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## Legal empowerment approaches in the context of COVID-19

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### ABSTRACT

Emerging data reveals the COVID-19 pandemic's disproportionate impact on historically marginalized communities. Drawing on in-depth interviews with legal empowerment practitioners, this article explores case studies of three communities (in Argentina, India, and the United States) that highlight a grassroots approach to tackling injustice during COVID-19. The article finds lasting insights for human rights practitioners and scholars, with the concepts of translation, trust, and transformation integral to disrupting power structures and creating pathways for communities to become the authors of their own justice and liberation.

### Introduction

The COVID-19 pandemic has triggered chaos across the globe, with governments struggling to reduce the spread of the virus amid rising challenges to human rights (Human Rights Watch 2020). Emerging data reveal the pandemic's disproportionate impact on the historically marginalized communities of black and brown people, Dalits and indigenous peoples, women, and people with disabilities (Devakumar, Bhopal, and Shannon 2020). These disparities are fueled by structural inequalities that deny people their human rights, including a right to access justice.<sup>1</sup> In 2019, a staggering 5.1 billion people were found to lack meaningful access to justice (Taskforce on Justice 2019). COVID-19 exacerbates this justice gap, with marginalized communities experiencing a pandemic within a pandemic of inequality and oppression.

In the midst of this devastating challenge, a grassroots approach to justice offers hope. Legal empowerment—a rights-based methodology that centers people in their own fight for justice—creates opportunities for people to “know, use, and shape” the laws that impact their lives (Satterthwaite *forthcoming*). These methods are a form of community immunity against injustice—parallel to the sought-after herd immunity to COVID-19 (Kwok, Lai, Wei, Wong, and Tang 2020).

In this article, we seek to understand how legal empowerment approaches to tackle injustice during COVID-19 may yield lasting insights for human rights scholars and practitioners. We open with a background on legal empowerment and human rights. Next, we explore the concepts of translation, trust, and transformation through three case studies carried out during the time of the COVID-19 pandemic, with informal settlement communities in Buenos Aires, Argentina, in New Delhi, India, and among undocumented communities in Chicago, the United States. The case studies are based on in-depth interviews<sup>2</sup> with members of three legal empowerment organizations and analysis of their resources: the Asociación Civil por la Igualdad y la Justicia (ACIJ) in Argentina, Nazdeek in India, and Organized Communities Against Deportation (OCAD) in Chicago. The case studies reveal that in both ethos and practice, the organizations remain rooted

to acts of translation, trust, and transformation as essential drivers for building grassroots power and advancing justice.

This article is based on the spirit, labor, and dedication of these resilient communities; we highlight this work with humility and gratitude (Hung 2017).

## Legal empowerment and human rights

Institutions regularly empower formal experts (such as lawyers, academics, or policymakers) to make decisions that impact the human rights of communities without their meaningful participation. Legal empowerment strives for a different world, one in which power structures are contested and disrupted, and directly impacted people become the authors of their own justice and liberation (Dhital 2018). Proponents of this approach believe that those closest to a problem are closest to a solution, and recognize lived experience as essential expertise (Dhital 2018). Lawyers and other formally trained individuals are seen as valuable partners in the fight for justice, with communities driving the decision-making process.<sup>3</sup> Legal empowerment takes many forms, including community paralegal programs, know-your-rights workshops, accompaniment programs, community-driven litigation, and community-driven campaigning efforts (JusticePower 2020a).

The field has iterated and evolved, drawing insights from trade union (Levi 2003) and feminist movements (Ackerly 2018), which saw the “emancipatory power of popular education and therefore embedded rights awareness with self-reflection and collective action” (Feruglio 2017: 6). It also finds roots in anti-apartheid movements, in which women community paralegals partnered with lawyers, NGOs, and churches to document violations, provide legal assistance, and bear witness to the injustice endured by communities of color (Dugard and Drage 2013).

Legal empowerment emerged as a principal strategy to increase access to justice and achieve sustainable development (Golub 2003; Gisselquist 2019). The term gained prominence with the 2008 UN Commission on Legal Empowerment of the Poor (CLEP),<sup>4</sup> which defined legal empowerment as “the process through which the poor become protected and are enabled to use the law to advance their rights and their interests” (2008: 26). CLEP anchored legal empowerment in the “basic principles of human rights articulated in the 1948 Universal Declaration of Human Rights (UDHR)—and the subsequent universal and regional international human rights conventions” (2008: 20). It underlined that all people have the right to access justice without discrimination, and that states must take positive steps to make this promise real for all (CLEP 2008). Meaningful participation was seen as essential to protecting this right, with former Special Rapporteur for Extreme Poverty and Human Rights Magdalena Sepúlveda linking the right to participation with empowerment, and describing it as a “key human rights goal and principle” (2012: 6). Legal empowerment was thus understood as both a means of realizing human rights and an end in itself (US Agency for International Development 2007).

Today more than 2,300 organizations are part of a global network dedicated to legal empowerment (Namati 2020), with a growing community of organizations moving beyond an approach to providing “access to justice” in conventional terms, toward embracing grassroots power as key to achieving social transformation.

## Three case studies: Translation, trust, and transformation

During the COVID-19 pandemic, we sought to explore how legal empowerment organizations were responding to the justice crisis. What strategies did they use to build power and advance justice as marginalized communities suffered under the weight of SARS-CoV-2? Did their work pivot in response to new and old forms of discrimination fueled by state and social responses to the virus? Through in-depth case studies with organizations in Buenos Aires, New Delhi, and

Chicago, we found remarkable levels of symmetry despite varying social, economic, political, and cultural contexts. Central to all of the work was community partnerships grounded in acts of translation, trust, and transformation. We argue that these components are foundational to shifting power, building individual and collective agency, and protecting human rights.

Translation flows: It democratizes laws and legal systems into a language that communities can understand, while also creating pathways for communities to share their lived realities and demand justice. Trust is a practice of vulnerability: It is an act of inclusive decision making and is foundational to thriving relationships between organizations and community partners. Transformation is both present and future: It is an active process through which individuals and communities reclaim their power, and in so doing reimagine and rebuild systems that work for everyone. Although all three organizations practice translation, trust, and transformation, the case studies explore each practice through the lens of a single organization.

### **Translation: *Asociación Civil por la Igualdad y la Justicia***

Founded in 2002 and based in Buenos Aires, ACIJ is an organization of lawyers, researchers, and activists dedicated to defending the rights of marginalized people and developing participatory and deliberative practices of democracy in Argentina. It engages in grassroots legal education, strategic litigation, action-research, and advocacy, and works with communities living in *villas*—informal settlements in Buenos Aires. The *villas* have a long history of political and social mobilization, with social movements organizing for public policies and a right to stay for nearly a century (Blaustein 2001). Today, people in the *villas* face profound housing insecurity and lack basic amenities such as water, electricity, and internet infrastructure (Mesel and Vitale 2019). Essential supplies are provided through *referentes sociales*—social leaders of local organizations who obtain public and private support to provide food and promote community health and solidarity (Mesel and Vitale 2019).

The first case of COVID-19 in Argentina was recorded on March 3, 2020 (*Buenos Aires Times*, 2020). In the weeks to follow, the virus spread rapidly in the *villas*, with cases doubling every seven days, compared to every 10 days in the city at large (Buenos Aires Ciudad 2020). Although *villas* make up only 10 percent of the city's population, at one point 46.8 percent of total COVID-19 cases were from the *villas*, with some neighborhoods within the *villas* reporting 70 percent positivity rates (Buenos Aires Ciudad 2020). Elena was one of these diagnoses. A social leader and member of *Bajo Autopista*—a collective of women resisting relocation as a result of the city's urbanization plan—Elena saw fear, hunger, and sickness escalate without an adequate government response. There was a breakdown in communication and translation was necessary. *Bajo Autopista* reached out to ACIJ for support.

### **Translation in action**

Translation spans the literal act of translating words from one language to another to the “vernacularization” (Merry 2006) of the law into a language that is accessible, and the “localization” of concepts (Mattingly 2019) to connect them to the lived experiences of a community. Translation is an essential piece of ACIJ's work, as exemplified by the legal empowerment course involving social leaders across the *villas*. Known as the School of Human Rights: Villas (Slums) and Legal Empowerment Strategies, this four-month course covers the social and political history of the *villas*, human rights of *villa* dwellers, and strategies to protect those rights. The course translates laws and policies into a language that is understandable to members of the community and draws on lived expertise to craft resistance strategies. A WhatsApp group created at the end of the course encourages ongoing exchange and collaboration.

Once COVID-19 hit the *villas*, the WhatsApp group became more active, with social leaders sharing public health information and government responses to the pandemic. ACIJ, in conversation with the community, saw the need for urgent translation. The organization pivoted and held five virtual webinars on COVID-19 with more than 70 community members. These interdisciplinary trainings covered public health and sanitation measures, rights and benefits linked to COVID-19, and legal tools to address rights violations. ACIJ also created a resource that outlined rights connected specifically to the pandemic, such as a moratorium on evictions and entitlements to specific social security benefits for families during the crisis.

Translation does not only flow to community, it also flows out from community. As Felipe Mesel (2020), a lawyer with ACIJ reflected, “With legal empowerment, communities seize the right to translate.” Community data justice projects are one such example. In these projects, communities collect, analyze, and translate data that lay the foundation for individual and systemic demands (Davis 2020). These efforts have been described as “community resilience, the power of collecting and sharing our stories, and the possibilities of community self-defense” (Our Data Bodies 2019). ACIJ recognizes that data are a “contested terrain in a political debate over who counts, who does the counting, and who gets counted” (Davis 2017: 1145), and that people who are “uncounted” are rendered invisible, creating “a data paradox, in which invisibility reinforces lack of resources and services” (Davis 2017: 1157).

People living in the *villas* suffer from invisibility, with a lack of data on their conditions reinforcing exclusion and, in turn, a denial of basic services (Castro 2014; Petty, Saba, Lewis, Gangadharan, and Eubanks 2018). ACIJ, in partnership with the community, saw an opening to change this, by creating a way for small data to “draw ... on the problems faced by real people” in order to “help identify the problems that matter to a community” and to “shape the best ways to address those problems” (Burnett and Walker 2018).

In 2014, ACIJ launched the *Caminos de la Villa* project, a participatory mapping effort of the *villas*. ACIJ later approached Google, which added a functionality to enable communities to collect data and upload the information onto Google Street View.<sup>5</sup> The resulting maps were incorporated into official maps, and community members felt legitimated and seen, a crucial step toward recognition within the public agenda.

In the next phase, community members began documenting the lack of public services on the participatory map. The data were used for litigation, human rights documentation, and advocacy. The project also mapped the city’s urbanization plans. Whereas the government of Buenos Aires had described the plans as a vehicle for getting formal services into informal settlements, *Caminos de la Villa* demonstrated that urbanization was only occurring in areas where property value was high (ACIJ 2020a). This participatory data-gathering exercise also served as a vital truth-telling tool.

Once COVID-19 hit the *villas*, ACIJ saw the power of using *Caminos de la Villa* to highlight the disparate impact of the virus within the city. Relying on official government statistics, the site shows the disproportionate number of cases within the *villas* as compared to other parts of the city (ACIJ 2020b). *Caminos de la Villa* reveals a broken system, with the map itself (created by and for community) enabling the visualization of discrimination and exclusion.

### Trust: Nazdeek

Founded in 2012 and based in New Delhi, Nazdeek fuses grassroots legal education, community monitoring, legal remedies, research, and advocacy to bring justice closer to marginalized communities in South Asia. The organization is a collective of women activist-lawyers, researchers, and community paralegals—community justice workers who act as a bridge between the legal system and the community. Nazdeek focuses its work in the urban settlements of New Delhi, tea

plantations of Assam, and garment factories of Tamil Nadu, with the aim of advancing the rights of indigenous and Dalit communities.

Baprola is one of these settlements. Baprola sits on the outskirts of Delhi and was selected by the government as a site for relocation of thousands of families evicted from their *basti* or slum (Misra 2019). Despite the law and government plans mandating otherwise, these disproportionately poor and Dalit families were relocated from the city center to an area without schools, hospitals, ration shops (local food distribution centers that provide government-subsidized food grains to poor people), or employment opportunities (Misra 2019).

Members of Nazdeek learned of Baprola in 2015, while working in a nearby informal settlement, and approached community members to explore a legal empowerment project. Since then, Nazdeek has trained more than 25 women paralegals on rights-based frameworks, helping to build their skills to document, monitor, and file complaints. Nazdeek has also partnered with community members to file strategic litigation and has offered advocacy support. Together, they have pressured the government of India to set up a local health clinic and nutritional centers, to improve water and sanitation delivery, and to appoint community health workers.

### **Trust in action**

In spring 2020, Seema was the first community paralegal to call Nazdeek. She said there was a food emergency in Baprola due to the lockdown issued by the Indian government as the COVID-19 pandemic ensued. Families were hungry and scared, and she wondered if Nazdeek could step in. Just days before, as the number of confirmed COVID-19 cases in India reached approximately 500, the entire country was ordered into a sudden, complete shutdown (Gettleman and Schultz 2020). Indian police authorities enforced the lockdown with use of force (Gettleman and Schultz 2020). Hundreds of thousands of daily-wage migrant workers in Delhi became jobless and began walking home to their villages across the country (Pandey 2020). Hunger skyrocketed, with numerous ration shops suddenly shuttered without warning; the few open were unable to meet the increased demand (*The Wire* 2020). Although Seema knew that Nazdeek did not itself carry out relief work, she also knew that the organization was driven by community needs.

Nazdeek's work is rooted in trust. Developing and maintaining trust is essential for communities and organizations to work together to advance justice (Schoorman, Mayer, and Davis 2007). Trust is built and fostered through open and shared decision making (Colquitt and Rodell 2011). Lawyers and other formal practitioners must recognize their privilege and power, and open up space for communities to engage and ultimately lead decision-making processes.

Lam Ho, the founder and director of the US-based legal empowerment organization Beyond Legal Aid, describes the trust-building process as a "willingness to be vulnerable" that involves a "depowering of lawyers," along with an "un-learning" of roles and "admit[ting] what we do not know" (JusticePower 2020b). Nazdeek similarly strives to address these dynamics, although caste and class hierarchies render this a continual work in progress. As an organization with lawyers and researchers (some of whom are not directly impacted by the same risks faced by community members), Nazdeek's staff recognize the asymmetries of power and the need to center community expertise. This is where trust comes in.

Based on community demands, Nazdeek pivoted in the wake of the COVID-19 lockdown in India and contacted donors to secure funds to deliver emergency relief kits. The relief work ran from March to May 2020, involving intensive planning and coordination with partner organizations: Ultimately, nearly 20,000 people received essential supplies. By mid-May, once ration shops and health clinics began reopening due to civil society pressure, Nazdeek again pivoted to address legal issues arising from the pandemic. This time the call was from Geeta, another paralegal in Baprola. She shared that the community had registered its first confirmed COVID-19 case. She stressed the attendant lack of information and fear of spread due to the settlement's dense

population. Nazdeek decided to conduct a remote training that would cover public health safety measures as well as pandemic-related rights and resources.

Nazdeek held the training on July 2, 2020, with six community paralegals and two community organizers. Several test runs of the video technology were carried out to ensure adequate video and audio quality, and to help members download and navigate the tool. Before the training, members of Nazdeek sent a PowerPoint presentation, shared YouTube videos on public health measures, and purchased data packages to ensure that everyone could join and download materials onto their devices. The training was interactive and impactful, blending substantive law with hypothetical scenarios and role-play activities, in which participants were asked to identify rights violations and legal strategies.

Nazdeek also continued to seek accountability for rights violations spurred by COVID-19. India's longstanding challenges with backlogged courts and unresponsive administrative grievance mechanisms made these mechanisms largely inaccessible (Gauri 2010; Hertel 2016). Despite this, Nazdeek filed complaints and petitions to record the structural violence caused by a failing system and obtain redress (Gupta 2012). The organization also shared community-collected data to highlight challenges in accessing COVID-19-related benefits.

All of these efforts grew from trust developed and strengthened by centering communities in the decision-making process. Rather than doing the work for communities, Nazdeek works with communities to determine their goals and demands. During a pandemic, the practice of trusting community members to decide what they needed remained steady. Although Nazdeek as an organization had never carried out relief work, trust in partnership and process led the way. The organization's steadfast gaze on exploiting legal mechanisms also signaled to the Indian government, as well as to community partners, that Nazdeek will keep fighting for a more just future. Shreya Sen, senior program officer with Nazdeek explained, "We want to tell the true story of how COVID is impacting a dysfunctional state. Systems—like the health and justice system—are failing. Even if the system fails, we will continue to demand a response" (Poddar, Satpute, and Sen 2020).

## Transformation: Organized Communities Against Deportation

OCAD is a group of "undocumented, unapologetic, and unafraid organizers building a resistance movement against deportations and the criminalization of immigrants and people of color" (OCAD 2020). The organization is based in Chicago, a city with an estimated 450,000 undocumented immigrants, the majority of whom are Latinx, Asian, and black (Tribune Graphics 2017).

Many of Chicago's immigrants live and work in the shadows because of their citizenship status. Perceptions of "illegality" tend to rely on national origin, social class, and criminal background rather than actual legal status (Flores and Schachter 2018), placing immigrants at the intersection of this perceived "illegality" and structural racism, classism, and discrimination. OCAD fights to change these terrorizing systems and "create an environment for our communities to work, organize, and thrive with happiness and without fear" (OCAD 2020). Members engage in community-driven campaigns, litigation, grassroots legal education, and mutual aid to build individual and collective power.

The organization is "undocumented-led" and guided by community input and direction, garnered through *asambleas* (community assemblies). Before the COVID-19 pandemic, the assemblies were held twice a month with around 50 members who discussed information on active immigration cases, explored organizing actions, identified strategic actions, and shared a collective meal. OCAD is led by Lxs Luchadorxs, a committee of about 10 members who have faced their own deportation proceedings.

### **Transformation in action**

In spring of 2020, OCAD received worried reports of expanded COVID-19 surveillance measures by Immigration and Customs Enforcement (ICE), justified on public health grounds and enacted in conjunction with broad emergency powers. Related measures included contact tracking using cell phone data and facial recognition technology, body temperature tracking, electronic ankle monitoring, and predictive modeling based on big data (Just Futures Law 2020). Prior to the pandemic, ICE regularly targeted undocumented immigrants for deportation through the use of surveillance technology (Funk 2019). This technology has become more sophisticated, as corporations including Palantir, Clearview, Google, and Amazon have begun to sell facial-recognition software, data, and analytics services to public agencies, police departments, and ICE (Garvie and Moy 2019; Mac, Haskins, and McDonald 2020). OCAD members were particularly concerned that surveillance in response to the COVID-19 pandemic would increase risks of deportation.

Challenging surveillance was not new for OCAD; the organization was a founding member of a coalition committed to the elimination of the gang database used by the Chicago Police Department to surveil, harass, target, and deport people from black and brown communities (OCAD 2020). But surveillance during the COVID-19 pandemic felt new and more dangerous (Just Futures Law 2020). OCAD was approached by Just Futures Law, a legal organization focused on transformative and innovative immigration lawyering, to discuss surveillance trends and explore a community-based litigation project. Before making a decision, OCAD emphasized the need to present the project to the assemblies and Lxs Luchadorxs.

OCAD works to catalyze the transformation of undocumented communities into holders of knowledge and agents of change. Leadership is a learned skill that OCAD cultivates through sharing knowledge, organizing behind common goals, and activating members into collective political action. Transformation is often viewed as a goal of legal empowerment work. As Domingo and O’Neil observed, “Legal empowerment occurs when poor or marginalised people use the law, legal systems, and justice mechanisms to improve or transform their social, political or economic situations” (2014: 4).

Toward this goal, organizations use a “range of tools driven by the communities with which they work, including information, organizing, advocacy, and litigation” (Chapman 2018: 183). These efforts create space for communities to learn and dream. They also seek to activate institutions through individual and collective claims, with a goal of social transformation. Satterthwaite (forthcoming) has described this work as “critical legal empowerment,” a “practice and a lens, making visible the work communities and movements are doing to transform legal systems.”

Transformation is also a personal practice through which individuals see themselves as “bearers of rights” and “agents capable of action” who are able to build individual and collective agency (Maru and Gauri 2018: 1). As Antonio Gutierrez of OCAD explained:

We organize the community so that they tap into the collective power. We believe in the autonomy and self-determination of the communities in which we work. This involves waking the social and political conscience of the community, bringing them from the inactivity pressed upon them by systemic racism and xenophobia, and into a state of wakefulness and activity that is essential to movement building and achieving just outcomes. We believe in collective learning, knowledge, and healing. We are what we need. (2020)

Central to this work is the power generated by being together in one space. And yet, the need to physically distance during the pandemic made these efforts near impossible. Recognizing the integral role of *asambleas* as transformative spaces for community leadership, OCAD transitioned its assemblies online. This shift was done with intention, taking into account accessibility and tech literacy: OCAD shared instructional videos with members detailing how to download and set up the Zoom videoconference platform, and narrated the tutorial in Spanish.

During the digital assemblies, members discussed individual cases, existing campaigns, and the proposal to partner with Just Futures Law on a COVID-19 surveillance project. OCAD created a

presentation that translated the proposal from Just Futures Law into Spanish and broke down the concepts of laws and rights into a language that spoke to members' experiences.

Surveillance plays an active role in the lives of many OCAD members; the presentation resonated with their experiences of ankle bracelets, regular ICE check-ins, and the Chicago gang database that regularly shares information with ICE. Members also raised additional privacy concerns, including images taken by traffic cameras and license plate readers. These conversations were part of the regular practice of coming together to share experiences and connecting those experiences to broader systems. Members felt empowered to discuss the information presented to them, as well as add issues they saw as integral to challenging dehumanizing systems. In this case, it was concerns around data collected by traffic cameras; in other projects, it was pushing lawyers to file motions as an organizing tactic.

Ultimately, OCAD's membership agreed to partner on the surveillance project. They have filed Illinois Freedom of Information Act (FOIA) requests for records on how government agencies are using technology to expand data surveillance during the COVID-19 pandemic.<sup>6</sup> As of this writing, the organizations await responses from the city of Chicago and other government agencies after filing. They plan to use the information elicited through the FOIA requests to build a community-led campaign against surveillance.

## Conclusion

The COVID-19 pandemic thrust already marginalized communities into a deeper justice crisis. Legal empowerment organizations leaned into their work of translation, trust, and transformation as strategies for power contestation and rights claiming. As evident from the three case studies analyzed in this article, this form of human rights practice offers enduring insights into how to breathe justice into social and legal systems while enabling communities to rebuild a just, transformed future.

## Notes

1. The right to access justice is essential to the protection of many human rights and is also a human right itself. Access to justice is protected under the International Covenant on Civil and Political Rights (ICCPR; UN General Assembly 1966: Article 14) as clarified by General Comment No. 32 to the ICCPR (Human Rights Committee 2007).
2. We conducted in-depth interviews with Felipe Mesel of ACIJ (Mesel 2020); Tripti Poddar, Jayshree Satpute, and Shreya Sen of Nazdeek (Poddar, Satpute, and Sen 2020); and Antonio Gutierrez of OCAD (Gutierrez 2020). These interviews occurred via phone and video-conferencing, with additional correspondence via email, from July 6, 2020, to August 6, 2020. All quotes attributed to Mesel, Poddar, Satpute, Sen, and Gutierrez were provided by and verified by the person to which they are attributed. Pseudonyms were used when referencing community members to protect their identities and security. We are deeply indebted to the organizations whose work is highlighted.
3. Experts play an important role in the development of policy responses to COVID-19, and problems arise when governments contradict public health experts, but even when governments listen to experts, "questions remain about how to mitigate ... inequalities to support the world's most vulnerable" (Weible, Nohrstedt, Cairney, Carter, Crow, Durnová, Heikkilä, Ingold, McConnell, and Stone 2020). This article focuses on that question.
4. The International Commission on Legal Empowerment of the Poor (CLEP) was hosted by the United Nations Development Programme (UNDP) in 2005; it was formed to focus on the link between exclusion, poverty, and the law. CLEP's final report, *Making the Law Work for Everyone* (2008), was adopted by the UN General Assembly (2008) and was followed up with a report by the UN Secretary-General on "legal empowerment of the poor and eradication of poverty" (2009).
5. Images collected by the community can be viewed on the Google Maps Street View website. For an example of an image taken in Villa 31 in November 2016, see <https://www.google.com/maps/@-34.585301,-58.3776946,2a,75y,100.37h,102t/data=!3m6!1e1!3m4!1sgvEz-qtevT7sftAbRrVqZg!2e0!7i13312!8i6656> [18 August 2020].

6. FOIA requests were made to the Chicago Police Department (Non-Commercial Police FOIA Request: P585877-061420), Mayor Lori Lightfoot, and the Chicago Department of Public Health via email on 11 June 2020.

## Notes on contributors

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