

'Rights-based approach' amid COVID-19 crisis

4 questions answered

YOU MAY have rolled your eyes. "There they go again."

But, if you are a citizen who has felt shortchanged in any way during the COVID-19 crisis, the rights-based approach actually tells you that it is rightful for you to feel dissatisfied and even to call out the authorities that failed to deliver.

We understand how volatile the topic of rights – particularly, human rights – has become in the Philippines. In his tenure, President Rodrigo Duterte has come at odds with critical values and institutions. The casualties have included:



the concept of human rights;

the United Nations (UN), which first attempted to define it;



and the national instrument ensuring the Philippines is making good on its commitments, the Commission on Human Rights.

You may be asking: Why talk about a stressful matter amid a health crisis? The answer lies in its being crucial, especially right now. Literally every UN body and thousands of agencies released guidelines to ensure human rights are respected during the pandemic, reflecting how critical it is. But not to worry. We at Ramento Project for Rights Defenders have made the topic easier to understand with four questions.



1

First things first, what does a rights-based approach mean?

The rights-based approach, or human rights-based approach, is a principle in human development that believes human rights should always be respected, protected and fulfilled, even during a crisis like the COVID-19 pandemic. Operatively, this means human rights principles must be present in all plans, policies and processes.



It is important at this point to take up human rights. It must be upheld by the Philippine government because it is enshrined in the Constitution's Bill of Rights (Article III) and the United Nations' International Bill of Human Rights, of which the country is a signatory. The latter includes the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. The UDHR, signed in 1948, is composed of 30 articles stating the common standards to uphold the dignity of all people.

Human rights are defined by the UN as "rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status." These are intrinsic to all people (universal) and cannot be transferred or taken away without due process (inalienable). These cannot be

treated as separate parts (indivisible). Instead, the fulfillment or violation of one piece can affect all the other provisions (interdependent and interrelated).

This concept acknowledges each person as a rights-holder, who should be able to claim their entitlements especially when these are violated by the duty-bearer. For Filipinos, the duty-bearer is the Philippine government, including its officials and workers at any level. Violations may be committed by misconduct, inefficiency, inaction or condonation, among others.

By extension, the rights-based approach respects the abovesaid principles. The UN noted that there is no universal recipe for the approach but three essential attributes: (1) that programs are undertaken with the main objective of fulfilling human rights; (2) that there is a dynamic that involves empowered rights-holders and responsible duty-bearers; and (3) that international human rights treaties are the standard at all levels.

2

Why do we need a rights-based approach?



It is best to understand this by revisiting what the rights-based approach replaced.

Most development workers had been into the needs-based approach. However, in 1997, the rights-based approach started taking over because some specialists had become concerned about the flaws of the earlier approach. Take a slum area pummeled by a storm. The apparent need would be a relief effort. But that would not help survivors emerge

from poverty or become more resilient to disaster in the long term.

There is a problem with terminology. Needs may differ subjectively depending on your source; rights are a fixed set of ideals. The needs-based approach is also transactional: There is a need, meet it; there is a disease, cure it. The latter believes the process is as

important as the outcome, and that the outcome may unpack another concern.

The second issue is practice. The needs-based approach has consulted experts more than people who have experienced an issue first-hand. This has resulted in a problematic belief that issues like poverty, marginalization and disease originated in personal behavior. It cultivated a thinking that anyone who seeks to help is better or higher in status or morality, intervening out of charity. Such is a common case for poverty alleviation in the Philippines. People tend to see initiatives from a "mas mabuti kaysa wala" (better than nothing) standpoint.

The rights-based approach, on the other hand, claims that almost is never enough. The needs of the poor may be part of a bigger issue; and desperation, no matter how grave, is no excuse to provide less or treat them with less respect. A program for their benefit is out of a responsibility to stop rights viola-

tions. Moreover, the approach delves into historical inequalities. According to the UN: "It seeks to analyze inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress."

Ultimately, the rights-based approach is more comprehensive, more just and more sustainable. It understands that an action may be a mere step in the right direction, not the ultimate solution. It sees consultation, dissent and redress as part of the process. Finally, the rights-based approach speaks to the need for duty-bearers to respect, protect and fulfill people's rights, and to educate the rights-holders to defend themselves from violations.



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It's a pandemic. Surely there are greater things to worry about than human rights, right?

By greater things, you may be referring to the very real needs for food, work, etc. Well, if you read the international and domestic documents outlining your human rights, you will find all these mentioned there. Thus, when you are encountering difficulties on these fronts due to COVID-19, it may be rightful to seek assistance from your duty-bearer, your government.

"But, that's not what we mean." All right, you are saying activism and all forms of dissent – even just those posted on social media – should be penalized; those who break the law deserve death *tokhang*-style, etc. We understand the current irregularity, what with the emergency powers and all. But savagery is not an option.

UN High Commissioner for Human Rights Michelle Bachelet reminded the global community last April 27, 2020: "Emergency powers should not be a weapon governments can wield to quash dissent, control the population, and even perpetuate their time in power... They should be used to cope effectively with the pandemic – nothing more, nothing less."

She said the "highly militarized" Philippine response led to the arrest of some 120,000 curfew violators, an "unnecessary and unsafe" policy that may expose people to the coronavirus.

"What if, with all of problems before us, implementing human rights fully is just impossible?" There are long-held parameters to guide countries in weighing their policies. Essentially, objectives should be met with the least intrusive measures. Indeed, no right should be toyed with.

To help nations navigate this gray area, the Office of the United Nations High Commissioner for Human Rights (OHCHR) released "Emergency Measures and COVID-19: Guidance." See Figure 1.

Moreover, there are rights that absolutely cannot be suppressed, as laid out in "The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (ICCPR)." See Table 1.



NONDEROGABLE RIGHTS

- right to life
- freedom from torture, cruel, inhuman or degrading treatment or punishment, and from medical or scientific experimentation without free consent
- freedom from slavery or involuntary servitude
- right not to be imprisoned for contractual debt
- right not to be convicted or sentenced to a heavier penalty by virtue of retroactive criminal legislation
- right to recognition as a person before the law
- freedom of thought, conscience and religion

Table 1. Nonderogable rights in Siracusa Principles

Among others, you cannot be killed for being positive for COVID-19, or taken as a slave by anyone for taking you in during the lockdown. The government also cannot use the pandemic or the consequent lockdown to crack down on activists and rights defenders, hoping to taunt them or torture information out of them.

Methods to manifest thought, conscience and religion may be limited, too, but the freedom itself cannot be eliminated. While a rally on EDSA may be prohibited during the lockdown considering COVID-19 is highly infectious, a protest from home or any expression of dissent conforming with set guidelines should not be stopped.

So, just so we are clear, by no means can human rights be cancelled in toto to solve COVID-19. In fact, the very concept should guide the response. It is possible to attain a rights-based response no matter how difficult times may be.

4

How is the Philippine COVID-19 response doing? Is it a rights-based approach?

You decide – but do continue reading.

The rights-based approach can be used to guide projects of any size, from a developmental experiment in a school or neighborhood setting to a national and even international intervention. In fact, it has telltale signs. Development workers use the mnemonic guide PANEL to explain rights-based approach in practice. See Table 2.

You can measure if a governmental approach is rights-based by asking PANEL-related questions like: Is the government talking with vulnerable populations like the poor, gender minorities, people in conflict areas, etc.? How does it treat criticism? Amid the lockdowns, are policies applied impartially? In the first place, does the government support human rights? Do policies negate human rights standards?

It could also help to assess the Philippine response with already available documents and checklists.



The Ontario Human Rights Commission released a document containing rights-based actions that governments can take up.

www.ohrc.on.ca/en/actions-consistent-human-rights-based-approach-managing-covid-19-pandemic



Human Rights Watch, on the other hand, published a checklist with Yes/No question.

www.hrw.org/news/2020/04/14/covid-19-human-rights-checklist



Also visit the International Justice Resource Center for a compendium of calls from human rights bodies.

ijrcenter.org/covid-19-guidance-from-supranational-human-rights-bodies/

Let's unravel the issue: COVID-19 is a medical crisis. All governments set their emergency policies on the pretext of protecting the right to health. How is the Philippines performing according to this right? Has the government prioritized testing, triaging, prevention and treatment, among others? Have healthcare workers received support

PANEL PRINCIPLES

Participation

People should be involved in decisions that affect their rights.

Accountability

There should be monitoring of how people's rights are being affected, as well as remedies when things go wrong.

Nondiscrimination and Equality

All forms of discrimination must be prohibited, prevented and eliminated. People who face the biggest barriers to realizing their rights should be prioritized.

Empowerment

Everyone should understand their rights and be fully supported to take part in developing policy and practices which affect their lives.

Legality

Approaches should be grounded in the legal rights that are set out in domestic and international laws.

Table 2. PANEL Principles as defined by the Scottish Human Rights Commission

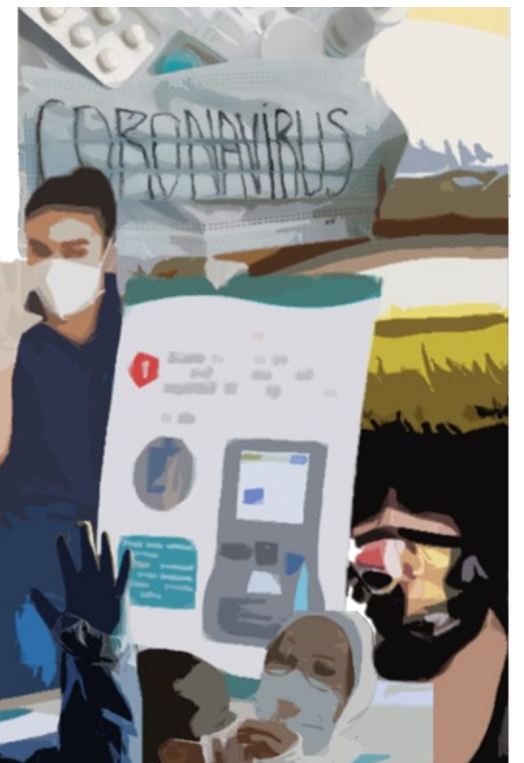
proportionate to their importance? How is the healthcare system holding up?

There's also an undeniable humanitarian crisis. People have lost income sources and cannot support their needs. How is the government addressing this? How is it treating sectors that have already been vulnerable before COVID-19? How will adversely affected citizens recover?

Finally, how do the medical and humanitarian programs fare against other steps which, to some observers, make up a "highly militarized" COVID-19 playbook?

The worst is not behind us. If you had to take away anything from this explainer, hopefully it's that, moving forward, holding duty-bearers to task for their obligations is right.

So, how are we doing?



Legality: The restriction must be "provided by law." This means that the limitation must be contained in a national law of general application, which is in force at the time the limitation is applied. The law must not be arbitrary or unreasonable, and it must be clear and accessible to the public.



Necessity: The restriction must be necessary for the protection of one of the permissible grounds stated in the ICCPR, which include public health, and must respond to a pressing social need.



Proportionality: The restriction must be proportionate to the interest at stake, i.e. it must be appropriate to achieve its protective function; and it must be the least intrusive option among those that might achieve the desired result.



Nondiscrimination: No restriction shall discriminate contrary to the provisions of international human rights law.



The authorities have the burden of justifying restrictions upon rights.

All limitations should be interpreted strictly and in favor of the right at issue. No limitation can be applied in an arbitrary manner.

Figure 1. Requirements for human rights restrictions, according to "Emergency Measures and COVID-19: Guidance"

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The Ramento Project for Rights Defenders is a Church-based human rights program operated by the Iglesia Filipina Independiente for the cause of human rights, especially of human rights defenders. Its human rights commitments are based on Christian principles and on universal and national human rights instruments. RPRD observes the standards and processes of the rights-based approach.