

Upholding human rights during a state of public health emergency

by Emerlynne Gil

The Philippine government is one of the many around the world struggling to respond to the severe public health crisis brought about by the spread of the COVID-19 virus. To date, the Philippines is one of the countries with the highest COVID-19 related deaths in Southeast Asia.

Like a number of others around the world, the Philippine government responded to this pandemic by declaring a state of public health emergency and imposed limitations to rights such as the freedom of movement and freedom of expression. When the state of public health emergency was declared by President Duterte, there were fears that this might cause the further erosion of the rule of law and democracy in the country.

A state of emergency per se is not inconsistent with international human rights law. The human rights paradigm, which has sometimes been perceived by its critics as being too idealistic and lacking the practicality of being widely applicable in the real world, is actually quite pragmatic and envisions situations like the one we are facing now.

Situations necessitating the limitation of certain rights are anticipated under international human rights law. The International Covenant on Civil and Political Rights (ICCPR), to which the Philippines is a party, provides for the possibility of limiting certain rights in the interests of public health, and, in the most extreme cases, derogating from certain rights during declared states of emergency, to the extent strictly necessary to meet a threat to the life of the nation.

As part of the emergency measures, the Philippine government imposed a nationwide lockdown, which severely limits the freedom of movement of everyone in the country. The right to freedom of expression is also limited since the law that was passed declaring the emergency imposes a punishment of imprisonment of two (2) months or a fine of not more than 1 million pesos (approximately US\$19,600) on persons found to have been “spreading false information regarding the COVID-19 crisis on social media and other platforms”.

The rights to freedom of movement and freedom of opinion and expression are two of the rights that may be limited under international law, but there are still parameters that must be followed when applying limitations. They must be established by law, are necessary, proportionate and non-discriminatory. This means that only the least restrictive measure must be applied. The limitations on these rights must be interpreted strictly in favor of the right always, and should not be construed so as to defeat the essence of the right involved. Furthermore and very important in the Philippines context, the limitations should not be abused or applied in an arbitrary manner.

Ever since the lockdown started in the Philippines, there have been reports of how this severe limitation of movement by the population is being abused by government authorities, especially to harass activists and those allegedly connected to armed rebel groups. For instance, Felipe Levy Gelle Jr., reported

several visits in his home from the military, after the lockdown started. Felipe Levy Gelle Jr., a member of a human rights group in Negros, is among those who called for the investigation into the death of Benjamin Ramos, a lawyer who assisted the families of the nine farmers murdered in Sagay City on 20 October 2019.

Local government officials, who have been tasked to implement the rules on community quarantine, are also abusing their powers during the emergency. There are credible reports according to which local officials have subjected people to ill-treatment on those who violate lockdown rules. For instance, a barangay captain in the province of Pampanga was reported to have forced LGBT individuals to do lewd acts in public and in some parts of Manila, those who violate lockdown rules are kept in dog cages.

These forms of “punishment” are definitely degrading as they are extremely humiliating and are aimed to debase a person beyond that which is usual. The prohibition against torture or cruel, inhuman or degrading treatment or punishment is absolute and is not subject to limitation or derogation, even in times of emergency.

On the right to freedom of opinion and expression, there have been reports of several activists and journalists who have been either threatened or harassed by the authorities for criticizing publicly the government’s response to the COVID-19 crisis. For instance, barangay officials threatened to press libel charges against a student journalist, Joshua Molo, for the views he expressed online regarding the government’s response to the COVID-19 crisis. By going after those who express critical views of the government and its response to the crisis, authorities are casting a chilling effect on freedom of expression, stimulating self-censorship and possibly impeding information that may be crucial in effectively addressing this crisis. Indeed, the right to freedom of expression may be limited during times of emergency, but the limitations on this right should not be interpreted so as to defeat the right itself.

If the Philippine authorities are genuinely concerned about the rampant disinformation on the COVID-19 crisis, the best way to address this is counter-speech and social dialogue. It is within the spirit of democracy and rule of law to foster a culture of public dialogue where everyone can freely and without fear of reprisal, talk about and debate issues emerging from this crisis.

President Duterte’s language and rhetoric during his regular press conferences do not help the situation where the entire country is struggling under this state of emergency. The manner by which he is addressing this public health crisis is no different from how he continues to pursue his murderous “war on drugs”. In one of his speeches, instead of discouraging the use of force and calling for peaceful de-escalation of tensions during protests through dialogue and negotiation, he told police to unlawfully shoot protesters who “cause trouble” during this emergency. Instead of calming the nation and giving clear direction on how the government must work in a lawful and rights compliant manner during this crisis, his speeches cause further anxiety and confusion among the people.

Moreover, instead of letting public health professionals take the lead in addressing this crisis, President Duterte appointed military officers to implement the National Action Plan on curbing the spread of COVID-19. This shows that the Duterte administration still intends to rely on brute force and opaque decision-making processes to manage this crisis, instead of leaning on sound public health policies and transparent governance.

The Philippines is facing a long and difficult path in getting to the other side of this public health emergency. What is clear right now is that more human rights violations will not help the country. The survival of the nation will depend on protecting the rights of the people and holding on fiercely to the principles of democracy and the rule of law.

About the author: Emerlynn Gil is a Filipino lawyer and a Senior International Legal Advisor of the International Commission of Jurists, a global organization of judges and lawyers dedicated to protecting human rights and upholding the rule of law.