

***APPLICATION OF THE HUMAN RIGHTS BASED APPROACH:
A NHRI PERSPECTIVE***

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Firstly, let me thank the Regional Working Group and the International Commission of Jurists for this opportunity to share the Commission on Human Rights of the Philippines' experience in its efforts to undertake Human Rights based approach in its mandate to promote and protect human rights.

On applying a Human Rights Based approach to development and 'governance', we offer our experience to showcase our program on the Human Rights-Based approach to Legislation' which I will convey in three parts,

First, is the reflection of the role of the Commission as a National Human Rights Institution;

Second, is the briefer on the 'Human Rights Based Approach to Legislation through a two tracks we have employed; and

Third, lessons learned and challenges to this program

Reflection of the role of the Commission as a National Human Rights Institution

The Commission on Human Rights as an independent and relatively new entity in government, has been challenged in advocating human rights with duty bearers who often view Human Rights as opposed to government undertakings.

Deciding to act on the idea that the

"A central element of [H]RBA is that the legal and policy environment is regarded as a dominant root cause for rights deprivation and violations [and that] While human rights is international law, national laws and policies are often more important in regulating national practices"¹

we have launched the Human Rights Based Approach to Legislation in fulfilling our constitutional Mandates to

¹ Boesen, Jakob Kirkemann and Martin, Tomas, Applying a Rights Based Approach: An Inspirational Guide for Civil Society, The Danish Institute for Human Rights, 2007, page 20.

- Recommend to Congress effective measures to promote and protect Human Rights; and
- Monitoring Government Compliance with International Treaties.

(Mandates being taken care of by my office in the Commission, Government Linkages Office).

Our espoused view of the national governance structure would articulate that Human Rights is not only the business of national human rights institutions but of government as a whole.

This view can be found in our partnership with the United Nations Development Fund through the Fostering Democratic Governance portfolio where we have been identified as an Implementing partner.

The project speaks of the Strengthening of the Human Rights Infrastructure whereby the Commission is but one of the bodies that ensure human rights promotion and protection. This Human Rights Infrastructure is viewed as representing the whole apparatus of government, not just what is often referred to as the “branches of government” but called “rights appropriately” as the “branches of state responsibility”.

The focus then was in a major government process. That of Legislation where the Commission takes an active part in the first order of state obligation as a state party to various Human Rights treaties (the Philippines being state party to 8 of the 9 core human rights treaties) that is --- to harmonize domestic law with international treaties (according to HR Expert and former Chair Dr. Purificacion Quisumbing).

We have employed two tracks to ensure the introduction of this obligation:

The first track involved the anchoring on Human Rights through agenda setting. While the Commission has been involved in public hearings on various human rights legislation, the ‘Human Rights Legislative Agenda’ has enabled us to repackage our approach to ensure the ‘Rights’ consciousness among major actors or Duty Bearers in the Legislature, to be able to relate the Legislators’ obligation to harmonize law with human rights. Rather, than past piecemeal practice.

We have connected this to the mandate of the Legislature in the Constitution which states the policy that

“The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity...”²

² Article XIII, Section 1, 1987 Philippine Constitution

This Human Rights Legislative Agenda is a product of consultation with various stakeholders – from the Commission, government agencies as well non-governmental organizations representing the disadvantaged, marginalized and vulnerable groups. It is aimed to present a common agenda for human rights advocates and provide Congress with a “scorecard” to base its performance in enacting laws that address human rights protection and promotion. Of equal importance, the Human Rights Legislative Agenda is also designed to assist the Legislature in implementing the Philippine’s legal obligations to harmonize and translate within the domestic sphere its commitments to specific human rights standards and principles.

The contents of the Human Rights Legislative Agenda was what we called ‘treaty based’ and derived from Concluding Observations of treaty bodies which usually recommend administrative, legislative and other measures to better implement its human rights obligations as well as the various human rights agenda prescribed by civil society.

The Agenda which was used as a scorecard, enabled the Commission to report on the action and status of bills filed and laws passed vis-à-vis each proposed legislative measure. Past reports highlighted the passage of vital HR measures such as Anti-Torture Law, Accessibility to Cheaper and Quality Medicines Law, Anti-Child Pornography Law among others. While underscoring the importance of these vital translation of human rights provisions into domestic laws, the report also updated the public on the status of other bills filed to measure progress reached and discuss challenges encountered in passing other proposals.

In analyzing, we have classified legislation passed through the following: HR Laws (laws that directly harmonize or translate provisions of human rights treaties such as the anti – torture law), HR-related laws, and Laws that address roots of human rights violations (where, for example, a proposed land use law was identified as one such measure)

The Human Rights Legislative Agenda set the foundation for human rights thinking through the obligation to harmonize. We have often been confronted with legislators who often see human rights treaties as an ‘outside imposition’ without realizing that it is indeed an obligation of their role as legislators.

The Second track employed is on Capacity Building. In the Commission’s role to establish a continuing program of Human Rights Education, the focus on duty bearers and key actors in the legislature provided us the opportunity for confidence building for human rights issue discussion where we have involved civil society organizations in many Workshops on HRBA to Legislation and Policy Development, introducing basic human rights concepts and introduced HRBA principles.

How have we fared in this endeavor of capacity building? We like to think that the ‘increased demand for our guidance and assistance in various committee hearings and technical working groups where Human Rights is a positive indicator’.

For the first time, invitations from other committees in the House of Representatives came in with requests to look at various issues and provide the “HR perspective” in pieces of legislation including accreditation of health clinics for clearances of Overseas Filipino Workers (OFW) or the public hearings on OFW deployment bans.

Aside from inclusion of human rights in the public hearings of legislative proposals, another indicator that we have made headway in HR thinking in the legislature is by the invitation of the Committee Affairs Department of the Legislature to join them in their initiative to come up with a Human Rights Based checklist, specifically on child rights.

This Checklist, which is in the process of finalization, aims to guide the Committee Secretariat, bill authors, bill drafters and advocacy groups in ensuring that human rights principles and standards are reflected in proposed and existing measures for children. It features a “process checklist” on how children can be involved in the drafting process as participants.

The second part of the child rights legislative checklist articulates the guarantee of child participation within the legislative process. Child Participation comes in many forms and at many levels. It provides for direct and indirect participation, as well as appropriate engagement through child rights and child experts across disciplines (for instance, in medicine and law). Child representatives are also considered whereby special advocates have the task to directly convey the child’s views as opposed to rendering opinions on the child’s best interest. It also takes great care in ensuring the specific nuances of children’s character and / or conditions (children in special circumstances, situations) as well as their milieu within the family, schools, communities that will inform their participation in the process of law making. It also ensures that continuing participation is solicited as the law is enforced, monitored and reviewed. The list also includes the utilization of other methodologies to inform law making of the child rights and child perspective through evidence based research, focus group discussions and surveys.³

A series of more focused workshops were convened to draft the checklist that articulates key HRBA elements and simulates the human rights-based approach thought process as it applies to bill drafting and analysis. The workshop to come up with the checklist is an endeavor aimed not only to capacitate but build constituencies of critical duty bearers in the legislative process to fulfill the state obligation to harmonize domestic legislation with human rights standards, principles and norms. We believe that the capacity building track for duty bearers will pave the way for civil society together with various sectors particularly vulnerable groups to actively, consciously be included and directly participate in the process.

³ Child Rights Legislative Checklist, Committee Affairs Division, House of Representatives and Government Linkages Office, Commission on Human Rights, 2011.

The HR Legislative Agenda and our capacity building activities have contributed to the third track in our HRBA to legislation which is that HRBA, having no uniform formula, is 'learning by doing' by evolving HRBA to Legislation tools such as the checklist by partnering with key duty bearers within existing mechanisms in government. This brought us a step back and revisit the view of the branches of state responsibility by including the executive mechanisms involved in legislation. We experienced "tunnel vision" by looking only at the legislature and by expanding or adjusting our human rights lens to view the macro level, we saw the need to include the executive in the process of legislation. Our starting point became the President's State of the Nation Address, which marks the opening Congress and initiates the annual cycle of the legislative process.

This has enabled the Commission to work with the Executive through its Legislative Liaison Mechanism – a network of executive duty bearers whose role is to propose and engage legislators in their respective agency priority legislative agenda. Enabling the Commission to participate in this network formally is a sort of base – saving to ensure that the human rights perspective and the approach is undertaken through executive activities is raised in discussions in law and policy formulation. The network has responded by issuing a directive to working clusters of the network to involve the Commission in all activities.

Challenges

Activities lined up which will now involve the convergence of executive branch through the Legislative Liaisons and the Congressional Committees have been forthcoming, the Human Rights-Based Approach Checklist on poverty alleviation (such as the Philippines Conditional Cash Transfer Program) is an encouraging project which we will undertake this year. And we look forward to sharing this with you in future.

What I have shared as a showcase is largely a national level initiative. As my Chairperson, Etta Rosales often reminds, while there have been positive changes there remains a disconnect between policy and practice, between national and local. HRBA in Local Legislation – at the local government level, remains a formidable challenge that the Commission will address also this year as there are many local government ordinances passed which are not congruent or compliant with human rights standards and principles.

Our experience has shown that we have achieved in bringing stakeholders to engage on a common platform. Our experience in applying the human rights based approach looks at duty bearers as an entry point in grounding human rights in a major governance process. Focusing on Duty bearers is just the first step in ensuring HRBA will be a way of thinking and doing in the process of legislation.

Thank you very much.