

OF BASELESS ARRESTS AND COVID-19: A TALE OF TWO PANDEMICS*

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When the coronavirus disease of 2019 (“COVID-19”) hit the Philippines, everyone had a common enemy—or at least, that is what we Filipinos thought. Little did we know, we ourselves became the enemy. As the number of COVID-19 cases began to rise, so had the number of individuals arrested, detained, and subsequently deprived of liberty. This is a tale of two pandemics.

After over five months of various scales of lockdown,¹ the number of cases of COVID-19 in the Philippines continues to rise.² While enforcing certain lockdown measures is a common response across nations³ as this pandemic involves a communicable disease with a high transmission rate,⁴ it is only the Philippines that has enforced quarantine measures so strict and for such a long period.⁵ As a result, the Philippines has arrested more community

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¹ Enhanced Community Quarantine (ECQ), Modified Enhanced Community Quarantine (MECQ), General Community Quarantine (GCQ), Modified General Community Quarantine (MGCQ). Omnibus Guidelines on the Implementation of Community Quarantine in the Philippines with Amendments as of July 16, 2020, INTER-AGENCY TASK FORCE FOR THE MANAGEMENT OF EMERGING INFECTIOUS DISEASES (IATF) [hereinafter “IATF Omnibus Guidelines”], *available at* <https://www.officialgazette.gov.ph/downloads/2020/07jul/20200716-omnibus-guidelines-on-the-implementation-of-community-quarantine-in-the-philippines.pdf>

² *Number of COVID-19 cases in the Philippines as of June 29, 2020 according to the Nationwide Cases Data Tracker*, DEP’T OF HEALTH, *at* <https://www.doh.gov.ph/covid19tracker>

³ *Coronavirus: Travel restrictions, border shutdowns by country*, AL JAZEERA, June 3, 2020, *at* <https://www.aljazeera.com/news/2020/03/coronavirus-travel-restrictions-border-shutdowns-country-200318091505922.html>

⁴ Darryl John Esguerra, *PH COVID-19 cases may hit a staggering 60,000 by end of July—experts*, INQUIRER.NET, June 29, 2020, *available at* <https://newsinfo.inquirer.net/1299289/ph-covid-19-cases-may-shoot-up-to-60000-by-end-of-july-experts>

⁵ Jason Castaneda, *Why Duterte won’t lift world’s longest lockdown*, ASIA TIMES, May 15, 2020, *at* <https://asiatimes.com/2020/05/why-duterte-wont-lift-worlds-longest-lockdown>

quarantine violators—reaching 57,177 at the start of June⁶—which is more than the actual number of COVID-19 cases at that time.⁷ Among those commonly violated are the government’s prohibition on “back-riders,”⁸ travelling without the appropriate pass, leaving one’s residence for “non-essential” reasons, travelling outside one’s mandated borders, violating the prohibition on mass gatherings and curfew, among many other measures.⁹

The massive number of arrests was the result of the penalty framework of the pandemic response of President Rodrigo Duterte. The President has declared a national emergency—a “public health emergency”—due to increased local transmission of COVID-19. Thereafter, and with constitutional imprimatur, Congress authorized the President to have emergency powers to employ measures in accordance with a declared national policy. This enabled him to draw up quarantine, isolation, and other economic and healthcare measures to address the emergency. Violations of these measures—on the quarantine, specifically—can allegedly give rise to criminal liability, and even be subjected to warrantless arrests. This paper attempts to show that the penalty framework has weak foothold in law, making the arrests under it illegal.

I. PENALTY FRAMEWORK OF THE COVID-19 RESPONSE

The Constitution and two statutes are the operative bases for the administration’s penalty framework.

⁶ Lian Buan, *2,875 Filipinos still detained for violating quarantine*, RAPPLER, June 1, 2020, at <https://www.rappler.com/nation/262537-pnp-report-detained-filipinos-coronavirus-quarantine-violators-may-31-2020>. This was the last reported number of community quarantine violators from the Philippine National Police.

⁷ Last June 30, 2020, the total number of COVID-19 cases was only at 37, 514. DOH COVID-10 Bulletin # 108, DEP’T OF HEALTH, *available at* <https://www.facebook.com/media/set/?vanity=OfficialDOHgov&set=a.157979910879936>

⁸ Omnibus Public Transport Protocols, DEP’T OF TRANSP. WEBSITE, at <http://dotr.gov.ph/55-dotnews/1339-read-omnibus-public-transport-protocols-guidelines-set-by-the-department-of-transportation-dotr.html>. As of July 10, 2020, the Philippine government lifted the “no back-rider” policy, but only if the back rider is a spouse or a partner, and the mandated protective shield or barrier between the driver and the rider is being used. See Christopher Calivan, *NTF Covid sets more rules for motorcycle back rides*, PHIL. NEWS AGENCY, July 13, 2020, at <https://www.pna.gov.ph/articles/1108755>

⁹ Tetch Torres-Tupas, *What you need to know when arrested for quarantine violation*, INQUIRER.NET, May 22, 2020, *available at* <https://newsinfo.inquirer.net/1279565/what-arrested-for-quarantine-violators-need-to-know>

Republic Act No. 11332 (R.A. No. 11332), or “the Mandatory Reporting of Notifiable Diseases and Health Events of Public Health Concern Act,” is the primary statute when it comes to battling infectious diseases. This was the baseline law for the issuance of Presidential Proclamation No. 922 last March 8, 2020, which placed the country in a “state of public health emergency,”¹⁰ as allowed under R.A. No. 11332:

Section 7. Declaration of Epidemic or Public Health Emergency.—
The Secretary of Health shall have the authority to declare epidemics of national and/or international concerns except when the same threatens national security.

In which case, *the President of the Republic of the Philippines shall declare a State of Public Health Emergency and mobilize governmental and nongovernmental agencies to respond to the threat*.[¹¹

On March 12, 2020, the number of COVID-19 cases doubled in the National Capital Region (“NCR”) in less than a week. In efforts to prevent continuous local transmission, the President imposed a mandatory community quarantine over the entire NCR.¹² Arrests began after this declaration.¹³ The national government was cautioned by lawyers as these arrests would be baseless, with Department of Justice (DOJ) Secretary Menardo Guevarra eventually announcing that the Philippine National Police (PNP) can only physically stop people from continuing their acts but cannot use it as basis for arrest.¹⁴

In response, the President’s declaration of a public health emergency was used as basis for the subsequent authorization by Congress for the President’s exercise of emergency powers. Congress enacted Republic Act No. 11469, or “the Bayanihan to Heal as One Act” (“BaHO Act”), which was subsequently signed into law on March 24, 2020, and remained effective until

¹⁰ Pres. Proc. No. 922 (2020), *available at* <https://www.officialgazette.gov.ph/downloads/2020/03mar/20200308-PROC-922-RRD.pdf>

¹¹ Rep. Act No. 11332 (2018), § 7. Mandatory Reporting of Notifiable Diseases and Health Events of Public Health Concern Act. (Emphasis supplied.)

¹² IATF Res. No. 11 (2020), *available at* <https://www.doh.gov.ph/sites/default/files/health-update/IATF-RESO-11.pdf>

¹³ Robertson Ramirez, *No arrests during community quarantine—DOJ*, PHIL. STAR, Mar. 15, 2020, *available at* <https://www.philstar.com/headlines/2020/03/15/2000937/no-arrests-during-community-quarantine-doj>

¹⁴ *Id.*

June 5, 2020, when Congress adjourned.¹⁵ The BaHO Act operationalized the emergency powers clause under the Constitution:

Section 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.¹⁶

In the Philippines, emergency powers are granted to the President by Congress in order to remove bureaucratic borders of government.¹⁷ Congress is the repository of emergency powers,¹⁸ and this provision allows Congress to delegate certain powers to the President to provide “prompt and speedy solutions”¹⁹ in crisis situations. Such is a deviation from the enshrined principle of separation of powers; and thus, the requisites for its exercise²⁰ must be strictly complied with.

With the BaHO Act, the President was able to impose quarantine measures so long as it falls within the declared policies of Congress²¹ and does

¹⁵ Rep. Act No. 11469 (2020). Bayanihan to Heal As One Act. Though the BaHO Act contains a sunset clause, limiting the exercise to only three months, the BaHO Act can no longer be the basis for the President’s subsequent quarantine declarations and enforcement of measures after June 5 or when Congress adjourned, because the Constitution limits the effectivity of the delegation of powers upon the next adjournment of Congress, unless sooner withdrawn by resolution. Despite this, the IATF continues to release new resolutions under the guise of legality.

¹⁶ Emphasis supplied.

¹⁷ Raymundo Armovit, *Emergency Powers*, 29 PHIL. L.J. 686 (1954).

¹⁸ *David v. Macapagal-Arroyo*, 522 Phil. 705 (2006).

¹⁹ Armovit, *supra* note 17, at 687-88.

²⁰ To be compliant with the Constitution, the case of *David v. Macapagal-Arroyo* provides that the following conditions must be met: (1) There must be a war or other emergency; (2) The delegation must be for a limited period only; (3) The delegation must be subject to such restrictions as the Congress may prescribe; and (4) The emergency powers must be exercised to carry out a national policy declared by Congress. *David*, 522 Phil. 705.

²¹ Rep. Act No. 11469 (2020), § 2 provides: “Declaration of policy—[...] (a) mitigate, if not contain, the transmission of COVID-19; (b) immediately mobilize assistance in the provision of basic necessities to families and individuals affected by the imposition of Community Quarantine; (c) undertake measures that will prevent the overburdening of the healthcare system; (d) immediately and amply provide healthcare, including medical tests and treatments to COVID-19 patients, persons under investigation (PUIs), or persons under monitoring (PUMs); (e) undertake a program for recovery and rehabilitation, including a social amelioration program and provision of safety nets to all affected sectors; (f) ensure that there is sufficient, adequate, and readily available funding to undertake the foregoing; (g) partner

not violate constitutional protections.²² The quarantine measures were drawn by the Inter-Agency Task Force for the Management of Emerging Infectious Diseases (IATF), which recommends via resolution certain actions to the President. The President designates his approval of IATF's resolutions. After which, its implementation is delegated further to the relevant line agencies, government instrumentalities, and the respective local government units ("LGUs").

In implementing the IATF's recommendations, local government units may enact an ordinance through their local legislative councils (like in Caloocan City),²³ by executive order of the chief executive of the LGU (like in Cebu City),²⁴ or in some cases, by memorandum of the mayor merely disseminating the IATF recommendations to be followed by the respective barangays (as is done in Quezon City).²⁵ The only thing that IATF mandates is that curfew hours be imposed via ordinance.²⁶ The IATF's recommendations provide that the imposition of penalties is within the discretion of the LGUs, which may be implemented via the proper ordinance or executive order.²⁷ The variety in which the IATF recommendations are being enforced by the LGUs, however, makes subjecting violators to criminal liability difficult.

Thus, DOJ Secretary Guevarra opined that violations of imposed quarantine measures can generally subject the individual to criminal liability under R.A. No. 11332, the same law that enables the President to declare a state of public health emergency, on the ground of "non-cooperation."²⁸ Guevarra also insists that if an individual "refuses to cooperate with the

with the private sector and other stakeholders to deliver these measures and programs quickly and efficiently; and (h) promote and protect the collective interests of all Filipinos in these challenging times."

²² Rep. Act No. 11469 (2020), § 4(ee).

²³ See Caloocan City Ordinance No. 0865 (2020), available at <http://caloocancity.gov.ph/images/pdfs/ordinance/2020-04-19/StrictImplementation.pdf>

²⁴ See Cebu City Executive Order No. 064 (2020), available at <https://www.cebucity.gov.ph/executive-order-no-64/>; Cebu City Executive Order No. 079 (2020), available at <https://www.rappler.com/nation/262468-document-cebu-city-general-community-quarantine-guidelines>

²⁵ See Quezon City Localized Guidelines (2020), available at <https://quezoncity.gov.ph/index.php/covid-updates/item/899-qc-general-community-quarantine-gcq-guidelines>

²⁶ IATF Omnibus Guidelines, § 8(1).

²⁷ IATF Omnibus Guidelines, § 8(4)-(5).

²⁸ Dona Pazzibugan, *Arrests OK for expanded quarantine violators*, INQUIRER.NET, Mar. 17, 2020, available at <https://newsinfo.inquirer.net/1243843/arrests-ok-for-expanded-quarantine-violators-says-doj>

government drive to limit public movement,”²⁹ the offender can be held liable under Article 151 of the Revised Penal Code for resistance and disobedience to a person in authority.

Based on this framework, the President is empowered to impose any kind of guideline falling within the declared policy of Congress in the exercise of emergency powers and then subject its violation to criminal liability and arrest, though such is neither directly nor specifically provided under the law. This begs the question—is this legal?

II. NATURE OF PHILIPPINE PENAL LAWS: *NULLUM CRIMEN, NULLA POENA SINE LEGE*

To effectively analyze whether the penalty framework for the COVID-19 response of the government is within the bounds of legality, an understanding of the nature of Philippine penal laws is necessary.

Philippine penal laws are primarily classical and positivist in nature.³⁰ What both schools of thought have in common is the fact that certain actions become subject of criminal liability only when it is encapsulated in law, and whatever circumstances that are to be considered in increasing and decreasing liability must be governed by law.³¹

This is an application of the classical school’s principle of *nulla poena sine lege*, otherwise known as the principle of legality.³² This principle was fixed into the discourse of criminal law by Paul John Anselm Feuerbach in his Textbook on Common Penal Law, *viz.*:³³

[E]very infliction of a punishment presupposes a criminal statute. *Nulla poena sine lege*. Because only the threat of the evil by the statute grounds the concept and the legal possibility of a punishment. [...] The infliction of a punishment is contingent on the existence of the

²⁹ Lian Buan, DOJ: Police can arrest violators of Luzon lockdown even if they do not resist, RAPPLER, Mar. 17, 2020, at <https://www.rappler.com/nation/254887-doj-says-police-can-arrest-violators-luzon-lockdown-even-without-warrants>

³⁰ Christine Lao, *Retribution, Rehabilitation, and the Revised Penal Code: Juridical Discourse in the Carceral State*, 73 PHIL. L.J. 258, 292 (1998).

³¹ *Id.* at 299.

³² *Id.*

³³ Tatjana Hörnle, *Paul John Anselm von Feuerbach and his Textbook of the Common Penal Law*, in FOUNDATIONAL TEXTS IN MODERN CRIMINAL LAW 132 (Markus Dubber ed., 2014).

threatened act, [...] and the said act is contingent on the statutory punishment.³⁴

In Philippine law, a similar construction principle is also used—*nullum crimen, nulla poena sine lege*.³⁵ It means that no conduct shall be held criminal unless it is specifically described in law.³⁶ This principle was adopted to limit the State's power to punish, preventing the sovereign to punish an individual arbitrarily. Such is a tenet of the constitutional right not to be deprived of one's liberty without due process of law.³⁷ An offender is only presumed to have known whether certain acts or omissions are actually illegal when such prohibition undergoes the required publication under law.³⁸ It is only with knowledge of its illegality that the State becomes justified in meting out punishment.³⁹ Without the offending act being considered as punishable under the law and with its specific penalty provided therein, the legal fiction of knowledge does not arise, thus becoming a derogation of the right to due process.

A. The Four Aspects of the Legality Principle

In assessing whether a certain statute is compliant with the legality principle, Feuerbach has determined four prongs to take into consideration: (1) *lex praevia*—that there is no penalty without previous laws; (2) *lex scripta*—that there is no penalty without written law; (3) *lex certa*—that there is to be no penalty without well-defined law, and (4) *lex stricta*—that no penalty may be imposed without exact law.⁴⁰ These prongs are applied when the jurisdiction uses a *strict legality approach* with regard to criminal laws,⁴¹ and as will be discussed in this section, such an approach is used in the Philippine jurisdiction.

³⁴ *Id.*, citing PAUL JOHN ANSELM VON FEUERBACH, TEXTBOOK OF THE COMMON PENAL LAW (1801).

³⁵ *Intod v. Ct. of Appeals*, 289 Phil. 485 (1992).

³⁶ *See People v. Silvestre*, 56 Phil. 353 (1931).

³⁷ CONST. art. 3, § 1; *Lao*, *supra* note 30, at 299; *See Tañada v. Tuvera*, 220 Phil. 422 (1985).

³⁸ *Pesigan v. Angeles*, 214 Phil. 149 (1984).

³⁹ *Lao*, *supra* note 30, at 299.

⁴⁰ Hörmle, *supra* note 33.

⁴¹ Jessica Corsi, *An Argument for Strict Legality in International Criminal Law*, 49 GEORGETOWN J. INT'L L. 1321 (2018).

1. *Lex praevia*

This refers to the prohibition of the enactment of *ex post facto* laws and retroactive crimes, as mandated by the Philippine Constitution.⁴² Any law that makes criminal an act performed before the passage of such law is *ex post facto*, and is therefore violative of due process. According to Feuerbach, this is because people cannot be deterred from performing an act that has not been made punishable by law, thereby making it unjust to punish the same retroactively. However, this prohibition is not absolute, and substantive laws may be given retroactive effect—but only when they are favorable to the accused.⁴³ The exception is borne out of the constitutional presumption of innocence.⁴⁴

2. *Lex scripta*

Feuerbach also stated that crimes and sanctions must be defined by written law or statutory law, for it is only through a defined statute that “advance notice” could be given to individuals on whether or not the act which they are about to commit could possibly be punished.⁴⁵

In the Philippines, the requirement that crimes must be in a statute passed by Congress is a necessary implication of the doctrine of separation of powers.

Legislative power is vested in the Congress of the Philippines.⁴⁶ Such is a plenary power for all purposes of civil government. Except as limited by the Constitution, either expressly or impliedly, this plenary power embraces all subjects and extends to matters of general concern or common interest, including the power to deem certain acts as criminal and subject them to penalties, be it in a fine or imprisonment.⁴⁷

In *People v. Maceren*,⁴⁸ the Court laid emphasis on the exclusive power of Congress to enact laws that subject individuals to certain penalties, holding that an administrative issuance that penalizes an act not penalized under statute is invalid. Citing *Texas Co. v. Montgomery*,⁴⁹ the Court held that “to

⁴² CONST. art. 3, § 21.

⁴³ REV. PEN. CODE, art. 22; *United States v. Conde*, 42 Phil. 766 (1922).

⁴⁴ CONST. art. 3, § 14(2).

⁴⁵ Hömle, *supra* note 33, at 145.

⁴⁶ CONST. art. VI, § 1.

⁴⁷ *Ople v. Torres*, 354 Phil. 948 (1998).

⁴⁸ 169 Phil. 437 (1977).

⁴⁹ 73 F. Supp. 527 (1947).

declare what shall constitute a crime and how it shall be punished is a power vested exclusively in the legislature, and it may not be delegated to any other body or agency.”⁵⁰

It must also be pointed out that Feuerbach’s concept of “advance notice” is related to the principle in Philippine law that laws are only enforceable once published in accordance with law.⁵¹ Without the publication requirement being complied with, the law cannot bind individuals without depriving them of due process.⁵² After all, there can be no basis for the application of the legal maxim *ignorantia legis non excusat* (or “ignorance of the law excuses no one”)⁵³ for “it would be the height of injustice to punish or otherwise burden a citizen for the transgression of a law which he had no notice whatsoever, not even a constructive one.”⁵⁴

3. *Lex certa*

Feuerbach’s principle of *lex certa*,⁵⁵ or legal certainty,⁵⁶ provides that “a crime ought to be articulated with sufficiently precise wording so that the criminalized conduct is clear.”⁵⁷ The individual must be able to determine from the wording of the relevant provision and, if need be, with the assistance of the courts’ interpretation, what acts and omissions would make him liable.⁵⁸

The case of *People v. Dela Piedra*⁵⁹ is illustrative of how the principle of *lex certa* is actually tied to the constitutional requirement of due process:

Due process requires that the terms of a penal statute must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. A criminal statute that [...] is so indefinite that ‘it encourages arbitrary and erratic arrests and convictions,’ is void for vagueness. *The constitutional vice in a vague or indefinite statute is the injustice to the accused*

⁵⁰ *Id.*

⁵¹ NEW CIVIL CODE, art. 2.

⁵² *Pesigan v. Angeles*, 214 Phil. 149 (1984).

⁵³ NEW CIVIL CODE, art. 3.

⁵⁴ *Tañada*, 220 Phil. 422.

⁵⁵ Hörnle, *supra* note 33, at 144.

⁵⁶ Corsi, *supra* note 41, at 1334.

⁵⁷ *Id.*, citing Michael Faure et al., *The Regulator’s Dilemma: Caught between the Need for Flexibility and the Demands of Foreseeability—Reassessing the Lex Certa Principle*, 24 ALBANY L. J. SCI. & TECH. 283 (2014).

⁵⁸ Corsi, *supra* note 41, at 1335.

⁵⁹ 403 Phil. 31 (2001).

*in placing him on trial for an offense, the nature of which he is given no fair warning.*⁶⁰

In *People v. Nazario*,⁶¹ the Court emphasized that not only does a vague statute violate the due process clause as it “fails to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid,” but it also “leaves enforcers unbridled discretion in carrying out its provisions and become an arbitrary flexing of the Government muscle.”⁶²

4. *Lex stricta*

The maxim of *lex stricta* is a rule of interpretation that requires a judge to lean towards a strict interpretation when it comes to criminal cases.⁶³ In the application of the facts,⁶⁴ or in the interpretation of the law,⁶⁵ such must be construed in favor of the accused—in *dubio pro reo*.⁶⁶

The *lex stricta* principle also prohibits the application of criminal laws analogously.⁶⁷ In *People v. Siton*,⁶⁸ the Court ruled that, when a provision penalizes an act of a particular class without any reasonable indicators, the court would have to use analogy in its application,⁶⁹ and such would result in “judicial crime creation.”⁷⁰ Since crime creation is an exercise of legislative power, when the judiciary overreaches on that power, it violates the doctrine of separation of powers.⁷¹ This necessitates that the principle of *lex stricta* be strictly adhered to in this jurisdiction.

⁶⁰ *Id.* (Emphasis supplied.)

⁶¹ G.R. No. L-44143, Aug. 31, 1988.

⁶² *Id.*

⁶³ Corsi, *supra* note 41, at 1339.

⁶⁴ *Malillin v. Lopez*, 576 Phil. 576 (2008). When the facts are in equal weight but are conflicting, the Court follows the *equipoise doctrine*: “where the evidence in a criminal case is evenly balanced, the constitutional presumption of innocence tilts the scale in favor of the accused.” *People v. Librias*, G.R. No. 208067, Sept. 14, 2016.

⁶⁵ “The fundamental principle in applying and interpreting criminal laws, including the Indeterminate Sentence Law, is to resolve all doubts in favor of the accused. *In dubio pro reo*. When in doubt, rule for the accused. This is in consonance with the constitutional guarantee that the accused ought to be presumed innocent until and unless his guilt is established beyond reasonable doubt.” *People v. Temporada*, 594 Phil. 680 (2008) (Corona, J., *separate opinion*).

⁶⁶ Corsi, *supra* note 41, at 1337.

⁶⁷ *Id.*

⁶⁸ 616 Phil. 449 (2009).

⁶⁹ *Id.*

⁷⁰ Corsi, *supra* note 41, at 1338.

⁷¹ *Biraogo v. Phil. Truth Comm’n*, 651 Phil. 374 (2010).

III. SCRUTINIZING THE PENALTY FRAMEWORK

As was demonstrated, the strict legality approach is indeed followed in the Philippine jurisdiction. When applied to the penalty framework of the administration, it would merely float on water.

At the outset, the BaHO Act does not contain any indication that Congress has penalized any violations of the measures to be created by the President. It also does not delegate to him any legislative power to subject any individual to any penalty.⁷² All Congress has delegated to the President is the power to undertake the necessary measures to carry out the declared national policy but limited to the guarantees in the Constitution:

Section 4. *Authorized powers.*— [...] The President shall have the power to adopt the following temporary emergency measures: [...] (ee) Undertake 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.*⁷³

By subjecting the measures to be taken by the President to the Bill of Rights and other constitutional guarantees, Congress has expressly prevented the President from overriding the strict legality approach, as the basis of the approach is the constitutional guarantees of due process and separation of powers.

Assuming that there was any delegation of the power to legislate criminal laws, there was no exercise of legislative power on the part of the President in criminalizing violations of quarantine measures. The resolutions of the IATF, as endorsed by the President, did not at any point contain any specific penalty.⁷⁴ Under the lens of *lex scripta*, the lack of sanctions in the resolutions would invalidate its usage as the basis for any criminal offense.

The strict legality approach would also prevent the incurring of criminal liability on the part of violators, even if the local government unit implemented an “ordinance or executive order.”⁷⁵

If the LGU opted to implement the recommendations via executive order or memorandum, this would violate the *lex scripta* requirement which mandates that crimes and their sanctions be contained in a statute. An

⁷² See Rep. Act No. 11469, § 4(a)-(ee).

⁷³ Rep. Act No. 11469, § 4(ee). (Emphasis supplied.)

⁷⁴ See IATF Omnibus Guidelines, *supra* note 1.

⁷⁵ IATF Omnibus Guidelines, § 8(4)-(5).

executive order or a memorandum is not a statute. An executive order is an act of the chief executive providing for the rules of a general or permanent character in implementation or execution of statutory powers, while memorandum orders and circulars are merely instructions on internal administration.⁷⁶ If the penalty was imposed through these issuances, it would not be compliant with the *lex scripta* requirement in Philippine law, and therefore cannot be the basis for any criminal offense.

On the other hand, LGUs which enacted an ordinance but merely “adopted” the IATF recommendations without imposing any penalty, such as Caloocan City, are no better. It would still be a violation of *lex scripta*, as the ordinance fails to include the corresponding sanction, and thus, in itself, cannot be the basis of any criminal liability. In the same vein, local enforcers cannot arbitrarily make citizens perform laborious tasks, such as cleaning up public places under the guise of community service when such a penalty is not in the ordinance itself.⁷⁷

To be able to effectively impose a penalty on community quarantine violations, the LGU must enact an ordinance that sufficiently defines the acts to be penalized in line with the *lex certa* principle and their specific penalties. The ordinance must also comply with substantive requirements: “[i]t (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory; (4) must not prohibit, but may regulate trade; (5) must be general and consistent with public policy; and (6) must not be unreasonable.”⁷⁸

With regard to Secretary Guevarra’s theory, this also falters against the strict legality approach. To interpret that violations of the quarantine measures can be considered as violations of R.A. No. 11332 on non-cooperation is violative of the *lex stricta* principle.

There are two provisions that quarantine violators are generally charged with:

Section 9. Prohibited Acts.—The following shall be prohibited under this Act: [...]

⁷⁶ ISAGANI CRUZ & CARLO CRUZ, PHILIPPINE POLITICAL LAW 388 (2014 ed.).

⁷⁷ Mary Malinao, *As penalty to ECQ violators: Rama questioning community service*, PHIL. STAR, July 11, 2020, available at <https://www.philstar.com/the-freeman/cebu-news/2020/07/11/2027173/penalty-ecq-violators-rama-questioning-community-service>

⁷⁸ *City of Cagayan de Oro v. Cagayan Electric Power & Light Co., Inc.*, G.R. No. 224825, Oct. 17, 2018.

(d) Non-cooperation of persons and entities that should report and/or respond to notifiable diseases or health events of public concern; and

(e) Non-cooperation of the person or entities identified as having the notifiable disease, or affected by the health event of public concern.

As can be gleaned from the two provisions, they are general in nature. Reading the provisions alone would be inadequate to guide any law enforcer as to what would count as “non-cooperation” in either instance. Hence, in construing such, “courts have to take the thought conveyed by the statute as a whole; construe the constituent parts together; ascertain the legislative intent from the whole act; consider each and every provision thereof in the light of the general purpose of the statute[.]”⁷⁹

Section 2 of R.A. No. 11332 provides that the law “endeavors to protect the people from public health threats *through the efficient and effective disease surveillance* of notifiable diseases.”⁸⁰ In the explanatory note of Senate Bill No. 1864, of which R.A. No. 11332 is based on, proponent Senator Risa Hontiveros emphasized that the purpose of the Bill is for the “institution of new policies and regulations pertaining to the *reporting of important public health concerns and the strengthening of disease surveillance systems at the national and local level.*”⁸¹ It mandates the creation of a response system for health events, with the Department of Health assigned to craft these measures and its local units tasked with its enforcement.

Thus, Sections 9(d) and (e) must be construed in this light. Section 9(d) essentially mandates cooperation on the part of those obliged to report on the notifiable and respond to the mandate of DOH. Similarly, Section 9(e) mandates that individuals identified as having the disease or entities who are affected by the public health concern must cooperate with the response system institutionalized by the DOH vis-à-vis reporting of the disease and disease surveillance functions. Nothing in these provisions include violations of border protocols, back riding on motorcycles, and even the prohibition on mass gatherings or other violations of community quarantine as approved by the President.

⁷⁹ Fort Bonifacio Corp. v. Comm’r of Internal Revenue, 617 Phil. 358 (2009).

⁸⁰ Rep. Act No. 11332 (2018), § 2. (Emphasis supplied.)

⁸¹ S. No. 1865, 17th Cong., 3rd Sess., July 4, 2018, *available at* <https://www.senate.gov.ph/lisdata/2809624399f.pdf> (Emphasis supplied.)

One must not stretch the law to convey a meaning different from the one actually intended. To do otherwise would be to punish an individual by analogy, which is proscribed by the *lex stricta* principle under the strict legality approach.

Similarly, Secretary Guevarra's insistence that an individual who violates quarantine protocols could also be liable under Article 151 of the Revised Penal Code for resistance and disobedience to a person in authority is also patently incorrect.

Article 151. *Resistance and disobedience to a person in authority or the agents of such person* - The penalty of arresto mayor and a fine not exceeding One hundred thousand pesos (₱100,000) shall be imposed upon any person who not being included in the provisions of the preceding articles shall resist or seriously disobey any person in authority, or the agents of such person, while engaged in the performance of official duties.

When the disobedience to an agent of a person in authority is not of a serious nature, the penalty of arresto menor or a fine ranging from Two thousand pesos (₱2,000) to Twenty thousand pesos (₱20,000) shall be imposed upon the offender.⁸²

The act being punished under this provision is not the violation of the community quarantine, but the act of resistance and disobedience to the person in authority or an agent of a person in authority.⁸³ It is not the direct disobedience of the community quarantine measures, but the disobedience to the person in authority or his agent when they directly order an individual to comply with a measure set by the government.⁸⁴ Hence, if the individual were to be arrested due to his violation of a community quarantine measure, and he resists the arrest, the charge under this provision would be unfounded. It bears emphasis that one of the requisites for this charge is that there be a "lawful order."⁸⁵ Considering that the violation of community quarantine is not a crime, the arrest cannot be considered a lawful order.

From this analysis, it is clear that the penalty framework of the government is hinged not on emergency powers or the BaHO Act, or any other national law or issuance for that matter, but on the enactment of a procedurally and substantively compliant ordinance by the LGU. Without

⁸² REV. PEN. CODE, art. 151, as amended by Rep. Act No. 10951 (2017).

⁸³ *Vytiaco v. Ct. of Appeals*, 126 Phil. 48 (1967).

⁸⁴ *Id.*

⁸⁵ *Sydeco v. People*, G.R. No. 202692, Nov. 12, 2014.

this, the framework falls apart. Thus, it is unprecedented to arrest, criminally charge, and penalize as many as 57,177 individuals nationwide when the basis is not as clear cut as it is being made out to be.

The community quarantine—which is essentially a lockdown⁸⁶—has left 4.2 million families hungry⁸⁷ and 7.3 million Filipinos jobless.⁸⁸ Gearing the government response towards the mass arrest of violators not only exacerbates the suffering of Filipinos, but also makes those who are detained in the already-cramped jail facilities more vulnerable to COVID-19.⁸⁹ Despite that, the government is still intent on ensuring that community quarantine violators are arrested, regardless of such arrest's lack of basis.⁹⁰

More than a tale of two pandemics, this is a tale of two tragedies—one caused by COVID-19, and the other being the government's own creation, with only the Filipino people as its victims.

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⁸⁶ Sofia Tomacruz, *What is 'enhanced community quarantine' and will it work?*, RAPPLER, March 14, 2020, at <https://www.rappler.com/newsbreak/iq/254521-things-to-know-community-quarantine>

⁸⁷ CNN Philippines Staff, *SWS survey reveals 4.2 million families suffered involuntary hunger amid COVID-19 pandemic*, CNN PHIL., May 22, 2020, at <https://cnnphilippines.com/news/2020/5/22/sws-survey-four-million-families-involuntary-hunger-covid-pandemic.html>

⁸⁸ Melissa Luz Lopez, *7.3 million Filipinos jobless in April amid COVID-19 pandemic – PSA*, CNN PHIL., June 5, 2020, at <https://www.cnnphilippines.com/business/2020/6/5/unemployment-April-2020-COVID-19.html>

⁸⁹ See Nina Sun & Livio Zilli, *COVID-19 Symposium: The Use of Criminal Sanctions in COVID-19 Responses – Exposure and Transmission, Part I*, OPINIO JURIS, April 3, 2020, at <http://opiniojuris.org/2020/04/03/covid-19-symposium-the-use-of-criminal-sanctions-in-covid-19-responses-exposure-and-transmission-part-i>

⁹⁰ See Aaron Recuenco, *Arrest quarantine violators in Cebu City*, MANILA BULLETIN, June 29, 2020, available at <https://news.mb.com.ph/2020/06/29/arrest-quarantine-violators-in-cebu-city-gamboa/>; Consejo Marquez, *Sinas to police chiefs; Find bigger detention areas for large arrests of GCQ violators*, INQUIRER.NET, June 30, 2020, available at <https://newsinfo.inquirer.net/1299558/sinas-to-police-chiefs-find-bigger-detention-areas-for-large-arrests-of-gcq-violators>