BAYAN, KARAPATAN, KILUSANG MAGBUBUKID NG PILIPINAS (KMP), GABRIELA, FR. JOSE DIZON, RENATO CONSTANTINO, JR., FROYEL YANEZA, AND FAHIMA TAJAR, PETITIONERS, VS. EDUARDO ERMITA, IN...

G.R. NO. 169838. April 25, 2006

Ponente: AZCUNA, J.

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AZCUNA, J.:

Petitioners come in three groups.

The first petitioners, Bayan, et al., in G.R. No. 169838,[1] allege that they are citizens and taxpayers of the Philippines and that their rights as organizations and individuals were violated when the rally they participated in on October 6, 2005 was violently dispersed by policemen implementing Batas Pambansa (B.P.) No. 880.

The second group consists of 26 individual petitioners, Jess del Prado, et al., in G.R. No. 169848,[2] who allege that they were injured, arrested and detained when a peaceful mass action they held on September 26, 2005 was preempted and violently dispersed by the police. They further assert that on October 5, 2005, a group they participated in marched to Malacañang to protest issuances of the Palace which, they claim, put the country under an "undeclared" martial rule, and the protest was likewise dispersed violently and many among them were arrested and suffered injuries.

The third group, Kilusang Mayo Uno (KMU), et al., petitioners in G.R. No. 169881,[3] allege that they conduct peaceful mass actions and that their rights as organizations and those of their individual members as citizens, specifically the right to peaceful assembly, are affected by Batas Pambansa No. 880 and the policy of "Calibrated Preemptive Response" (CPR) being followed to implement it.

KMU, et al., claim that on October 4, 2005, a rally KMU co-sponsored was to be conducted at the Mendiola bridge but police blocked them along C.M. Recto and Lepanto Streets and forcibly dispersed them, causing injuries to several of their members. They further allege that on October 6, 2005, a multi-sectoral rally which KMU also co-sponsored was scheduled to proceed along España Avenue in front of the University of Santo Tomas and going towards Mendiola bridge. Police officers blocked them along Morayta Street and prevented them from proceeding further. They were then forcibly dispersed, causing injuries on one of them.[4] Three other rallyists were arrested.

All petitioners assail Batas Pambansa No. 880, some of them in toto and others only Sections 4, 5, 6, 12, 13(a), and 14(a), as well as the policy of CPR. They seek to stop violent dispersals of rallies under the "no permit, no rally" policy and the CPR policy recently announced.

> B.P. No. 880, "The Public Assembly Act of 1985," provides:
>
> Batas Pambansa Blg. 880

An Act Ensuring The Free Exercise By The People Of Their Right Peaceably To Assemble And Petition The Government [And] For Other Purposes

Be it enacted by the Batasang Pambansa in session assembled:

Section 1. Title . -This Act shall be known as "The Public Assembly Act of 1985."

Sec. 2. Declaration of policy. - The constitutional right of the people peaceably to assemble and petition the government for redress of grievances is essential and vital to the strength and stability of the State. To this end, the State shall ensure the free exercise of such right without prejudice to the rights of others to life, liberty and equal protection of the law.

Sec. 3. Definition of terms. - For purposes of this Act:

(a) "Public assembly" means any rally, demonstration, march, parade, procession or any other form of mass or concerted action held in a public place for the purpose of presenting a lawful cause; or expressing an opinion to the general public on any particular issue; or protesting or influencing any state of affairs whether political, economic or social; or petitioning the government for redress of grievances.

The processions, rallies, parades, demonstrations, public meetings and assemblages for religious purposes shall be governed by local ordinances; Provided, however, That the declaration of policy as provided in Section 2 of this Act shall be faithfully observed.

The definition herein contained shall not include picketing and other concerted action in strike areas by workers and employees resulting from a labor dispute as defined by the Labor Code, its implementing rules and regulations, and by the Batas Pambansa Bilang 227.

(b) "Public place" shall include any highway, boulevard, avenue, road, street, bridge or other thoroughfare, park, plaza square, and/or any open space of public ownership where the people are allowed access.

(c) "Maximum tolerance" means the highest degree of restraint that the military, police and other peace keeping authorities shall observe during a public assembly or in the dispersal of the same.

(d) "Modification of a permit" shall include the change of the place and time of the public assembly, rerouting of the parade or street march, the volume of loud-speakers or sound system and similar changes.

Sec. 4. Permit when required and when not required.-- A written permit shall be required for any person or persons to organize and hold a public assembly in a public place. However, no permit shall be required if the public assembly shall be done or made in a freedom park duly established by law or ordinance or in private property, in which case only the consent of the owner or the one entitled to its legal possession is required, or in the campus of a government-owned and operated educational institution which shall be subject to the rules and regulations of said educational institution. Political meetings or rallies held during any election campaign period as provided for by law are not covered by this Act.

Sec. 5. Application requirements.-- All applications for a permit shall comply with the following guidelines:

(a) The applications shall be in writing and shall include the names of the leaders or organizers; the purpose of such public assembly; the date, time and duration thereof, and place or streets to be used for the intended activity; and the probable number of persons participating, the transport and the public address systems to be used.

(b) The application shall incorporate the duty and responsibility of applicant under Section 8 hereof.

(c) The application shall be filed with the office of the mayor of the city or municipality in whose jurisdiction the intended activity is to be held, at least fie (5) working days before the scheduled public assembly.

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(d) Upon receipt of the application, which must be duly acknowledged in writing, the office of the city or municipal mayor shall cause the same to immediately be posted at a conspicuous place in the city or municipal building.

Sec. 6. Action to be taken on the application. -

(a) It shall be the duty of the mayor or any official acting in his behalf to issue or grant a permit unless there is clear and convincing evidence that the public assembly will creat a clear and present danger to public order, public safety, public convenience, public morals or public health.

(b) The mayor or any official acting in his behalf shall act on the application within two (2) working days from the date the application was filed, failing which, the permit shall be deemed granted. Should for any reason the mayor or any official acting in his behalf refuse to accept the application for a permit, said application shall be posted by the applicant on the premises of the office of the mayor and shall be deemed to have been filed.

(c) If the mayor is of the view that there is imminent and grave danger of a substantive evil warranting the denial or modification of the permit, he shall immediately inform the applicant who must be heard on the matter.

(d) The action on the permit shall be in writing and served on the applica[nt] within twenty-four hours.

(e) If the mayor or any official acting in his behalf denies the application or modifies the terms thereof in his permit, the applicant may contest the decision in an appropriate court of law.

(f) In case suit is brought before the Metropolitan Trial Court, the Municipal Trial Court, the Municipal Circuit Trial Court, the Regional Trial Court, or the Intermediate Appellate court, its decisions may be appealed to the appropriate court within forty-eight (48) hours after receipt of the same. No appeal bond and record on appeal shall be required. A decision granting such permit or modifying if in terms satisfactory to the applicant shall be immediately executory.

(g) All cases filed in court under this section shall be decided within twenty-four (24) hours from date of filing. Cases filed hereunder shall be immediately endorsed to the executive judge for disposition or, in his absence, to the next in rank.

(h) In all cases, any decision may be appealed to the Supreme Court.

(i) Telegraphic appeals to be followed by formal appeals are hereby allowed.

Sec. 7. Use of Public throroughfare. - Should the proposed public assembly involve the use, for an appreciable length of time, of any public highway, boulevard, avenue, road or street, the mayor or any official acting in his behalf may, to prevent grave public inconvenience, designate the route thereof which is convenient to the participants or reroute the vehicular traffic to another direction so that there will be no serious or undue interference with the free flow of commerce and trade.

Sec. 8. Responsibility of applicant. - It shall be the duty and responsibility of the leaders and organizers of a public assembly to take all reasonable measures and steps to the end that the intended public assembly shall be conducted peacefully in accordance with the terms of the permit. These shall include but not be limited to the following:

(a) To inform the participants of their responsibility under the permit;

(b) To police the ranks of the demonstrators in order to prevent non-demonstrators from disrupting the lawful activities of the public assembly;

(c) To confer with local government officials concerned and law enforcers to the end that the public assembly may be held peacefully;

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(d) To see to it that the public assembly undertaken shall not go beyond the time stated in the permit; and

(e) To take positive steps that demonstrators do not molest any person or do any act unduly interfering with the rights of other persons not participating in the public assembly.

Sec. 9. Non-interference by law enforcement authorities. - Law enforcement agencies shall not interfere with the holding of a public assembly. However, to adequately ensure public safety, a law enforcement contingent under the command of a responsible police officer may be detailed and stationed in a place at least one hundred (100) meters away from the area of activity ready to maintain peace and order at all times.

Sec. 10. Police assistance when requested. - It shall be imperative for law enforcement agencies, when their assistance is requested by the leaders or organizers, to perform their duties always mindful that their responsibility to provide proper protection to those exercising their right peaceably to assemble and the freedom of expression is primordial. Towards this end, law enforcement agencies shall observe the following guidelines:

(a) Members of the law enforcement contingent who deal with the demonstrators shall be in complete uniform with their nameplates and units to which they belong displayed prominently on the front and dorsal parts of their uniform and must observe the policy of "maximum tolerance" as herein defined;

(b) The members of the law enforcement contingent shall not carry any kind of firearms but may be equipped with baton or riot sticks, shields, crash helmets with visor, gas masks, boots or ankle high shoes with shin guards;

(c) Tear gas, smoke grenades, water cannons, or any similar anti-riot device shall not be used unless the public assembly is attended by actual violence or serious threats of violence, or deliberate destruction of property.

Sec. 11. Dispersal of public assembly with permit. - No public assembly with a permit shall be dispersed. However, when an assembly becomes violent, the police may disperse such public assembly as follows:

(a) At the first sign of impending violence, the ranking officer of the law enforcement contingent shall call the attention of the leaders of the public assembly and ask the latter to prevent any possible disturbance;

(b) If actual violence starts to a point where rocks or other harmful objects from the participants are thrown at the police or at the non-participants, or at any property causing damage to such property, the ranking officer of the law enforcement contingent shall audibly warn the participants that if the disturbance persists, the public assembly will be dispersed;

(c) If the violence or disturbance prevailing as stated in the preceding subparagraph should not stop or abate, the ranking officer of the law enforcement contingent shall audibly issue a warning to the participants of the public assembly, and after allowing a reasonable period of time to lapse, shall immediately order it to forthwith disperse;

(d) No arrest of any leader, organizer or participant shall also be made during the public assembly unless he violates during the assembly a law, statute, ordinance or any provision of this Act. Such arrest shall be governed by Article 125 of the Revised Penal Code, as amended;

(e) Isolated acts or incidents of disorder or breach of the peace during the public assembly may be peacefully dispersed.

Sec. 12. Dispersal of public assembly without permit. - When the public assembly is held without a permit where a permit is required, the said public assembly may be peacefully dispersed.

Sec. 13. Prohibited acts. - The following shall constitute violations of the Act:

(a) The holding of any public assembly as defined in this Act by any leader or organizer without having first

secured that written permit where a permit is required from the office concerned, or the use of such permit for such purposes in any place other than those set out in said permit: Provided, however, That no person can be punished or held criminally liable for participating in or attending an otherwise peaceful assembly;

(b) Arbitrary and unjustified denial or modification of a permit in violation of the provisions of this Act by the mayor or any other official acting in his behalf;

(c) The unjustified and arbitrary refusal to accept or acknowledge receipt of the application for a permit by the mayor or any official acting in his behalf;

(d) Obstructing, impeding, disrupting or otherwise denying the exercise of the right to peaceful assembly;

(e) The unnecessary firing of firearms by a member of any law enforcement agency or any person to disperse the public assembly;

(f) Acts in violation of Section 10 hereof;

(g) Acts described hereunder if committed within one hundred (100) meters from the area of activity of the public assembly or on the occasion thereof:

- the carrying of a deadly or offensive weapon or device such as firearm, pillbox, bomb, and the like;

- the carrying of a bladed weapon and the like;

- the malicious burning of any object in the streets or thoroughfares;

- the carrying of firearms by members of the law enforcement unit;

- the interfering with or intentionally disturbing the holding of a public assembly by the use of a motor vehicle, its horns and loud sound systems.

Sec. 14. Penalties. - Any person found guilty and convicted of any of the prohibited acts defined in the immediately preceding section shall be punished as follows:

(a) violation of subparagraph (a) shall be punished by imprisonment of one month and one day to six months;

(b) violations of subparagraphs (b), (c), (d), (e), (f), and item 4, subparagraph (g) shall be punished by imprisonment of six months and one day to six years;

(c) violation of item 1, subparagraph (g) shall be punished by imprisonment of six months and one day to six years without prejudice to prosecution under Presidential Decree No. 1866;

(d) violations of item 2, item 3, or item 5 of subparagraph (g) shall be punished by imprisonment of one day to thirty days.

Sec. 15. Freedom parks. - Every city and municipality in the country shall within six months after the effectivity of this Act establish or designate at least one suitable "freedom park" or mall in their respective jurisdictions which, as far as practicable, shall be centrally located within the poblacion where demonstrations and meetings may be held at any time without the need of any prior permit.

In the cities and municipalities of Metropolitan Manila, the respective mayors shall establish the freedom parks within the period of six months from the effectivity this Act.

Sec. 16. Constitutionality.-Should any provision of this Act be declared invalid or unconstitutional, the validity or constitutionality of the other provisions shall not be affected thereby.

Sec. 17. Repealing clause. - All laws, decrees, letters of instructions, resolutions, orders, ordinances or parts thereof which are inconsistent with the provisions of this Act are hereby repealed, amended, or modified

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accordingly.

Sec. 18. Effectivity. - This Act shall take effect upon its approval.

Approved, October 22, 1985.

CPR, on the other hand, is a policy set forth in a press release by Malacañang dated September 21, 2005, shown in Annex "A" to the Petition in G.R. No. 169848, thus:

Malacañang Official
Manila, Philippines NEWS

Release No. 2 September 21, 2005

STATEMENT OF EXECUTIVE SECRETARY EDUARDO ERMITA

On Unlawful Mass Actions

In view of intelligence reports pointing to credible plans of anti-government groups to inflame the political situation, sow disorder and incite people against the duty constituted authorities, we have instructed the PNP as well as the local government units to strictly enforce a "no permit, no rally" policy, disperse groups that run afoul of this standard and arrest all persons violating the laws of the land as well as ordinances on the proper conduct of mass actions and demonstrations.

The rule of calibrated preemptive response is now in force, in lieu of maximum tolerance. The authorities will not stand aside while those with ill intent are herding a witting or unwitting mass of people and inciting them into actions that are inimical to public order, and the peace of mind of the national community.
Unlawful mass actions will be dispersed. The majority of law-abiding citizens have the right to be protected by a vigilant and proactive government.

We appeal to the detractors of the government to engage in lawful and peaceful conduct befitting of a democratic society.

The President's call for unity and reconciliation stands, based on the rule of law.

Petitioners Bayan, et al., contend that Batas Pambansa No. 880 is clearly a violation of the Constitution and the International Covenant on Civil and Political Rights and other human rights treaties of which the Philippines is a signatory.[5]

They argue that B.P. No. 880 requires a permit before one can stage a public assembly regardless of the presence or absence of a clear and present danger. It also curtails the choice of venue and is thus repugnant to the freedom of expression clause as the time and place of a public assembly form part of the message for which the expression is sought. Furthermore, it is not content-neutral as it does not apply to mass actions in support of the government. The words "lawful cause," "opinion," "protesting or influencing" suggest the exposition of some cause not espoused by the government. Also, the phrase "maximum tolerance" shows that the law applies to assemblies against the government because they are being tolerated. As a content-based legislation, it cannot pass the strict scrutiny test.

Petitioners Jess del Prado, et al., in turn, argue that B.P. No. 880 is unconstitutional as it is a curtailment of the right to peacefully assemble and petition for redress of grievances because it puts a condition for the valid exercise of that right. It also characterizes public assemblies without a permit as illegal and penalizes them and allows their dispersal. Thus, its provisions are not mere regulations but are actually prohibitions.

Furthermore, the law delegates powers to the Mayor without providing clear standards. The two standards stated

in the laws (clear and present danger and imminent and grave danger) are inconsistent.

Regarding the CPR policy, it is void for being an ultra vires act that alters the standard of maximum tolerance set forth in B.P. No. 880, aside from being void for being vague and for lack of publication.

Finally, petitioners KMU, et al., argue that the Constitution sets no limits on the right to assembly and therefore B.P. No. 880 cannot put the prior requirement of securing a permit. And even assuming that the legislature can set limits to this right, the limits provided are unreasonable: First, allowing the Mayor to deny the permit on clear and convincing evidence of a clear and present danger is too comprehensive. Second, the five-day requirement to apply for a permit is too long as certain events require instant public assembly, otherwise interest on the issue would possibly wane.

As to the CPR policy, they argue that it is preemptive, that the government takes action even before the rallyists can perform their act, and that no law, ordinance or executive order supports the policy. Furthermore, it contravenes the maximum tolerance policy of B.P. No. 880 and violates the Constitution as it causes a chilling effect on the exercise by the people of the right to peaceably assemble.

Respondents in G.R. No. 169838 are Eduardo Ermita, as Executive Secretary, Manila City Mayor Lito Atienza, Chief, of the Philippine National Police (PNP) Gen. Arturo Lomibao, National Capital Region Police Office (NCRPO) Chief, PNP Maj. Gen. Vidal Querol, and Manila Police District (MPD) Chief Gen. Pedro Bulaong.

Respondents in G.R. No. 169848 are Eduardo Ermita as Executive Secretary and in his personal capacity; Angelo Reyes, as Secretary of the Interior and Local Governments; Arturo Lomibao, as Chief Vidal Querol, as Chief, NCRPO; Pedro Bulaong, as Chief, MPD, and all other public officers and private individuals acting under their control, supervision and instruction.

Respondents in G.R. No. 169881 are the Honorable Executive Secretary, PNP Director General Arturo Lomibao, the Honorable Mayor Joselito Atienza, and PNP MPD Chief Pedro Bulaong.

Respondents argue that:

- Petitioners have no standing because they have not presented evidence that they had been "injured, arrested or detained because of the CPR," and that "those arrested stand to be charged with violating Batas Pambansa [No.] 880 and other offenses."

- Neither B.P. No. 880 nor CPR is void on its face. Petitioners cannot honestly claim that the time, place and manner regulation embodied in B.P. No. 880 violates the three-pronged test for such a measure, to wit: (a) B.P. No. 880 is content-neutral, i.e., it has no reference to content of regulated speech; (b) B.P. No. 880 is narrowly tailored to serve a significant governmental interest, i.e., the interest cannot be equally well served by a means that is less intrusive of free speech interests; and (c) B.P. No. 880 leaves open alternative channels for communication of the information.[6]

- B.P. No. 880 is content-neutral as seen from the text of the law. Section 5 requires the statement of the public assembly's time, place and manner of conduct. It entails traffic re-routing to prevent grave public inconvenience and serious or undue interference in the free flow of commerce and trade. Furthermore, nothing in B.P. No. 880 authorizes the denial of a permit on the basis of a rally's program content or the statements of the speakers therein, except under the constitutional precept of the "clear and present danger test." The status of B.P. No. 880 as a content-neutral regulation has been recognized in Osmeña v. Comelec.[7]

- Adiong v. Comelec[8] held that B.P. No. 880 is a content-neutral regulation of the time, place and manner of holding public assemblies and the law passes the test for such regulation, namely, these regulations need only a

substantial governmental interest to support them.

- Sangalang v. Intermediate Appellate Court[9] held that a local chief executive has the authority to exercise police power to meet "the demands of the common good in terms of traffic decongestion and public convenience." Furthermore, the discretion given to the mayor is narrowly circumscribed by Sections 5 (d), and 6 (a), (b), (c), (d), (e), 13 and 15 of the law.

- The standards set forth in the law are not inconsistent. "Clear and convincing evidence that the public assembly will create a clear and present danger to public order, public safety, public convenience, public morals or public health" and "imminent and grave danger of a substantive evil" both express the meaning of the "clear and present danger test."[10]

- CPR is simply the responsible and judicious use of means allowed by existing laws and ordinances to protect public interest and restore public order. Thus, it is not accurate to call it a new rule but rather it is a more pro-active and dynamic enforcement of existing laws, regulations and ordinances to prevent chaos in the streets. It does not replace the rule of maximum tolerance in B.P. No. 880.

Respondent Mayor Joselito Atienza, for his part, submitted in his Comment that the petition in G.R. No. 169838 should be dismissed on the ground that Republic Act No. 7160 gives the Mayor power to deny a permit independently of B.P. No. 880; that his denials of permits were under the "clear and present danger' rule as there was a clamor to stop rallies that disrupt the economy and to protect the lives of other people; that J. B. L. Reyes v. Bagatsing,[11] Primicias v. Fugoso,[12] and Jacinto v. CA,[13] have affirmed the constitutionality of requiring a permit; that the permit is for the use of a public place and not for the exercise of rights; and that B.P. No. 880 is not a content-based regulation because it covers all rallies.

The petitions were ordered consolidated on February 14, 2006. After the submission of all the Comments, the Court set the cases for oral arguments on April 4, 2006,[14] stating the principal issues, as follows:

> - On the constitutionality of Batas Pambansa No. 880, specifically Sections 4, 5, 6, 12 13(a) and 14(a) thereof, and Republic Act No. 7160:
>
> (a) Are these content-neutral or content-based regulations?
> (b) Are they void on grounds of overbreadth or vagueness?
> (c) Do they constitute prior restraint?
> (d) Are they undue delegations of powers to Mayors?
> (e) Do they violate international human rights treaties and the Universal Declaration of Human Rights?
>
> - On the constitutionality and legality of the policy of Calibrated Preemptive Response (CPR):
>
> (a) Is the policy void on its face or due to vagueness?
> (b) Is it void for lack of publication?
> (c) Is the policy of CPR void as applied to the rallies of September 26 and October 4, 5 and 6, 2005?

During the course of the oral arguments, the following developments took place and were approved and/or noted by the Court:

- Petitioners, in the interest of a speedy resolution of the petitions, withdrew the portions of their petitions raising factual issues, particularly those raising the issue of whether B.P. No. 880 and/or CPR is void as applied to the rallies of September 20, October 4, 5 and 6, 2005.

- The Solicitor General agreed with the observation of the Chief Justice that CPR should no longer be used as a legal term inasmuch as, according to respondents, it was merely a "catchword" intended to clarify what was

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thought to be a misunderstanding of the maximum tolerance policy set forth in B.P. No. 880 and that, as stated in the affidavit executed by Executive Secretary Eduardo Ermita and submitted to the Ombudsman, it does not replace B.P. No. 880 and the maximum tolerance policy embodied in that law.

The Court will now proceed to address the principal issues, taking into account the foregoing developments.

Petitioners' standing cannot be seriously challenged. Their right as citizens to engage in peaceful assembly and exercise the right of petition, as guaranteed by the Constitution, is directly affected by B.P. No. 880 which requires a permit for all who would publicly assemble in the nation's streets and parks. They have, in fact, purposely engaged in public assemblies without the required permits to press their claim that no such permit can be validly required without violating the Constitutional guarantee. Respondents, on the other hand, have challenged such action as contrary to law and dispersed the public assemblies held without the permit.

Section 4 of Article III of the Constitution provides:

> Sec. 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

The first point to mark is that the right to peaceably assemble and petition for redress of grievances is, together with freedom of speech, of expression, and of the press, a right that enjoys primacy in the realm of constitutional protection. For these rights constitute the very basis of a functional democratic polity, without which all the other rights would be meaningless and unprotected. As stated in Jacinto v. CA,[15] the Court, as early as the onset of this century, in U.S. v. Apurado,[16] already upheld the right to assembly and petition, as follows:

> There is no question as to the petitioners' rights to peaceful assembly to petition the government for a redress of grievances and, for that matter, to organize or form associations for purposes not contrary to law, as well as to engage in peaceful concerted activities. These rights are guaranteed by no less than the Constitution, particularly Sections 4 and 8 of the Bill of Rights, Section 2(5) of Article IX, and Section 3 of Article XIII. Jurisprudence abounds with hallowed pronouncements defending and promoting the people's exercise of these rights. As early as the onset of this century, this Court in U.S. vs. Apurado, already upheld the right to assembly and petition and even went as far as to acknowledge:
>
> "It is rather to be expected that more or less disorder will mark the public assembly of the people to protest against grievances whether real or imaginary, because on such occasions feeling is always wrought to a high pitch of excitement, and the greater, the grievance and the more intense the feeling, the less perfect, as a rule will be the disciplinary control of the leaders over their irresponsible followers. But if the prosecution be permitted to seize upon every instance of such disorderly conduct by individual members of a crowd as an excuse to characterize the assembly as a seditious and tumultuous rising against the authorities, then the right to assemble and to petition for redress of grievances would expose all those who took part therein to the severest and most unmerited punishment, if the purposes which they sought to attain did not happen to be pleasing to the prosecuting authorities. If instances of disorderly conduct occur on such occasions, the guilty individuals should be sought out and punished therefor, but the utmost discretion must be exercised in drawing the line between disorderly and seditious conduct and between an essentially peaceable assembly and a tumultuous uprising."

Again, in Primicias v. Fugoso,[17] the Court likewise sustained the primacy of freedom of speech and to assembly and petition over comfort and convenience in the use of streets and parks.

Next, however, it must be remembered that the right, while sacrosanct, is not absolute. In Primicias, this Court said:

> The right to freedom of speech, and to peacefully assemble and petition the government for redress of

grievances, are fundamental personal rights of the people recognized and guaranteed by the constitutions of democratic countries. But it is a settled principle growing out of the nature of well-ordered civil societies that the exercise of those rights is not absolute for it may be so regulated that it shall not be injurious to the equal enjoyment of others having equal rights, nor injurious to the rights of the community or society. The power to regulate the exercise of such and other constitutional rights is termed the sovereign "police power," which is the power to prescribe regulations, to promote the health, morals, peace, education, good order or safety, and general welfare of the people. This sovereign police power is exercised by the government through its legislative branch by the enactment of laws regulating those and other constitutional and civil rights, and it may be delegated to political subdivisions, such as towns, municipalities and cities by authorizing their legislative bodies called municipal and city councils enact ordinances for purpose.[18]

Reyes v. Bagatsing[19] further expounded on the right and its limits, as follows:

- It is thus clear that the Court is called upon to protect the exercise of the cognate rights to free speech and peaceful assembly, arising from the denial of a permit. The Constitution is quite explicit: "No law shall be passed abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances." Free speech, like free press, may be identified with the liberty to discuss publicly and truthfully any matter of public concern without censorship or punishment. There is to be then no previous restraint on the communication of views or subsequent liability whether in libel suits, prosecution for sedition, or action for damages, or contempt proceedings unless there be a "clear and present danger of a substantive evil that [the State] has a right to prevent." Freedom of assembly connotes the right of the people to meet peaceably for consultation and discussion of matters of public concern. It is entitled to be accorded the utmost deference and respect. It is not to be limited, much less denied, except on a showing, as is the case with freedom of expression, of a clear and present danger of a substantive evil that the state has a right to prevent. Even prior to the 1935 Constitution, Justice Malcolm had occasion to stress that it is a necessary consequence of our republican institutions and complements the right of free speech. To paraphrase the opinion of Justice Rutledge, speaking for the majority of the American Supreme Court in Thomas v. Collins, it was not by accident or coincidence that the rights to freedom of speech and of the press were coupled in a single guarantee with the right of the people peaceably to assemble and to petition the government for redress of grievances. All these rights, while not identical, are inseparable. In every case, therefore, where there is a limitation placed on the exercise of this right, the judiciary is called upon to examine the effects of the challenged governmental actuation. The sole justification for a limitation on the exercise of this right, so fundamental to the maintenance of democratic institutions, is the danger, of a character both grave and imminent, of a serious evil to public safety, public morals, public health, or any other legitimate public interest.

- Nowhere is the rationale that underlies the freedom of expression and peaceable assembly better expressed than in this excerpt from an opinion of Justice Frankfurter: "It must never be forgotten, however, that the Bill of Rights was the child of the Enlightenment. Back of the guaranty of free speech lay faith in the power of an appeal to reason by all the peaceful means for gaining access to the mind. It was in order to avert force and explosions due to restrictions upon rational modes of communication that the guaranty of free speech was given a generous scope. But utterance in a context of violence can lose its significance as an appeal to reason and become part of an instrument of force. Such utterance was not meant to be sheltered by the Constitution." What was rightfully stressed is the abandonment of reason, the utterance, whether verbal or printed, being in a context of violence. It must always be remembered that this right likewise provides for a safety valve, allowing parties the opportunity to give vent to their views, even if contrary to the prevailing climate of opinion. For if the peaceful means of communication cannot be availed of, resort to non-peaceful means may be the only alternative. Nor is this the sole reason for the expression of dissent. It means more than just the right to be heard of the person who feels aggrieved or who is dissatisfied with things as they are. Its value may lie in the fact that there may be something worth hearing from the dissenter. That is to ensure a true ferment of ideas. There are, of course, well-defined limits. What is guaranteed is peaceable assembly. One may not advocate disorder in the name of protest, much less preach rebellion under the cloak of dissent. The Constitution frowns

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on disorder or tumult attending a rally or assembly. Resort to force is ruled out and outbreaks of violence to be avoided. The utmost calm though is not required. As pointed out in an early Philippine case, penned in 1907 to be precise, United States v. Apurado: "It is rather to be expected that more or less disorder will mark the public assembly of the people to protest against grievances whether real or imaginary, because on such occasions feeling is always wrought to a high pitch of excitement, and the greater the grievance and the more intense the feeling, the less perfect, as a rule, will be the disciplinary control of the leaders over their irresponsible followers." It bears repeating that for the constitutional right to be invoked, riotous conduct, injury to property, and acts of vandalism must be avoided. To give free rein to one's destructive urges is to call for condemnation. It is to make a mockery of the high estate occupied by intellectual liberty in our scheme of values.

There can be no legal objection, absent the existence of a clear and present danger of a substantive evil, on the choice of Luneta as the place where the peace rally would start. The Philippines is committed to the view expressed in the plurality opinion, of 1939 vintage of, Justice Roberts in Hague v. CIO: "Whenever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but must not, in the guise of respondents, be abridged or denied." The above excerpt was quoted with approval in Primicias v. Fugoso. Primicias made explicit what was implicit in Municipality of Cavite v. Rojas, a 1915 decision, where this Court categorically affirmed that plazas or parks and streets are outside the commerce of man and thus nullified a contract that leased Plaza Soledad of plaintiff-municipality. Reference was made to such plaza "being a promenade for public use," which certainly is not the only purpose that it could serve. To repeat, there can be no valid reason why a permit should not be granted for the proposed march and rally starting from a public park that is the Luneta.

- Neither can there be any valid objection to the use of the streets to the gates of the US embassy, hardly two blocks away at the Roxas Boulevard. Primicias v. Fugoso has resolved any lurking doubt on the matter. In holding that the then Mayor Fugoso of the City of Manila should grant a permit for a public meeting at Plaza Miranda in Quiapo, this Court categorically declared: "Our conclusion finds support in the decision in the case of Willis Cox v. State of New Hampshire, 312 U.S., 569. In that case, the statute of New Hampshire P.L. chap. 145, section 2, providing that no parade or procession upon any ground abutting thereon, shall be permitted unless a special license therefor shall first be obtained from the selectmen of the town or from licensing committee," was construed by the Supreme Court of New Hampshire as not conferring upon the licensing board unfettered discretion to refuse to grant the license, and held valid. And the Supreme Court of the United States, in its decision (1941) penned by Chief Justice Hughes affirming the judgment of the State Supreme Court, held that "a statute requiring persons using the public streets for a parade or procession to procure a special license therefor from the local authorities is not an unconstitutional abridgment of the rights of assembly or of freedom of speech and press, where, as the statute is construed by the state courts, the licensing authorities are strictly limited, in the issuance of licenses, to a consideration of the time, place, and manner of the parade or procession, with a view to conserving the public convenience and of affording an opportunity to provide proper policing, and are not invested with arbitrary discretion to issue or refuse license, * * *. "Nor should the point made by Chief Justice Hughes in a subsequent portion of the opinion be ignored: "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestricted abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition of social need. Where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the

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attempted exercise of some civil right which in other circumstances would be entitled to protection."

x x x

- x x x The principle under American doctrines was given utterance by Chief Justice Hughes in these words: "The question, if the rights of free speech and peaceable assembly are to be preserved, is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects." There could be danger to public peace and safety if such a gathering were marked by turbulence. That would deprive it of its peaceful character. It is true that the licensing official, here respondent Mayor, is not devoid of discretion in determining whether or not a permit would be granted. It is not, however, unfettered discretion. While prudence requires that there be a realistic appraisal not of what may possibly occur but of what may probably occur, given all the relevant circumstances, still the assumption - especially so where the assembly is scheduled for a specific public place - is that the permit must be for the assembly being held there. The exercise of such a right, in the language of Justice Roberts, speaking for the American Supreme Court, is not to be "abridged on the plea that it may be exercised in some other place."

x x x

- By way of a summary. The applicants for a permit to hold an assembly should inform the licensing authority of the date, the public place where and the time when it will take place. If it were a private place, only the consent of the owner or the one entitled to its legal possession is required. Such application should be filed well ahead in time to enable the public official concerned to appraise whether there may be valid objections to the grant of the permit or to its grant but at another public place. It is an indispensable condition to such refusal or modification that the clear and present danger test be the standard for the decision reached. If he is of the view that there is such an imminent and grave danger of a substantive evil, the applicants must be heard on the matter. Thereafter, his decision, whether favorable or adverse, must be transmitted to them at the earliest opportunity. Thus if so minded, they can have recourse to the proper judicial authority. Free speech and peaceable assembly, along with the other intellectual freedoms, are highly ranked in our scheme of constitutional values. It cannot be too strongly stressed that on the judiciary, -- even more so than on the other departments - rests the grave and delicate responsibility of assuring respect for and deference to such preferred rights. No verbal formula, no sanctifying phrase can, of course, dispense with what has been so felicitiously termed by Justice Holmes "as the sovereign prerogative of judgment." Nonetheless, the presumption must be to incline the weight of the scales of justice on the side of such rights, enjoying as they do precedence and primacy. x x x.

B.P. No. 880 was enacted after this Court rendered its decision in Reyes.

The provisions of B.P. No. 880 practically codify the ruling in Reyes:

Reyes v. Bagatsing

(G.R. No. L-65366, November 9, 1983,
125 SCRA 553, 569)

8. By way of a summary. The applicants for a permit to hold an assembly should inform the licensing authority of the date, the public place where and the time when it will take place. If it were a private place, only the consent of the owner or the one entitled to its legal possession is required. Such application should be filed well ahead in time to enable the public official concerned to appraise whether there may be valid objections to the grant of the permit or to its grant but at another public place. It is an indispensable condition to such refusal or modification that the clear and present danger test be the standard for the decision reached. If he is of the view that there is such an imminent and grave danger of a substantive evil, the applicants must be heard on the matter. Thereafter, his

decision, whether favorable or adverse, must be transmitted to them at the earliest opportunity. Thus if so minded, they can have recourse to the proper judicial authority.

B.P. No. 880

Sec. 4. Permit when required and when not required.-- A written permit shall be required for any person or persons to organize and hold a public assembly in a public place. However, no permit shall be required if the public assembly shall be done or made in a freedom park duly established by law or ordinance or in private property, in which case only the consent of the owner or the one entitled to its legal possession is required, or in the campus of a government-owned and operated educational institution which shall be subject to the rules and regulations of said educational institution. Political meetings or rallies held during any election campaign period as provided for by law are not covered by this Act.

Sec.5. Application requirements.-- All applications for a permit shall comply with the following guidelines:(a) The applications shall be in writing and shall include the names of the leaders or organizers; the purpose of such public assembly; the date, time and duration thereof, and place or streets to be used for the intended activity; and the probable number of persons participating, the transport and the public address systems to be used.(b) The application shall incorporate the duty and responsibility of applicant under Section 8 hereof.(c) The application shall be filed with the office of the mayor of the city or municipality in whose jurisdiction the intended activity is to be held, at least five (5) working days before the scheduled public assembly.(d) Upon receipt of the application, which must be duly acknowledged in writing, the office of the city or municipal mayor shall cause the same to immediately be posted at a conspicuous place in the city or municipal building.

Sec. 6. Action to be taken on the application. -
(a) It shall be the duty of the mayor or any official acting in his behalf to issue or grant a permit unless there is clear and convincing evidence that the public assembly will create a clear and present danger to public order, public safety, public convenience, public morals or public health.
(b) The mayor or any official acting in his behalf shall act on the application within two (2) working days from the date the application was filed, failing which, the permit shall be deemed granted. Should for any reason the mayor or any official acting in his behalf refuse to accept the application for a permit, said application shall be posted by the applicant on the premises of the office of the mayor and shall be deemed to have been filed.
(c) If the mayor is of the view that there is imminent and grave danger of a substantive evil warranting the denial or modification of the permit, he shall immediately inform the applicant who must be heard on the matter.
(d) The action on the permit shall be in writing and served on the applica[nt] within twenty-four hours.
(e) If the mayor or any official acting in his behalf denies the application or modifies the terms thereof in his permit, the applicant may contest the decision in an appropriate court of law.
(f) In case suit is brought before the Metropolitan Trial Court, the Municipal Trial Court, the Municipal Circuit Trial Court, the Regional Trial Court, or the Intermediate Appellate Court, its decisions may be appealed to the appropriate court within forty-eight (48) hours after receipt of the same. No appeal bond and record on appeal shall be required. A decision granting such permit or modifying it in terms satisfactory to the applicant shall be immediately executory.
(g) All cases filed in court under this section shall be decided within twenty-four (24) hours from date of filing. Cases filed hereunder shall be immediately endorsed to the executive judge for disposition or, in his absence, to the next in rank.
(h) In all cases, any decision may be appealed to the Supreme Court.
(i) Telegraphic appeals to be followed by formal appeals are hereby allowed.

It is very clear, therefore, that B.P. No. 880 is not an absolute ban of public assemblies but a restriction that

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simply regulates the time, place and manner of the assemblies. This was adverted to in Osmeña v. Comelec,[20] where the Court referred to it as a "content-neutral" regulation of the time, place, and manner of holding public assemblies.[21]

A fair and impartial reading of B.P. No. 880 thus readily shows that it refers to all kinds of public assemblies[22] that would use public places. The reference to "lawful cause" does not make it content-based because assemblies really have to be for lawful causes, otherwise they would not be "peaceable" and entitled to protection. Neither are the words "opinion," "protesting" and "influencing" in the definition of public assembly content based, since they can refer to any subject. The words "petitioning the government for redress of grievances" come from the wording of the Constitution, so its use cannot be avoided. Finally, maximum tolerance is for the protection and benefit of all rallyists and is independent of the content of the expressions in the rally.

Furthermore, the permit can only be denied on the ground of clear and present danger to public order, public safety, public convenience, public morals or public health. This is a recognized exception to the exercise of the right even under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, thus:

> Universal Declaration of Human Rights
>
> Article 20
>
> - Everyone has the right to freedom of peaceful assembly and association.
>
> x x x
>
> Article 29
>
> - Everyone has duties to the community in which alone the free and full development of his personality is possible.
>
> - In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
>
> - These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.
>
> The International Covenant on Civil and Political Rights
>
> Article 19.
>
> - Everyone shall have the right to hold opinions without interference.
>
> - Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
>
> - The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
>
> (a) For respect of the rights or reputations of others;
> (b) For the protection of national security or of public order (ordre public), or of public health or morals.

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Contrary to petitioner's claim, the law is very clear and is nowhere vague in its provisions. "Public" does not have to be defined. Its ordinary meaning is well-known. Webster's Dictionary defines it, thus:[23]

> public, n, x x x 2a: an organized body of people x x x 3: a group of people distinguished by common interests or characteristics x x x.

Not every expression of opinion is a public assembly. The law refers to "rally, demonstration, march, parade, procession or any other form of mass or concerted action held in a public place." So it does not cover any and all kinds of gatherings.

Neither is the law overbroad. It regulates the exercise of the right to peaceful assembly and petition only to the extent needed to avoid a clear and present danger of the substantive evils Congress has the right to prevent.

There is, likewise, no prior restraint, since the content of the speech is not relevant to the regulation.

As to the delegation of powers to the mayor, the law provides a precise and sufficient standard -the clear and present danger test stated in Sec. 6(a). The reference to "imminent and grave danger of a substantive evil" in Sec. 6(c) substantially means the same thing and is not an inconsistent standard. As to whether respondent Mayor has the same power independently under Republic Act No. 7160[24] is thus not necessary to resolve in these proceedings, and was not pursued by the parties in their arguments.

Finally, for those who cannot wait, Section 15 of the law provides for an alternative forum through the creation of freedom parks where no prior permit is needed for peaceful assembly and petition at any time:

> Sec. 15. Freedom parks. - Every city and municipality in the country shall within six months after the effectivity of this Act establish or designate at least one suitable "freedom park" or mall in their respective jurisdictions which, as far as practicable, shall be centrally located within the poblacion where demonstrations and meetings may be held at any time without the need of any prior permit.
>
> In the cities and municipalities of Metropolitan Manila, the respective mayors shall establish the freedom parks within the period of six months from the effectivity this Act.

This brings up the point, however, of compliance with this provision.

The Solicitor General stated during the oral arguments that, to his knowledge, only Cebu City has declared a freedom park " Fuente Osmeña.

That of Manila, the Sunken Gardens, has since been converted into a golf course, he added.

If this is so, the degree of observance of B.P. No. 880's mandate that every city and municipality set aside a freedom park within six months from its effectivity in 1985, or 20 years ago, would be pathetic and regrettable. The matter appears to have been taken for granted amidst the swell of freedom that rose from the peaceful revolution of 1986.

Considering that the existence of such freedom parks is an essential part of the law's system of regulation of the people's exercise of their right to peacefully assemble and petition, the Court is constrained to rule that after thirty (30) days from the finality of this Decision, no prior permit may be required for the exercise of such right in any public park or plaza of a city or municipality until that city or municipality shall have complied with Section 15 of the law. For without such alternative forum, to deny the permit would in effect be to deny the right. Advance notices should, however, be given to the authorities to ensure proper coordination and orderly proceedings.

The Court now comes to the matter of the CPR. As stated earlier, the Solicitor General has conceded that the use of the term should now be discontinued, since it does not mean anything other than the maximum tolerance policy

set forth in B.P. No. 880. This is stated in the Affidavit of respondent Executive Secretary Eduardo Ermita, submitted by the Solicitor General, thus:

> - The truth of the matter is the policy of "calibrated preemptive response" is in consonance with the legal definition of "maximum tolerance" under Section 3 (c) of B.P. Blg. 880, which is the "highest degree of restraint that the military, police and other peacekeeping authorities shall observe during a public assembly or in the dispersal of the same." Unfortunately, however, the phrase "maximum tolerance" has acquired a different meaning over the years. Many have taken it to mean inaction on the part of law enforcers even in the face of mayhem and serious threats to public order. More so, other felt that they need not bother secure a permit when holding rallies thinking this would be "tolerated." Clearly, the popular connotation of "maximum tolerance" has departed from its real essence under B.P. Blg. 880.
>
> - It should be emphasized that the policy of maximum tolerance is provided under the same law which requires all pubic assemblies to have a permit, which allows the dispersal of rallies without a permit, and which recognizes certain instances when water cannons may be used. This could only mean that "maximum tolerance" is not in conflict with a "no permit, no rally policy" or with the dispersal and use of water cannons under certain circumstances for indeed, the maximum amount of tolerance required is dependent on how peaceful or unruly a mass action is. Our law enforcers should calibrate their response based on the circumstances on the ground with the view to preempting the outbreak of violence.
>
> - Thus, when I stated that calibrated preemptive response is being enforced in lieu of maximum tolerance I clearly was not referring to its legal definition but to the distorted and much abused definition that it has now acquired. I only wanted to disabuse the minds of the public from the notion that law enforcers would shirk their responsibility of keeping the peace even when confronted with dangerously threatening behavior. I wanted to send a message that we would no longer be lax in enforcing the law but would henceforth follow it to the letter. Thus I said, "we have instructed the PNP as well as the local government units to strictly enforce a no permit, no rally policy . . . arrest all persons violating the laws of the land . . . unlawful mass actions will be dispersed." None of these is at loggerheads with the letter and spirit of Batas Pambansa Blg. 880. It is thus absurd for complainants to even claim that I ordered my co-respondents to violate any law.[25]

At any rate, the Court rules that in view of the maximum tolerance mandated by B.P. No. 880, CPR serves no valid purpose if it means the same thing as maximum tolerance and is illegal if it means something else. Accordingly, what is to be followed is and should be that mandated by the law itself, namely, maximum tolerance, which specifically means the following:

> Sec. 3. Definition of terms. - For purposes of this Act:
>
> x x x
>
> (c) "Maximum tolerance" means the highest degree of restraint that the military, police and other peace keeping authorities shall observe during a public assembly or in the dispersal of the same.
>
> x x x
>
> Sec. 9. Non-interference by law enforcement authorities. - Law enforcement agencies shall not interfere with the holding of a public assembly. However, to adequately ensure public safety, a law enforcement contingent under the command of a responsible police officer may be detailed and stationed in a place at least one hundred (100) meters away from the area of activity ready to maintain peace and order at all times.
>
> Sec. 10. Police assistance when requested. - It shall be imperative for law enforcement agencies, when their assistance is requested by the leaders or organizers, to perform their duties always mindful that their responsibility to provide proper protection to those exercising their right peaceably to assemble and the freedom of expression is primordial. Towards this end, law enforcement agencies shall observe the following

guidelines:

(a) Members of the law enforcement contingent who deal with the demonstrators shall be in complete uniform with their nameplates and units to which they belong displayed prominently on the front and dorsal parts of their uniform and must observe the policy of "maximum tolerance" as herein defined;

(b) The members of the law enforcement contingent shall not carry any kind of firearms but may be equipped with baton or riot sticks, shields, crash helmets with visor, gas masks, boots or ankle high shoes with shin guards;

(c) Tear gas, smoke grenades, water cannons, or any similar anti-riot device shall not be used unless the public assembly is attended by actual violence or serious threats of violence, or deliberate destruction of property.

Sec. 11. Dispersal of public assembly with permit. - No public assembly with a permit shall be dispersed. However, when an assembly becomes violent, the police may disperse such public assembly as follows:

(a) At the first sign of impending violence, the ranking officer of the law enforcement contingent shall call the attention of the leaders of the public assembly and ask the latter to prevent any possible disturbance;

(b) If actual violence starts to a point where rocks or other harmful objects from the participants are thrown at the police or at the non-participants, or at any property causing damage to such property, the ranking officer of the law enforcement contingent shall audibly warn the participants that if the disturbance persists, the public assembly will be dispersed;

(c) If the violence or disturbance prevailing as stated in the preceding subparagraph should not stop or abate, the ranking officer of the law enforcement contingent shall audibly issue a warning to the participants of the public assembly, and after allowing a reasonable period of time to lapse, shall immediately order it to forthwith disperse;

(d) No arrest of any leader, organizer or participant shall also be made during the public assembly unless he violates during the assembly a law, statute, ordinance or any provision of this Act. Such arrest shall be governed by Article 125 of the Revised Penal Code, as amended;

(d) Isolated acts or incidents of disorder or breach of the peace during the public assembly may be peacefully dispersed.

x x x

Sec. 12. Dispersal of public assembly without permit. - When the public assembly is held without a permit where a permit is required, the said public assembly may be peacefully dispersed.

Sec. 13. Prohibited acts. - The following shall constitute violations of the Act:

(e) Obstructing, impeding, disrupting or otherwise denying the exercise of the right to peaceful assembly;

(f) The unnecessary firing of firearms by a member of any law enforcement agency or any person to disperse the public assembly;

(g) Acts described hereunder if committed within one hundred (100) meters from the area of activity of the public assembly or on the occasion thereof:

x x x

- the carrying of firearms by members of the law enforcement unit;

- the interfering with or intentionally disturbing the holding of a public assembly by the use of a motor vehicle, its horns and loud sound systems.

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Furthermore, there is need to address the situation adverted to by petitioners where mayors do not act on applications for a permit and when the police demand a permit and the rallyists could not produce one, the rally is immediately dispersed. In such a situation, as a necessary consequence and part of maximum tolerance, rallyists who can show the police an application duly filed on a given date can, after two days from said date, rally in accordance with their application without the need to show a permit, the grant of the permit being then presumed under the law, and it will be the burden of the authorities to show that there has been a denial of the application, in which case the rally may be peacefully dispersed following the procedure of maximum tolerance prescribed by the law.

In sum, this Court reiterates its basic policy of upholding the fundamental rights of our people, especially freedom of expression and freedom of assembly. In several policy addresses, Chief Justice Artemio V. Panganiban has repeatedly vowed to uphold the liberty of our people and to nurture their prosperity. He said that "in cases involving liberty, the scales of justice should weigh heavily against the government and in favor of the poor, the oppressed, the marginalized, the dispossessed and the weak. Indeed, laws and actions that restrict fundamental rights come to the courts with a heavy presumption against their validity. These laws and actions are subjected to heightened scrutiny."[26]

For this reason, the so-called calibrated preemptive response policy has no place in our legal firmament and must be struck down as a darkness that shrouds freedom. It merely confuses our people and is used by some police agents to justify abuses. On the other hand, B.P. No. 880 cannot be condemned as unconstitutional; it does not curtail or unduly restrict freedoms; it merely regulates the use of public places as to the time, place and manner of assemblies. Far from being insidious, "maximum tolerance" is for the benefit of rallyists, not the government. The delegation to the mayors of the power to issue rally "permits" is valid because it is subject to the constitutionally-sound "clear and present danger" standard.

In this Decision, the Court goes even one step further in safeguarding liberty by giving local governments a deadline of 30 days within which to designate specific freedom parks as provided under B.P. No. 880. If, after that period, no such parks are so identified in accordance with Section 15 of the law, all public parks and plazas of the municipality or city concerned shall in effect be deemed freedom parks; no prior permit of whatever kind shall be required to hold an assembly therein. The only requirement will be written notices to the police and the mayor's office to allow proper coordination and orderly activities.

WHEREFORE, the petitions are GRANTED in part, and respondents, more particularly the Secretary of the Interior and Local Governments, are DIRECTED to take all necessary steps for the immediate compliance with Section 15 of Batas Pambansa No. 880 through the establishment or designation of at least one suitable freedom park or plaza in every city and municipality of the country. After thirty (30) days from the finality of this Decision, subject to the giving of advance notices, no prior permit shall be required to exercise the right to peaceably assemble and petition in the public parks or plazas of a city or municipality that has not yet complied with Section 15 of the law. Furthermore, Calibrated Preemptive Response (CPR), insofar as it would purport to differ from or be in lieu of maximum tolerance, is NULL and VOID and respondents are ENJOINED to REFRAIN from using it and to STRICTLY OBSERVE the requirements of maximum tolerance. The petitions are DISMISSED in all other respects, and the constitutionality of Batas Pambansa No. 880 is SUSTAINED.

No costs.

SO ORDERED.

Panganiban, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Garcia, and Velasco, Jr., JJ., concur.
Puno, J., on leave.
Chico-Nazario, J., on official leave.

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[1] Petition for Certiorari, Mandamus and Prohibition with Prayer for Temporary Restraining Order filed by Bayan, Karapatan, Kilusang Magbubukid Ng Pilipinas (KMP), COURAGE, GABRIELA, Fr. Jose A. Dizon, Renato Constantino, Jr., Froyel Yaneza, and Fahima Tajar.

[2] Petition for Prohibition, Injunction, Restraining Order and other Just and Equitable Reliefs filed by Jess Del Prado, Wilson Fortaleza, Leody de Guzman, Pedro Pinlac, Carmelita Morante, Rasti Delizo, Paul Bangay, Marie Jo Ocampo, Lilia dela Cruz, Cristeta Ramos, Adelaida Ramos, Mary Grace Gonzales, Michael Torres, Rendo Sabusap, Precious Balute, Roxanne Magboo, Ernie Bautista, Joseph de Jesus, Margarita Escober, Djoannalyn Janier, Magdalena Sellote, Manny Quiazon, Ericson Dizon, Nenita Cruzat, Leonardo De los Reyes, Pedrito Fadrigon.

[3]Petition for Certiorari, Prohibition and Mandamus with Prayer for Issuance of Restraining Order filed by Kilusang Mayo Uno, represented by its Chairperson Elmer C. Labog and Secretary General Joel Maglunsod, National Federation of Labor Unions - Kilusang Mayo Uno (NAFLU-KMU), represented by its National President, Joselito V. Ustarez, Antonio C. Pascual, Salvador T. Carranza, Gilda Sumilang, Francisco Lastrella, and Roque M. Tan.

[4]Petitioner Gilda Sumilang.

[5]Petition, G.R. No. 169838, p. 29.

[6]Citing Adiong v. Commission on Elections, 207 SCRA 712 (1992); United States v. O'Brien, 391 U.S. 367, 20 L. Ed. 2d 672 (1968); see R.D. Rotunda, et al., TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE (1986) citing Clark v. Community for Creative Non-Violence, 468 U.S. 288, 104 S.Ct. 3065, 82 L.Ed. 2d 221 (1984).

[7]G.R. No. 132231, March 31, 1998, 288 SCRA 447.

[8] G.R. No. 103956, March 31, 1992, 207 SCRA 712.

[9] G.R. No. 71169, August 25, 1989, 176 SCRA 719.

[10] Citing Iglesia ni Cristo v. Court of Appeals, G.R. No. 119673, July 26, 1996, 259 SCRA 529.

[11] G. R. No. L-65366, November 9, 1983, 125 SCRA 553.

[12] 80 Phil. 71 (1948).

[13] G.R. No. 124540, November 14, 1997.

[14] Resolution dated March 28, 2006.

[15] 346 Phil. 665-666 (1997).

[16] 7 Phil. 422 (1907).

[17] 80 Phil. 71 (1948).

[18] Ibid at 75-76 (Emphasis supplied).

[19] G.R. No. L-65366, November 9, 1983, 125 SCRA 553.

[20] G.R. No. 132231, March 31, 1998, 288 SCRA 447.

[21] Ibid, p. 478.

[22] Except picketing and other concerted action in strike areas by workers and employees resulting from a labor dispute, which are governed by the Labor Code and other labor laws; political meeting or rallies held during any election campaign period, which are governed by the Election Code and other election related laws; and public assemblies in the campus of a government-owned and operated educational institution, which shall be subject to the rules and regulations of said educational institution. (Sec. 3[a] and Sec. 4 of B.P. No. 880).

[23] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED (1993 Ed)., p. 1836.

[24] The Local Government Code. Specifically, Section 16 stating the general welfare clause, thus:

Sec. 16. General Welfare. - Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

[25] Respondents' Consolidated Memorandum, pp. 30-31 (Emphasis supplied by respondents).

[26]Chief Justice Artemio V. Panganiban, Liberty and Prosperity, February 15, 2006.

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