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National Responses for Persons Deprived of Liberty during the COVID-19 Pandemic in the Philippines

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ABSTRACT

The main purpose of this paper is to review the national responses for persons deprived of liberty (PDLs) during the coronavirus disease 2019 (COVID-19) pandemic in the Philippines. The researcher discusses the major responses that have been carried out such as easing the rules on parole grant and executive clemency, providing human consideration to the vulnerable segments, and improving the corrections facilities health management. These responses are expected to decrease the growth of virus infection inside the corrections facilities, protect the condition especially of the vulnerable segments, and ensure the overall safety of the community. This paper specifically recommends for the need to expand the virtualization of judiciary functions to the provincial zones, place the release of the vulnerable segments in priority order, and technically improve the health management of corrections. However, as current responses may just represent temporary measures due to the crisis, this paper further urges for responses that will eventually lead to long-term decongestion of corrections facilities or reduction of the perennially high prison population of the country.

KEYWORDS

persons deprived of liberty; corrections facilities; COVID-19 pandemic; Philippines; Covid-19; Pandemic; Alternatives to incarceration; Early release mechanisms; Prison reform

Introduction

The world continues to grapple with the crisis brought by the COVID-19, a respiratory syndrome caused by a new strain of coronavirus. As of July 26, the World Health Organization (2020) reported a total of 15,581,009 confirmed positive cases across the globe. There is no codified treatment that has been discovered to cure the infection but authorities have long distinguished the importance of physical distancing as one of the approaches to prevent the virus transmission. However, in closed environments of corrections facilities such as jails, prisons, detention centers, and community corrections, people have no option but to share inadequate spaces and spend most of their time locked in the cells. Thus, the recommended physical distance is almost an impossible measure in these areas plagued by structural challenges. When one is exposed to the virus, the entire corrections facilities become fragile grounds of concentrated infections. A population that has become vulnerable, especially in countries with a congested penal system like the Philippines, is the group of PDLs.

As a background for the term based on the Mandela rule, prisoners shall be called PDLs who, under the guideline of the United Nations, are entitled to minimum humanitarian

treatment (Echeminada, 2017). Under Article 10 of the International Covenant on Civil and Political Rights that provides for the respect for the essential dignity of the human person, the term PDLs is adopted with the purpose that such neutral term will prevent branding by the use of derogatory words like “prisoner” and others. The new term PDLs in the Philippines appeared in the Revised Implementing Rules and Regulations, according to Section 23 of Republic Act No. 10575, otherwise known as the “The Bureau of Corrections Act of 2013.” It legally defines PDLs as “detainee, inmate, or prisoner, or other person under confinement or custody in any other manner.”

The Philippine penal system is considered as one of the most concentrated systems in the world (McCarthy, 2020). Based on the relevant data gathered from the World Prison Brief (2020), an increasing trend in the prison population of the country can be observed. In 2012, the total prison population was 106,323 with a prison population rate of 111. In 2016, the total prison population increased to 142,168 with a prison population rate of 140. In 2019, the total prison population ultimately reached 215,000 with a prison population rate of 200. The present national prison population cannot be accurately determined at the moment but based on available data, the Bureau of Corrections reported the congestion rate in its facilities at 310% in January while the Bureau of Jail Management at 534% in March (Cabrera & Nonato, 2020). This overcrowding has since been exacerbated by the drug war program that has seen thousands sent to prison. Because of the upward trend in the national prison population, which is aggravated by the deplorable structural condition of the corrections facilities, there has been a public expression of heightened fears that the spaces occupied by the PDLs may soon emerge as the epicenter of the COVID-19 infection (Santos, 2020).

Looking at the COVID-19 epidemiological status of the country, the surge of COVID-19 cases began when quarantine measures eased up. As of reports on July 15, the total national COVID-19 infection was recorded at 70,764 confirmed positive cases, including 45,646 active cases, 23,281 recoveries, and 1,837 deaths. When accounting for the number of COVID infection in the corrections facilities supervised by the Bureau of Jail Management in about the same period, there are 1,086 confirmed positive cases which include 180 active cases, 895 recoveries, and 11 deaths (Sajid, 2020). It should be noted that it does not include the cases in the corrections facilities under the Bureau of Corrections. There is further a concern that the real number of cases could be higher as some authorities were unable to establish the cause of the recent mortality of some PDLs who died inside the facilities (Siu, 2020). As of this September 10, the COVID-19 figures of the country recorded 241,987 confirmed positive cases with 52,893 active cases, 185,178 recoveries, and 3,916 deaths (Umali, 2020). It can be observed, however, that there have been no reports of a significant increase in corrections facilities nationwide.

Amid the COVID-19 crisis overwhelming many parts of the world, the United Nations Office on Drugs and Crime (2020) has issued a position paper for the safety of the confined population of PDLs as well as workers and officers who are involved in ensuring their custody. It underscored the rights of PDLs to equal care standards and suggested the adoption of alternative measures without prejudice to their legal status. Recalling its past stance, it urged countries to respond to overcrowded corrections facilities and ease imprisonment measures so that states can assume its responsibility of care when removing people of their right to liberty. At the national level in the Philippines, there have also been urgent calls to safeguard the PDLs. Many human rights individuals and groups such as Amnesty

International (2020), Human Rights Watch (2020), and Commission on Human Rights (2020) have demanded the authorities to take immediate measures such as decreasing the population in corrections facilities and improving the access to medical services.

A discussion of the various responses for PDLs confined in the corrections facilities amid the COVID-19 crisis has been globally provided emerging attention in research (e.g., Cingolani et al., 2020; Franco-Paredes et al., 2020; Hawks et al., 2020). A particular attention to the national responses for PDLs amid the COVID-19 crisis is significant for some reasons especially in countries with challenging structural contexts like the Philippines. For one, it will primarily assess the possible impacts of these national responses with consideration of the complex situation of overcrowded jail system in the country and the current COVID-19 crisis. If such a research goal is achieved, it will draw recommendations for the improvement of future responses. The researcher believes though that with or without the current crisis, it should be a top concern for the government to decongest the corrections facilities or reduce the prison population of the country whether by structurally expanding such facilities or developing measures to efficiently release the PDLs.

Thus, the overall purpose of this paper is to discuss the national responses for PDLs during the COVID-19 pandemic in the Philippines.

National responses for PDLs during COVID-19 pandemic

When responding to the current crisis in the corrections facilities, the equilibrium between human rights and public health is a complex issue. Three key national responses have been undertaken and are continuously being considered by the government to secure the conditions of PDLs amid the COVID-19 pandemic. The data collected from various reports show that the accumulated numbers of the released PDLs were 9,731 in May; 21,858 in July; and 58,625 in August (Cabrera & Nonato, 2020; Sajid, 2020; Macairan & Porcalla, 2020).

Easing the rules on parole grant and executive clemency

Given the current crisis and the need to decongest the corrections facilities, specified measures such as early, temporary, or conditional release of PDLs with consideration of the gravity of the charge are being most often considered in the decision spaces. The Philippine government, in connection, has been easing the rules on parole grant and executive clemency to facilitate these measures. It has approved simplified rules for probation and parole and released guidelines on the reduction of bail for indigent PDLs (Patinio, 2020) and adopting remote processes.

As a result, in May, it was initially reported that 9,731 PDLs have been released. These are PDLs for crimes punishable with the incarceration of 6 months and below (Siu, 2020). Moreover, based on the data of released PDLs in July, there were 15,102 paralegal releases through bail, bargain, parole, or probation. At the same time, 6,756 were legal releases through acquittal or served sentence (Sajid, 2020). The most recent data in August further showed that the total number of released PDLs has increased to 58,625. However, these numbers should be carefully analyzed within the context of regional differences. It should be noted that such a response just mostly occurred in the regions of Metro Manila, Calabarzon,

Central Luzon, and Central Visayas which have the highest confirmed virus cases (Macairan & Porcalla, 2020).

Moreover, to support the continuity of the judiciary functions as a further response to hasten the release process of the PDLs amid the crisis, the government has initiated efforts to conduct video conference hearings. Through the European Union and its Governance in Justice program, 70 units of laptops have been distributed to the Supreme Court. Additionally, 120 units of tablets have been provided to the Bureau of Jail Management to facilitate the participation of the PDLs in the video conference hearings (GOJUST, 2020).

Amid the calls and responses to release the PDLs, there is another side of the issue arguing that simply releasing them has other unintended possible impacts to the community. It is known that PDLs in the country suffer from contagious health problems either caused or worsened by congestion. For example, tuberculosis is widespread, although authorities have always repelled questions about how many PDLs are infected or how much of the mortality rate can be attributed to the disease. Thus, simply releasing them without proper medical attention may place far more people at risk to the community (The Manila Times, 2020). At any normal rate, employment for released PDLs is a huge challenge. Thus, with the reported surge of national unemployment rate caused by the crisis, the conditional or final release of PDLs without assistance for entry into the labor market would just add to the jobless population.

If the response to make the justice process efficient for PDLs is coupled with assistance for medical treatment and economic entry, it is expected to curb the immediate concern on virus transmission at the same time. It can be both a desirable human rights policy and public health policy. On one hand, it will efficiently resolve cases given due process under existing laws. On the other hand, it will address the perennial problem on congestion, thus feasibly make the recommended physical distance possible inside the corrections facilities.

Providing human considerations to the vulnerable segments

Furthermore, another response to decongest the corrections facilities is the temporary arranged release of vulnerable segment of PDLs based on humanitarian grounds. These vulnerable segments of PDLs include senior citizens, sick people, persons with disabilities, and pregnant women who are considered at high risk of virus infection. It also includes the children in conflict with the law, offenders of low risk, and other persons arbitrarily detained (Patinio, 2020).

From March until July, it was reported that a total number of 21,858 PDLs in the Philippines have been released to prevent the spread of the COVID-19 in the different corrections facilities. Of this total number, 409 were senior citizens, 621 were sick people, and 24 were pregnant women (Sajid, 2020). The scheduled release of some children in conflict with the law in detention centers has been coordinated earlier with the high court (Abad, 2020). The record of the recent release of 58,625 PDLs included children in conflict with the law as well as PDLs who have served the least of their prison terms (Macairan & Porcalla, 2020).

Aside from contributing to the reduction of the population inside the corrections facilities, this response will specifically improve the condition of this vulnerable segment of PDLs such as senior citizens, sick people, persons with disabilities, and pregnant women. They must have already suffered because of their physiological status and exacerbated by

psychological anxieties caused by the high risk of virus infection. Thus, their conditional release will greatly diminish their burdens.

Improving the corrections facilities health management

While all PDLs cannot be released and to protect corrections workers and officers, various national agencies and private organizations have combined efforts to improve the health management in corrections facilities. For one, since the government has started an expanded testing program, it has also been working with appropriate authorities to implement “targeted testing” in corrections facilities (Santos, 2020). This response and others have primarily aimed to provide PDLs access to medical care including access to preventive, curative, and palliative services.

Specifically, the Bureau of Jail Management has intensified measures in institutional corrections. For example, in one of the most critically infected provincial jails, it has gathered swab samples of PDLs and officers, established isolation centers, and strengthened contact tracing (Gregorio, 2020). The accumulated number of tests administered in corrections facilities is not recorded, but there has been a significant increase in the daily national testing capacity which covers several corrections facilities. Furthermore, the World Health Organization, International Committee of the Red Cross, and the Department of Health have also been closely working to provide technical expertise and establish quarantine facilities for the infected PDLs (See, 2020).

As with response for PDLs in community corrections, there have been few reports and mostly focused on the response for PDLs in drug treatment and rehabilitation centers. The drug treatment and rehabilitation centers are an important component of the Philippine Correctional System which ensures community corrections especially for the PDLs involved in illegal drugs. As a measure of COVID-19 control after their reported closures in the previous months, the Dangerous Drugs Board (2020) has implemented prevention protocols in the admissions in drug treatment and rehabilitation facilities all over the country. Such new restriction necessitated for engineering controls like isolation corners and ventilation facilities. Essential environmental controls were also implemented such as sanitation and disinfection of all areas. The facilities have been urged to meet visitation guidelines, provide personal protective equipment, and observe physical distance.

Given that such a response in institutional and community corrections facilities will be continuously provided attention, the safety not only of the PDLs but also of the outside community will be secured. It should be noted that virus infection in corrections facilities is also a menace to workers, officers, and visitors, which can potentially lead to virus transmission to the outside community. Thus, the management of the corrections facilities is a concern not only of the penal system but also of the outside community.

Conclusion

It should be underscored that the state must uphold the rights of its citizens regardless of their legal status especially in times of social crisis. This paper provides a discussion as regards the national responses for PDLs during the COVID-19 pandemic in the Philippines. The most often used measure specifically involves early, temporary, or conditional release. This measure is hastened by responses such as easing the rules on parole grant and executive

clemency, providing human consideration to the vulnerable segments, and improving the corrections facilities health management. Considering that there will be continued national responses undertaken by the authorities, it is expected to have positive implications in connection to addressing the current crisis. These responses are hoped to decrease the growth of virus infection inside the corrections facilities, improve the condition especially of the vulnerable segments, and ensure the overall safety of the community.

Furthermore, looking back at the available numbers gathered and discussed in this paper, if the previous prison population and the recent number of released PDLs are to be considered, a significant decrease of around 25% in the prison population can be estimated. This decrease can be remarkably attributed to the recent national responses. However, considering the earlier negative stance of the solicitor general and justice secretary on the release of prisoners amid the crisis (Cabrera & Nonato, 2020), such a decrease in prison population may only represent a short-term reduction. It should be further noted that most of the releases occurred in four regions with the highest confirmed positive virus cases (Macairan & Porcalla, 2020), indicating that the government may primarily be just responding to the immediate danger posed by the current crisis. With this matter on hand, there is still a significant need for national responses that will eventually lead to long-term decongestion or reduction of the prison population all over the country in the future. The current national responses being considered to present a timely signal for all offices and agencies of the government to address this need.

Overall, this paper recommends for the continued inclusion of the PDLs, as well as workers and officers, in the current government decision spaces not only to combat the COVID-19 crisis but also to decongest the corrections facilities or reduce the prison population in the country. Specifically, the following recommendations, anchored also on pieces of evidence of good practices in other countries, are offered:

- (1) There is a need to expand the virtualization program of the judiciary functions to the provincial zones. This measure has been implemented in countries like the UK and the USA which were badly impacted as early as the acute phase of the crisis. Such a measure included allowing civil procedures in magistrate courts to be conducted through a telephone and using online live links in criminal procedures (Zou, 2020). This measure in the Philippine context, considering challenges in technological access, can be addressed through cross-sectoral engagements with organizations that have a shared vision for enhanced governance especially judiciary functions.
- (2) More efficient actions are required to immediately release the vulnerable segments of PDLs such as the senior citizens, sick persons, pregnant women, and youth in conflict of the law. The initiative has been ordered by authorities in countries with a similar case of overcrowded penal system (e.g., Matengo, 2020 on the release of female and older PDLs in Uganda) and high level of virus transmission rate (e.g., Carneiro et al., 2020 on the release of medically compromised and older PDLs in Brazil). These vulnerable segments in the Philippines must be prioritized also as far as their physiological and psychological needs are concerned.
- (3) Technical improvement of the health management of the corrections facilities must be continuously supported to prevent the possible new wave of virus infection. For example, Clarke et al. (2020) reported the government initiative in Ireland to establish an approach of contact tracing in prisons in which all prisons, and two support agencies, have fully operative internal teams that conduct contact tracing

and manage quarantine procedures among the PDLs. On the other hand, as more PDLs are released in the Philippines, there is also a demand to improve the community corrections that will supervise them once they are outside.

Disclosure statement

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