assuming almost all affected); 360,000 education jobs (50%); 269,000 arts, entertainment and recreation jobs (assuming almost all affected); and conservatively 132,000 public sector jobs (10% affected assuming continued pay but a skeletal workforce). The relatively least amount of potential displacements is in: 95,000 financial jobs (25% affected); 34,000 health and social work jobs (10%); 24,000 mining and quarrying jobs (25%); and 10,000 utility jobs (10%). *The group said that any disruptions in the livelihoods of displaced workers and informal sector earners will have grave consequences.*⁴²⁴

In response to this crisis, the Department of Labor and Employment (DOLE) stated that they will assist workers on a *no work, no pay* scheme by “providing emergency employment during the enhanced community quarantine[]” — particularly through its Tulong Pangkabuhayan sa Ating Displaced/Underprivileged Workers (TUPAD) program.⁴²⁵ Under this program, the government will hire informal workers and give them work relating to disinfection of houses and communities in order to provide them with a temporary wage employment for a limited period of ten days.⁴²⁶ As commendable as it seems, the Author believes that this measure may not be as sustainable as it was designed to consider the poverty statistics of the Philippines citing the number of families living in dire destitution and those who do not, on the basis of a minimum cost of living, which may well be underestimating those who are truly poor due to an incredibly low currency. Further, the qualified beneficiaries of the program, which include self-

424. IBON Media, *supra* note 419 (emphasis supplied).

425. CNN Philippines Staff, DOLE to provide temporary wage employment to workers affected by Luzon quarantine, *available at* <https://cnnphilippines.com/news/2020/3/18/dole-TUPAD-program-temporary-wage-employment-coronavirus.html?fbclid=IwAR3ANk17-HNB3looJ2GLeByfepVCuWMjT6h65IYdBfsYYw35iDADOmFQoC8> (last accessed Aug. 15, 2020).

426. *Id.*

employed workers and displaced marginalized workers who had to give up their livelihood during the quarantine period, excludes the unemployed segment of the population, which is hardest hit by this pandemic. This is notwithstanding the fact that the limited period of employment is only ten days — much lesser than the entire duration of the quarantine period. Problems may thereafter arise if the government decides to extend the ECQ period due to rising exponential number of cases in the country. Senator Panfilo Lacson also worries about the lethargic and sluggish distribution of cash subsidies despite the passage of Bayanihan to Heal as One Act.

Under Republic Act No. 11469 or the Bayanihan to Heal As One Act which President Rodrigo Duterte recently signed into law, some 18 million households are entitled to get an emergency subsidy from a minimum of ₱5,000 to a maximum of ₱8,000 for two months computed based on the prevailing regional minimum wage rate.

Section 9 of the said measure shall take effect ‘immediately upon its publication in a newspaper of general circulation or in the Official Gazette.’

...

‘It’s now March 30. By now, those in charge of its implementation particularly the distribution of cash dole-outs to the 18 million plus families should already be taking place.’ ... ‘[F]amilies, especially the daily wage earners, are going hungry already.’

*‘If the executive does not act with dispatch, we may have a serious social problem to face. As the old adage says, ‘a hungry stomach knows no law[.]’*⁴²⁷

There is also no clear measure to ensure that private companies and employers would truly allocate and give salaries to all of its employees despite stoppage of operations. Labor groups have demanded the publication of clear measures and regulations from government as the lockdown measure has seemingly paralyzed Luzon, throwing such groups into “complete uncertainty.”⁴²⁸ In this circumstance, it is significant to remember the words

427. Neil Arwin Mercado, *Lacson: Wage Earners getting hungry, but where’s the cash subsidy*, PHIL. DAILY INQ., Mar. 30, 2020, available at https://newsinfo.inquirer.net/1251075/lacson-distribution-of-cash-subsidy-story?utm_medium=Social&utm_source=Facebook&fbclid=IwAR0j2EvHhVc4XR-YzosXMs1a2v_t9vJepLG-Yuvjh5_vo3GoltUwUBgwi68#Echobox=1585556973 (last accessed Aug. 15, 2020) (emphases supplied).

428. ‘Complete uncertainty’: Labor groups demand clarity as gov’t lockdown paralyzes Luzon, available at <https://news.abs->

of Justice Puno in the case of *Serrano v. National Labor Relations Commission*⁴²⁹ —

If we are really zealous of protecting the rights of labor as called for by the Constitution, we should guard against every violation of their rights regardless of whether the government or a private party is the culprit. Section 3 of Article XIII of the Constitution requires the State to give full protection to labor. We cannot be faithful to this duty if we give no protection to labor when the violator of its rights happens to be private parties like private employers.⁴³⁰

Similarly, Justice Puno argued that the role of the government and of the private sector in the protection of the rights of the laborers is paramount

The 1987 Constitution guarantees the rights of workers, especially the right to security of tenure in a separate article — section 3 of Article XIII entitled Social Justice and Human Rights. Thus, a 20-20 vision of the Constitution will show that the more specific rights of labor are not in the Bill of Rights which is historically directed against government acts alone. *Needless to state, the constitutional rights of labor should be safeguarded against assaults from both government and private parties.*⁴³¹

These constitutionally enshrined rights advocated by countless magistrates of the Highest Court were also equally reverberated by legal scholar Efren Resurreccion, *viz.* —

The 1987 Constitution expanded our social justice provisions even more. It expanded the scope of state policy on social justice to cover ‘all phases of national development’ (Section 10), added a policy on human rights (Section 11), developed the 1973 Constitution’s policy on the protection of labor into an even more specific provision now found in Article XIII, Section 3, while also maintain[ing] a state policy on the protection of the rights of workers (Section 18), and adding a policy on the promotion of full employment and a rising standard of living, and an improved quality of life for all (Section 9). Justice Puno asserted that ‘[t]hese provisions protecting

[cbn.com/news/03/17/20/complete-uncertainty-labor-groups-demand-clarity-as-govt-lockdown-paralyses-luzon](https://www.cbn.com/news/03/17/20/complete-uncertainty-labor-groups-demand-clarity-as-govt-lockdown-paralyses-luzon) (last accessed Aug. 15, 2020).

429. *Serrano v. National Labor Relations Commission*, 323 SCRA 445 (2000).

430. *Id.* at 476 (J. Puno, dissenting opinion).

431. *Id.* at 519-20 (J. Puno, dissenting opinion) (emphasis supplied).

labor are not mere beliefs but should be reinforced by everyone's behavior.⁴³²

It is only through the implementation of these magnanimous provisions that government can breathe life into the spirit and intent of the framers of the Constitution in the same manner that the State should always accord meaning and substance to the “constitutional postulates in favor of the worker.”⁴³³ This is attuned to the view that Philippine labor laws are “compassionate laws”⁴³⁴ in that the “sad plight of workers, past and present, requires no elucidation.”⁴³⁵ The Author is of the firm belief that future legislations should take into account the quandary and plight of these marginalized workers of society — creating sustainable legislation which is prepared and adequate to meet head-on the challenges of a pandemic. Such legislation must tend in favor of labor by providing a readily applicable plan as to how cash subsidies will be provided and that salaries and wages must still be provided for. This is in line with creating implementing guidelines that clearly instruct management as to how it can remedy this legal complication, all in favor of tilting the scales in favor of labor.

To remedy this situation, the government, through the Department of Labor and Employment (DOLE), aimed to release financial assistance packages to all employees coursed through their employers, which provided ₱5,000.00 to ₱8,000.00 per employee based on the regional minimum wage.⁴³⁶ In addition, the DSWD sought to implement the Social Amelioration Program, which aimed to provide food packs and monetary assistance to the vulnerable population, including persons with disabilities, senior citizens, pregnant women and solo parents, distressed and repatriated overseas Filipino workers, indigenous peoples, farmers and fishermen, those

432. Efren II R. Resurreccion, *Charting the Waters of Constitutional Construction: A Function-Based Framework for Appreciating our Constitutional State Policies*, 90 PHIL. L.J. 1, 39 (2016).

433. *Id.*

434. Caddac, *supra* note 411, at 119.

435. *Id.*

436. Press Release by Department of Labor and Employment, *DOLE-CAMP aids over 1k affected workers in NCR* (Mar. 25, 2020), available at <http://ncr.dole.gov.ph/default.php?retsamlakygee=1052&resource=cfe6055d2e0503be378bb63449ec7ba6> (last accessed Aug. 15, 2020).

who are self-employed, and those who are homeless or are informal settlers,⁴³⁷ in accordance with Republic Act No. 11469.

Through these two mechanisms, the government aims to minimize the collateral damage brought about by the ECQ to its citizens who may starve from the lockdown. The Author emphasizes, however, that such an intervention was only finalized and released late March, at the third week of the lockdown in Luzon. Further, the cash assistance program of DOLE is dependent on the employers who might not be motivated to apply for such a package for their employees, in which case the employees will not benefit at all. The Author fears that red tape and lack of benefit to employers, or lack of sanction thereof, may prevent employees from receiving full financial assistance. Likewise, assistance to the unemployed remains to be a concern, as there are no provisions that can grant them additional support at this time except for relief operations conducted by their respective LGUs.

B. Employers, Businesses, and the Economy

I. Contract Crisis Management vis-à-vis Force Majeure

As the novel coronavirus transmission continues to affect economies worldwide, thereby deepening the impact on social communities and private businesses, the need to tackle the issue regarding contract crisis management and *force majeure* provisions becomes a preeminent concern across borders. This crisis is vital to businesses that find it challenging or impossible to comply with contractual obligations committed upon before the spread of the SARS-CoV-2. In this regard, the non-performing parties may “seek to rely on contractual *force majeure* provisions as to avoid liability for what would otherwise be a breach of contract.”⁴³⁸

Depending on how the *force majeure* clause was worded, the party desiring to rely on such clause will have to prove that the circumstances relating to the COVID-19 pandemic is within the *force majeure* clause. A pertinent query now traverses the minds of distressed parties — can the COVID-19 pandemic be considered a fortuitous event which would

437. Philippine News Agency, DBM releases P100-B for social amelioration programs of DSWD, available at <https://www.pna.gov.ph/articles/1098645> (last accessed Aug. 15, 2020).

438. Lois Horne, et al., Force majeure and frustration in the context of Covid-19, available at <https://www.macfarlanes.com/what-we-think/in-depth/2020/force-majeure-and-frustration-in-the-context-of-covid-19> (last accessed Aug. 15, 2020).

ultimately justify any form of non-compliance with the provisions of the contract entered into or any underlying delay in performing contractual stipulations? In the case of *Philippine Communications Satellite Corporation v. Globe Telecom, Inc.*,⁴³⁹ the Supreme Court clarified the concept of *force majeure*, stating that

Article 1174, which exempts an obligor from liability on account of fortuitous events or *force majeure*, refers not only to events that are unforeseeable, *but also to those which are foreseeable, but inevitable*:

Art. 1174. Except in cases specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which, could not be foreseen, or which, though foreseen were inevitable.

A fortuitous event under Article 1174 may either be an ‘act of God,’ or natural occurrences such as floods or typhoons, or an ‘act of man,’ such as riots, strikes or wars.⁴⁴⁰

Thus, as civilist Timoteo B. Aquino states, a fortuitous event is an event which could not be foreseen or which, though foreseen, is inevitable.⁴⁴¹ This is in consonance with Article 1174 of the New Civil Code.⁴⁴² More so, considering normal circumstances, a “fortuitous event may justify a contracting party’s failure or inability to comply with an agreement if the event was clearly unavoidable, and its occurrence has made impossible the fulfillment of contractual obligations in a regular manner.”⁴⁴³ According to the case of *National Power Corporation v. Court of Appeals*,⁴⁴⁴ in order for a fortuitous event to be accepted as a justification for non-performance of an obligation, the following requisites must be present:

(a) the cause of the breach of the obligation must be independent of the will of the debtor; (b) the event must be either unforeseeable or unavoidable; (c) the event must be such as to render it impossible for the

439. *Philippine Communications Satellite Corporation v. Globe Telecom, Inc.*, 429 SCRA 153 (2004).

440. *Id.* at 163 (citing BLACK’S LAW DICTIONARY 657 (7th ed. 1999)) (emphases supplied).

441. TIMOTEO AQUINO, REVIEWER ON CIVIL LAW 352 (2014).

442. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 1174 (1950).

443. Raul J. Palabrica, *COVID-19 pandemic as a fortuitous event*, PHIL. DAILY INQ., Mar. 24, 2020, available at <https://business.inquirer.net/293315/covid-19-pandemic-as-a-fortuitous-event> (last accessed Aug. 15, 2020).

444. *National Power Corporation v. Court of Appeals*, 222 SCRA 415 (1993).

debtor to fulfill his obligation in a moral manner; and (d) the debtor must be free from any participation in, or aggravation of the injury to the creditor.⁴⁴⁵

Furthermore, in addition to knowing the requisites which can justify non-performance, it is of equal importance to discern by law the circumstances where there is liability even if there is a fortuitous event. Of vital significance is Article 1165, paragraph 3 of the New Civil Code which provides that “[i]f the obligor delays, or has promised to deliver the same thing to two or more persons who do not have the same interest, he shall be responsible for any fortuitous event until he has effected the delivery.”⁴⁴⁶

Moreover, Aquino enumerates other instances wherein, in an obligation to deliver or to give, the debtor shall still be considered by law as liable despite any fortuitous event. Compliance with the any of the following instances allows the other contracting party to hold the debtor or obligor liable for non-performance or delay in the performance of a contractual obligation, *viz.*:

- (1) The obligor or the debtor promised the same thing to two or more persons who do not have the same interest;
- (2) When there is a stipulation or agreement that the obligor will not be excused even if the cause is a fortuitous event;
- (3) If there is assumption of risk as required by the nature of the obligation;
- (4) Where the thing to be delivered is generic; and
- (5) Where the obligor is also at fault. Although there is a fortuitous event, there is still liability for breach of an obligation if the obligor is at fault because the fortuitous event is in effect humanized.⁴⁴⁷

The COVID-19 pandemic, which as of this writing has no known effective treatment (aside from promising off-label usage of hydroxychloroquine sulfate ± azithromycin or fapilavir) or vaccine, can clearly be considered as a fortuitous event under Philippine laws. The fearful fatality of SARS-CoV-2 and the subsequent regulations put in place to contain its unprecedented spread both nationally and globally could not have

445. *Id.* at 426 (citing *Vasquez v. Court of Appeals*, 138 SCRA 553 (1985); *Estrada v. Consolacion*, 71 SCRA 423 (1976); *Austria v. Court of Appeals*, 39 SCRA 527, (1971); *Republic v. Luzon Stevedoring Corporation*, 21 SCRA 279 (1967); & *Lasam v. Smith*, 45 Phil. 657, (1924)).

446. CIVIL CODE, art. 1165, para. 3.

447. TIMOTEO AQUINO, *supra* note 441, at 353-54.

been foreseen, or even if foreseen, is clearly inevitable with regards to impact. However, in order to claim such a defense, the non-performing party must also comply with the following requisites —

The party seeking such relief has to prove that his or her inability to live up to the agreement is either directly attributable to it, (i.e.,] contracting the illness; or indirectly, because of the restrictions imposed by the government on the movement of people). After meeting this criterion, the next step is to show that the contract or invoking party does not come under any of the exceptions earlier mentioned on the non-application of the fortuitous event provision.⁴⁴⁸

In these instances, it is imperative that the non-performing party: (1) shows a correlation between the delay or non-performance and the COVID-19 pandemic; (2) mitigation measures engaged by such party to lessen the impact on the performance of the contract — in particular that the failure or delay was beyond the control of the party; and (3) prove that none of the conditions imposing liability is present. A well-drafted *force majeure* clause can lead to the suspension of the performance of the contract, excuse the non-performing party from complying, or even to the extent of terminating the contractual obligations of both parties. The clause may also pertain to a specific settlement procedure such as arbitration and may, in some instances, lead to litigation.

The Author asserts that it is indispensable for corporations and other contracting parties to take heed of the lessons posed by the COVID-19 pandemic. There must be an effort to ensure that the *force majeure* clauses in contracts entered into must be all-encompassing and must provide an assurance against non-compliance even in the case of fortuitous events. This includes the inclusion of provisions pertaining to the assumption of risks of both parties, regardless of the presence of fortuitous events. Particular attention must be given to remedial measures, whether it be arbitration, mediation, or litigation, for example, in resolving these dilemmas. The non-performing party must also ensure that there is no negligence on its part and that it exercised due diligence in ensuring that it had in place mitigation measures to lessen the impact of the non-performance of the contractual stipulations brought about by the existence of a pandemic. Only if these measures are put in place can the rights of contracting parties be safeguarded, not to mention the protection of labor rights of the involved workforce,

448. Raul Palabrica, *COVID-19 pandemic as a fortuitous event*, PHIL. DAILY INQ., Mar. 24, 2020, available at <https://business.inquirer.net/293315/covid-19-pandemic-as-a-fortuitous-event> (last accessed Aug. 15, 2020).

extenuation of economic risks, and preservation of the stability of the national economy.

2. SME Viability: Repercussions in a Halted Economy

As part of its measures in relation to government worker wages, the Department of Budget and Management together with the Commission on Audit released its Joint Circular No. 1, s. 2020 last 19 March 2020 regarding its interim rules governing contract service and job order workers in government for the duration of the state of calamity and community quarantine due to the corona virus disease.⁴⁴⁹ The said circular states that those who will be working from home will still receive their salaries during the entirety of the enhanced community quarantine period.⁴⁵⁰

Furthermore, President Rodrigo Duterte also implored business owners to implement a sustainable work from home arrangement for its employees,⁴⁵¹ only necessitating a skeletal workforce to continue office operations. This was coupled with an appeal for employers and business owners to continue paying its employees their salaries during the ECQ.⁴⁵² This was stated without clear guidelines or implementations as to how the private sector can apply such guidelines.

Economist and entrepreneur Andrew Marasigan argued that those part of the small and medium-sized enterprises (SMEs) are a “ticking time bomb”⁴⁵³ as they continue to fight for their survival amidst the COVID-19 pandemic. This situation is further aggravated by the ambiguous and uncertain policies of the government with regard to how they shall continue

449. Department of Bureau and Management & Commission on Audit, Joint Circular No.1, s. 2020 (Mar. 19, 2020).

450. *Id.* ¶ 3.4.

451. CNN Philippines Staff, DOLE to provide temporary wage employment to workers affected by Luzon quarantine, *available at* <https://cnnphilippines.com/news/2020/3/18/dole-TUPAD-program-temporary-wage-employment-coronavirus.html?fbclid=IwAR3ANk17-HNB3lo0J2GLeByfepVCuWMjT6h65IYdBfsYYw35iDADOmFQoC8> (last accessed Aug. 15, 2020).

452. *Id.*

453. Andrew Marasigan, *SMEs are a ticking time bomb*, PHIL. STAR, Mar. 25, 2020, *available at* https://www.philstar.com/opinion/2020/03/25/2003244/smes-are-ticking-time-bomb?fbclid=IwAR3GWQkZAIKPwgDhgW8UEEUx3l6z6etbnWTAmBEXYsh_F2KU-6pZ7IoU9ms (last accessed Aug. 15, 2020).

operations and deal with their employees. The piecemeal release of guidelines and the disconcerting voices implementing fragmentary measures from different officials of the government and sometimes some regulations contradicting those declared by other agencies have provided confusion to the private sector. This is not very efficacious as the next few weeks will certainly be crucial for the SMEs as the “SMEs face zero to minimal sales but must still meet payroll, rentals for office and factories, utilities and bank amortization.”⁴⁵⁴ These measures may be enough for those with savings and retained earnings, but majority of the SMEs may not survive a heavy blow, thus —

The problem lies in government’s lack of preparation and poor messaging. While we in the SME sector have every intention to comply with the directives of the state, we are left confused with contradicting directives that come to us on a piecemeal basis. It’s obvious that government is writing the rules as it goes along. We can forgive the authorities for frequently adjusting policies considering the fluidity of the situation. What is unforgivable is their propensity for making sweeping pronouncements without preparing clear implementing guidelines ... We ran around in circles asking which sectors were exempted from the forced quarantine and which could continue operating? How could we sustain our supply chains amidst the quarantine and curfew? What were the guidelines for employee compensation, particularly those unable to report for work?

With all non-essential commercial establishments ordered to close, merchants agonized over how they could meet payroll and rental obligations with no sales to back it up. We were unclear on who could continue operating on a skeletal basis and who could not. We asked what permits were necessary to deploy delivery trucks on the streets. Eventually, some of our questions were answered, albeit in trickles. The point is, government should have been ready with its implementing guidelines before it announced the lockdown. Momentous announcements that affect the way we live and work should be backed with a clear set of rules.⁴⁵⁵

Under clear premises, this notion is bolstered by legal scholar Lawrence Ortiz who recognized that the balancing of the rights of labor and management in the law “must be construed in a way that does not blindly give benefits to the labor sector.”⁴⁵⁶ Ortiz asserts that “*the supply side of the employer should equally be considered,*”⁴⁵⁷ thus —

454. *Id.*

455. *Id.*

456. Ortiz, *supra* note 416, at 901.

457. *Id.*

There is a fine line between affording full protection to labor and sending the national economy into a downward spiral. While it is important to protect the labor sector, the right of enterprises to reasonable return to investment, expansion, growth, and survival should not be easily brushed aside. *These enterprises are as important as labor to the nation's survival and eventual success.*

*A free society can be maintained only on the basis of a sound and healthy private economy. The standard of living of [a] nation depends on the productive capital it possesses much more than on all other things put together. Economic progress depends on the rate of profit being sufficiently high to attract the capital necessary to provide a steady increase in productivity, in wages and in the national income.*⁴⁵⁸

In the same vein, these are not simply empty rhetoric; rather, they resound the intention of the framers of the Constitution. The framers emphasized that there must be reasonable returns to capital and a just share to the fruits of production as reflected in Article XIII, Section 3, paragraph 4, to wit —

MR. PADILLA: [] *The sharing of responsibility and likewise the sharing of the benefits of industrial peace are rights not only of labor but also of the enterprise. Actually, if the enterprise does not earn or realize profits as reasonable return[s] on investments, if there are no profits or net income, then there can hardly be any basis for the share of labor in the fruits of production. They are joint rights, concomitant[,] mutually dependent on each other ... Both factors should derive enough earnings or profits for reasonable returns to capital and a just share to labor. When the word 'just' justifies 'share', that is meaningful ...*⁴⁵⁹

This proposition becomes all the more compelling in the face of an imperative extension of the ECQ period and possible further extensions thereafter as the circumstances require and as national financial resources can accommodate, in order to save Filipino lives. Last 4 April 2020, the Department of Trade and Industry (DTI) released DTI Memorandum Circular No. 20-12,⁴⁶⁰ which granted a “month-long moratorium on residential and commercial rent payments for small businesses in light of the

458. *Id.* at 902 (citing Roland Behrens, *Capital – Profits – Wages.*, 949 A.B.A. SEC. PROP. PROB. & TR. PROC. 58, 65 (1949)) (emphases supplied).

459. Official Gazette, R.C.C. No. 51 Friday, August 8, 1986, available at <https://www.officialgazette.gov.ph/1986/08/08/r-c-c-no-51-friday-august-8-1986/> (last accessed Aug. 15, 2020).

460. Department of Trade and Industry, Memorandum Circular No. 20-12, s. 2020 [Memo. Circ. 20-12, s. 2020] (Apr. 4, 2020).

COVID-19 crisis.”⁴⁶¹ This may help ease the burden on SMEs with continuing expenses under a lack of income; however, it is imperative that sustainability measures be also accounted for, since moratoriums only provide grace periods for debts, which the SMEs are still bound to pay.

Yet, a query remains unanswered. Given that lockdowns are not designed to end a pandemic but only exist to stall time to further implement health policies and regulations, can the ECQ period ensure the health of the people without “unnecessarily paralyzing local economies over a long period of time?”⁴⁶² This inevitable clashing of economic rights with public health revives the long-standing debate on the premise that without ensuring the right to public health, no other rights would be possible, for public health advances collective rights.⁴⁶³ It is vital to note that the indivisibility of health as a human right is recognized equally in international laws, propelling nations to realize the highest attainable standard of health for all.⁴⁶⁴ This concern was aptly raised by the University of the Philippines COVID-19 Pandemic Response Team, a group of scientists and mathematicians providing for scenario analyses for post-ECQ measures relative to healthcare capacity,⁴⁶⁵ thus —

Crafting of guidelines for an extended ECQ requires foresight, one that is informed by scientific data on estimates of the effectiveness of pandemic control strategies. It requires key metrics that are primarily epidemiological

461. *Id.* § 3. See also Darryl John Esguerra, *DTI imposes 30-day grace period for residential, commercial rent payment*, PHIL. DAILY INQ., Apr. 6, 2020, available at https://newsinfo.inquirer.net/1254708/dti-imposes-30-day-grace-period-for-residential-commercial-rent-payment?utm_medium=Social&utm_source=Facebook&fbclid=IwAR3sShUVG1O6z4UAqn34h57tUsjGZc6FB_U3Rz4MjqglbLw62zokRYsvDoI#Echobox=1586166000 (last accessed Aug. 15, 2020).

462. UP COVID-19 Pandemic Response Team, *Modified Community Quarantine beyond April 30: Analysis and Recommendations*, available at <https://www.up.edu.ph/modified-community-quarantine-beyond-april-30-analysis-and-recommendations> (last accessed Aug. 15, 2020).

463. Meier & Mori, *supra* note 1.

464. See U.N. Committee on Economic, Social, and Cultural rights, *CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, ¶ 2, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000).

465. UP COVID-19 Pandemic Response Team, *Preparing for a Post-ECQ Scenario: Analysis and Recommendations*, available at <https://www.up.edu.ph/preparing-for-a-post-ecq-scenario-analysis-and-recommendations> (last accessed Aug. 15, 2020).

in nature and must be infused with as many scientific points of view as possible.

...

[A]n ECQ covering a wide area may not be sustainable over the long run. Prolonged restriction on the movement of goods and services over a large area (i.e. region-wide) can unnecessarily paralyze local economies. In light of this reality, our best recourse after April 30 is to implement graduated activation of ECQ depending on the level of risk in certain areas at a given time. Under this set-up, provinces (or even lower-level LGUs) may be put under ECQ depending on how close or far they are to an estimated outbreak threshold. This suggestion is made based on our analysis on the trajectory of spread and the severity of its impacts across LGUs, which varies depending on the onset of local transmission, population density, and age-group distribution.⁴⁶⁶

This contention of a possible paralysis in local economies and the unsustainability of subsequent extensions of the ECQ is supported by both global and national financial conditions. The International Monetary Fund (IMF) warns countries globally that the world, in its present status amidst the pandemic, is facing its “worst recession since the Great Depression of the 1930s.”⁴⁶⁷ In the Philippines, certain government agencies have either halted or limited their distribution of cash aids, particularly DOLE and DSWD — leaving millions of Filipinos hanging with little or selective assurance from government due to alleged depletion of funds.⁴⁶⁸ This harrowing declaration came subsequently after the World Bank signed a U.S. \$500 million loan to the Philippines in order to support the Duterte administration in augmenting its “urgent financing requirements arising from the crisis spawned by the 2019 coronavirus disease.”⁴⁶⁹ Accordingly, the Author maintains that while

466. UP COVID-19 Pandemic Response Team, *supra* note 462.

467. Graeme Wearden & Jasper Jolly, IMF: Global economy faces worst recession since the Great Depression — as it happened, *available at* <https://www.theguardian.com/business/live/2020/apr/14/stock-markets-china-trade-global-recession-imf-forecasts-covid-19-business-live> (last accessed Aug. 15, 2020).

468. Tristan Nodalo, Applications for workers’ aid suspended as funding for program ‘close to being depleted’, *available at* <https://www.cnnphilippines.com/news/2020/4/16/DOLE-COVID-Adjustment-Measures-Program-application-suspended.html> (last accessed Aug. 15, 2020).

469. Department of Finance, PHL, World Bank sign US\$500-M loan accord to fight COVID-19, *available at* <https://www.dof.gov.ph/phl-world-bank-sign-us500-m-loan-accord-to-fight-covid-19> (last accessed Aug. 15, 2020).

economic resources are considered in arguing that the law should be tilted favorably for the labor sector, it is undeniable that the concerns of management must also be balanced with the former's plight and must also be taken into consideration. The national government and LGUs, especially amidst a pandemic, cannot be indecisive and scattered by issuing conflicting statements and declarations which only make implementation more arduous and herculean for SMEs. In the face of a global economic recession as announced by the IMF,⁴⁷⁰ there must be concrete actions intended to protect SMEs, lest they fall into bankruptcy during this pandemic.

VI. CONCLUSION: THE WAY FORWARD

In the matter of establishing a crisis government, it is best to consider and appraise well the crisis at hand, and assume such powers and curtail such rights only, as in the exercise of sound judgment would be necessarily required by the crisis. Furthermore, in the excitement and alarm of protecting the existing constitutional order, one should not forget to give due regard to the meaning and implications of a democratic constitutional system.

— Raymundo A. Armovit⁴⁷¹

Juxtaposing the dreaded coronavirus vis-à-vis the people's inherent human rights, the COVID-19 pandemic has led to a strengthened call for state cooperation and national solidarity. Despite its short yet ongoing history of threatening healthcare and wounding economic growth, COVID-19 has proven, in social parlance, to be a "test of societies, of governments, of communities, and of individuals."⁴⁷² In the presence of a havoc-wreaking pandemic, it is necessary to preserve the state and to protect the people's right to health. Hence, governments of all affected states must ensure the provision of adequate healthcare services, timely medical support, and unwavering dedication in servicing COVID-19 related concerns to every single one of its citizens, whether infected by the virus or not, and either served or underserved.

470. Mark Armstrong, IMF declares global recession and doubles the size of its final war chest, *available at* <https://www.euronews.com/2020/03/28/imf-declares-global-recession-and-doubles-the-size-if-its-financial-war-chest> (last accessed Aug. 15, 2020).

471. Armovit, *supra* note 71, at 901.

472. United Nations Human Rights — Office of the High Commissioner, COVID-19 and its human rights dimensions, *available at* <https://www.ohchr.org/EN/NewsEvents/Pages/COVID-19.aspx> (last accessed Aug. 15, 2020).

With these in mind, human rights are maintained only if the national government and local government units ensure due compensation to healthcare workers and volunteers as their line of work demands, and that rights which may contrast measures intended to cull the contagion must be preserved and protected, and violations must be corrected under the rigors of law. As the Constitution dictates, the presence of a national emergency or of a threat to the republic must not undermine the free exercise of the rights of the people, and the government must therefore cautiously examine the provisions of the Bayanihan Act so that enforcement of its powers may not deliberately violate human rights. Lastly, to address current inefficiencies, it is prudent for the national government to invest in health and research, especially in the field of molecular medicine, so that adequate preparations might be set in case another pandemic of this or of greater proportion ensues. Indeed, the call to implement an effective public health strategy vis-à-vis to balance the needs of other strategic players in society within the framework of human rights continues to be a delicate yet interesting issue for all States.