EMPOWERING SURVIVORS IN THE ASIAN CLIMATE
BATTLEGROUND: PROPOSING A CRIMINAL JUSTICE MODEL
FOR CRISES AFTER CALAMITIES

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ABSTRACT

Criminal justice mechanisms are often overlooked in the crafting of laws, rules and policies related to disaster risk reduction, response and management. This leads to the detriment of citizens in communities ravaged by calamities, for they are doubly victimized, first by the consequences of the natural phenomena, and second by the ineffectuality of the criminal justice system in their locale in the chaos following the storm. This paper examines the effects of such oversight in Asia. In particular, it analyzes legislation and jurisprudence related to the intersection of disaster law and criminal law, and how it has failed in the aftermath of the strongest storm to ever make landfall in history. Applicable not only to the Philippines but also to greater Asia, it recommends best practices and key policies for stronger criminal justice mechanisms to take effect in the aftermath of natural calamities, in order to prevent abuses on the accused, support community rehabilitation and ultimately uphold human rights.

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A. INTRODUCTION

“It’s time to change the mindset that natural disasters are inevitable.”

Gordon McBean

When we think of natural disasters, we often refer to them as unstoppable or inevitable. After all, what are humans in the face of the forces of nature? That is why it proves to be an interesting idea when UN Secretary General Kofi Annan noted that we have to differentiate a calamity from a disaster, stating that it is only a disaster when states fail to recognize their vulnerabilities and are unable to effectively prepare for incoming onslaughts. While natural phenomena can give birth to a host of potential calamities, they need not turn into outright disasters. Planning, preparation and proper execution remain key factors in order to prevent injustice from being wrought unto citizens in the aftermath of a natural calamity. In other words, while calamities cannot be prevented, it is in human hands for disasters to be averted.

One such aspect of problems confronting communities after a natural calamity pertains to criminal justice. Any established community requires the imposition of order; it is important therefore to have a strong criminal justice system in place after a natural calamity. This is because criminal cases lie at the heels of natural and man-made calamities, accidents and disasters, violating even the most basic of all human rights. It is the State’s duty to prevent these violations, by ensuring sufficient government compliance and ability to intervene in citizen affairs when necessity demands.

But this is easier said than done. The question remains: how we deal with criminality in the aftermath of a natural calamity?

This paper analyzes key criminal justice policies and their implementation in the wake of catastrophes. In particular, it zooms in on a number of examples from all around Asia. One of them is Tacloban City, one of the urban areas directly hit by Typhoon Haiyan in 2013, which scientists claim as “the worst storm to ever make landfall in history”, and where reports of crime

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1 Report of the Secretary General to the General Assembly, “On international cooperation on humanitarian assistance in the field of natural disasters, from relief to development,” A/60/227.


were widespread ipso facto.\textsuperscript{4} In contrast, it looks at similar post-calamity examples, including Myanmar after Cyclone Nargis in 2008\textsuperscript{5} and East Japan after the 2011 earthquake.\textsuperscript{6}

Not only does the paper provide a critique of Philippine disaster laws in relation to natural disasters, it also recommends best practices from around the world which can applicable in the local setting, advocating for policy modifications at the level of both local and national government in relation to disaster risk reduction, response and management, particularly in the Asian region.

**B. METHODOLOGY**

The objective of the paper is to propose a criminal law model which is applicable in the aftermath of a natural calamity. It should be properly responsive and address both the immediate and long-term concerns as outlined in this article. To meet this main objective, it looks at the general international literature concerning natural calamities, including statistics, policies and recommendatory papers in order to provide an overview of how disasters shape development. In addition, it looks at criminal justice in the wake of public disorder from an multinational setting, and draws best practices which could be applied across cultures and jurisdictions.

It makes use of the case study approach by zooming in on various localities after a natural disaster, and identifies the requirements of the community when it comes to addressing concerns of criminal justice after a calamity.

From these data analysis, adopting the Critical Research in Information Systems (CRIS) framework, the article then provides general guidelines which could assist in the crafting of legislation and policy at the intersection of disaster law and criminal justice, which not only uphold the rights of the accused and the victim, but also assist in long-term inclusive development of the community.


C. AN ASIAN CLIMATE BATTLEGROUN

Around the world, the frequency of hydro meteorological natural disasters, those which refer to storms, floods and other weather-related disturbances, has been increasing, with Asia suffering the worst of these effects. In fact, the Asian Development Bank notes that natural disasters are “four times more likely to affect people in Asia and the Pacific than those in Africa, and 25 times more likely than those in Europe or North America.” The past two decades have seen humongous economic losses due to natural disasters to the tune of US$927 billion, and this in Asia alone. In contrast, damages amount to an approximate US$956 billion during the same period in the Americas, Europe, Africa and Australia all combined. Indeed, it is very important for Asian countries to revisit key policies regarding disaster risk reduction, response and management. In the same vein, it is equally necessary for them to do so with a focus on criminal justice, as this affects public order in the communities affected by calamities, and can translate to sociopolitical and economic damages even long after the storm has passed.

The Philippines provides for an excellent case study when it comes to the intersection of laws on natural disasters and criminal justice. Lying in the middle of the Ring of Fire, this archipelagic country suffers an average of 200 to 250 earthquakes on any given day, and is at risk from eruptions from its 22 active volcanoes all around the islands. In addition, it is squarely nestled in the Pacific Typhoon Belt, with an average 19 to 21 typhoons passing through the Philippine Area of Responsibility (PAR) on any given year. While this number is more or less uniform in the coming years, the 2013 Intergovernmental Panel on Climate Change Report

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8 Id.

9 Id.


estimates that cyclone intensity will dramatically increase, resulting to more super typhoons in certain areas, including the Philippines.\textsuperscript{13}

The UN International Strategy for Disaster Reduction (ISDR) ranks the Philippines 12\textsuperscript{th} out of 200 countries based on the Mortality Risk Index (MRI) pertaining to natural disasters. On the other hand, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) rank Filipinos second in the world when it comes to vulnerability to these natural calamities.\textsuperscript{14} This could be due to the fact that not only is the Philippines in a geographically dangerous location, it is also suffering from both overpopulation and extreme poverty,\textsuperscript{15} which drive crime rates up regardless of the presence of a natural calamity.\textsuperscript{16}

Truly, the Philippines is a climate battleground, with the indomitable human spirit on one side of the ring, and the majestic forces of nature on the other. With climate change an undisputable and inevitable fact, this battleground is set to expand to greater Asia, predicted to wreak even greater havoc. It is therefore wise to be prepared, analyzing existing policies in order to create newer, better ones, in order to facilitate the resilience of communities to be affected by these calamities. This we do by examining Philippine criminal justice laws, rules and policies, evaluating their efficacy, and providing recommendations for improvement which could prove useful not only to the Philippines but also to other Asian countries as well who share comparatively similar legal systems.

**D. TACLOBAN AFTER HAIYAN: A CASE STUDY OF CRIMINAL LAWS POST-DISASTER**

The United Nations Office for Disaster Risk Reduction identifies a disaster as “a serious disruption of the functioning of a community or a society involving widespread human, material,
economic or environmental losses and impacts, which exceeds the ability of the affected community or society to cope using its own resources.” The ASEAN Agreement on Disaster Management and Emergency Response more or less adopted this definition, and characterized them these as damaging to “human life, health, property or the environment.” The Inter-Agency Standing Committee, a inter-agency forum involving UN and non-UN humanitarian partners, defined natural disasters as the “consequences of events triggered by natural hazards that overwhelm local response capacity and seriously affect the social and economic development of the region.” Regardless of these varying definitions, it is clear from their phraseology that to bring order to the community after a natural disaster through sound criminal justice policies would be a huge leap towards mitigating its negative impacts.

Philippine jurisprudence in criminal law is replete with legislative enactments pertaining to periods prior to, during and after a disaster, whether it be considered an Act of God or man-made.

Premiere among them is the Revised Penal Code. Despite being promulgated in 1930, it remains good law up to present. For one, it imposes a heavier penalty on an act committed “on the occasion of a conflagration, shipwreck, earthquake, epidemic or other calamity or misfortune,” considering it as an aggravating circumstance, which in turn imposes a heavier penalty on the person of the accused.

Several crimes are also qualified when their commission is attended by a natural calamity.


18 Association of Southeast Asian Nations, ASEAN Agreement on Disaster Management and Emergency Response, art. i(3) (2005); International Federation of the Red Cross, Introduction to the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, 11 (2008), at http://www.ifrc.org/what/disasters/idrl/resources/guidelines.asp cited in Id.


21 Act No. 3815 (1930), Art. 14 §7.
These include crimes against property\textsuperscript{22}, in particular that of theft\textsuperscript{23} \textit{vis-à-vis} robbery.\textsuperscript{24} Homicide may also be qualified as murder when the accused takes advantage of “an earthquake, eruption of a volcano, destructive cyclone, epidemic, or other public calamity” to commit the crime, punishable by \textit{reclusion perpetua}\textsuperscript{25} to death.\textsuperscript{26}

In all previous cases, when the circumstance of a public calamity is attended by other qualifying circumstances, it will then be considered as \textit{generic aggravating}\textsuperscript{27}, similarly imposing a heavier penalty upon the accused.\textsuperscript{28}

The Revised Penal Code also provides a dual system of punishment and reward for convicts who are unwittingly given the opportunity to escape on the occasion of a natural calamity. It penalizes those who escape and do not willingly return with an additional $\frac{1}{5}$ fraction of their remaining penalty\textsuperscript{29}; in contrast, it grants a $\frac{2}{5}$ diminution of the \textit{total} sentence to be served when the person chooses to remain in one’s cell, despite their ability to leave.\textsuperscript{30}

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\textsuperscript{22} “Robbery and theft are both crimes against property; however, they differ in that an essential element of robbery is the employment of violence or intimidation of any person, or force upon anything. The latter type of crime is arguably more common after a natural disaster, particularly since the act of looting usually involves violence and entry “through a opening not intended for entrance or egress,” or “by breaking any wall, roof, or floor or breaking any door or window.”” Lifted directly from Chad Osorio, \textit{When Order has Fallen: Philippine Criminal Justice in the Aftermath of Natural Calamities}, unpublished manuscript.

\textsuperscript{23} Act No. 3815 (1930), Art. 310. See also Luis B. Reyes, \textit{THE REVISED PENAL CODE: CRIMINAL LAW} (2008). According to Justice Reyes in his commentary of the Revised Penal Code, the elements of theft are as follows:
1. That there be taking of personal property
2. That said property belongs to another
3. That the taking be done with intent to gain
4. That the taking be done without the consent of the owner
5. That the taking be accomplished without the use of violence against or intimidation of persons or force against things

\textsuperscript{24} \textit{Id.}, Art. 293, \textit{vis-à-vis} Chap. 3, § 1.

\textsuperscript{25} \textit{Id.}, Art. 76. \textit{Reclusion perpetua} lasts from 20 years and 1 day in prison to 40 years.

\textsuperscript{26} Rep. Act No. 9346 (2006). The death penalty is currently prohibited by law.

\textsuperscript{27} People v. Dueno, G.R. No. L-31102 (1979)

\textsuperscript{28} Act No. 3815 (1930), Art. 62.

\textsuperscript{29} \textit{Id.}, Art. 158.

left momentarily but came back within 48 hours after the cessation of the cause of the public calamity is entitled to a reduction of 1/5 of the total sentence to be served.\textsuperscript{31}

Interestingly, the Revised Penal Code, while being more than 80 years old, has seen very few case laws which apply its provisions pertaining to public calamities, despite both the high number of crimes and the high number of natural disasters in the country.

Despite exhaustive analysis, it is clear that Philippines laws focused on or related to natural disasters rarely discuss criminal justice in the aftermath of a calamity. From Presidential Decree No. 1566, which was passed in 1978 and which created the National Disaster Coordinating Council (NDCC)\textsuperscript{32} to the Climate Change Act, which created the Climate Change Commission,\textsuperscript{33} to the most recent Republic Act No. 10121, otherwise known as the “Philippine Disaster Risk Reduction and Management Act,”\textsuperscript{34} precious little headway has been made to address criminal justice concerns in the wake of disasters.

In the aftermath of natural calamities, peace and order should become the primary concern. And yet, existing disaster risk response, rehabilitation and management policies make little mention of these terms. ‘Crime’ and ‘criminal’ never appeared in the law itself. ‘Peace’ has been mentioned only to refer to the peace process in Mindanao.\textsuperscript{35} Further textual analysis show that even the word ‘order’, which is essential in any post-disaster community, has not been given enough attention. It has never been used as a noun to refer to the much-needed rehabilitation after a natural calamity; instead, its linguistic utilization has been limited to its form as either an adverb\textsuperscript{36}, a noun to describe command or instruction\textsuperscript{37}, or a compound preposition coupled with an infinitive as its object\textsuperscript{38}.

\textsuperscript{31} Act No. 3815 (1930), Art. 98.

\textsuperscript{32} Pres. Dec. No. 1566 (1978), Strengthening the Philippine Disaster Control, Capability, and Establishing the National Program on Community Disaster Preparedness.


\textsuperscript{34} Rep. Act No. 10121 (2010).

\textsuperscript{35} Rep. Act No. 10121 (2010) §§ 2(i); 5(p).

\textsuperscript{36} “Orderly transitions”. \textit{Id.}, §3(j).

\textsuperscript{37} “Executive orders”. \textit{Id.}, §28.

\textsuperscript{38} “In order to”. \textit{Id.}, §§ 2(i); 3(e) (l) (o); 6(a); 21 §2; 22(c).
The law itself provides prohibited acts and penalties before, during and after a calamity\(^\text{39}\), but it is limited only to that, as no discussion has been made regarding enforcement and the agency mandated to do so. The local police force, being victims themselves, can hardly be counted on to focus on this task.

A look at the Implementing Rules and Regulations reveal a similar gap. While Rule 9 allows private individuals to volunteer their help via accreditation and training,\(^\text{40}\) this does not include in its ambit the maintenance of peace and order. Interestingly, when it comes to Disaster Response under the National Disaster Risk Reduction and Management Plan\(^\text{41}\), the Department of Social Welfare and Development takes the lead role.

<table>
<thead>
<tr>
<th>Outcome</th>
<th>Lead agencies</th>
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<tbody>
<tr>
<td>Well-established disaster response operations</td>
<td>DSWD</td>
</tr>
<tr>
<td>Adequate and prompt assessment of needs and damages at all levels</td>
<td>Disaster Risk Reduction and Management Councils (DRRMCs), Office of Civil Defense &amp; DSWD</td>
</tr>
<tr>
<td>Integrated and coordinated Search, Rescue and Retrieval (SRR) capacity</td>
<td>Department of National Defense (DND), DILG &amp; Department of Health (DOH)</td>
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<tr>
<td>Safe and timely evacuation of affected communities</td>
<td>Local Government Units (LGUs)</td>
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<tr>
<td>Temporary shelter needs adequately addressed</td>
<td>DSWD</td>
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<tr>
<td>Basic social services provided to affected population (whether inside or outside evacuation centers)</td>
<td>DOH</td>
</tr>
<tr>
<td>Psychosocial needs of directly and indirectly affected population addressed</td>
<td>DOH</td>
</tr>
<tr>
<td>Coordinated, integrated system for early recovery implemented</td>
<td>DSWD</td>
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While it is not discounted the essential role that the DSWD plays in the aftermath of a calamity, it is equally noteworthy that the Department of Interior and Local Government, which

\(^{39}\) Id., §§ 19; 20


\(^{41}\) Id., Rule 7.
retains control and supervision over the Philippine National Police 42 has no clear directive in how peace and order is to be maintained in the affected communities during the key crucial period immediately following a natural disaster. Instead, their mandate is limited only to search, rescue and retrieval.

The Secretary of the Department of Justice also plays no key role in the NDRRM Plan, albeit being a permanent member of the National Council. 43 This despite the clear fact that communities which have been victimized by natural disasters “immediately need legal assistance in areas such as housing, insurance, disaster relief programs, lost documents, and the criminal justice system.”44

E. AREAS FOR IMPROVEMENT OF CURRENT DRRRM LAWS

“If strong measures to control law and order are not in place before a disaster or emergency, civil unrest and looting and other crimes are likely to increase after a disaster or emergency,” notes foreign jurisprudence.45

This statement has been spot-on in the case of the Philippines. Typhoon Haiyan, known locally as Typhoon Yolanda, cost a staggering US$5.8 billion.46 It affected more than 2 million families in 44 provinces, and weeks after it swathed through the Visayas region, thousands of families still remain displaced.47

The dire situation, extreme need and the lack of resources resulted to a reports of lawlessness and crime, particularly in communities where food supplies ran low and there was no

44 Chiaki Ota, Legal Humanitarian Assistance: Instituting Disaster Response Clinics and Law Firm Engagement, 19 Geo. J. on Poverty L. & Pol’y 515 (2012) New Orleans and the failure of its criminal justice system after Hurricane Katrina is a well-documented example in the international setting. Not only were convicted felons able to flee from jail, hundreds who awaited trial waited months, or even up to a year, in incarceration for such minor infractions as parking tickets and other offenses punishable by a maximum of six months. In Brandon L. Garrett & Tania Tetlow, Criminal Justice Collapse: The Constitution After Hurricane Katrina, 56 Duke L. J. 127 (2006).
visible order. Homicide, murder and physical injuries were prevalent, victimizing even unsuspecting minors. Communities lived in fear of militants and escaped convicts, as reports of looting, raiding and raping abound. Even supply vans catering to the victims of the natural disasters did not escape the attention of armed men.

Interviews on the ground reveal that right after the storm, eleven detainees took the opportunity to escape. Warning shots were fired, which prevented more from fleeing, but when nighttime came, more of them took advantage of the broken facilities and broke out of jail. The morning after, a head count revealed that a total of 360 detainees got away. After that, there were reports of rape, robbery, and looting, all attributed to the detainees who fled their cells.

While there were victims outside the penal walls, the same held true for those who remained inside them, though for different reasons. Because of red tape and the bureaucratic processes, prisoners who chose to remain inside their cells for minor crimes were detained even

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longer than the actual sentences that were to be imposed upon them, taking months of additional incarceration.\textsuperscript{52} In some cases, even up to a year.\textsuperscript{53}

Outside the prison cells, it was chaos, at least for the first few days. Due to the lack of manpower, the local police force could do precious little. It was only after reinforcements arrived from the Special Armed Forces (SAF) that they were able to confiscate looted goods. However, they could not detain criminals for long, nor could they file cases, as there were no local prosecutors present.\textsuperscript{54}

Reports from international media noted the weak presence of the national government,\textsuperscript{55} which drew heavy criticism from all sides of the political spectrum.\textsuperscript{56} Years after, government programs are still criticized on its poor handling of rehabilitation efforts in Tacloban, some of which come from the locals themselves.\textsuperscript{57} While police reports intend to show a more stable political environment in Tacloban now due to reduced crime rates,\textsuperscript{58} it is undeniable that so many violations of rights happened in the period immediately after Typhoon Haiyan, violations which could have been easily preventable had the national government taken steps to do so.

The same thing happened in other Asian countries after a particularly strong natural disaster. The aftermath of Cyclone Nargis, for example, reported incidents of violence and

\begin{itemize}
\item[\textsuperscript{53}] Phone interview with Philippine National Police- Tacloban Chief Domingo Cabillan (March 13, 2016) (unpublished transcript on file with the author).
\item[\textsuperscript{54}] Id.
\end{itemize}
looting. The situation was dire enough that it was feared that mass riots would break out.\textsuperscript{59} The 2004 tsunami in Aceh, Indonesia, was similarly catastrophic. Brigadier-General Ito Sumardi reports that the tsunami “destroyed the entire criminal justice system and anything that survived was in total chaos.”\textsuperscript{60} Half the police stations were wiped out by the wave, and more than 1,500 policemen were missing.\textsuperscript{61} The rest of the surviving policemen could not report for duty.\textsuperscript{62} Because of this vulnerability, criminals have set their sights on targeting the tsunami victims.\textsuperscript{63}

It is clear that a number of criminal justice systems in Asia have failed to take into account a model which can be adapted in the wake of a natural disaster. But how can we improve this, and how can other countries which are in danger of experiencing similar dilemmas, prevent these problems from happening?

F. PROPOSING A CRIMINAL JUSTICE MODEL IN THE AFTERMATH OF NATURAL CALAMITIES

In crafting any criminal justice policy, we must ensure that it complies with international obligations, particularly those related to human rights. After all, criminal justice mechanisms have been identified as “a principal source of grave human rights violations.”\textsuperscript{64} We must take note of this in order to prevent victims of natural disasters to be doubly-victimised by the criminal justice system of their respective countries, whether they be the accused or the complainant in a criminal case.

In truth, this is supported by international law. The Operational Guidelines on Human Rights and National Disasters strongly recommends that first and foremost, order must be established following a calamity.\textsuperscript{65} It is therefore imperative upon the State to strengthen its


\textsuperscript{61} Id.

\textsuperscript{62} Id.


\textsuperscript{65} Espenilla, \textit{supra} note 19.
criminal justice system in the event of such disasters and plan for contingencies with respect to
criminal justice implementation. This necessarily includes how the persons of the accused are
being detained.

It is an established fact that the detainee does not lose his humanity, and ergo his human
rights, once he has been incarcerated. That is why the State should still keep in mind that under
Article 11 of the International Covenant of Economic, Social and Cultural Rights (ICESCR),
State Parties have the obligation “recognize the right of everyone to […] adequate food, clothing
and housing, and to the continuous improvement of living conditions.” UN Guiding Principles
further qualify that these must be readily available, accessible, acceptable and adaptable. They
make no special distinction regarding detainees, and so the governments must comply to take
care of them the same way that they care of everyone in the community affected by natural
disasters.

Furthermore, under the International Covenant on Civil and Political Rights (ICCPR), it
requires that “all persons deprived of their liberty shall be treated with humanity and with respect
for the inherent dignity of the human person.” Failure to so amounts to gross negligence, and
not only be considered as mass infringement of human rights, but also amount to a state crime.
Such was the case in Budayeva v. Russia, where the European Court of Human Rights (ECHR)
ruled that mismanagement of a calamity has resulted in gross violations of human rights. The
same can be argued for the mismanagement of a criminal justice system in the aftermath of a
natural hazard. This is not even to mention that when arrest or detention has exceeded the
mandate of the law, the ICCPR also allows an enforceable right to compensation.

At the regional level, countries like the Philippines, Myanmar and Indonesia, as part of
the Association of Southeast Asian Nations (ASEAN), have agreed to abide by the ASEAN
Human Rights Declaration (AHRD). It is a non-binding declaration, but nevertheless lays a social
framework by which member-countries can uphold human rights. In any case, some of its key

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66 Committee on Economic, Social and Cultural Rights, CESC General Comment No. 3: The Nature of State


68 ICCPR Art. 10.1


70 ICESCR Art. 9.5
Tenets are already considered legally-binding under customary law, including those under the ICESCR, the ICCPR, the Convention on the Elimination of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC).

Based on some of the best legal practices and disaster policies around the world, particularly with regards to criminal justice implementation, one of the ways by which criminal justice policies after a natural disaster can be properly upheld is by proper contingency planning. This necessarily includes extended training for law enforcement officers and community actors, as well as members of the Bar and the Bench, in order to better manage the criminal justice system in various eventualities in the wake of calamities.

The creation and invocation of mutual assistance pacts can also be instrumental in keeping order not only during the immediate post-disaster period, but generally in all instances of mass disorder. This applies both at the macrosocial and microsocial levels: pacts can be made between not only between states, but also between local law enforcement agencies. When it comes to international relations, these pacts take the form of bilateral and multilateral treaties, accompanied by reciprocal obligations to lend assistance whenever required. At the community level, local governments can enter into similar obligations. This is essential particularly during the initial post-calumity period, when the local government is disabled, assistance from the national government is far away, and external help is much needed.

These mutual assistance pacts may encompass a variety of things, from basic resources like food, water and medicine, to assistance in setting up rehabilitation centers, to manpower and supplies for immediate medical assistance and relief. More than that, however, law enforcement officers may be temporarily assigned from one local government to another, providing interim support and lending peace and order on the ground.

71 This proposal was initiated by the National Advisory Commission on Civil Disorders, otherwise known as the Kerner Commission, to address a series of riots due to intense racial issues during the Johnson Administration. In NAT’L ADVISORY COMM’N ON CIVIL DISORDERS, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 15–16 (1968). In Garrett, supra note 45.

72 “The Philippines, in particular, enjoy these potential benefits with the ASEAN and the United States, to name just two, with the reciprocal obligation to send help when a co-party to the agreement is similarly imperiled.” Lifted directly from Chad Osorio, When Order has Fallen: Philippine Criminal Justice in the Aftermath of Natural Calamities, unpublished manuscript.

73 This statement has been made in reference to federal aid given to states affected by calamities, but may also be applicable in the Philippine settings to local government units vis-à-vis the national government. In Garrett, supra note 45.
This is particularly appreciated and effective especially when the majority of the members of the local law enforcement are victims of the calamities themselves. As such, the latter cannot then be expected to focus solely on duty. Law enforcement colleagues from other local governments can lighten the heavy and unexpected workload, help boost morale, and ultimately assist in facilitating a return to normalcy.

More law enforcement officers on the ground can also serve to deter crimes even before they occur. Visibility is important. However, arrest, particularly in the wake of natural calamities, should “be used sparingly during an emergency to maintain order rather than resort to mass arrests.” This entails changing the ‘arrest mindset’.

In the Philippines alone, the situation for both the accused and the convicted is extremely dire, where congestion rates for penal institutions go as high as 310%. It is therefore imperative to minimize incarceration in order to declog jails and prisons. More so after a natural calamity, when resources turn even more scarce. As for the detained, instead of being productive citizens, they are often reduced to unutilized humanpower, if not unfed or unattended in violation of their human rights. Southeast Asia has a particularly high number of overcrowded prisons, including Indonesia, Vietnam, Thailand and Sri Lanka. Other Asian examples include Bangladesh, with a 302.4% occupancy rate, and Pakistan, with 249.5% occupancy rate.

Alternatives to arrest include roving patrols to boost police visibility, clear and unequivocal warnings, and confiscation of looted items. Only in extreme cases should arrests be made.

However, it is a fact that despite these precautionary measures, crimes will still occur and arrests will still have to be made. In these instances, though, must the rights of the accused

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74 Garrett, supra note 45.


prevail more than ever, in order to prevent them from being abused by the layers of bureaucracy of the system.

It has been suggested that a revised set of criminal procedure will kick in only in the event that a situation has been classified as a public disaster. This is meant to uphold the constitutional rights of the accused, vis-à-vis the special circumstances surrounding the commission of the crime, and the imposition and service of the sentence. It posits that during times of unrest, disorder or natural disaster, the accused should be entitled to their rights, with the national government to mandate the following:

1. Require the state corrections department and prosecutors to make promptly available names and locations of all inmates to defense counsel and families;
2. Conduct prompt triage hearings to release non-felony offenders, for whom due process should prevent indefinite detention, and waive or reduce statutory bail;
3. For more serious offenses, insist that prompt hearings be held in which prosecutors decide whether to charge or accept guilty pleas with probation (to be supervised for evacuees in their new homes);
4. Ensure full access to counsel at detention facilities;
5. Conduct prompt hearings to ascertain adequacy of indigent defense counsel, solicit volunteer counsel if there is a shortage of local counsel, and evaluate the institutional adequacy of the indigent defense office;
6. Insist on compliance with charge deadlines and speedy-trial deadlines, and if there is no compliance, entertain writs of habeas corpus—with priority for misdemeanor detainees.78

In order to properly accomplish these, it is also ideal to create emergency criminal courts in the wake of calamities, meant to hasten criminal justice administration.79

“[E]mergency courts could provide a clearinghouse for such subjects as planning for transfer of prisoners; tracking and making public updated contact information for defense attorneys and prosecutors; making public lists of prisoners and where they are located; monitoring hearings; ensuring adequate indigent defense; ensuring court deadlines are

78 Kerner Commission, supra note 72.

79 Id.
complied with; safeguarding records and evidence; and supervising efforts to locate witnesses and evidence.”

The importance of focusing on criminal courts cannot be more emphasized, as it is usually those detained in jails and prisons whose human rights stand to suffer the most during their period of detention. Much more so when chaos abounds, and they become doubly victimized: first from the natural calamity, and second from the treatment they receive during incarceration. Family members are also indirectly victimized, with the agony of fending for themselves and ignorant of the plight of the accused languishing behind cell walls.

In the emergency criminal courts lies the power of discretion to release detainees based on the evidence against them, as well as hold that an accused be held further by virtue of a strong legal basis to do so, issuing warrants or commitment orders as may be required. The creation of these emergency criminal courts will then have a two-fold effect: it can immediately set free those detained who are guilty of minor offenses or those with no strong legal basis for their incarceration, and; further protect the general public by keeping the effort and resources of the

80 Garrett, supra note 45.

81 In the United States, where there is a solid body of documentation, human rights abuses of prisoners are rampant after a natural calamity. There have been cases of prison transfers where the inmates’ medical records were not forwarded, and necessary medications were not administered. See ACLU NATIONAL PRISON PROJECT, Abandoned and Abused: Orleans Parish Prisoners In The Wake Of Hurricane Katrina, Aug. 13, 2006 <http://www.aclu.org/pdfs/prison/oppreport20060809.pdf> accessed April 18, 2017. Failure to inform counsel and families where these prisoners have been transferred indefinitely also constitutes violations of constitutional rights. Bounds v. Smith, 430 U.S. 817, 828 (1977); Richmond Newspapers v. Virginia, 448 U.S. 555 (1980) In Garrett, supra note 45.

“A year after the storm, prison officials, public defenders and law school clinic students continued to locate hundreds of inmates who had yet to see a lawyer or a judge.” In Garrett, supra note 40, citing Gwen Filosa, Pledge to release detainees unmet: Frustrated judge orders report on indigents’ cases, Times-Picayune, Aug. 31, 2006, at B1.
local law enforcement agencies into keeping the truly dangerous criminals in check and behind bars.  

Of course, though, criminal justice is not only about retribution nor punishment; ideally, it should nip crimes in the bud. Poverty and extreme need has been pointed to as key factors in the likelihood of crime, most particularly robbery and looting, after a natural disaster. It is essential then to provide the proper mechanisms by which immediate relief and long-term rehabilitation can flourish, and establish effective means for socioeconomic alleviation. This includes more efficient management of aid, proper resource allocation, and swift action on the part of the national and local government.

G. CONCLUSION

Disaster risk response, rehabilitation and management laws are intricately weaved with the criminal justice system. However, in the chaos of the wake of a calamity, this intersecting aspect of the law tends to be easily forgotten, not realizing that sturdy criminal justice mechanisms could actually assist in relief and rehabilitation efforts both by the local and the national government.

With the advent of greater hydrometeorological disasters coming the way of Asia due to rapid climate change, it is clear that we have to prepared for all eventualities. We have to learn then from the example of the dearth of criminal justice policies in particular countries in Asia to respond better to crises after calamities. This means that DRRRM policies must incorporate into its way of thinking criminality in the wake of disaster, and must make space for key recommendations to protect the most basic of all constitutional and human rights embodied in criminal law. These include more training and contingency planning at the community level, including mutual assistance pacts. It also envisions the creation of emergency criminal courts,

82 In post-Haiyan Tacloban, hundreds of looting suspects were released as no charges were filed, thus they cannot be detained for more than 18 hours. In the Philippines, this scenario of untimely release of convicts is likely to happen again in areas ravaged by calamities if no charges are filed or no court issues warrant of arrests. See Joey Gabieta, Tacloban cops release 100 lootings suspects as no charges filed, Inquirer.net, Dec. 6, 2013 <http://newsinfo.inquirer.net/541793/tacloban-cops-release-100-lootings-suspects-as-no-charges-filed> accessed April 18, 2017.

Recorded cases of this also happened after Typhoon Katrina in New Orleans. Police officers simply released people they have apprehended, taking only photographs of them with their loot, hoping to arrest them later with a warrant. See Dan Baum, DELUGED: When Katrina hit, where were the police?, New Yorker, Jan. 9, 2006 <http://www.newyorker.com/magazine/2006/01/09/deluged> accessed April 18, 2017.

with a different set of criminal procedure, and efforts to change the ‘arrest mindset.’ Lastly, relief
must be given equal effort and opportunity as peace and order: effective socioeconomic
alleviation *can* curb crimes.

The convergence of disaster law and criminal law entails not only substantial preparation
but also a change of mindset; this could be the key to preventing natural calamities from turning
into full-pledged disasters.