

**MARK ANTHONY V. ZABAL, THITING ESTOSO JACOSALEM, AND
ODON S. BANDIOLA, PETITIONERS, VS. RODRIGO R. DUTERTE,
PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES; SALVADOR C.
MEDIALDEA, ...**

G.R. No. 238467. February 12, 2019

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

Paradise is a place of bliss, felicity, and delight.[1] For Filipinos and foreign nationals alike, Boracay - a small island in Malay, Aklan, with its palm-fringed, pristine white sand beaches, azure waters, coral reefs, rare seashells,[2] and a lot more to offer,[3] - is indeed a piece of paradise. Unsurprisingly, Boracay is one of the country's prime tourist destinations. However, this island-paradise has been disrespected, abused, degraded, over-used, and taken advantage of by both locals and tourists. Hence, the government gave Boracay its much-needed respite and rehabilitation. However, the process by which the rehabilitation was to be implemented did not sit well with petitioners, hence, the present petition.

The Case

Before this Court is a Petition for Prohibition and Mandamus with Application for Temporary Restraining Order, Preliminary Injunction, and/or Status Quo Ante Order filed by petitioners Mark Anthony V. Zabal (Zabal), Thiting Estoso Jacosalem (Jacosalem), and Odon S. Bandiola (Bandiola) against respondents President Rodrigo R. Duterte (President Duterte), Executive Secretary Salvador C. Medialdea, and Secretary Eduardo M. Año of the Department of Interior and Local Government (DILG).

The Parties

Zabal and Jacosalem are both residents of Boracay who, at the time of the filing of the petition, were earning a living from the tourist activities therein. Zabal claims to build sandcastles for tourists while Jacosalem drives for tourists and workers in the island. While not a resident, Bandiola, for his part, claims to occasionally visit Boracay for business and pleasure. The three base their locus standi on direct injury and also from the transcendental importance doctrine.[4] Respondents, on the other hand, are being sued in their capacity as officials of the government.

The Facts

Claiming that Boracay has become a cesspool, President Duterte first made public his plan to shut it down during a business forum held in Davao sometime February 2018.[5] This was followed by several speeches and news releases stating that he would place Boracay under a state of calamity. True to his words, President Duterte ordered the shutting down of the island in a cabinet meeting held on April 4, 2018. This was confirmed by then Presidential Spokesperson Harry L. Roque, Jr. in a press briefing the following day wherein he formally announced that the total closure of Boracay would be for a maximum period of six months starting April 26,

2018.[6]

Following this pronouncement, petitioners contend that around 630 police and military personnel were readily deployed to Boracay including personnel for crowd dispersal management.[7] They also allege that the DILG had already released guidelines for the closure.[8]

Petitioners claim that ever since the news of Boracay's closure came about, fewer tourists had been engaging the services of Zabal and Jacosalem such that their earnings were barely enough to feed their families. They fear that if the closure pushes through, they would suffer grave and irreparable damage. Hence, despite the fact that the government was then yet to release a formal issuance on the matter,[9] petitioners filed the petition on April 25, 2018 praying that:

(a)

Upon the filing of [the] petition, a TEMPORARY RESTRAINING ORDER (TRO) and/or a WRIT OF PRELIMINARY PROHIBITORY INJUNCTION be immediately issued RESTRAINING and/or ENJOINING the respondents, and all persons acting under their command, order, and responsibility from enforcing a closure of Boracay Island or from banning the petitioners, tourists, and non-residents therefrom, and a WRIT OF PRELIMINARY MANDATORY INJUNCTION directing the respondents, and all persons acting under their command, order, and responsibility to ALLOW all of the said persons to enter and/or leave Boracay Island unimpeded;

(b)

In the alternative, if the respondents enforce the closure after the instant petition is filed, that a STATUS QUO ANTE Order be issued restoring and maintaining the condition prior to such closure;

(c)

After proper proceedings, a judgment be rendered PERMANENTLY RESTRAINING and/or ENJOINING the respondents, and all persons acting under their command, order, and responsibility from enforcing a closure of Boracay Island or from banning the petitioners, tourists, and non-residents therefrom, and further DECLARING the closure of Boracay Island or the ban against petitioners, tourists, and non-residents therefrom to be UNCONSTITUTIONAL.

Other reliefs just and equitable under the premises are similarly prayed for.[10]

On May 18, 2018, petitioners filed a Supplemental Petition[11] stating that the day following the filing of their original petition or on April 26, 2018, President Duterte issued Proclamation No. 475[12] formally declaring a state of calamity in Boracay and ordering its closure for six months from April 26, 2018 to October 25, 2018. The closure was implemented on even date. Thus, in addition to what they prayed for in their original petition, petitioners implore the Court to declare as unconstitutional Proclamation No. 475 insofar as it orders the closure of Boracay and ban of tourists and non-residents therefrom.[13]

In the Resolutions dated April 26, 2018[14] and June 5, 2018,[15] the Court required respondents to file their Comment on the Petition and the Supplemental Petition, respectively. Respondents filed their Consolidated Comment[16] on July 30, 2018 while petitioners filed their Reply[17] thereto on October 12, 2018.

On October 26, 2018, Boracay was reopened to tourism.

Petitioners' Arguments

Petitioners state that a petition for prohibition is the appropriate remedy to raise constitutional issues and to review and/or prohibit or nullify, when proper, acts of legislative and executive officials. An action for

mandamus, on the other hand, lies against a respondent who unlawfully excludes another from the enjoyment of an entitled right or office. Justifying their resort to prohibition and mandamus, petitioners assert that (1) this case presents constitutional issues, i.e., whether President Duterte acted within the scope of the powers granted him by the Constitution in ordering the closure of Boracay and, whether the measures implemented infringe upon the constitutional rights to travel and to due process of petitioners as well as of tourists and non-residents of the island; and, (2) President Duterte exercised a power legislative in nature, thus unlawfully excluding the legislative department from the assertion of such power.

As to the substantive aspect, petitioners argue that Proclamation No. 475 is an invalid exercise of legislative powers. They posit that its issuance is in truth a law-making exercise since the proclamation imposed a restriction on the right to travel and therefore substantially altered the relationship between the State and its people by increasing the former's power over the latter. Simply stated, petitioners posit that Proclamation No. 475 partakes of a law the issuance of which is not vested in the President. As such, Proclamation No. 475 must be struck down for being the product of an invalid exercise of legislative power.

Likewise, petitioners argue that Proclamation No. 475 is unconstitutional for infringing on the constitutional rights to travel and to due process.

Petitioners point out that although Section 6, Article III of the Constitution explicitly allows the impairment of the right to travel, two conditions, however, must concur to wit: (1) there is a law restricting the said right, and (2) the restriction is based on national security, public safety or public health. For petitioners, neither of these conditions have been complied with. For one, Proclamation No. 475 does not refer to any specific law restricting the right to travel. Second, it has not been shown that the presence of tourists in the island poses any threat or danger to national security, public safety or public health.

As to the right to due process, petitioners aver that the same covers property rights and these include the right to work and earn a living. Since the government, through Proclamation No. 475, restricted the entry of tourists and non-residents into the island, petitioners claim that they, as well as all others who work, do business, or earn a living in the island, were deprived of the source of their livelihood as a result thereof. Their right to work and earn a living was curtailed by the proclamation. Moreover, while Proclamation No. 475 cites various violations of environmental laws in the island, these, for the petitioners, do not justify disregard of the rights of thousands of law-abiding people. They contend that environmental laws provide for specific penalties intended only for violators. Verily, to make those innocent of environmental transgressions suffer the consequences of the Boracay closure is tantamount to violating their right to due process.

Petitioners likewise argue that the closure of Boracay could not be anchored on police power. For one, police power must be exercised not by the executive but by legislative bodies through the creation of statutes and ordinances that aim to promote the health, moral, peace, education, safety, and general welfare of the people. For another, the measure is unreasonably unnecessary and unduly oppressive.

In their Supplemental Petition, petitioners aver that Proclamation No. 475 unduly impinges upon the local autonomy of affected Local Government Units (LGUs) since it orders the said LGUs to implement the closure of Boracay and the ban of tourists and non-residents therefrom. While petitioners acknowledge the President's power of supervision over LGUs, they nevertheless point out that he does not wield the power of control over them. As such, President Duterte can only call the attention of the LGUs concerned with regard to rules not being followed, which is the true essence of supervision, but he cannot lay down the rules himself as this already constitutes control.

Finally, petitioners state that this case does not simply revolve on the need to rehabilitate Boracay, but rather, on

the extent of executive power and the manner by which it was wielded by President Duterte. To them, necessity does not justify the President's abuse of power.

Respondents' Arguments

At the outset, respondents assert that President Duterte must be dropped as party-respondent in this case because he is immune from suit. They also argue that the petition should be dismissed outright for lack of basis. According to respondents, prohibition is a preventive remedy to restrain future action. Here, President Duterte had already issued Proclamation No. 475 and in fact, the rehabilitation of the island was then already ongoing. These, according to respondents, have rendered improper the issuance of a writ of prohibition considering that as a rule, prohibition does not lie to restrain an act that is already *fait accompli*. Neither is mandamus proper. Section 3, Rule 65 of the Rules of Court provides that a mandamus petition may be resorted to when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station. Respondents argue that mandamus will not lie in this case because they were not neglectful of their duty to protect the environment; on the contrary, they conscientiously performed what they were supposed to do by ordering the closure of Boracay to give way to its rehabilitation. Thus, to them, mandamus is obviously inappropriate.

At any rate, respondents contend that there is no real justiciable controversy in this case. They see no clash between the right of the State to preserve and protect its natural resources and the right of petitioners to earn a living. Proclamation No. 475 does not prohibit anyone from being gainfully employed.

Respondents moreover maintain that the petition is in the nature of a Strategic Lawsuit Against Public Participation (SLAPP) under Rule 6 of A.M. No. 09-6-8-SC or the Rules of Procedure for Environmental Cases, or a legal action filed to harass, vex, exert undue pressure or stifle any legal recourse that any person, institution or the government has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights. Respondents thus assert that the petition must be dismissed since it was filed for the said sole purpose.

With regard to the substantive aspect, respondents contend that the issuance of Proclamation No. 475 is a valid exercise of delegated legislative power, it being anchored on Section 16 of Republic Act (RA) No. 10121, otherwise known as the Philippine Disaster Risk Reduction and Management Act of 2010, or the authority given to the President to declare a state of calamity, viz.:

SECTION 16. Declaration of State of Calamity. - The National Council shall recommend to the President of the Philippines the declaration of a cluster of barangays, municipalities, cities, provinces, and regions under a state of calamity, and the lifting thereof, based on the criteria set by the National Council. The President's declaration may warrant international humanitarian assistance as deemed necessary.

x x x x

They likewise contend that Proclamation No. 475 was issued pursuant to the President's executive power under Section 1, Article VII of the Constitution. As generally defined, executive power is the power to enforce and administer laws. It is the power of implementing the laws and enforcing their due observance. And in order to effectively discharge the enforcement and administration of the laws, the President is granted administrative power over bureaus and offices, which includes the power of control. The power of control, in turn, refers to the authority to direct the performance of a duty, restrain the commission of acts, review, approve, reverse or modify acts and decisions of subordinate officials or units, and prescribe standards, guidelines, plans and programs. Respondents allege that President Duterte's issuance of Proclamation No. 475 was precipitated by his approval of the recommendation of the National Disaster Risk Reduction and Management Council (NDRRMC) to place

Boracay under a state of calamity. By giving his imprimatur, it is clear that the President merely exercised his power of control over the executive branch.

In any case, respondents assert that the President has residual powers which are implied from the grant of executive power and which are necessary for him to comply with his duties under the Constitution as held in the case of *Marcos v. Manglapus*.^[18]

In sum, respondents emphasize that the issuance of Proclamation No. 475 is within the ambit of the powers of the President, not contrary to the doctrine of separation of powers, and in accordance with the mechanism laid out by the Constitution.

Further, respondents dispute petitioners' allegation that Proclamation No. 475 infringes upon the rights to travel and to due process. They emphasize that the right to travel is not an absolute right. It may be impaired or restricted in the interest of national security, public safety, or public health. In fact, there are already several existing laws which serve as statutory limitations to the right to travel.

Anent the alleged violation of the right to due process, respondents challenge petitioners' claim that they were deprived of their livelihood without due process. Respondents call attention to the fact that Zabal as sandcastle maker and Jacosalem as driver are freelancers and thus belong to the informal economy sector. This means that their source of livelihood is never guaranteed and is susceptible to changes in regulations and the over-all business climate. In any case, petitioners' contentions must yield to the State's exercise of police power. As held in *Ermita-Malate Hotel & Motel Operators Association, Inc. v. The Hon. City Mayor of Manila*,^[19] the mere fact that some individuals in the community may be deprived of their present business or of a particular mode of living cannot prevent the exercise of the police power of the State. Indeed, to respondents, private interests should yield to the reasonable prerogatives of the State for the public good and welfare, which precisely are the primary objectives of the government measure herein questioned.

Lastly, respondents insist that Proclamation No. 475 does not unduly transgress upon the local autonomy of the LGUs concerned. Under RA 10121, it is actually the Local Disaster Risk Reduction Management Council concerned which, subject to several criteria, is tasked to take the lead in preparing for, responding to, and recovering from the effects of any disaster when a state of calamity is declared. In any case, the devolution of powers upon LGUs pursuant to the constitutional mandate of ensuring their autonomy does not mean that the State can no longer interfere in their affairs. This is especially true in this case since Boracay's environmental disaster cannot be treated as a localized problem that can be resolved by the concerned LGUs only. The magnitude and gravity of the problem require the intervention and assistance of different national government agencies in coordination with the concerned LGUs.

As a final point, respondents aver that the bottom line of petitioners' lengthy discourse and constitutional posturing is their intention to re-open Boracay to tourists and non-residents for the then remainder of the duration of the closure and thus perpetuate and further aggravate the island's environmental degradation. Respondents posit that this is unacceptable since Boracay cannot be sacrificed for the sake of profit and personal convenience of the few.

Our Ruling

First, we discuss the procedural issues.

President Duterte is dropped as respondent in this case

As correctly pointed out by respondents, President Duterte must be dropped as respondent in this case. The

Court's pronouncement in *Professor David v. President Macapagal-Arroyo*[20] on the non-suability of an incumbent President cannot be any clearer, viz.:

x x x Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government.[21]

Accordingly, President Duterte is dropped as respondent in this case.

Propriety of Prohibition and Mandamus

Section 2, Rule 65 of the Rules of Court provides for a petition for prohibition as follows:

SEC. 2. Petition for prohibition. – When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or in excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

x x x x

"Indeed, prohibition is a preventive remedy seeking that a judgment be rendered directing the defendant to desist from continuing with the commission of an act perceived to be illegal. As a rule, the proper function of a writ of prohibition is to prevent the performance of an act which is about to be done. It is not intended to provide a remedy for acts already accomplished."[22]

Mandamus, on the other hand, is provided for by Section 3 of the same Rule 65:

SEC. 3. Petition for mandamus. – When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

x x x x

"As the quoted provision instructs, mandamus will lie if the tribunal, corporation, board, officer, or person unlawfully neglects the performance of an act which the law enjoins as a duty resulting from an office, trust, or station."[23]

It is upon the above-discussed contexts of prohibition and mandamus that respondents base their contention of improper recourse. Respondents maintain that prohibition is not proper in this case because the closure of Boracay is already a *fait accompli*. Neither is mandamus appropriate since there is no neglect of duty on their part as they

were precisely performing their duty to protect the environment when the closure was ordered.

Suffice it to state, however, that the use of prohibition and mandamus is not merely confined to Rule 65. These extraordinary remedies may be invoked when constitutional violations or issues are raised. As the Court stated in *Spouses Imbong v. Hon. Ochoa, Jr.*:^[24]

As far back as *Tañada v. Angara*, the Court has unequivocally declared that certiorari, prohibition and mandamus are appropriate remedies to raise constitutional issues and to review and/or prohibit/nullify, when proper, acts of legislative and executive officials, as there is no other plain, speedy or adequate remedy in the ordinary course of law. This ruling was later on applied in *Macalintal v. COMELEC*, *Aldaba v. COMELEC*, *Magallona v. Ermita*, and countless others. In *Tañada*, the Court wrote:

In seeking to nullify an act of the Philippine Senate on the ground that it contravenes the Constitution, the petition no doubt raises a justiciable controversy. Where an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. 'The question thus posed is judicial rather than political. The duty (to adjudicate) remains to assure that the supremacy of the Constitution is upheld.' Once a 'controversy as to the application or interpretation of constitutional provision is raised before this Court, as in the instant case, it becomes a legal issue which the Court is bound by constitutional mandate to decide. x x x'^[25] (Citations omitted; emphasis supplied)

It must be stressed, though, that resort to prohibition and mandamus on the basis of alleged constitutional violations is not without limitations. After all, this Court does not have unrestrained authority to rule on just about any and every claim of constitutional violation.^[26] The petition must be subjected to the four exacting requisites for the exercise of the power of judicial review, viz.: (a) there must be an actual case or controversy; (b) the petitioners must possess locus standi; (c) the question of constitutionality must be raised at the earliest opportunity; and (d) the issue of constitutionality must be the *lis mota* of the case.^[27] Hence, it is not enough that this petition mounts a constitutional challenge against Proclamation No. 475. It is likewise necessary that it meets the aforementioned requisites before the Court sustains the propriety of the recourse.

Existence of Requisites for Judicial Review

In *La Bugal-B'laan Tribal Association, Inc. v. Sec. Ramos*,^[28] an actual case or controversy was characterized as a "case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion. The power does not extend to hypothetical questions since any attempt at abstraction could only lead to dialectics and barren legal question and to sterile conclusions unrelated to actualities."^[29]

The existence of an actual controversy in this case is evident. President Duterte issued Proclamation No. 475 on April 26, 2018 and, pursuant thereto, Boracay was temporarily closed the same day. Entry of non-residents and tourists to the island was not allowed until October 25, 2018. Certainly, the implementation of the proclamation has rendered legitimate the concern of petitioners that constitutional rights may have possibly been breached by this governmental measure. It bears to state that when coupled with sufficient facts, "reasonable certainty of the occurrence of a perceived threat to any constitutional interest suffices to provide a basis for mounting a constitutional challenge."^[30] And while it may be argued that the reopening of Boracay has seemingly rendered moot and academic questions relating to the ban of tourists and non-residents into the island, abstention from judicial review is precluded by such possibility of constitutional violation and also by the exceptional character of the situation, the paramount public interest involved, and the fact that the case is capable of repetition.^[31]

As to legal standing, petitioners assert that they were directly injured since their right to travel and, their right to work and earn a living which thrives solely on tourist arrivals, were affected by the closure. They likewise want to

convince the Court that the issues here are of transcendental importance since according to them, the resolution of the same will have far-reaching consequences upon all persons living and working in Boracay; upon the Province of Aklan which is heavily reliant on the island's tourism industry; and upon the whole country considering that fundamental constitutional rights were allegedly breached.

"Legal standing or locus standi is a party's personal and substantial interest in a case such that he has sustained or will sustain direct injury as a result of the governmental act being challenged. It calls for more than just a generalized grievance. The term 'interest' means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest."^[32] There must be a present substantial interest and not a mere expectancy or a future, contingent, subordinate, or consequential interest.^[33]

In *Galicto v. Aquino III*,^[34] the therein petitioner, Jelbert B. Galicto (Galicto) questioned the constitutionality of Executive Order No. 7 (EO7) issued by President Benigno Simeon C. Aquino III, which ordered, among others, a moratorium on the increases in the salaries and other forms of compensation of all government-owned-and-controlled corporations (GOCCs) and government financial institutions. The Court held that Galicto, an employee of the GOCC Philhealth, has no legal standing to assail EO7 for his failure to demonstrate that he has a personal stake or material interest in the outcome of the case. His interest, if any, was speculative and based on a mere expectancy. Future increases in his salaries and other benefits were contingent events or expectancies to which he has no vested rights. Hence, he possessed no locus standi to question the curtailment thereof.

Here, as mentioned, Zabal is a sandcastle maker and Jacosalem, a driver. The nature of their livelihood is one wherein earnings are not guaranteed. As correctly pointed out by respondents, their earnings are not fixed and may vary depending on the business climate in that while they can earn much on peak seasons, it is also possible for them not to earn anything on lean seasons, especially when the rainy days set in. Zabal and Jacosalem could not have been oblivious to this kind of situation, they having been in the practice of their trade for a considerable length of time. Clearly, therefore, what Zabal and Jacosalem could lose in this case are mere projected earnings which are in no way guaranteed, and are sheer expectancies characterized as contingent, subordinate, or consequential interest, just like in *Galicto*. Concomitantly, an assertion of direct injury on the basis of loss of income does not clothe Zabal and Jacosalem with legal standing.

As to Bandiola, the petition is bereft of any allegation as to his substantial interest in the case and as to how he sustained direct injury as a result of the issuance of Proclamation No. 475. While the allegation that he is a non-resident who occasionally goes to Boracay for business and pleasure may suggest that he is claiming direct injury on the premise that his right to travel was affected by the proclamation, the petition fails to expressly provide specifics as to how. "It has been held that a party who assails the constitutionality of a statute must have a direct and personal interest. [He] must show not only that the law or any governmental act is invalid, but also that [he] sustained or is in immediate danger of sustaining some direct injury as a result of its enforcement, and not merely that [he] suffers thereby in some indefinite way. [He] must show that [he] has been or is about to be denied some right or privilege to which [he] is lawfully entitled or that [he] is about to be subjected to some burdens or penalties by reason of the statute or act complained of."^[35] Indeed, the petition utterly fails to demonstrate that Bandiola possesses the requisite legal standing to sue.

Notwithstanding petitioners' lack of locus standi, this Court will allow this petition to proceed to its ultimate conclusion due to its transcendental importance. After all, the rule on locus standi is a mere procedural technicality, which the Court, in a long line of cases involving subjects of transcendental importance, has waived or relaxed, thus allowing non-traditional plaintiffs such as concerned citizens, taxpayers, voters and legislators to

sue in cases of public interest, albeit they may not have been personally injured by a government act.[36] More importantly, the matters raised in this case, involved on one hand, possible violations of the Constitution and, on the other, the need to rehabilitate the country's prime tourist destination. Undeniably, these matters affect public interests and therefore are of transcendental importance to the people. In addition, the situation calls for review because as stated, it is capable of repetition, the Court taking judicial notice of the many other places in our country that are suffering from similar environmental degradation.

As to the two other requirements, their existence is indubitable. It will be recalled that even before a formal issuance on the closure of Boracay was made by the government, petitioners already brought the question of the constitutionality of the then intended closure to this Court. And, a day after Proclamation No. 475 was issued, they filed a supplemental petition impugning its constitutionality. Clearly, the filing of the petition and the supplemental petition signals the earliest opportunity that the constitutionality of the subject government measure could be raised. There can also be no denying that the very *lis mota* of this case is the constitutionality of Proclamation No. 475.

Defense of SLAPP

Suffice it to state that while this case touches on the environmental issues in Boracay, the ultimate issue for resolution is the constitutionality of Proclamation No. 475. The procedure in the treatment of a defense of SLAPP provided for under Rule 6 of the Rules of Procedure for Environmental Cases should not, therefore, be made to apply.

Now as to the substantive issues.

We first quote in full Proclamation No. 475.

PROCLAMATION No. 475

DECLARING A STATE OF CALAMITY IN THE BARANGAYS OF BALABAG, MANOC-MANOC AND YAPAK (ISLAND OF BORACAY) IN THE MUNICIPALITY OF MALAY, AKLAN, AND TEMPORARY CLOSURE OF THE ISLAND AS A TOURIST DESTINATION

WHEREAS, Section 15, Article II of the 1987 Constitution states that the State shall protect and promote the right to health of the people and instill health consciousness among them;

WHEREAS, Section 16, Article II of the 1987 Constitution provides that it is the policy of the State to protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature;

WHEREAS, Section 2, Article XII of the 1987 Constitution provides that the State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone;

WHEREAS, an Inter-Agency Task Force, composed of the Department of Environment and Natural Resources (DENR), the [DILG] and the Department of Tourism (DOT), was established to evaluate the environmental state of the Island of Boracay, and investigate possible violations of existing environmental and health laws, rules and regulations;

WHEREAS, the investigations and validation undertaken revealed that:

- There is a high concentration of fecal coliform in the Bolabog beaches located in the eastern side of Boracay Island due to insufficient sewer lines and illegal discharge of untreated waste water into the beach, with daily tests conducted from 6 to 10 March 2018 revealing consistent failure in compliance with acceptable water standards, with an average result of 18,000 most probable number (MPN)/100ml, exceeding the standard level

of 400 MPN/100ml;

- Most commercial establishments and residences are not connected to the sewerage infrastructure of Boracay Island, and waste products are not being disposed through the proper sewerage infrastructures in violation of environmental law, rules, and regulations;
- Only 14 out of 51 establishments near the shores of Boracay Island are compliant with the provision of Republic Act (RA) No. 9275 or the Philippine Clean Water Act of 2004;
- Dirty water results in the degradation of the coral reefs and coral cover of Boracay Island, which declined by approximately 70.5% from 1988 to 2011, with the highest decrease taking place between 2008 and 2011 during a period of increased tourist arrivals (approximately 38.4%);
- Solid waste within Boracay Island is at a generation rate of 90 to 115 tons per day, while the hauling capacity of the local government is only 30 tons per day, hence, leaving approximately 85 tons of waste in the Island daily;
- The natural habitats of Puka shells, nesting grounds of marine turtles, and roosting grounds of flying foxes or fruit bats have been damaged and/or destroyed; and
- Only four (4) out of nine (9) wetlands in Boracay Island remain due to illegal encroachment of structures, including 937 identified illegal structures constructed on forestlands and wetlands, as well as 102 illegal structures constructed on areas already classified as easements, and the disappearance of the wetlands, which acts as natural catchments, enhances flooding in the area;

WHEREAS, the findings of the Department of Science and Technology (DOST) reveal that beach erosion is prevalent in Boracay Island, particularly along the West Beach, where as much as 40 meters of erosion has taken place in the past 20 years from 1993 to 2003, due to storms, extraction of sand along the beach to construct properties and structures along the foreshore, and discharge of waste water near the shore causing degradation of coral reefs and seagrass meadows that supply the beach with sediments and serve as buffer to wave action;

WHEREAS, the DOST also reports that based on the 2010-2015 Coastal Ecosystem Conservation and Adaptive Management Study of the Japan International Cooperation Agency, direct discharge of waste water near the shore has resulted in the frequent algal bloom and coral deterioration, which may reduce the source of sand and cause erosion;

WHEREAS, the data from the Region VI - Western Visayas Regional Disaster Risk Reduction and Management Council shows that the number of tourists in the island in a day amounts to 18,082, and the tourist arrival increased by more than 160% from 2012 to 2017;

WHEREAS, the continuous rise of tourist arrivals, the insufficient sewer and waste management system, and environmental violations of establishments aggravate the environmental degradation and destroy the ecological balance of the Island of Boracay, resulting in major damage to property and natural resources, as well as the disruption of the normal way of life of the people therein;

WHEREAS, it is necessary to implement urgent measures to address the abovementioned human-induced hazards, to protect and promote the health and well-being of its residents, workers and tourists, and to rehabilitate the Island in order to ensure the sustainability of the area and prevent further degradation of its rich ecosystem;

WHEREAS, RA No. 9275 provides that the DENR shall designate water bodies, or portions thereof, where specific pollutants from either natural or man-made source have already exceeded water quality guidelines as non-attainment areas for the exceeded pollutants and shall prepare and implement a program that will not allow new sources of exceeded water pollutant in non-attainment areas without a corresponding reduction in

discharges from existing sources;

WHEREAS, RA No. 9275 also mandates the DENR, in coordination with other concerned agencies and the private sectors, to take such measures as may be necessary to upgrade the quality of such water in non-attainment areas to meet the standards under which it has been classified, and the local government units to prepare and implement contingency plans and other measures including relocation, whenever necessary, for the protection of health and welfare of the residents within potentially affected areas;

WHEREAS, Proclamation No. 1064 (s. 2006) classified the Island of Boracay into 377.68 hectares of reserved forest land for protection purposes and 628.96 hectares of agricultural land as alienable and disposable land;

WHEREAS, pursuant to the Regalian Doctrine, and as emphasized in recent jurisprudence, whereby all lands not privately owned belong to the State, the entire island of Boracay is state-owned, except for lands already covered by existing valid titles;

WHEREAS, pursuant to RA No. 10121, or the Philippine Disaster Risk Reduction and Management Act of 2010, the National Disaster Risk Reduction and Management Council has recommended the declaration of a State of Calamity in the Island of Boracay and the temporary closure of the Island as a tourist destination to ensure public safety and public health, and to assist the government in its expeditious rehabilitation, as well as in addressing the evolving socio-economic needs of affected communities;

NOW, THEREFORE, I, RODRIGO ROA DUTERTE, President of the Philippines, by virtue of the powers vested in me by the Constitution and existing laws, do hereby declare a State of Calamity in the barangays of Balabag, Manoc-Manoc and Yapak (Island of Boracay) in the Municipality of Malay, Aklan. In this regard, the temporary closure of the Island as a tourist destination for six (6) months starting 26 April 2018, or until 25 October 2018, is hereby ordered subject to applicable laws, rules, regulations and jurisprudence.

Concerned government agencies shall, as may be necessary or appropriate, undertake the remedial measures during a State of Calamity as provided in RA No. 10121 and other applicable laws, rules and regulations, such as control of the prices of basic goods and commodities for the affected areas, employment of negotiated procurement and utilization of appropriate funds, including the National Disaster Risk Reduction and Management Fund, for relief and rehabilitation efforts in the area. All departments and other concerned government agencies are also hereby directed to coordinate with, and provide or augment the basic services and facilities of affected local government units, if necessary.

The State of Calamity in the Island of Boracay shall remain in force and effect until lifted by the President, notwithstanding the lapse of the six-month closure period.

All departments, agencies and offices, including government-owned or controlled corporations and affected local government units are hereby directed to implement and execute the abovementioned closure and the appropriate rehabilitation works, in accordance with pertinent operational plans and directives, including the Boracay Action Plan.

The Philippine National Police, Philippine Coast Guard and other law enforcement agencies, with the support of the Armed Forces of the Philippines, are hereby directed to act with restraint and within the bounds of the law in the strict implementation of the closure of the Island and ensuring peace and order in the area.

The Municipality of Malay, Aklan is also hereby directed to ensure that no tourist will be allowed entry to the island of Boracay until such time that the closure has been lifted by the President.

All tourists, residents and establishment owners in the area are also urged to act within the bounds of the law and to comply with the directives herein provided for the rehabilitation and restoration of the ecological balance of the Island which will be for the benefit of all concerned.

It must be noted at the outset that petitioners failed to present and establish the factual bases of their arguments because they went directly to this Court. In ruling on the substantive issues in this case, the Court is, thus, constrained to rely on, and uphold the factual bases, which prompted the issuance of the challenged proclamation, as asserted by respondents. Besides, executive determinations, such as said factual bases, are generally final on this Court.[37]

The Court observes that the meat of petitioners' constitutional challenge on Proclamation No. 475 is the right to travel.

Clearly then, the one crucial question that needs to be preliminarily answered is - does Proclamation No. 475 constitute an impairment on the right to travel?

The Court answers in the negative.

Proclamation No. 475 does not pose an actual impairment on the right to travel

Petitioners claim that Proclamation No. 475 impairs the right to travel based on the following provisions:

NOW, THEREFORE, I, RODRIGO ROA DUTERTE, President of the Philippines, by virtue of the powers vested in me by the Constitution and existing laws, do hereby declare a State of Calamity in the barangays of Balabag, Manoc-Manoc and Yapak (Island of Boracay) in the Municipality of Malay, Aklan. In this regard, the temporary closure of the Island as a tourist destination for six (6) months starting 26 April 2018, or until 25 October 2018, is hereby ordered subject to applicable laws, rules, regulations and jurisprudence.

x x x x

The Municipality of Malay, Aklan is also hereby directed to ensure that no tourist will be allowed entry to the island of Boracay until such time that the closure has been lifted by the President.

x x x x

The activities proposed to be undertaken to rehabilitate Boracay involved inspection, testing, demolition, relocation, and construction. These could not have been implemented freely and smoothly with tourists coming in and out of the island not only because of the possible disruption that they may cause to the works being undertaken, but primarily because their safety and convenience might be compromised. Also, the contaminated waters in the island were not just confined to a small manageable area. The excessive water pollutants were all over Bolabog beach and the numerous illegal drainpipes connected to and discharging wastewater over it originate from different parts of the island. Indeed, the activities occasioned by the necessary digging of these pipes and the isolation of the contaminated beach waters to give way to treatment could not be done in the presence of tourists. Aside from the dangers that these contaminated waters pose, hotels, inns, and other accommodations may not be available as they would all be inspected and checked to determine their compliance with environmental laws. Moreover, it bears to state that a piece-meal closure of portions of the island would not suffice since as mentioned, illegal drainpipes extend to the beach from various parts of Boracay. Also, most areas in the island needed major structural rectifications because of numerous resorts and tourism facilities which lie along easement areas, illegally reclaimed wetlands, and of forested areas that were illegally cleared for construction purposes. Hence, the need to close the island in its entirety and ban tourists therefrom.

In fine, this case does not actually involve the right to travel in its essential sense contrary to what petitioners want to portray. Any bearing that Proclamation No. 475 may have on the right to travel is merely corollary to the closure of Boracay and the ban of tourists and non-residents therefrom which were necessary incidents of the island's rehabilitation. There is certainly no showing that Proclamation No. 475 deliberately meant to impair the right to travel. The questioned proclamation is clearly focused on its purpose of rehabilitating Boracay and any

intention to directly restrict the right cannot, in any manner, be deduced from its import. This is contrary to the import of several laws recognized as constituting an impairment on the right to travel which directly impose restriction on the right, viz.:

[1] The Human Security Act of 2010 or Republic Act (R.A.) No. 9372. The law restricts the right travel of an individual charged with the crime of terrorism even though such person is out on bail.

[2] The Philippine Passport Act of 1996 or R.A. No. 8239. Pursuant to said law, the Secretary of Foreign Affairs or his authorized consular officer may refuse the issuance of, restrict the use of, or withdraw, a passport of a Filipino citizen.

[3] The 'Anti-Trafficking in Persons Act of 2003' or RA 9208. Pursuant to the provisions thereof, the Bureau of Immigration, in order to manage migration and curb trafficking in persons, issued Memorandum Order Radjr No. 2011-011, allowing its Travel Control and Enforcement Unit to 'offload passengers with fraudulent travel documents, doubtful purpose of travel, including possible victims of human trafficking' from our ports.

[4] The Migrant Workers and Overseas Filipinos Act of 1995 or R.A. No. 8042, as amended by R.A. No. 10022. In enforcement of said law, the Philippine Overseas Employment Administration (POEA) may refuse to issue deployment permit[s] to a specific country that effectively prevents our migrant workers to enter such country.

[5] The Act on Violence Against Women and Children or R.A. No. 9262. The law restricts movement of an individual against whom the protection order is intended.

[6] Inter-Country Adoption Act of 1995 or R.A. No. 8043. Pursuant thereto, the Inter-Country Adoption Board may issue rules restrictive of an adoptee's right to travel 'to protect the Filipino child from abuse, exploitation, trafficking and/or sale or any other practice in connection with adoption which is harmful, detrimental, or prejudicial to the child.'[38]

In *Philippine Association of Service Exporters, Inc. v. Hon. Drilon*,[39] the Court held that the consequence on the right to travel of the deployment ban implemented by virtue of Department Order No. 1, Series of 1998 of the Department of Labor and Employment does not impair the right.

Also significant to note is that the closure of Boracay was only temporary considering the categorical pronouncement that it was only for a definite period of six months.

Hence, if at all, the impact of Proclamation No. 475 on the right to travel is not direct but merely consequential; and, the same is only for a reasonably short period of time or merely temporary.

In this light, a discussion on whether President Duterte exercised a power legislative in nature loses its significance. Since Proclamation No. 475 does not actually impose a restriction on the right to travel, its issuance did not result to any substantial alteration of the relationship between the State and the people. The proclamation is therefore not a law and conversely, the President did not usurp the law-making power of the legislature.

For obvious reason, there is likewise no more need to determine the existence in this case of the requirements for a valid impairment of the right to travel.

Even if it is otherwise, Proclamation No. 475 must be upheld for being in the nature of a valid police power measure

Police power, amongst the three fundamental and inherent powers of the state, is the most pervasive and comprehensive.[40] "It has been defined as the 'state authority to enact legislation that may interfere with personal liberty or property in order to promote general welfare.'"[41] "As defined, it consists of (1) imposition or restraint

upon liberty or property, (2) in order to foster the common good. It is not capable of exact definition but has been purposely, veiled in general terms to underscore its all-comprehensive embrace." [42] The police power "finds no specific Constitutional grant for the plain reason that it does not owe its origin to the Charter" [43] since "it is inborn in the very fact of statehood and sovereignty." [44] It is said to be the "inherent and plenary power of the State which enables it to prohibit all things hurtful to the comfort, safety, and welfare of the society." [45] Thus, police power constitutes an implied limitation on the Bill of Rights. [46] After all, "the Bill of Rights itself does not purport to be an absolute guaranty of individual rights and liberties. 'Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's will.' It is subject to the far more overriding demands and requirements of the greater number." [47]

"Expansive and extensive as its reach may be, police power is not a force without limits." [48] "It has to be exercised within bounds – lawful ends through lawful means, i.e., that the interests of the public generally, as distinguished from that of a particular class, require its exercise, and that the means employed are reasonably necessary for the accomplishment of the purpose while not being unduly oppressive upon individuals." [49]

That the assailed governmental measure in this case is within the scope of police power cannot be disputed. Verily, the statutes [50] from which the said measure draws authority and the constitutional provisions [51] which serve as its framework are primarily concerned with the environment and health, safety, and well-being of the people, the promotion and securing of which are clearly legitimate objectives of governmental efforts and regulations. The motivating factor in the issuance of Proclamation No. 475 is without a doubt the interest of the public in general. The only question now is whether the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.

The pressing need to implement urgent measures to rehabilitate Boracay is beyond cavil from the factual milieu that precipitated the President's issuance of Proclamation No. 475. This necessity is even made more critical and insistent by what the Court said in *Oposa v. Hon. Factoran, Jr.* [52] in regard the rights to a balanced and healthful ecology and to health, which rights are likewise integral concerns in this case. *Oposa* warned that unless the rights to a balanced and healthful ecology and to health are given continuing importance and the State assumes its solemn obligation to preserve and protect them, the time will come that nothing will be left not only for this generation but for the generations to come as well. [53] It further taught that the right to a balanced and healthful ecology carries with it the correlative duty to refrain from impairing the environment. [54]

Against the foregoing backdrop, we now pose this question: Was the temporary closure of Boracay as a tourist destination for six months reasonably necessary under the circumstances? The answer is in the affirmative.

As earlier noted, one of the root causes of the problems that beset Boracay was tourist influx. Tourist arrivals in the island were clearly far more than Boracay could handle. As early as 2007, the DENR had already determined this as the major cause of the catastrophic depletion of the island's biodiversity. [55] Also part of the equation is the lack of commitment to effectively enforce pertinent environmental laws. Unfortunately, direct action on these matters has been so elusive that the situation reached a critical level. Hence, by then, only bold and sweeping steps were required by the situation.

Certainly, the closure of Boracay, albeit temporarily, gave the island its much needed breather, and likewise afforded the government the necessary leeway in its rehabilitation program. Note that apart from review, evaluation and amendment of relevant policies, the bulk of the rehabilitation activities involved inspection, testing, demolition, relocation, and construction. These works could not have easily been done with tourists present. The rehabilitation works in the first place were not simple, superficial or mere cosmetic but rather quite complicated, major, and permanent in character as they were intended to serve as long-term solutions to the

problem.[56] Also, time is of the essence. Every precious moment lost is to the detriment of Boracay's environment and of the health and well-being of the people thereat. Hence, any unnecessary distraction or disruption is most unwelcome. Moreover, as part of the rehabilitation efforts, operations of establishments in Boracay had to be halted in the course thereof since majority, if not all of them, need to comply with environmental and regulatory requirements in order to align themselves with the government's goal to restore Boracay into normalcy and develop its sustainability. Allowing tourists into the island while it was undergoing necessary rehabilitation would therefore be pointless as no establishment would cater to their accommodation and other needs. Besides, it could not be said that Boracay, at the time of the issuance of the questioned proclamation, was in such a physical state that would meet its purpose of being a tourist destination. For one, its beach waters could not be said to be totally safe for swimming. In any case, the closure, to emphasize, was only for a definite period of six months, i.e., from April 26, 2018 to October 25, 2018. To the mind of the Court, this period constitutes a reasonable time frame, if not to complete, but to at least put in place the necessary rehabilitation works to be done in the island. Indeed, the temporary closure of Boracay, although unprecedented and radical as it may seem, was reasonably necessary and not unduly oppressive under the circumstances. It was the most practical and realistic means of ensuring that rehabilitation works in the island are started and carried out in the most efficacious and expeditious way. Absent a clear showing of grave abuse of discretion, unreasonableness, arbitrariness or oppressiveness, the Court will not disturb the executive determination that the closure of Boracay was necessitated by the foregoing circumstances. As earlier noted, petitioners totally failed to counter the factual bases of, and justification for the challenged executive action.

Undoubtedly, Proclamation No. 475 is a valid police power measure. To repeat, police power constitutes an implied limitation to the Bill of Rights, and that even liberty itself, the greatest of all rights, is subject to the far more overriding demands and requirements of the greater number.

For the above reasons, petitioners' constitutional challenge on Proclamation No. 475 anchored on their perceived impairment of the right to travel must fail.

Petitioners have no vested rights on their sources of income as to be entitled to due process

Petitioners argue that Proclamation No. 475 impinges on their constitutional right to due process since they were deprived of the corollary right to work and earn a living by reason of the issuance thereof.

Concededly, "[a] profession, trade or calling is a property right within the meaning of our constitutional guarantees. One cannot be deprived of the right to work and the right to make a living because these rights are property rights, the arbitrary and unwarranted deprivation of which normally constitutes an actionable wrong." [57] Under this premise, petitioners claim that they were deprived of due process when their right to work and earn a living was taken away from them when Boracay was ordered closed as a tourist destination. It must be stressed, though, that "when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare." [58] Otherwise, police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, government measures implemented pursuant to the said state power would be stymied or invalidated. [59]

In any case, petitioners, particularly Zabal and Jacosalem, cannot be said to have already acquired vested rights to their sources of income in Boracay. As heretofore mentioned, they are part of the informal sector of the economy where earnings are not guaranteed. In *Southern Luzon Drug Corporation v. Department of Social Welfare and Development*, [60] the Court elucidated on vested rights, as follows:

x x x Vested rights are 'fixed, unalterable, or irrevocable.' More extensively, they are depicted as follows:

Rights which have so completely and definitely accrued to or settled in a person that they are not subject to be defeated or cancelled by the act of any other private person, and which it is right and equitable that the government should recognize and protect, as being lawful in themselves, and settled according to the then current rules of law, and of which the individual could not be deprived arbitrarily without injustice, or of which he could not justly be deprived otherwise than by the established methods of procedure and for the public welfare. x x x A right is not 'vested' unless it is more than a mere expectancy based on the anticipated continuance of present laws; it must be an established interest in property, not open to doubt. x x x To be vested in its accurate legal sense, a right must be complete and consummated, and one of which the person to whom it belongs cannot be divested without his consent. x x x[61]

Here, Zabal and Jacosalem's asserted right to whatever they may earn from tourist arrivals in Boracay is merely an inchoate right or one that has not fully developed and therefore cannot be claimed as one's own. An inchoate right is a mere expectation, which may or may not come into fruition. "It is contingent as it only comes 'into existence on an event or condition which may not happen or be performed until some other event may prevent their vesting.'"[62] Clearly, said petitioners' earnings are contingent in that, even assuming tourists are still allowed in the island, they will still earn nothing if no one avails of their services. Certainly, they do not possess any vested right on their sources of income, and under this context, their claim of lack of due process collapses. To stress, only rights which have completely and definitely accrued and settled are entitled protection under the due process clause.

Besides, Proclamation No. 475 does not strip Zabal and Jacosalem of their right to work and earn a living. They are free to work and practice their trade elsewhere. That they were not able to do so in Boracay, at least for the duration of its closure, is a necessary consequence of the police power measure to close and rehabilitate the island.

Also clearly untenable is petitioners' claim that they were being made to suffer the consequences of the environmental transgressions of others. It must be stressed that the temporary closure of Boracay as a tourist destination and the consequent ban of tourists into the island were not meant to serve as penalty to violators of environmental laws. The temporary closure does not erase the environmental violations committed; hence, the liabilities of the violators remain and only they alone shall suffer the same. The temporary inconvenience that petitioners or other persons may have experienced or are experiencing is but the consequence of the police measure intended to attain a much higher purpose, that is, to protect the environment, the health of the people, and the general welfare. Indeed, any and all persons may be burdened by measures intended for the common good or to serve some important governmental interest.[63]

No intrusion into the autonomy of the concerned LGUs

The alleged intrusion of the President into the autonomy of the LGUs concerned is likewise too trivial to merit this Court's consideration. Contrary to petitioners' argument, RA 10121 recognizes and even puts a premium on the role of the LGUs in disaster risk reduction and management as shown by the fact that a number of the legislative policies set out in the subject statute recognize and aim to strengthen the powers decentralized to LGUs.[64] This role is echoed in the questioned proclamation.

The fact that other government agencies are involved in the rehabilitation works does not create the inference that the powers and functions of the LGUs are being encroached upon. The respective roles of each government agency are particularly defined and enumerated in Executive Order No. 53[65] and all are in accordance with their respective mandates. Also, the situation in Boracay can in no wise be characterized or labelled as a mere local issue as to leave its rehabilitation to local actors. Boracay is a prime tourist destination which caters to both local and foreign tourists. Any issue thereat has corresponding effects, direct or otherwise, at a national level. This, for one, reasonably takes the issues therein from a level that concerns only the local officials. At any rate, notice must

be taken of the fact that even if the concerned LGUs have long been fully aware of the problems afflicting Boracay, they failed to effectively remedy it. Yet still, in recognition of their mandated roles and involvement in the rehabilitation of Boracay, Proclamation No. 475 directed "[a]ll departments, agencies and offices, including government-owned or controlled corporations and affected local government units x x x to implement and execute x x x the closure [of Boracay] and the appropriate rehabilitation works, in accordance with pertinent operational plans and directives, including the Boracay Action Plan. "

As a final note, the Court in *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*,^[66] called out the concerned government agencies for their cavalier attitude towards solving environmental destruction despite hard evidence and clear signs of climate crisis. It equated the failure to put environmental protection on a plane of high national priority to the then lacking level of bureaucratic efficiency and commitment. Hence, the Court therein took it upon itself to put the heads of concerned department-agencies and the bureaus and offices under them on continuing notice and to enjoin them to perform their mandates and duties towards the clean-up and/or restoration of Manila Bay, through a "continuing mandamus." It likewise took the occasion to state, viz.:

In the light of the ongoing environmental degradation, the Court wishes to emphasize the extreme necessity for all concerned executive departments and agencies to immediately act and discharge their respective official duties and obligations. Indeed, time is of the essence; hence, there is a need to set timetables for the performance and completion of the tasks, some of them as defined for them by law and the nature of their respective offices and mandates.

The importance of the Manila Bay as a sea resource, playground and as a historical landmark cannot be over-emphasized. It is not yet too late in the day to restore the Manila Bay to its former splendor and bring back the plants and sea life that once thrived in its blue waters. But the tasks ahead, daunting as they may be, could only be accomplished if those mandated, with the help and cooperation of all civic-minded individuals, would put their minds to these tasks and take responsibility. This means that the State, through [the concerned department-agencies], has to take the lead in the preservation and protection of the Manila Bay.

The era of delays, procrastination, and ad hoc measures is over. [The concerned department-agencies] must transcend their limitations, real or imaginary, and buckle down to work before the problem at hand becomes unmanageable. Thus, we must reiterate that different government agencies and instrumentalities cannot shirk from their mandates; they must perform their basic functions in cleaning up and rehabilitating the Manila Bay. x x x^[67]

There is an obvious similarity in *Metropolitan Manila Development Authority* and in the present case in that both involve the restoration of key areas in the country which were once glowing with radiance and vitality but are now in shambles due to abuses and exploitation. What sets these two cases apart is that in the former, those mandated to act still needed to be enjoined in order to act. In this case, the bold and urgent action demanded by the Court in *Metropolitan Manila Development Authority* is now in the roll out. Still, the voice of cynicism, naysayers, and procrastinators heard during times of inaction can still be heard during this time of full action – demonstrating a classic case of "damn if you do, damn if you don't". Thus, in order for the now staunch commitment to save the environment not to fade, it behooves upon the courts to be extra cautious in invalidating government measures meant towards addressing environmental degradation. Absent any clear showing of constitutional infirmity, arbitrariness or grave abuse of discretion, these measures must be upheld and even lauded and promoted. After all, not much time is left for us to remedy the present environmental situation. To borrow from Oposa, unless the State undertakes its solemn obligation to preserve the rights to a balanced and healthful ecology and advance the health of the people, "the day would not be too far when all else would be lost not only for the present generation, but also for those to come – generations which stand to inherit nothing but parched

earth incapable of sustaining life."[68]

All told, the Court sustains the constitutionality and validity of Proclamation No. 475.

WHEREFORE, the Petition for Prohibition and Mandamus is DISMISSED.

SO ORDERED.

Bersamin (C.J.), Peralta, A. Reyes, Jr., Gesmundo, J. Reyes, Jr., Hernando, and Carandang, JJ., concur.

Carpio and Perlas-Bernabe, JJ., see separate concurring opinions.

Leonen, J., dissent. See separate opinion.

Jardeleza, J., see concurring and dissenting opinion.

Caguioa, J., dissent. See dissenting opinion.

[1] <https://www.merriam-webster.com/dictionary/paradise>; last visited on January 28, 2019.

[2] Malay, Our Home...Your Destination, <http://aklan.gov.ph/tourism/malay/>; last visited on January 28, 2019.

[3] The Department of Tourism's feature on Boracay posted in its website cites that aside from being a tropical heaven, Boracay also boasts of diverse culinary fare, water fun activities, beach combing, nightlife, bat caves, and its Kar-Tir Seashell museum; see <http://www.experiencephilippines.org/tourism/destinations-tourism/boracay-department-of-tourism/>, last visited on January 28, 2019.

[4] Rollo, p. 5.

[5] Duterte wants to close 'cesspool' Boracay, <http://www.pna.gov.ph/articles/1024807>; last visited on January 28, 2019.

[6] Palace: Duterte approves 6-month total closure of Boracay, https://pcoo.gov.ph/news_releases/palace-duterte-approves-6-month-total-closure-of-boracay/; last visited on January 28, 2019.

[7] Rollo, p. 9.

[8] The guidelines allegedly provide as follows:

- No going beyond Jetty Port. Identified tourists will not be allowed into the island and will be stopped at the Jetty Port in Malay, Aklan.

- No ID, no entry. Residents/workers/resort owners will be allowed entry into the island subject to the presentation of identification cards specifying a residence in Boracay. All government-issued IDs will be recognized. Non-government IDs are acceptable as long as they are accompanied by a barangay certification of residency.

- Swimming for locals only. Generally, swimming shall not be allowed anywhere on the island. However, residents may be allowed to swim only at Angol Beach in station 3 from 6 am to 5 pm.

- One condition for entry. No visitors of Boracay residents shall be allowed entry, except under emergency situations, and with the clearance of the security committee composed of DILG representative, police, and local government officials.

- Journalists need permission to cover. Media will be allowed entry subject to prior approval from the Department

of Tourism, with a definite duration and limited movement.

- No floating structures. No floating structures shall be allowed up to 15 kilometers from the shoreline.
- Foreign residents to be checked. The Bureau of Immigration will revalidate the papers of foreigners who have found a home in Boracay.
- One entry, one exit point. There will only be one transportation point to Boracay Island. Authorities have yet to decide where.

[9] Rollo, p. 11.

[10] Id. at 28-29.

[11] Id. at 62-102.

[12] Id. at 103-106.

[13] Id. at 96.

[14] Id. at 54-55.

[15] Id. at 111-112.

[16] Id. at 141-201.

[17] Id. at 235-287.

[18] 258 Phil. 479 (1989).

[19] 128 Phil. 473 (1967).

[20] 522 Phil. 705 (2006).

[21] Id. at 763-764.

[22] *Vivas v. The Monetary Board of the Bangko Sentral ng Pilipinas*, 716 Phil. 132, 145 (2013).

[23] *Uy Kiao Eng v. Lee*, 624 Phil. 200, 206-207 (2010).

[24] 732 Phil. 1 (2014).

[25] Id. at 121-122.

[26] Id. at 122.

[27] Id.

[28] 465 Phil 860 (2004).

[29] Id. at 889-890.

[30] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 481 (2010).

[31] *Funa v. Acting Secretary Agra*, 704 Phil. 205, 219-220 (2013).

[32] *Jumamil v. Café*, 507 Phil. 455, 465 (2005).

[33] *Galicto v. H.E. President Aquino III*, 683 Phil 141, 171 (2012).

[34] Id.

[35] Anak Mindanao Party-List Group v. Executive Secretary Ermita, 558 Phil. 338, 351 (2007).

[36] Funa v. Chairman Villar, 686 Phil. 571, 585 (2012).

[37] Philippine Association of Service Exporters, Inc. v. Hon. Drilon, 246 Phil. 393, 401 (1988).

[38] Leave Division, Office of the Administrative Services (OAS)-Office of the Court Administrator (OCA) v. Heusdens, 678 Phil. 328, 339-340 (2011).

[39] Supra note 37.

[40] Gorospe, Rene, B., Constitutional Law, Notes and Readings on the Bill of Rights, Citizenship and Suffrage, Volume I (2006), p. 9.

[41] Id., citing Edu v. Ericta, 146 Phil. 469 (1970).

[42] Id.

[43] Philippine Association of Service Exporters, Inc. v. Hon. Drilon, supra note 37 at 398.

[44] Id.

[45] Id. at 399.

[46] Id.

[47] Id.

[48] Gorospe, Rene, B., Constitutional Law, Notes and Readings on the Bill of Rights, Citizenship and Suffrage, Volume I (2006), p. 12.

[49] Id.

[50] RA 10121 and RA 9275 or The Philippine Clean Water Act

[51] CONSTITUTION, Article II, Sections 15 and 16 and Article XII, Section 2.

[52] 296 Phil. 694 (1993).

[53] Id. at 713.

[54] Id.

[55] Rollo, p. 145.

[56] See Executive Order No. 53, CREATING A BORACAY INTER-AGENCY TASK FORCE, PROVIDING FOR ITS POWERS AND FUNCTIONS AND THOSE OF THE MEMBER-AGENCIES THEREOF, AND OTHER MEASURES TO REVERSE THE DEGRADATION OF BORACAY ISLAND, id. at 202-207.

[57] JMM Promotion and Management, Inc. v. Court of Appeals, 329 Phil. 87, 99-100 (1996).

[58] Carlos Superdrug Corporation v. Department of Social Welfare and Development, 553 Phil. 120, 132 (2007).

[59] Id.

[60] G.R. No. 199669, April 25, 2017, 824 SCRA 164.

[61] Id. at 211.

[62] Id. at 212.

[63] Manila Memorial Park, Inc. v. Secretary of the Department of Social Welfare and Development, 722 Phil. 538, 590 (2013).

[64] Relevant legislative polices of RA 10121 state, viz.:

SECTION 2. Declaration of Policy. - It shall be the policy of the State to:

x x x x

(e) Develop, promote, and implement a comprehensive National Disaster Risk Reduction and Management Plan (NDRRMP) that aims to strengthen the capacity of the national government and the local government units (LGUs), together with partner stakeholders, to build the disaster resilience of communities, and to institutionalize arrangements and measures for reducing disaster risks, including projected climate risks, and enhancing disaster preparedness and response capabilities at all levels;

x x x x

(k) Recognize the local risk patterns across the country and strengthen the capacity of LGUs for disaster risk reduction and management through decentralized powers, responsibilities, and resources at the regional and local levels; [and]

(l) Recognize and strengthen the capacities of LGUs and communities in mitigating and preparing for, responding to, and recovering from the impact of disasters;

x x x x

[65] Supra note 56.

[66] 595 Phil. 305 (2008).

[67] Id. at 346-347.

[68] Oposa v. Hon. Factoran, Jr., supra note 52 at 713.

SEPARATE CONCURRING OPINION

CARPIO, J.:

This case involves the constitutionality of Proclamation No. 475,[1] declaring a state of calamity in Barangays Balabag, Manoc-Manoc and Yapak in 1,032-hectare Boracay Island and ordering the temporary closure of the island as a tourist destination for six months, starting 26 April 2018 until 25 October 2018.

I vote to dismiss the petition.

Proclamation No. 475 was issued because of the environmental degradation and destruction of the ecological balance of Boracay Island, which was aggravated by the continuing rise of tourist arrivals.[2] Under Section 4[3] of Presidential Decree No. 1586,[4] the President may declare certain areas in the country as environmentally critical. To pave the way for the rehabilitation of Boracay Island and prevent further degradation of its rich ecosystem, the proclamation ordered the temporary closure of the island as a tourist destination for six months[5]

during which period the government would undertake massive road, drainage, and sewerage construction, as well as require all establishments to comply with the Clean Water Act, Clean Air Act, Code on Sanitation of the Philippines, Ecological Solid Waste Management Act of 2000, and other relevant laws. However, local residents of Boracay Island were not prohibited from entering or leaving the island during the rehabilitation period as the prohibition applied only to travelers and tourists.

The rehabilitation of Boracay Island resulted in the closure of almost all of the hotels because of non-compliance with the Clean Water Act, Clean Air Act, National Building Code of the Philippines, Code on Sanitation of the Philippines, Ecological Solid Waste Management Act of 2000, and the Environmental Compliance Certificate requirement.[6] The Department of Tourism suspended the accreditation of hotels and resorts in Boracay Island for six months to stop the disposal of wastewater into the seas.[7] Some establishments have also built illegal structures on Boracay's wetlands and forestlands which had to be dismantled.[8] Furthermore, some companies were operating without Environmental Compliance Certificate (ECC), in violation of Presidential Decree No. 1586 which established the Environmental Impact Statement System.[9]

Swimming in the waters of Boracay Island was generally not allowed during the six-month rehabilitation period.[10] The illegal discharge of untreated wastewater into the sea and the insufficient sewerage system caused the high concentration of fecal coliform in some of the beaches in Boracay Island.[11] The extremely high level of coliform bacteria which reached 47,460 mpn (most probable number) per 100 ml.[12] of water sample was alarming considering that the safe level for swimming and other activities is just 1,000 mpn/100ml. of water sample.[13] Thus, the ban on swimming imposed by the government was justified and necessary considering the high coliform level in the waters of Boracay Island, which was clearly unsafe for swimming and posed serious health and sanitation hazards.[14]

Many roads were closed for rehabilitation, widening, and construction, including the main road network which is the primary access to many establishments in the island.[15] Not only were the roads widened, sewage pipes were also laid to prevent sewage from flowing into the beach waters, and drainage pipes were installed to prevent clogged waterways which caused flooding before the closure.[16] As such, traveling around Boracay Island was severely restricted even for the local residents. Under Section 1 of Commonwealth Act No. 548,[17] "[national] roads may be temporarily closed to any or all classes of traffic by the Director of Public Works or his duly authorized representative whenever the condition of the road or the traffic thereon makes such action necessary or advisable in the public interest, or for a specified period, with the approval of the Secretary of Public Works and Communications."

The rehabilitation of Boracay Island as a consequence of Proclamation No. 475, declaring a state of calamity in Boracay Island, resulted in: (1) the closure of majority of the hotels and other business establishments for non-compliance with environmental laws; (2) the closure of many roads for repair, widening, and installation of drainage pipes; and (3) the ban on swimming in the beaches of Boracay Island due to the unsafe level of coliform bacteria.

Given such a situation in Boracay Island, the invocation on behalf of non-residents of Boracay Island of the right to travel, which includes the right to move freely within the country,[18] is misplaced. First, the valid closure of roads severely restricted movement around the island. Second, the closure of hotels and establishments pending investigation and accreditation left tourists and non-locals with no accommodations. Third, the valid ban on swimming in Boracay beaches for sanitary and health considerations made unavailable the main tourist attraction of Boracay Island.

Clearly, the condition of Boracay Island during the six-month rehabilitation period justified the prohibition on

travelers and tourists from entering Boracay Island because of the physical impediment to traveling around the island resulting from the massive road, sewerage and drainage construction, the lack of accommodations, and the ban on swimming and other water recreational activities. Thus, Proclamation No. 475 is a valid exercise of various existing laws, that is, Presidential Decree No. 1586, Commonwealth Act No. 548, Clean Water Act of 2004 (Republic Act No. 9275), Clean Air Act of 1999 (Republic Act No. 8749), National Building Code of the Philippines (Republic Act No. 6541), Ecological Solid Waste Management Act of 2000 (Republic Act No. 9003), and the Code on Sanitation of the Philippines (Presidential Decree No. 856). These are laws pursuant to the police power of the state. There is no claim that these laws are unconstitutional. The President, in the exercise of his control over the Executive branch of government,[19] can directly exercise the functions of subordinate officials tasked to implement these laws.

Accordingly, I vote to DISMISS the petition.

[1] DECLARING A STATE OF CALAMITY IN THE BARANGAYS OF BALABAG, MANOC-MANOC AND YAPAK (ISLAND OF BORACAY) IN THE MUNICIPALITY OF MALAY, AKLAN, AND TEMPORARY CLOSURE OF THE ISLAND AS A TOURIST DESTINATION.

[2] The WHEREAS clauses of Proclamation No. 475 cites the result of the evaluation and investigation of the Inter-Agency Task Force composed of the DENR, DILG, and DOT, which revealed, among others, (1) high concentration of fecal coliform in some of the beaches in Boracay; (2) insufficient sewer and waste management system resulting in improper disposal of waste products, including discharge of waste water near the shores; (3) 937 illegal structures constructed on forestlands and wetlands, as well as 102 illegal structures on areas classified as easements.

[3] Section 4. Presidential Proclamation of Environmentally Critical Areas and Projects. – The President of the Philippines may, on his own initiative or upon recommendation of the National Environmental Protection Council, by proclamation declare certain projects, undertakings or areas in the country as environmentally critical. No person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative. For the proper management of said critical project or area, the President may by his proclamation reorganize such government offices, agencies, institutions, corporations or instrumentalities including the re-alignment of government personnel, and their specific functions and responsibilities.

For the same purpose as above, the Ministry of Human Settlements shall: (a) prepare the proper land or water use pattern for said critical project(s) or area(s); (b) establish ambient environmental quality standards; (c) develop a program of environmental enhancement or protective measures against calamitous factors such as earthquake, floods, water erosion and others, and (d) perform such other functions as may be directed by the President from time to time.

[4] ESTABLISHING AN ENVIRONMENTAL IMPACT STATEMENT SYSTEM INCLUDING OTHER ENVIRONMENTAL MANAGEMENT RELATED MEASURES AND FOR OTHER PURPOSES.

[5] <https://news.abs-cbn.com/specials/the-boracay-project> (visited 9 November 2018); <https://news.abs-cbn.com/news/05/10/18/duterte-creates-boracay-inter-agency-rehab-task-force> (visited 9 November 2018); <http://www.officialgazette.gov.ph/downloads/2018/05may/20180508-EO-53-RRD-2.pdf> (visited 9 November 2018).

[6] "The Environmental Management Bureau (EMB)-6 has issued 478 notices of violations to establishments in

Boracay Island for violating environmental laws." <https://pia.gov.ph/news/articles/1010563> (visited 12 November 2018); <http://visayas.politics.com.ph/ang-dami-nga-denr-issues-478-violation-notice-to-boracay-businesses/> (visited 12 November 2018); <https://businessmirror.com.ph/new-denr-list-reveals-more-boracay-businesses-violated-environment-laws/> (visited 12 November 2018).

[7]

<https://news.abs-cbn.com/news/02/26/18/tourism-dept-to-suspend-accreditation-of-non-compliant-boracay-hotels> (visited 9 November 2018).

[8] <http://cnnphilippines.com/news/2018/03/02/senate-boracay-probe.html> (visited 9 November 2018).

[9] <https://businessmirror.com.ph/new-denr-list-reveals-more-boracay-businesses-violated-environment-laws/> (visited 12 November 2018).

[10] <https://www.rappler.com/nation/200719-no-total-swimming-fishing-ban-boracay-residents> (visited 16 November 2018).

[11] <https://www.bworldonline.com/denr-to-fast-track-approvals-for-boracay-sewage-treatment-plants/> (visited 12 November 2018); <https://businessmirror.com.ph/water-from-boracay-hidden-pipes-found-positive-for-coliform-bacteria/> (visited 12 November 2018).

[12] <https://newsinfo.inquirer.net/979944/environmental-issues-have-been-hounding-boracay-for-20-years> (visited 16 November 2018); <https://www.philstar.com/headlines/2015/02/21/1426419/government-raises-concern-over-high-bacteria-levels-boracay-water> (visited 16 November 2018).

[13] Section 6.2.1 of the Implementing Rules and Regulations of Chapter VIII - "Public Swimming or Bathing Places" of the Code on Sanitation of the Philippines states:

6.2 Natural Bathing Places

6.2.1 The quality of water for natural bodies of water used for swimming, bathing, or other contact recreation purposes shall be within the standard set by the Department of Environment and Natural Resources.

a. Inland Waters. - For inland water, total coliform shall not exceed 1,000 MPN per 100 ml of water sample, fecal coliform shall not exceed 200 MPN per 100 ml of water sample, and a pH range of 6.5-8.5.

b. Marine and Estuarine Waters. - For marine water, total coliform shall not exceed 1,000 MPN per 100 ml of water sample, fecal coliform shall not exceed 200 MPN per 100 ml of water sample, and a pH range of 6.0-8.5.

[14] Section 5.2.1 of the Implementing Rules and Regulations of Chapter VIII - "Public Swimming or Bathing Places" of the Code on Sanitation of the Philippines states:

5.2 Safety Precautions at Public Natural Bathing Places

5.2.1 No public bathing place shall be maintained on a natural body of water that has been determined and declared by the Department of Health or the local health office to be unsafe for bathing or may pose to be a menace to health of the bathers.

[15] <https://businessmirror.com.ph/dpwh-fast-tracks-completion-of-boracay-islands-road-infrastructure/> (visited 9 November 2018); <https://www.rappler.com/nation/210011-photo-boracay-to-open-war-zone-like-roads> (visited 12 November 2018).

[16] <https://news.mb.com.ph/2018/09/25/dpwh-speeds-up-completion-of-boracay-main-road/> (visited 12 November 2018); <https://news.abs-cbn.com/focus/multimedia/slideshow/08/16/18/this-is-how-boracay-looks-like-then-and-now> (visited 12 November 2018).

[17] AN ACT TO REGULATE AND CONTROL THE USE AND TRAFFIC ON NATIONAL ROADS AS WELL AS CONSTRUCTIONS ALONG THE SAME, PRESCRIBING PENALTIES FOR THE VIOLATION THEREOF.

[18] *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, G.R. No. 225442, 8 August 2017, 835 SCRA 350, citing *Marcos v. Manglapus*, 258 Phil. 479, 497-498 (1989).

[19] Section 17, Article VII, 1987 Constitution.

SEPARATE CONCURRING OPINION

PERLAS-BERNABE, J.:

I concur.

Among other points, I agree with the ponencia that "this case does not actually involve the right to travel in its essential sense contrary to what petitioners want to portray."^[1] In my view, there can be no violation of the right to travel because, in the first place, Proclamation No. 475^[2] is not an issuance that substantively regulates such right.

To expound, the right to travel has been regarded as integral to personal liberty,^[3] which Blackstone defines as "freedom from restraint of the person."^[4] The guarantee of free movement may be historically traced^[5] to the Magna Carta of 1215 which assured the liberty for anyone, except those imprisoned, outlawed, and the natives of an enemy country, safe and secure entry to and exit from England. It likewise assured merchants, that they may enter, leave, stay, and move about England "unharmful and without fear."^[6] Much later, or in 1948, the Universal Declaration of Human Rights (UDHR) recognized everyone's right to freedom of movement within the borders of each state, as well as the one's right to leave and return to his country.^[7] The guarantee was likewise incorporated in the 1966 International Covenant on Civil and Political Rights,^[8] which the Philippines signed in the same year.^[9] This guarantee was incorporated in our fundamental law in the 1973 Constitution,^[10] and now appears in the 1987 Constitution.^[11]

An examination of local cases wherein the right to travel was involved will support the premise that the right to travel – if one were to understand the same in its proper sense – ought to pertain to government regulations that directly affect the individual's freedom of locomotion or movement. For instance, in *Samahan ng mga Progresibong Kabataan v. Quezon City*,^[12] the minors' exercise of travel rights was restricted by the curfew ordinances. In several cases,^[13] the accused in a criminal case, especially those released on bail, were held to be validly prevented from departing from the Philippines. In *Philippine Association of Service Exporters, Inc. v. Drilon*,^[14] the deployment ban was imposed on female domestic overseas workers. Further, during medical emergencies, a person may be isolated or quarantined to prevent the spread of communicable diseases.^[15]

Even the statutes recognized as validly impairing the right to travel have, for its proper object, a palpably direct restraint on a person's freedom of movement, viz.: (1) in the Human Security Act,^[16] the law restricts the right to

travel of an individual charged with the crime of terrorism even though such person is out on bail; (2) in the Philippine Passport Act of 1996,[17] the Secretary of Foreign Affairs or his authorized consular officer may refuse the issuance of, restrict the use of, or withdraw, a passport of a Filipino citizen; (3) in the Anti-Trafficking in Persons Act of 2003,[18] the Bureau of Immigration, in order to manage migration and curb trafficking in persons, issued Memorandum Order RADJR No. 2011-011,[19] allowing its Travel Control and Enforcement Unit to "offload passengers with fraudulent travel documents, doubtful purpose of travel, including possible victims of human trafficking" from the Philippine ports; and (4) in the Inter-Country Adoption Act of 1995,[20] the Inter-Country Adoption Board may issue rules restrictive of an adoptee's right to travel "to protect the Filipino child from abuse, exploitation, trafficking, and/or sale or any other practice in connection with adoption which is harmful, detrimental, or prejudicial to the child." [21]

In all these instances, the restrictions on the right to travel were imposed on a person or group of persons,[22] seemingly attaching unto them some form of "ball and chain" to limit their movement. Clearly, this is not the situation presented in this case. While the closure of Boracay pursuant to Proclamation No. 475 prohibited the entry of tourists and non-residents thereto, these people still remained free to move about in other parts of the country without arbitrary restraint. Thus, whatever effect such regulation may have on a person's ability to travel to such a specific place is merely incidental in nature and accordingly, is conceptually remote from the right's proper sense. To my mind, Proclamation No. 475 is more akin to government regulations that amount to the "cordonning-off" of areas ravaged by flood, fire, or other calamities, where access by people thereto may indeed be prohibited pursuant to considerations of safety and general welfare based on circumstantial exigencies. Thus, as the right to travel is not the correct vantage point to resolve this case, there is no need to determine whether or not an explicit statutory enactment exists to justify the impairment of said right as required under Section 6, Article III of the 1987 Constitution.[23]

Lest it be misunderstood, the extrication of this case from a "right to travel analysis" does not necessarily mean that the President is, by his sole accord, both authorized and justified in issuing Proclamation No. 475.

Fundamentally speaking, the President is the Chief of the Executive Department whose main task is to faithfully execute the laws. In its simple sense, his duty is not to make law, but rather, implement the law. Proclamation No. 475 is not law, but rather, an executive issuance which derives statutory imprimatur from existing laws and hence, has the "force and effect" of law. As its titular heading denotes, Proclamation No. 475 is a declaration of a state of calamity in the barangays of Balabag, Manoc-Manoc, and Yapak (Island of Boracay) in the Municipality of Malay, Aldan. In order to address the situation declared thereunder, it was necessary for the Executive to effect "expeditious rehabilitation," and to implement this objective, the President had to direct the area's temporary closure.

To be sure, insofar as this case is concerned, the power of the President to declare a state of calamity over a particular locality may be sourced from the Administrative Code of 1987[24] in relation to the Philippine Disaster Risk Reduction and Management Act of 2010.[25] Based on these laws, the President, pursuant to the recommendation of the National Disaster Risk Reduction and Management Council (NDRRMC), is authorized to "declare a state of calamity[26] in areas extensively damaged," as well as to approve "proposals to restore normalcy in the affected areas." [27] On this basis, the NDRRMC recommended to the President not only the declaration of a state of calamity in Boracay but also, as a means to restore normalcy therein, the "temporary closure of the Island as a tourist destination" for the purpose of assisting the government in the "expeditious rehabilitation" of the same.[28] Thus, as an off-shoot of the declaration of a state of calamity, and acting upon the recommendation of the NDRRMC, the President found it necessary to decree the temporary closure of the affected areas if only to ensure the Island's proper rehabilitation.

While it appears that the above-cited statutes do not spell out in "black- and-white" the President's power to temporarily close-off an area, it is my opinion that a logical complement to the Executive's power to faithfully execute the laws is the authority to perform all necessary and incidental acts that are reasonably germane to the statutory objective that the President is, after all, tasked to execute. What comes to mind is the doctrine of necessary implication which evokes that "[e]very statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms. Ex necessitate legis. And every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege."^[29] This principle, in its general sense, holds true in this case. By and large, I find it unreasonable that a President who declares a state of calamity, and who has been further prompted by a specialized government agency created for disaster operations pursuant to existing laws to effect a viable plan of action is nonetheless impotent to pursue the necessary steps to effect a viable plan of action. Surely, the President must be given reasonable leeway to address calamitous situations, else he be reduced to a mere mouthpiece of doom.

At this juncture, it is apt to state that Proclamation No. 475 explicitly recognizes in its "whereas clauses" the State's constitutional duty to protect and advance the rights to health and to a balanced and healthful ecology,^[30] which duty has been translated in numerous legislative enactments, such as the Philippine Clean Water Act of 2004,^[31] and as mentioned, the Philippine Disaster Risk Reduction and Management Act of 2010, as well as the Administrative Code of 1987. The Philippine Clean Water Act of 2004 authorizes the Department of Environment and Natural Resources (DENR) to undertake emergency clean-up operations^[32] to counter water pollution. As earlier mentioned, the Philippine Disaster Risk Reduction and Management Act of 2010 empowers the NDRRMC to recommend the declaration of a state of calamity in areas extensively damaged by either natural or human-induced hazards such as environment degradation, as well as proposals to restore normalcy in the affected areas, such as through rehabilitation^[33] or the rebuilding of damaged infrastructures. Further, the Administrative Code of 1987 grants the DENR the power to "exercise supervision and control over [alienable public lands],"^[34] such as Boracay, and the Department of Interior and Local Government the authority to implement programs "to meet national or local emergencies arising from natural or man-made disasters,"^[35] such as environmental destruction.

Ultimately, the agglomeration of the above-stated laws reveals that the Executive Department has sufficient statutory authority to clean up the Island. Since the Constitution vests all executive power in the President, and on this score, grants him the power of control over all executive departments, he can, within the bounds of law, integrate and take on the above-stated functions, and in the exercise of which, issue a directive to implement an environmental rehabilitation program as recommended by the relevant state agency. At the risk of sounding repetitive, the temporary closure of the Island to tourists was necessary to effectively execute Boracay's rehabilitation program pursuant to a declaration of a state of calamity. Therefore, the President had sufficient authority from both the Constitution and statutes to issue Proclamation No. 475. That being said, and as a point of clarification, I find it unnecessary to situate such authority in his unstated residual powers.^[36]

Having discussed the President's authority, the final question to be traversed is whether or not there was ample justification for the issuance of Proclamation No. 475.

As previously mentioned, this case should not be assessed against the parameters of the right to travel. As Proclamation No. 475 constitutes a restriction not against a person's freedom of movement, but rather, a "place-based" regulation, I deem it appropriate to instead examine the issuance's validity under the lens of petitioners' right to property under Section 1, Article III of the 1987 Constitution. After all, this approach specifically

corresponds to petitioners' line of argumentation. In particular, as found in the petition, petitioners Mark Anthony V. Zabal (Zabal) and Thiting Estoso Jacosalem (Jacosalem) assail the validity of Proclamation No. 475 on the ground that it violated their right as persons earning a living in the Boracay Island. As alleged, Zabal earns a living by making sandcastles while Jacosalem works as a driver for tourists.[37] Accordingly, they submit that the exclusion of tourists from the Island drastically affected their trade or livelihood.[38]

Under the auspices of Section 1, Article III of the 1987 Constitution, protected property includes the right to work and the right to earn a living.[39] The purpose of the due process guaranty is "to prevent arbitrary governmental encroachment against the life, liberty, and property of individuals." [40] While the right to property is sheltered by due process provision, it is by no means absolute as it must yield to the general welfare.[41] Thus, the State may deprive persons of property rights provided that the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.[42]

In this case, although the exclusion of tourists from the Island drastically affected the trade or livelihood of those reliant on them, including petitioners, I submit that the government had a legitimate State interest in rehabilitating the affected localities of Boracay given the Island's current critical state. Findings of various government agencies in the Island reveal its precarious environmental condition, to wit: (a) high concentration of fecal coliform due to improper sewage infrastructure and sewer waste management system; (b) dirty water resulting in the degradation of coral reefs and coral cover; (c) improper solid waste management; (d) destruction of natural habitats in the island; (e) beach erosion caused by illegal extraction of sand along the beach; (f) illegal structures along the foreshore; and (g) unauthorized discharge of untreated waste water near the shore.[43] Notably, these environmental problems were found to have been aggravated by "tourist influx." [44]

To effectively remedy the Island's environmental woes, "expeditious rehabilitation" thereof became crucial, and in line therewith, the entry of tourists became necessary to suspend. As aptly rationalized in the ponencia:

Certainly, the closure of Boracay, albeit temporarily, gave the island its much needed breather, and likewise afforded the government the necessary leeway in its rehabilitation program. Note that apart from review, evaluation and amendment of relevant policies, the bulk of the rehabilitation activities involved inspection, testing, demolition, relocation, and construction. These works could not have easily been done with tourists present. The rehabilitation works in the first place were not simple, superficial or mere cosmetic but rather quite complicated, major, and permanent in character as they were intended to serve as long term solutions to the problem. x x x Moreover, as part of the rehabilitation efforts, operations of establishments in Boracay had to be halted in the course thereof since majority, if not all of them, need to comply with environmental and regulatory requirements in order to align themselves with the government's goal to restore Boracay into normalcy and develop its sustainability. Allowing tourists into the island while it was undergoing necessary rehabilitation would therefore be pointless as no establishment would cater to their accommodation and other needs. Besides, it could not be said that Boracay, at the time of the issuance of the questioned proclamation, was in such a physical state that would meet its purpose of being a tourist destination. For one, its beach waters could not be said to be totally safe for swimming. x x x Indeed, the temporary closure of Boracay, although unprecedented and radical as it may seem, was reasonably necessary and not unduly oppressive under the circumstances. It was the most practical and realistic means of ensuring that rehabilitation works in the island are started and carried out in the most efficacious and expeditious way.[45] (Emphases supplied)

Moreover, the limited six (6)-month period shows that the closure was not unduly oppressive upon individuals, and was put in place only to implement the desired State objective. Therefore, all things considered, Proclamation No. 475 cannot be said to have been issued with grave abuse of discretion, and as such, remains constitutional.

Accordingly, I vote to DISMISS the petition.

[1] Ponencia, p. 20.

[2] Entitled "DECLARING A STATE OF CALAMITY IN THE BARANGAYS OF BALABAG, MANOC-MANOC AND YAPAK (ISLAND OF BORACAY) IN THE MUNICIPALITY OF MALAY, AKLAN, AND TEMPORARY CLOSURE OF THE ISLAND AS A TOURIST DESTINATION," signed on April 26, 2018.

[3] See McAdam, Jane "An Intellectual History of Freedom of Movement in International Law: The Right to Leave as a Personal Liberty." *Melbourne Journal of International Law*, Vol. 12 (2011), p. 6.

[4] Shattuck, Charles E. "The True Meaning of the Term 'Liberty' in Those Clauses in the Federal and State Constitutions Which Protect 'Life, Liberty, and Property.'" *Harvard Law Review*, Vol. 4, No.8 (1891), p. 377; citing William Blackstone, "Absolute Right of Individuals"; emphasis supplied. < www.jstor.org/stable/1322046 > (visited February 12, 2019).

[5] See Gould, William B. "Right to Travel and National Security," 1961 *Wash. U. L. Q.* 334 (1961). < http://openscholarship.wustl.edu/law_lawreview/vol1961/iss4/2 > (visited February 12, 2019).

[6] See English translation of the Magna Carta of 1215 < <https://www.bl.uk/magna-carta/articles/magna-carta-english-translation> > (visited February 12, 2019).

[7] Adopted on December 10, 1948. < <https://www.ohchr.org/EN/UDHR/Documents/UDHRTranslations/eng.pdf>. > (visited February 12, 2019). Article 13 of the UDHR provides:

Article 13.

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

[8] Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49. < <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> > (February 12, 2019). Article 12, Part III of the 1966 International Covenant on Civil and Political Rights states:

Article 12.

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

[9] The Philippines signed on December 19, 1966. < https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280004bf5&clang=_en > (February 12, 2019).

[10] Section 5, Article IV of the 1973 CONSTITUTION provides:

Section 5. The liberty of abode and of travel shall not be impaired except upon lawful order of the court, or when necessary in the interest of national security, public safety, or public health.

[11] See Section 6, Article III of the 1987 CONSTITUTION.

[12] G.R. No. 225442, August 8, 2017, 835 SCRA 350.

[13] See *Manotoc, Jr. v. Court of Appeals*, 226 Phil. 75 (1986), *Silverio v. Court of Appeals*, 273 Phil. 128 (1991). In *Marcos v. Sandiganbayan* (317 Phil. 149, 167 [1995]), the Court stated that "a person's right to travel is subject to the usual constraints imposed by the very necessity of safeguarding the system of justice." See also *Lee v. The State* (474 S.E.2d 281 [1996]), wherein the Court of Appeals of Georgia held that an arrest restrains a person's liberty to come and go as he pleases.

[14] See 246 Phil. 393 (1988).

[15] See Internal Health Regulations of the World Health Organization, 3[rd] Edition (2005), pp. 23-24 < <https://apps.who.int/iris/bitstream/handle/10665/246107/9789241580496-eng.pdf;jsessionid=7B5FCF4B030035B953CDCDEE7F92D6EC?sequence=1> > (February 12, 2019).

[16] Republic Act No. (RA) 9372, entitled "AN ACT TO SECURE THE STATE AND PROTECT OUR PEOPLE FROM TERRORISM," approved on March 6, 2007.

[17] RA 8239, approved on November 22, 1996.

[18] RA 9208, entitled "AN ACT TO INSTITUTE POLICIES TO ELIMINATE TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION AND SUPPORT OF TRAFFICKED PERSONS, PROVIDING PENALTIES FOR ITS VIOLATIONS, AND FOR OTHER PURPOSES," approved on May 26, 2003.

[19] Entitled "STRENGTHENING THE TRAVEL CONTROL AND ENFORCEMENT UNIT (TCEU) UNDER AIRPORT OPERATIONS DIVISION (AOD) AND DEFINING THE DUTIES AND FUNCTIONS THEREOF" dated June 30, 2011.

[20] RA 8043, entitled "AN ACT ESTABLISHING THE RULES TO GOVERN INTER-COUNTRY ADOPTION OF FILIPINO CHILDREN, AND FOR OTHER PURPOSES," approved on June 7, 1995.

[21] See *Leave Division, Office of Administrative Services, Office of the Court Administrator v. Heusdens*, 678 Phil. 328, 339-340 (2011).

[22] See also the United Nations Convention relating to the Status of Refugees, adopted in 1951 and entered into force on 22 April 1954, which stresses refugees' freedom of movement, to wit:

Article 26

Freedom of Movement

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

[23] See *Genuino v. De Lima* (G.R. Nos. 197930, 199034, and 199046, April 17, 2018) in relation to Section 6, Article III of the 1987 Constitution.

[24] Executive Order No. 292, entitled "INSTITUTING THE ADMINISTRATIVE CODE OF 1987" (August 3, 1988). The President's ordinance power is explicitly stated in Section 4, Chapter 2, Title I, Book III of the Administrative Code of 1987, to wit:

Section 4. Proclamations. – Acts of the President fixing a date or declaring a status or condition of public moment or interest, upon the existence of which the operation of a specific law or regulation is made to depend, shall be promulgated in proclamations which shall have the force of an executive order. (Underscoring

supplied)

[25] RA 10121, entitled "AN ACT STRENGTHENING THE PHILIPPINE DISASTER RISK REDUCTION AND MANAGEMENT SYSTEM, PROVIDING FOR THE NATIONAL DISASTER RISK REDUCTION AND MANAGEMENT FRAMEWORK AND INSTITUTIONALIZING THE NATIONAL DISASTER RISK REDUCTION AND MANAGEMENT PLAN, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES," May 27, 2010.

[26] Section 2 (II) of RA10121 defines "State of Calamity" as "a condition involving mass casualty and/or major damages to property, disruption of means of livelihoods, roads and normal way of life of people in the affected areas as a result of the occurrence of natural or human-induced hazard."

[27] See Section 6 (c) of RA 10121 which states:

Section 6. Powers and Functions of the NDRRMC. x x x

x x x x

(c) x x x recommend to the President the declaration of a state of calamity in areas extensively damaged; and submit proposals to restore normalcy in the affected areas, to include calamity fund allocation[.] (Emphasis and underscoring supplied)

[28] The last whereas clause of Proclamation No. 475 reads:

WHEREAS, pursuant to [RA 10121] x x x, the [NDRRMC] has recommended the declaration of a State of Calamity in the Island of Boracay and the temporary closure of the Island as a tourist destination to ensure public safety and public health, and to assist the government in its expeditious rehabilitation, as well as in addressing the evolving socio-economic needs of the affected communities[.] (Underscoring supplied)

[29] See *Robustum Agricultural Corporation v. Department of Agrarian Reform and Land Bank of the Philippines*, G.R. No. 221484, November 19, 2018.

[30] In *Oposa v. Factoran, Jr.* (G.R. No. 101083, July 30, 1993, 224 SCRA 792, 804-805), the Court held that "[w]hile the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation — aptly and fittingly stressed by the petitioners — the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind." The Court also exclaimed that the right to a balanced and healthful ecology "unites with the right to health."

[31] RA 9275, entitled "AN ACT PROVIDING FOR A COMPREHENSIVE WATER QUALITY MANAGEMENT AND FOR OTHER PURPOSES," approved on March 22, 2004.

[32] Section 16, Article 3 of RA 9275 reads:

Section 16. Clean-Up Operations. — x x x Provided. That in the event emergency clean-up operations are necessary x x x the Department, in coordination with other government agencies concerned, shall conduct containment, removal and clean-up operations. x x x. (Emphasis supplied)

[33] Section 3 (ee) of RA 10121 defines "Rehabilitation" as "measures that ensure the ability of affected communities/areas to restore their normal level of functioning by rebuilding livelihood and damaged infrastructures and increasing the communities' organizational capacity."

[34] See Section 4 (4), Chapter I, Title XIV, Book IV of the Administrative Code of 1987.

[35] See Section 3 (5), Chapter I, Title XII, Book IV of the Administrative Code of 1987.

[36] In response to the discussions in Justice Alfredo Benjamin S. Caguioa's Dissenting Opinion, pp. 17-27.

[37] See Petition, p. 3.

[38] See *id.* at 20 and 22.

[39] See Senior Associate Justice Antonio T. Carpio's Separate Concurring Opinion in *Serrano v. Gallant Maritime Services, Inc.*, 601 Phil. 245, 307 (2009).

[40] *White Light Corporation v. City of Manila*, 596 Phil. 444, 461 (2009).

[41] See *Carlos Superdrug Corporation v. Department of Social Welfare and Development*, 553 Phil. 120, 132 (2007).

[42] In *Social Justice Society v. Atienza, Jr.* (568 Phil. 658, 702 [2008]), the Court held that the State "may be considered as having properly exercised [its] police power only if the following requisites are met: (1) the interests of the public generally, as distinguished from those of a particular class, require its exercise and (2) the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. In short, there must be a concurrence of a lawful subject and a lawful method." (Emphasis supplied)

[43] See 4[th]-7[th] whereas clauses of Proclamation No. 475.

[44] See 8[th] and 9[th] whereas clauses of Proclamation No. 475.

[45] Ponencia, pp. 23-24.

DISSENTING OPINION

We can save ourselves, but only if we let go of the myth of dominance and mastery and learn to work with nature.

Naomi Klein

The primary threat to nature and people today comes from centralizing and monopolizing power and control. Not until diversity is made the logic of production will there be a chance for sustainability, justice and peace. Cultivating and conserving diversity is no luxury in our times: it is a survival imperative.

Vandana Shiva

LEONEN, J.:

With respect to my esteemed colleagues, I dissent.

Proclamation No. 475, s. 2018 (or the Proclamation) is unconstitutional, as it is an impermissible exercise of police power.

It violates the right to life and liberty properly invoked by petitioners without due process of law. The Proclamation imposes a closure and a deprivation of the livelihood of those who have not been shown to have caused the high levels of fecal coliform and other human made incursions into Boracay's ecology which invited President Rodrigo Duterte's drastic actions. The specific actions and programs to be undertaken during the closure of the entire island, so as to properly advise the residents, workers, and others interested, are not clearly stated. The six (6)-month duration of the closure is arbitrary. The state of calamity will persist even after the closure expires. The lifting of the declaration of the state of calamity is not preceded by any discernible standard. The Department of the Interior and Local Government "Guidelines" (DILG Guidelines) for the closure were issued prior to the promulgation of the Proclamation. It is inconsistent with the latter, containing provisions with serious constitutional implications.

The Proclamation is unduly vague. It is unconstitutionally broad.

Proclamation No. 475 is contrary to the very statutes it allegedly implements, Republic Acts No. 10121[1] and 9275.[2] The ecological problem in Boracay is not the calamity envisioned in Republic Act No. 10121 or the Philippine Disaster Risk Reduction and Management Act of 2010. By exercising control rather than merely supervision, the Presidential exercise violates the constitutionally protected principle of local autonomy. Contrary to the Majority's view, such infringement is neither incidental nor marginal.

Assuming that a state of calamity was properly declared, the Proclamation upends the framework of locally-led remediation and rehabilitation efforts mandated by the statutes. By declaring that only the President can lift the declaration, the Proclamation violates Republic Act No. 10121.

Human induced ecological disasters need to be addressed deliberately, systematically, structurally and with all institutions of government actively engaging public participation. There are laws already in place that could have been properly enforced. The right intentions however must always be accompanied by the right and legal means. The Majority's tolerance for the dramatic and drastic actions of the Chief Executive violates the rule of law and undermines constitutional democracy.

Considering the many calamities our society has to face, upholding the framework contained in Proclamation No. 475 invites a regime that is borderline authoritarian.

I

The Petition raises questions relating to petitioners' right to travel and right to due process. I join Associate Justice Alfredo Benjamin Caguioa's view that the right to travel has been violated especially in light of the most recent unanimous decision of this Court in *Genuino v De Lima*.^[3] Fundamentally, however, I vote to grant the Petition on due process grounds.

The basic rights asserted by petitioners are acknowledged in Article III, Section 1 of the Constitution:

SECTION 1. No person shall be deprived of life, liberty or property without due process of law[.]

The due process clause is written as a proscription.^[4] It implies a sphere of individual autonomy that is constitutionally protected. As early as 1890, in the seminal work of Louis D. Brandeis and Samuel Warren, this

sphere was referred to as the "right to be left alone" from interference by the State. Reviewing its evolution in common law:

That the individual shall have full protection in person and in property is a principle as old as the common law; but it has been found necessary from time to time to define anew the exact nature and extent of such protection. Political, social and economic changes entail the recognition of new rights, and the common law, in its eternal youth, grows to meet the demands of society. Thus, in very early times, the law gave a remedy only for physical interference with life and property, for trespasses vi et armis. Then the "right to life" served only to protect the subject from battery in its various forms; liberty meant freedom from actual restraint; and the right to property secured to the individual his lands and his cattle. Later, there came a recognition of man's spiritual nature, of his feelings and his intellect. Gradually the scope of these legal rights broadened; and now the right to life has come to mean the right to enjoy life,—the right to be let alone; the right to liberty secures the exercise of extensive civil privileges; and the term "property" has grown to comprise every form of possession—intangible, as well as tangible.

Thus, with the recognition of the legal value of sensations, the protection against actual bodily injury was extended to prohibit mere attempts to do such injury; that is, the putting another in fear of such injury. From the action of battery grew that of assault. Much later there came a qualified protection of the individual against offensive noises and odors, against dust and smoke and excessive vibration. The law of nuisance was developed. So regard for human emotions soon extended the scope of personal immunity beyond the body of the individual. His reputation, the standing among his fellow-men, was considered, and the law of slander and libel arose. Man's family relations became a part of the legal conception of his life, and the alienation of a wife's affections was held remediable. Occasionally the law halted,—as in its refusal to recognize the intrusion by seduction upon the honor of the family. But even here the demands of society were met. A mean fiction, the action per quod servitium amisit, was resorted to, and by allowing damages for injury to the parents' feelings, an adequate remedy was ordinarily afforded. Similar to the expansion of the right to life was the growth of the legal conception of property. From corporeal property arose the incorporeal rights issuing out of it; and then there opened the wide realm of intangible property, in the products and processes of the mind, as works of literature and art, goodwill, trade secrets, and trademarks.

This development of the law was inevitable.[5] (Citations omitted)

The structure of the due process clause and the primordial value it conceals do not limit protection of life only to one's corporeal existence.[6] Liberty is more than just physical restraint. Even property can be incorporeal.[7]

In *Secretary of National Defense et al. v. Manalo et al.*:[8]

While the right to life under Article III, Section 1 guarantees essentially the right to be alive—upon which the enjoyment of all other rights is preconditioned—the right to security of person is a guarantee of the secure quality of this life, viz.: "The life to which each person has a right is not a life lived in fear that his person and property may be unreasonably violated by a powerful ruler. Rather, it is a life lived with the assurance that the government he established and consented to, will protect the security of his person and property. The ideal of security in life and property . . . pervades the whole history of man. It touches every aspect of man's existence." In a broad sense, the right to security of person "emanates in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation. It includes the right to exist, and the enjoyment of life while existing, and it is invaded not only by a deprivation of life but also of those things which are necessary to the enjoyment of life according to the nature, temperament and lawful desires of the individual.[9] (Citations omitted)

City of Manila v. Laguio, Jr.[10] reiterated the broad conception of the right to life and liberty:

[T]he right to exist and the right to be free from arbitrary restraint or servitude. The term cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the right of

man to enjoy the faculties with which he has been endowed by his Creator, subject only to such restraint as are necessary for the common welfare.[11] (Emphasis supplied, citation omitted)

The rights to life and liberty are inextricably woven. Life is nothing without liberties. Without a full life, the fullest of liberties protected by our constitutional order will not happen. Again, in *City of Manila*:

While the Court has not attempted to define with exactness the liberty . . . guaranteed [by the Fifth and Fourteenth Amendments], the term denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized . . . as essential to the orderly pursuit of happiness by free men. In a Constitution for a free people, there can be no doubt that the meaning of "liberty" must be broad indeed.[12] (Emphasis supplied)

Thereafter:

These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood where they formed under compulsion of the State. [13]

Likewise, in my Concurring Opinion in *Spark v Quezon City*: [14]

Speaking of life and its protection does not merely entail ensuring biological subsistence. It is not just a proscription against killing. Likewise, speaking of liberty and its protection does not merely involve a lack of physical restraint. The objects of the constitutional protection of due process are better understood dynamically and from a frame of consummate human dignity. They are likewise better understood integrally, operating in a synergistic frame that serves to secure a person's integrity.

"Life, liberty and property" is akin to the United Nations' formulation of "life, liberty, and security of person" and the American formulation of "life, liberty and the pursuit of happiness." As the Declaration of Independence postulates, they are "unalienable rights" for which "[g]overnments are instituted among men" in order that they may be secured. Securing them denotes pursuing and obtaining them, as much as it denotes preserving them. The formulation is, thus, an aspirational declaration, not merely operating on factual givens but enabling the pursuit of ideals.

"Life," then, is more appropriately understood as the fullness of human potential: not merely organic, physiological existence, but consummate self-actualization, enabled and effected not only by freedom from bodily restraint but by facilitating an empowering existence. "Life and liberty," placed in the context of a constitutional aspiration, it then becomes the duty of the government to facilitate this empowering existence. This is not an inventively novel understanding but one that has been at the bedrock of our social and political conceptions. As Justice George Malcolm, speaking for this Court in 1919, articulated:

Civil liberty may be said to mean that measure of freedom which may be enjoyed in a civilized community, consistently with the peaceful enjoyment of like freedom in others. The right to liberty guaranteed by the Constitution includes the right to exist and the right to be free from arbitrary personal restraint or servitude. The term cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the right of man to enjoy the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare. As enunciated in a long array of authorities including epoch-making decisions of the United States Supreme Court, liberty includes the right of the citizen to be free to use his faculties in lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any avocation, and for that purpose, to enter into all contracts which may be

proper, necessary, and essential to his carrying out these purposes to a successful conclusion. The chief elements of the guaranty are the right to contract, the right to choose one's employment, the right to labor, and the right of locomotion.

It is in this sense that the constitutional listing of the objects of due process protection admits amorphous bounds. The constitutional protection of life and liberty encompasses a penumbra of cognate rights that is not fixed but evolves — expanding liberty — alongside the contemporaneous reality in which the Constitution operates. *People v. Hernandez* illustrated how the right to liberty is multi-faceted and is not limited to its initial formulation in the due process clause:

[T]he preservation of liberty is such a major preoccupation of our political system that, not satisfied with guaranteeing its enjoyment in the very first paragraph of section (1) of the Bill of Rights, the framers of our Constitution devoted paragraphs (3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), (17), (18), and (21) of said section (1) to the protection of several aspects of freedom.[15] (Citations omitted)

Petitioners assert that due process covers the right to livelihood, to work and earn a living.[16] The pleadings were brought by a sandcastle builder, a driver, and a non-resident. The first two (2) are informal workers who have no economic resources other than their ability to provide their services. The last petitioner is a citizen claiming his right, as a Filipino, to enjoy the natural beauty of his country—his right to travel.

The majority unfortunately canisters this right as falling under the right to property. The argument is that since petitioners have no vested rights on their sources of income, they are not entitled to due process. Even if tourists were still allowed in the island, they earn nothing if no one avails of their services. Thus, since petitioners' earnings are contingent and merely inchoate, the right to property does not yet exist.

I disagree.

The right invoked is not merely the right to property. The right to livelihood falls within the spectrum of the almost inviolable right to life and liberty. The ability to answer a calling, evolve, and create a better version of oneself, in the process of serving others, is a quintessential part of one's life. The right to life is not a mere corporeal existence, but includes one's choice of occupation. This is as important as to those who belong to the informal sector. It is an aspect of social justice that their right to be able to earn a livelihood should be protected by our Constitution.

In the hierarchy of rights, the right to life and the right to liberty sit higher than the right to property. This is also the import of Article II, Section 11 of the Constitution which provides:

SECTION 11. The State values the dignity of every human person and guarantees full respect for human rights.

We recognize the primacy of human rights over property rights because these rights are "delicate and vulnerable[.]" They are so precious in our society, such that the threat of sanctions may deter their exercise almost as strongly as the actual application of sanctions. They "need breathing space to survive"; thus, government regulation is allowable only with "narrow specificity." [17]

In contrast, property rights may be readily qualified as evidenced by the many rules and laws that have been enacted on property ownership and possession. Article XII, Section 6 of the Constitution qualifies the right to property:

SECTION 6. The use of property bears as social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of

the State to promote distributive justice and to intervene when the common good so demands.

As early as in *Ermita-Malate Hotel and Motel Operators Association v. City of Manila*,^[18] this Court already emphasized that if the liberty involved were "freedom of the mind or the person, the standard for the validity of governmental acts is much more rigorous and exacting, but where the liberty curtailed affects at the most rights of property, the permissible scope of regulatory measures is wider."^[19]

We are not confronted with a situation where the government simply regulates one's occupation. Here, the shutdown contemplated in Proclamation No. 475 is complete. The total deprivation of their right to exercise their occupation was curtailed.

For those who have a very regular and lucrative source of income, a period of six (6) months may not be a long time. However, to those within the informal sector, losing their jobs even for a day can spell disaster not only for themselves, but also for their families. Not only do they have legal standing to challenge the Proclamation, but they also do so invoking one (1) of the most primordial of our fundamental rights.

The Proclamation deprives them of their livelihood not for a day, for a week, or for even a month, but for six (6) months. The Proclamation itself— or any law that is purportedly meant to have authorized the issuance of such proclamation—does not provide a credible means of compensation for them. It does not mention any remedial measures for those whose rights will be affected. It is not only police power that exists. Fundamental rights vested by the Constitution could only be considered collateral damage undeserving of any form of redress.

Parenthetically, even if the characterization of their plea belongs to the right to property, *Southern Luzon Drug Corporation v. Department of Social Welfare and Development*,^[20] is not on point.

In *Southern Luzon Drug Corporation*, we dealt with the question as to whether the shift in tax treatment of the 20% discount given to senior citizens and persons with disability was a valid exercise of police power. The case did not involve the livelihood of individuals; rather, it involved the profits of an ongoing business. Furthermore, the businesses affected by the senior citizen's discount were not suspended. The case only concerned itself on the proper way of computing their taxes for incomes they have not yet received.

There is a fundamental difference in treatment between a business and human labor under our Constitution. Human labor is given more protection. This is found in Article XIII, Section 3 of the Constitution:

SECTION 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

Here, what happened was not a mere regulation of a business. It was a closure of an entire island that ceased to make any of the means to a livelihood known to them possible.

It is unfortunate that the Majority made judicial findings accepting the government's argument that petitioners were free to move and practice their profession elsewhere.^[21] This was without basis.

Not all informal workers are mobile simply because not all of them have financial resources to move from one (1) place to another. Not all of them have multiple skills that would allow them the flexibility to be employed in another line of work immediately when their current consistent source of income stops. Precisely, they become part of the informal sector because through their circumstances, they have been unable to evolve to more marketable skills. To nonchalantly assume that they can find other jobs should not be an acceptable judicial approach, as that may trivialize the rights they assert. It is an unfortunate—though perhaps unintended—display of our lack of compassion for the plight of petitioners.

Certainly, this is not the judicial approach sanctioned by our Constitution. Article II, Sections 9 and 10 of the

Constitution call attention to sensitivity to social justice, thus:

SECTION 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

SECTION 10. The State shall promote social justice in all phases of national development.

Together, these constitutional provisions provide that social justice cannot be achieved through an overgeneralized understanding of labor. The informal sector, represented by petitioners, does not have the same mobility of other workers who have more skills. They do not also have the same mobility as the businesses that filed the petition in Southern Luzon Drug Corporation.[22]

Undoubtedly, here, the total negation of petitioners' opportunity to do their livelihood was a deprivation of their right to life and liberty. Definitely, they had standing to sue.

II

The breadth of the constitutional protection of life and liberty may continue to evolve with contemporary realities. However, the textual basis in the Constitution is fixed: any intrusion must be with due process of law.

Jurisprudence evolved three (3) levels of due process analysis.

In *Ermita Malate Hotel and Motel Operators Association*,[23] where the validity of an ordinance was upheld, this Court reasoned that the ordinance was a police power measure aimed at safeguarding public morals, and thus, is immune from imputation of nullity:

To hold otherwise would be to unduly restrict and narrow the scope of police power which has been properly characterized as the most essential, insistent and the least limitable of powers, extending as it does "to all the great public needs." It would be, to paraphrase another leading decision, to destroy the very purpose of the state if it could be deprived or allowed itself to be deprived of its competence to promote public health, public morals, public safety and the general welfare. Negatively put, police power is "that inherent and plenary power in the State which enables it to prohibit all that is hurtful to the comfort, safety, and welfare of society." [24] (Emphasis supplied)

In that case, the Court viewed due process as merely requiring that the challenged action "must not outrun the bounds of reasons and result in sheer oppression. Due process is thus hostile to any official action marred by lack of reasonableness. Correctly has it been identified as freedom from arbitrariness. It is the embodiment of the sporting idea of fair play." [25]

Decades later, in *City of Manila*,[26] an ordinance that prohibited persons and corporations from contracting and engaging in any business providing certain forms of amusement, entertainment, services, and facilities, where women were used as tools in entertainment, was struck down as unconstitutional because it affected the moral welfare of the community. This Court clearly defined the test of a valid ordinance:

[I]t must not only be within the corporate powers of the local government unit to enact and must be passed according to the procedure prescribed by law, it must also conform to the following substantive requirements: (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory; (4) must not prohibit but may regulate trade; (5) must be general and consistent with public policy; and (6) must not be unreasonable.[27]

Only a few years later, in *White Light Corporation v. City of Manila*,[28] this Court elaborated:

The general test of the validity of an ordinance on substantive due process grounds is best tested when assessed with the evolved footnote 4 test laid down by the U.S. Supreme Court in *U.S. v. Carolene Products*. Footnote 4 of the *Carolene Products* case acknowledged that the judiciary would defer to the legislature unless there is a discrimination against a "discrete and insular" minority or infringement of a "fundamental right". Consequently, two standards of judicial review were established: strict scrutiny for laws dealing with freedom of the mind or restricting the political process, and the rational basis standard of review for economic legislation.

A third standard, denominated as heightened or immediate scrutiny, was later adopted by the U.S. Supreme Court for evaluating classifications based on gender and legitimacy. Immediate scrutiny was adopted by the U.S. Supreme Court in *Craig*, after the Court declined to do so in *Reed v. Reed*. While the test may have first been articulated in equal protection analysis, it has in the United States since been applied in all substantive due process cases as well.

We ourselves have often applied the rational basis test mainly in analysis of equal protection challenges. Using the rational basis examination, laws or ordinances are upheld if they rationally further a legitimate governmental interest. Under intermediate review, governmental interest is extensively examined and the availability of less restrictive measures is considered. Applying strict scrutiny, the focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of less restrictive means for achieving that interest.

In terms of judicial review of statutes or ordinances, strict scrutiny refers to the standard for determining the quality and the amount of governmental interest brought to justify the regulation of fundamental freedoms. Strict scrutiny is used today to test the validity of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection. The United States Supreme Court has expanded the scope of strict scrutiny to protect fundamental rights such as suffrage, judicial access and interstate travel.[29] (Citations omitted)

Recently, in *Fernando, et al. v. St. Scholastica's College, et al.*,^[30] we again discussed the three (3) levels of tests employed when there is a breach of a fundamental right.

In *Spark v. Quezon City*,^[31] I reviewed in a Concurring Opinion the extent of the three (3) modes of due process review:

An appraisal of due process and equal protection challenges against government regulation must admit that the gravity of interests invoked by the government and the personal liberties or classification affected are not uniform. Hence, the three (3) levels of analysis that demand careful calibration: the rational basis test, intermediate review, and strict scrutiny. Each level is typified by the dual considerations of: first, the interest invoked by the government; and second, the means employed to achieve that interest.

The rational basis test requires only that there be a legitimate government interest and that there is a reasonable connection between it and the means employed to achieve it.

Intermediate review requires an important government interest. Here, it would suffice if government is able to demonstrate substantial connection between its interest and the means it employs. In accordance with *White Light*, "the availability of less restrictive measures [must have been] considered." This demands a conscientious effort at devising the least restrictive means for attaining its avowed interest. It is enough that the means employed is conceptually the least restrictive mechanism that the government may apply.

Strict scrutiny applies when what is at stake are fundamental freedoms or what is involved are suspect classifications. It requires that there be a compelling state interest and that the means employed to effect it are narrowly-tailored, actually — not only conceptually — being the least restrictive means for effecting the invoked interest. Here, it does not suffice that the government contemplated on the means available to it. Rather, it must

show an active effort at demonstrating the inefficacy of all possible alternatives. Here, it is required to not only explore all possible avenues but to even debunk the viability of alternatives so as to ensure that its chosen course of action is the sole effective means. To the extent practicable, this must be supported by sound data gathering mechanisms.

Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas further explained:

Under most circumstances, the Court will exercise judicial restraint in deciding questions of constitutionality, recognizing the broad discretion given to Congress in exercising its legislative power. Judicial scrutiny would be based on the "rational basis" test, and the legislative discretion would be given deferential treatment.

But if the challenge to the statute is premised on the denial of a fundamental right, or the perpetuation of prejudice against persons favored by the Constitution with special protection, judicial scrutiny ought to be more strict. A weak and watered down view would call for the abdication of this Court's solemn duty to strike down any law repugnant to the Constitution and the rights it enshrines. This is true whether the actor committing the unconstitutional act is a private person or the government itself or one of its instrumentalities. Oppressive acts will be struck down regardless of the character or nature of the actor.

Cases involving strict scrutiny innately favor the preservation of fundamental rights and the non-discrimination of protected classes. Thus, in these cases, the burden falls upon the government to prove that it was impelled by a compelling state interest and that there is actually no other less restrictive mechanism for realizing the interest that it invokes:

Applying strict scrutiny, the focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of less restrictive means for achieving that interest, and the burden befalls upon the State to prove the same.[32] (Emphasis in the original, citations omitted)

The Constitution mandates more sensitivity towards several classes and identities found within our society. Social justice at all levels of governances is an overarching state policy. This envisions a dynamic social order that will ensure prosperity and "free the people from poverty"[33] through policies which "provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all."[34] Our fundamental law "values the dignity of every human person and guarantees full respect for human rights."[35] Women, the youth, indigenous peoples, farmers and farmworkers, labor in general enjoy significant protection.

These provisions are not merely sardonic normative ornaments. Those who find themselves at the margins of society—through the operation of an oppressive political economy, or the stereotypes of contemporary culture, or as residues of our colonial past—deserve more judicial sensitivity. With respect to the due process clause, it means that when the everyday livelihood of those found within our informal sector are affected, an invocation of their fundamental right at least deserves a stricter judicial scrutiny. Unfortunately, the Majority Opinion failed to do so.

III

Even with the lowest level of scrutiny—the reasonability of the means to achieve a legitimate purpose test—the Proclamation should have failed judicial review for three (3) basic reasons. First, the coercive remedial measures contained in the Proclamation was so broad as to affect those who are innocent bystanders or those who are compliant with the law. Second, the Proclamation is vague and contradicts at least the DILG Guidelines and existing statutes; namely, our Civil Code and Republic Act No. 9275. Third, the Proclamation is not justified and is contradictory to Republic Act No. 10121.

This Court has, on many occasions struck down executive actions when it tends to unreasonably affect the rights of innocent third parties, who should not have been otherwise subjected to coercive measures.

White Light Corporation,[36] dealt with an ordinance that prohibited wash-up rates within the territory of the local government unit. It appeared that its intentions were to deprive the use of hotels and motels from commercial sex workers and those engaged in illicit affairs.

This Court, however, without going into the legitimacy of the objective of the measure, still nullified the ordinance. Other individuals, such as spouses or travelers or others who simply need a place to nap or shower, would also likely benefit from the short periods of accommodation that would charge the wash-up rates. This Court declared that "individual rights may be adversely affected only to the extent that may be required by the legitimate demands of public interest or public welfare." [37]

Proclamation No. 475 acknowledges that innocent parties and those who are compliant with existing laws will be affected. In its preambular clauses the government acknowledges:

WHEREAS, the investigations and validation undertaken revealed that:

. . . .

b.

Most commercial establishments and residences are not connected to the sewerage infrastructure of Boracay Island, and waste products are not being disposed through the proper sewerage infrastructures in violation of environmental law, rules, and regulations;

c.

Only 14 out of 51 establishments near the shores of Boracay Island are compliant with the provisions of Republic Act (RA) No. 9275 or the Philippine Clean Water Act of 2004;

. . . .

e.

Solid waste within Boracay Island is at a generation rate of 90 to 115 tons per day, while the hauling capacity of the local government is only 30 tons per day, hence leaving approximately 85 tons of waste in the Island daily;

. . . .

g.

Only four (4) out of nine (9) wetlands in Boracay Island remain due to illegal encroachment of structures, including 937 identified illegal structures constructed on forestlands and wetlands, as well as 102 illegal structures on areas already classified as easements, and the disappearance of the wetlands, which act as natural catchments, enhances flooding in the area.[38]

There are commercial establishments and residential areas connected to the sewage infrastructure. There are at least 14 establishments who comply with Republic Act No. 9275 or the Philippine Clean Water Act of 2004.

There are wetlands that are not affected by illegal structures. There are residents and commercial establishments whose garbage are collected properly. More importantly, petitioners are not shown to have contributed to the formation of fecal coliform in the targeted beaches of Boracay.

Similar to the situation in *White Light Corporation*,^[39] the coercive remedial measures are too broad that it affects those who may not be responsible for the evil sought to be addressed.

IV

Secondly, the Proclamation does not pass due process scrutiny because it is vague that it does not adequately provide notice to all those affected as to what the Chief Executive, through his various departments, intend to do and how the rights of those encompassed within its broad sweep will be affected. Worse, the deployment of a massive contingent of law enforcers and the curtailment of freedom of the press may have served to stifle questions as to the specific contours of the actions of government to address the ecological situation in the island.

We review the chronological context of the government's actions as contained in the pleadings. Apparently, the closure was effected even before the Proclamation was promulgated through DILG Guidelines.

Sometime in February last year, President Duterte, in one of his speeches, described Boracay as a "cesspool" and ordered the Department of Environment and Natural Resources to clean up the island.^[40] On March 6, 2018, he announced that he would be placing Boracay under a state of calamity. He warned the courts not to interfere or issue Temporary Restraining Orders and threatened to charge the local officials of Boracay with sedition if they were to resist.^[41]

On April 4, 2018, during a cabinet meeting, he approved the total closure of the island for six (6) months, beginning April 26, 2018. The day after, Spokesperson Harry L. Roque confirmed the rumors that Boracay was indeed being closed on the basis of police power.^[42]

On their websites, publications Rappler and ABS-CBN reported that the Department of Interior and Local Government issued guidelines for the closure,^[43] and that 630 police and military personnel have been deployed on the island.^[44]

The DILG Guidelines provide:

- No going beyond Jetty Port. Identified tourists will not be allowed into the island and will be stopped at the Jetty Port in Malay, Aklan.
- No ID, no entry. Residents/workers/resort owners will be allowed entry into the island subject to the presentation of identification cards specifying a residence in Boracay. All government-issued IDs will be recognized. Non-government IDs are acceptable as long as they are accompanied by a barangay certification of residency.
- Swimming for locals only. Generally, swimming shall not be allowed anywhere on the island. However, residents may be allowed to swim only at Angol Beach in station 3 from 6 am to 5pm.
- One condition for entry. No visitors of Boracay residents shall be allowed entry, except under emergency situations, and with the clearance of the security committee composed of DILG representative, police, and local government officials.
- Journalists need permission to cover. Media will be allowed entry subject to prior approval from the Department of Tourism, with a definite duration and limited movement.

- No floating structures. No floating structures shall be allowed up to 15 kilometers from the shoreline.
- Foreign residents to be checked. The Bureau of Immigration will revalidate the papers of foreigners who have found a home in Boracay.
- One entry, one exit point. There will only be one transportation point to Boracay Island. Authorities have yet to decide where.[45] (Emphasis in the original)

On April 24, 2018, petitioners came to this Court. They are a sandcastle builder, a driver and a non-resident who visits the island.

Two (2) days later, President Duterte issued Proclamation No. 475 and the shutdown of the entire island commenced.

After being able to access the Proclamation, Petitioners filed a Supplemental Petition on May 10, 2018.

The DILG Guidelines are rudimentary and merely provide who may enter the island and how they are to do so. On the other hand, the Proclamation provides for the implementation of "urgent measures," the designation by Department of Environment and Natural Resources of water bodies where specific pollutants have exceeded the water quality levels, and powers to take "measures" to improve the water quality.

The DILG Guidelines, as reported, mention "identified tourists", limit swimming only to "residents" to areas which are free from malevolent bacteria. It does not allow swimming for workers of establishments or the members of law enforcement contingent sent to the island. It also curtails visitation of residents. The DILG Guidelines also require media to register without any guidance as to the basis for allowing or rejecting coverage, seriously raising issues regarding whether freedom of expression and/or the press has been abridged.

While none of the provisions in the DILG Guidelines are contained specifically in Proclamation No. 475, the latter does not specifically repeal the former.

The programs and activities that the Proclamation puts into effect are unclear. There are no provisions to alleviate those whose rights will be affected and the remedies that will be available to those aggrieved. More than any reasonable piece of legislation, it only seems to grant amorphous powers to the President.

The Proclamation provides:

NOW, THEREFORE, I, RODRIGO ROA DUTERTE, President of the Philippines, by virtue of the powers vested in me by the Constitution and existing laws, do hereby declare a State of Calamity in the barangays of Balabag, Manoc-Manoc and Yapak (Island of Boracay) in the Municipality of Malay, Aklan. In this regard, the temporary closure of the Island as a tourist destination for six (6) months starting 26 April 2018, or until 25 October 2018, is hereby ordered, subject to applicable laws, rules, regulations and jurisprudence.

Concerned government agencies shall, as may be necessary or appropriate, undertake the remedial measures during a State of Calamity as provided in RA No. 10121 and other applicable laws, rules and regulations, such as control of the prices of basic goods and commodities for the affected areas, employment of negotiated procurement and utilization of appropriate funds, including the National Disaster Risk Reduction and Management Fund, for relief and rehabilitation efforts in the area. All departments and other concerned government agencies are also hereby directed to coordinate with and provide or augment the basic services and facilities of affected local government units, if necessary.

The State of Calamity in the Island of Boracay shall remain in force and effect until lifted by the President, notwithstanding the lapse of the six-month closure period.

All departments, agencies and offices, including government-owned or controlled corporations and affected

local government units are hereby directed to implement and execute the abovementioned closure and the appropriate rehabilitation works, in accordance with pertinent operational plans and directives, including the Boracay Action Plan.

The Philippine National Police, the Philippine Coast Guard and other law enforcement agencies, with the support of the Armed Forces of the Philippines, are hereby directed to act with restraint and within the bounds of the law in the strict implementation of the closure of the Island and ensuring peace and order in the area.

The Municipality of Malay, Aklan is also hereby directed to ensure that no tourist will be allowed entry to the Island of Boracay until such time that the closure has been lifted by the President.

All tourists, residents and establishment owners in the area are also urged to act within the bounds of the law and to comply with the directives herein provided for the rehabilitation and restoration of the ecological balance of the Island which will be for the benefit of all concerned.[46] (Emphasis in the original)

The enacting clause declares a temporary closure of the island for six (6) months yet the third clause provides that the state of calamity is open ended and without a time limit. Nothing in the Proclamation justifies the period of six (6) months for the closure. The second paragraph after the enacting clause also suggests that the temporary closure may be extended because the state of calamity is indefinite. Thus:

The State of Calamity in the Island of Boracay shall remain in force and effect until lifted by the President, notwithstanding the lapse of the six-month closure period.[47]

The first paragraph after the enacting clause mentions general remedial measures to be done by the Executive. All government agencies are mandated to assist in the yet to be publicly declared programs and activities during the closure.

The third paragraph after the enacting clause only refers to "the appropriate rehabilitation works, in accordance with pertinent operational plans and directives, including the Boracay Action Plan." None of these plans however were attached to the proclamation and none were presented here by the Office of the Solicitor General on behalf of the government.

The fourth paragraph after the enacting clause refers to a policy of restraint for law enforcement agencies. The fifth paragraph after the enacting clause refers to the ban for tourists to sojourn into the island without providing for the reasons why all tourists shall be banned. It also does not contain the standard for restrictions, if any, for tourism should the island be partially opened.

The sixth paragraph after the enacting clause is addressed to the residents and owners to comply with the directives for the rehabilitation of the island. Those aggrieved are not provided with a procedure for raising their claims to their livelihood and properties. There is no process to address any objections to the hidden projects or activities that are not mentioned in the Proclamation.

Proclamation No. 475 is eerily similar to the vagueness of the Martial Law Proclamation in the recent case of *Lagman v Medialdea*.^[48] We recall our discussion on void-for-vagueness:

The doctrine of void for vagueness is a ground for invalidating a statute or a governmental regulation for being vague. The doctrine requires that a statute be sufficiently explicit as to inform those who are subject to it what conduct on their part will render them liable to its penalties. In *Southern Hemisphere v. Anti-Terrorism Council*:

A statute or act suffers from the defect of vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application. It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties

targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.

In *People of the Philippines v. Piedra*, the Court explained that the rationale behind the doctrine is to give a person of ordinary intelligence a fair notice that his or her contemplated conduct is forbidden by the statute or the regulation. Thus, a statute must be declared void and unconstitutional when it is so indefinite that it encourages arbitrary and erratic arrests and convictions.

In *Estrada v. Sandiganbayan*, the Court limited the application of the doctrine in cases where the statute is "utterly vague on its face, i.e. that which cannot be clarified by a saving clause or construction." Thus, when a statute or act lacks comprehensible standards that men of common intelligence must necessarily guess its meaning and differ in its application, the doctrine may be invoked:

Hence, it cannot plausibly be contended that the law does not give a fair warning and sufficient notice of what it seeks to penalize. Under the circumstances, petitioner's reliance on the "void-for-vagueness" doctrine is manifestly misplaced. The doctrine has been formulated in various ways, but is most commonly stated to the effect that a statute establishing a criminal offense must define the offense with sufficient definiteness that persons of ordinary intelligence can understand what conduct is prohibited by the statute. It can only be invoked against that specie of legislation that is utterly vague on its face, i.e., that which cannot be clarified either by a saving clause or by construction.

A statute or act may be said to be vague when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ in its application. In such instance, the statute is repugnant to the Constitution in two (2) respects — it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of what conduct to avoid; and, it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle. But the doctrine does not apply as against legislations that are merely couched in imprecise language but which nonetheless specify a standard though defectively phrased; or to those that are apparently ambiguous yet fairly applicable to certain types of activities. The first may be "saved" by proper construction, while no challenge may be mounted as against the second whenever directed against such activities. With more reason, the doctrine cannot be invoked where the assailed statute is clear and free from ambiguity, as in this case.

In *Southern Hemisphere Engagement Network, Inc. v. Anti--Terrorism Council*, the Court clarified that the void for vagueness doctrine may only be invoked in as-applied cases. The Court explained:

While *Estrada* did not apply the overbreadth doctrine, it did not preclude the operation of the vagueness test on the Anti-Plunder Law as applied to the therein petitioner, finding, however, that there was no basis to review the law "on its face and in its entirety." It stressed that "statutes found vague as a matter of due process typically are invalidated only 'as applied' to a particular defendant."

However, in *Disini v. Secretary of Justice*, the Court extended the application of the doctrine even to facial challenges, ruling that "when a penal statute encroaches upon the freedom of speech, a facial challenge grounded on the void-for-vagueness doctrine is acceptable." Thus, by this pronouncement the void for vagueness doctrine may also now be invoked in facial challenges as long as what it involved is freedom of speech.

On the other hand, the void for overbreadth doctrine applies when the statute or the act "offends the constitutional principle that a governmental purpose to control or prevent activities constitutionally subject to state regulations may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."

In *Adiong v. Commission on Elections*, the Court applied the doctrine in relation to the Due Process Clause of the Constitution. Thus, in *Adiong*, the Commission on Elections issued a Resolution prohibiting the posting of decals

and stickers not more than eight and one-half (8 ½) inches in width and fourteen (14) inches in length in any place, including mobile places whether public or private except in areas designated by the COMELEC. The Court characterized the regulation as void for being "so broad," thus:

Verily, the restriction as to where the decals and stickers should be posted is so broad that it encompasses even the citizen's private property, which in this case is a privately-owned vehicle. In consequence of this prohibition, another cardinal rule prescribed by the Constitution would be violated. Section 1, Article III of the Bill of Rights provides "that no person shall be deprived of his property without due process of law."

Property is more than the mere thing which a person owns, it includes the right to acquire, use, and dispose of it; and the Constitution, in the 14th Amendment, protects these essential attributes.

Property is more than the mere thing which a person owns. It is elementary that it includes the right to acquire, use, and dispose of it. The Constitution protects these essential attributes of property. . . . Property consists of the free use, enjoyment, and disposal of a person's acquisitions without control or diminution save by the law of the land.

In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, the Court held that the application of the overbreadth doctrine is limited only to free speech cases due to the rationale of a facial challenge. The Court explained:

By its nature, the overbreadth doctrine has to necessarily apply a facial type of invalidation in order to plot areas of protected speech, inevitably almost always under situations not before the court, that are impermissibly swept by the substantially overbroad regulation. Otherwise stated, a statute cannot be properly analyzed for being substantially overbroad if the court confines itself only to facts as applied to the litigants.

The Court ruled that as regards the application of the overbreadth doctrine, it is limited only to "a facial kind of challenge and, owing to the given rationale of a facial challenge, applicable only to free speech cases."

The Court's pronouncements in *Disini v. Secretary of Justice* is also premised on the same tenor. Thus, it held:

Also, the charge of invalidity of this section based on the overbreadth doctrine will not hold water since the specific conducts proscribed do not intrude into guaranteed freedoms like speech. Clearly, what this section regulates are specific actions: the acquisition, use, misuse or deletion of personal identifying data of another. There is no fundamental right to acquire another's personal data.

. . . .

But this rule admits of exceptions. A petitioner may for instance mount a "facial" challenge to the constitutionality of a statute even if he claims no violation of his own rights under the assailed statute where it involves free speech on grounds of overbreadth or vagueness of the statute. The rationale for this exception is to counter the "chilling effect" on protected speech that comes from statutes violating free speech. A person who does not know whether his speech constitutes a crime under an overbroad or vague law may simply restrain himself from speaking in order to avoid being charged of a crime. The overbroad or vague law thus chills him into silence.

It is true that in his Dissenting Opinion in *Estrada v. Sandiganbayan*, Justice V.V. Mendoza expressed the view that "the overbreadth and vagueness doctrines then have special application only to free speech cases. They are inapt for testing the validity of penal statutes."

However, the Court already clarified in *Southern Hemisphere Engagement Network, Inc., v. Anti-Terrorism Council*, that the primary criterion in the application of the doctrine is not whether the case is a freedom of speech case, but rather, whether the case involves an as-applied or a facial challenge. The Court clarified:

The confusion apparently stems from the interlocking relation of the overbreadth and vagueness doctrines as

grounds for a facial or as-applied challenge against a penal statute (under a claim of violation of due process of law) or a speech regulation (under a claim of abridgement of the freedom of speech and cognate rights).

To be sure, the doctrine of vagueness and the doctrine of overbreadth do not operate on the same plane.

....

The allowance of a facial challenge in free speech cases is justified by the aim to avert the chilling effect on protected speech, the exercise of which should not at all times be abridged. As reflected earlier, this rationale is inapplicable to plain penal statutes that generally bear an in terrorem effect in deterring socially harmful conduct. In fact, the legislature may even forbid and penalize acts formerly considered innocent and lawful, so long as it refrains from diminishing or dissuading the exercise of constitutionally protected rights.

The Court then concluded that due to the rationale of a facial challenge, the overbreadth doctrine is applicable only to free speech cases. Thus:

By its nature, the overbreadth doctrine has to necessarily apply a facial type of invalidation in order to plot areas of protected speech, inevitably almost always under situations not before the court, that are impermissibly swept by the substantially overbroad regulation. Otherwise stated, a statute cannot be properly analyzed for being substantially overbroad if the court confines itself only to facts as applied to the litigants.

....

In restricting the overbreadth doctrine to free speech claims, the Court, in at least two cases, observed that the US Supreme Court has not recognized an overbreadth doctrine outside the limited context of the First Amendment, and that claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words. In *Virginia v. Hicks*, it was held that rarely, if ever, will an overbreadth challenge succeed against a law or regulation that is not specifically addressed to speech or speech-related conduct. Attacks on overly broad statutes are justified by the "transcendent value to all society of constitutionally protected expression."

As regards the application of the void for vagueness doctrine, the Court held that vagueness challenges must be examined in light of the specific facts of the case and not with regard to the statute's facial validity. Notably, the case need not be a freedom of speech case as the Court cited previous cases where the doctrine was applied:

In this jurisdiction, the void-for-vagueness doctrine asserted under the due process clause has been utilized in examining the constitutionality of criminal statutes. In at least three cases, the Court brought the doctrine into play in analyzing an ordinance penalizing the non-payment of municipal tax on fishponds, the crime of illegal recruitment punishable under Article 132 (b) of the Labor Code, and the vagrancy provision under Article 202 (2) of the Revised Penal Code. Notably, the petitioners in these three cases, similar to those in the two *Romualdez* and *Estrada* cases, were actually charged with the therein assailed penal statute, unlike in the present case.

From these pronouncements, it is clear that what is relevant in the application of the void-for-vagueness doctrine is not whether it is a freedom of speech case, but rather whether it violates the Due Process Clause of the Constitution for failure to accord persons a fair notice of which conduct to avoid; and whether it leaves law enforcers unbridled discretion in carrying out their functions.[49] (Emphasis in the original, citations omitted)

V

The inability of the Proclamation to provide fair notice and "whether it leaves law enforcers unbridled discretion in carrying out their function"[50] is readily demonstrated by the contradiction in the provisions of the Proclamation with existing laws.

The Civil Code acknowledges the concept of nuisance, thus:

ARTICLE 694. A nuisance is any act, omission, establishment, business, condition of property, or anything else which:

- (1) Injures or endangers the health or safety of others; or
- (2) Annoys or offends the senses; or
- (3) Shocks, defies or disregards decency or morality; or
- (4) Obstructs or interferes with the free passage of any public highway or street, or any body of water; or
- (5) Hinders or impairs the use of property.

ARTICLE 695. Nuisance is either public or private. A public nuisance affects a community or neighborhood or any considerable number of persons, although the extent of the annoyance, danger or damage upon individuals may be unequal. A private nuisance is one that is not included in the foregoing definition.

The responsibility to abate a nuisance lies with the owner or possessor of a property:

ARTICLE 696. Every successive owner or possessor of property who fails or refuses to abate a nuisance in that property started by a former owner or possessor is liable therefor in the same manner as the one who created it.

ARTICLE 697. The abatement of a nuisance does not preclude the right of any person injured to recover damages for its past existence.[51]

Being a public nuisance, the remedy for the discharge of coliform within private properties or properties possessed by private persons are:

ARTICLE 699. The remedies against a public nuisance are:

- (1) A prosecution under the Penal Code or any local ordinance; or
- (2) A civil action; or
- (3) Abatement, without judicial proceedings.[52]

Abatement of a public nuisance is provided, thus:

ARTICLE 698. Lapse of time cannot legalize any nuisance, whether public or private.

ARTICLE 700. The district health officer shall take care that one or all of the remedies against a public nuisance are availed of.

ARTICLE 701. If a civil action is brought by reason of the maintenance of a public nuisance, such action shall be commenced by the city or municipal mayor.

ARTICLE 702. The district health officer shall determine whether or not abatement, without judicial proceedings, is the best remedy against a public nuisance.

ARTICLE 703. A private person may file an action on account of a public nuisance, if it is specially injurious to himself.

ARTICLE 704. Any private person may abate a public nuisance which is specially injurious to him by removing, or if necessary, by destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury. But it is necessary:

- (1) That demand be first made upon the owner or possessor of the property to abate the nuisance;
- (2) That such demand has been rejected;

(3) That the abatement be approved by the district health officer and executed with the assistance of the local police; and

(4) That the value of the destruction does not exceed three thousand pesos.[53]

Nothing in the Proclamation relates to or is in accordance with these statutory procedures and standards of the Civil Code.

Significantly, the Proclamation also contravenes Republic Act No. 9275 or the Philippine Clean Water Act of 2004.

Section 6 of the Philippine Clean Water Act of 2004 provides a systematic procedure for the management of water bodies which are heavily polluted or referred to as "non-attainment areas." Thus:

SECTION 6. Management of Non-attainment Areas. — The Department shall designate water bodies, or portions thereof, where specific pollutants from either natural or man-made source have already exceeded water quality guidelines as non-attainment areas for the exceeded pollutants. It shall prepare and implement a program that will not allow new sources of exceeded water pollutant in non-attainment areas without a corresponding reduction in discharges from existing sources: Provided, That if the pollutant is naturally occurring, e.g. naturally high boron and other elements in geothermal areas, discharge of such pollutant may be allowed: Provided, further, That the effluent concentration of discharge shall not exceed the naturally occurring level of such pollutant in the area: Provided, finally, That the effluent concentration and volume of discharge shall not adversely affect water supply, public health and ecological protection.

The Department shall, in coordination with NWRB, Department of Health (DOH), Department of Agriculture (DA), governing board and other concerned government agencies and private sectors shall take such measures as may be necessary to upgrade the quality of such water in non- attainment areas to meet the standards under which it has been classified.

Upgrading of water quality shall likewise include undertakings which shall improve the water quality of a water body to a classification that will meet its projected or potential use.

The LGUs shall prepare and implement contingency plans and other measures including relocation, whenever necessary, for the protection of health and welfare of the residents within potentially affected areas.

Complementing these procedures to identify heavily polluted waters, and therefore considered non-attainment areas, are the enforcement mechanisms in the law. Should clean-up of the waters become necessary, Section 16 of Republic Act No. 9275 will apply, thus:

SECTION 16. Clean-Up Operations. — Notwithstanding the provisions of Sections 15 and 26 hereof, any person who causes pollution in or pollutes water bodies in excess of the applicable and prevailing standards shall be responsible to contain, remove and clean-up any pollution incident at his own expense to the extent that the same water bodies have been rendered unfit for utilization and beneficial use: Provided, That in the event emergency clean-up operations are necessary and the polluter fails to immediately undertake the same, the Department, in coordination with other government agencies concerned, shall conduct containment, removal and clean-up operations. Expenses incurred in said operations shall be reimbursed by the persons found to have caused such pollution upon proper administrative determination in accordance with this Act. Reimbursements of the cost incurred shall be made to the Water Quality Management Fund or to such other funds where said disbursements were sourced.

This applies to the containment, removal, and clean-up operations for the body of water that is polluted. To prevent further discharge from a private source, Section 27 of Republic Act No. 9275 prohibits:

SECTION 27. Prohibited Acts. — The following acts are hereby prohibited:

a)

Discharging, depositing or causing to be deposited material of any kind directly or indirectly into the water bodies or along the margins of any surface water, where, the same shall be liable to be washed into such surface water, either by tide action or by storm, floods or otherwise, which could cause water pollution or impede natural flow in the water body;

....

e)

Unauthorized transport or dumping into sea waters of sewage sludge or solid waste as defined under Republic Act No. 9003;

....

g)

Operate facilities that discharge or allow to seep, willfully or through gross negligence, prohibited chemicals, substances or pollutants listed under Republic Act No. 6969, into water bodies or wherein the same shall be liable to be washed into such surface, ground, coastal, and marine water;

h)

Undertaking activities or development and expansion of projects, or operating wastewater/sewerage facilities in violation of Presidential Decree No. 1586 and its implementing rules and regulations;

i)

Discharging regulated water pollutants without the valid required discharge permit pursuant to this Act or after the permit was revoked or any violation of any condition therein;

j)

Noncompliance of the LGU with the Water Quality Framework and Management Area Action Plan. In such a case, sanctions shall be imposed on the local government officials concerned;

k)

Refusal to allow entry, inspection and monitoring by the Department in accordance with this Act;

l)

Refusal to allow access by the Department to relevant reports and records in accordance with this Act;

m)

Refusal or failure to submit reports whenever required by the Department in accordance with this Act;

....

o)

Directly using booster pumps in the distribution system or tampering with the water supply in such a way as to alter or impair the water quality.

Section 28 of the same law provides further enforcement mechanisms:

SECTION 28. Fines, Damages and Penalties. — Unless otherwise provided herein, any person who commits any of the prohibited acts provided in the immediately preceding section or violates any of the provision of this Act or its implementing rules and regulations, shall be fined by the Secretary, upon the recommendation of the PAB in the amount of not less than Ten thousand pesos (P10,000.00) nor more than Two hundred thousand pesos (P200,000.00) for every day of violation. The fines herein prescribed shall be increased by ten percent (10%) every two (2) years to compensate for inflation and to maintain the deterrent function of such fines: Provided, That the Secretary, upon recommendation of the PAB may order the closure, suspension of development or construction, or cessation of operations or, where appropriate disconnection of water supply, until such time that proper environmental safeguards are put in place and/or compliance with this Act or its rules and regulations are undertaken. This paragraph shall be without prejudice to the issuance of an ex parte order for such closure, suspension of development or construction, or cessation of operations during the pendency of the case.

Failure to undertake clean-up operations, willfully, or through gross negligence, shall be punished by imprisonment of not less than two (2) years and not more than four (4) years and a fine not less than Fifty thousand pesos (P50,000.00) and not more than One hundred thousand pesos (P100,000.00) per day for each day of violation. Such failure or refusal which results in serious injury or loss of life and/or irreversible water contamination of surface, ground, coastal and marine water shall be punished with imprisonment of not less than six (6) years and one (1) day and not more than twelve (12) years, and a fine of Five hundred thousand pesos (P500,000.00) per day for each day during which the omission and/or contamination continues.

In case of gross violation of this Act, the PAB shall issue a resolution recommending that the proper government agencies file criminal charges against the violators. (Emphasis supplied)

The Department of Environment and Natural Resources is only authorized by the Clean Water Act to order closures of operations when recommended by the Pollution Adjudicatory Board, or when the latter files an ex parte order before a court.

It is the Pollution Adjudicatory Board, not the President or the Department of Environment and Natural Resources, that has specific jurisdiction over the Clean Water Act:[54]

RULE III

Jurisdiction and Authority of the Board

SECTION 1. JURISDICTION OF THE BOARD

....

B. Specific Jurisdiction. — Notwithstanding the general jurisdiction of the Board over adjudication of pollution cases, and all matters related thereto, the Board has specific jurisdiction, over the following cases:

....

2. Clean Water Act (RA 9275)

The PAB has the exclusive and original jurisdiction with respect to adjudication of pollution cases based on exceedance of the DENR Effluent Standards and other acts defined as prohibited under Section 27 of R.A. 9275. (Emphasis supplied)

Should it be necessary, the issuance of Cease and Desist Orders are provided in the Pollution Adjudication Board Resolution No. 001-10 or the Revised Rules of Procedure of the Pollution Adjudicatory Board, thus:

RULE X

Orders, Resolutions and Decisions

SECTION 1. Cease and Desist Order. — Whenever the Board finds prima facie evidence that the emission or discharge of pollutants constitutes an immediate threat to life, public health, safety or welfare, or to animal or plant life, or exceeds the allowable DENR Standards, it may issue or recommend to the DENR Secretary an ex-parte order directing the discontinuance of the same or the temporary suspension or cessation of operation of the establishment or person generating such pollutants, without need of a prior public hearing.

The Cease and Desist Order (CDO) shall be immediately executory and shall remain in force and effect until modified or lifted by the Board or the DENR Secretary.

The Board or the DENR Secretary may also direct the Regional Office to revoke, suspend or modify any permit to operate a pollution control facility or any clearance whenever such is necessary to prevent or abate the pollution.

SECTION 2. Cease and Desist Order against Whom Issued. — A CDO shall be issued against the respondent for the purpose of directing it to immediately stop or refrain from doing or conducting an act, or continuing a particular activity or course of action in violation of environmental laws, such as, but not limited to, the operation of a particular machine, equipment, process or activity, or doing a particular act expressly prohibited by law.

....

SECTION 4. Board Action on Interim Cease and Desist Order. — Where an interim CDO effective for seven (7) days has been issued by the Regional Director, the Board shall issue a Cease and Desist Order or recommend to the Secretary the issuance of a CDO, pursuant to the provisions of the applicable law.

SECTION 5. Remedy of Respondent. — The respondent may contest the order by filing with the Board a motion to lift the CDO, with proof of service of copies thereof on the Regional Office and the parties concerned.

The Board shall direct the Regional Office which has jurisdiction over the case and the parties concerned to

file their comment to the motion within five (5) days from receipt thereof, copy-furnished the respondent. Thereafter, the motion shall be set for hearing or calendared for the Board's deliberation. The filing of such motion shall not stay the enforcement and execution of the CDO.

SECTION 6. Implementation of Cease and Desist Order. — The Regional Director or his duly authorized representative, in coordination with the Regional Executive Director (RED) shall implement or cause the implementation of the Cease and Desist Order no later than seventy-two (72) hours from receipt thereof. He shall submit to the Board a report within forty-eight (48) hours after the completion of the implementation, stating therein the actions taken. Should the Cease and Desist Order be implemented beyond seventy-two (72) hours or cannot be implemented, the Regional Director shall submit a written report to the Board stating therein the causes of delay or failure to execute the same.

The implementing team shall be designated by the Regional Director.

In the implementation of Cease and Desist Orders, the Regional Director shall observe the following guidelines:

1. Upon issuance or receipt of the CDO by the Board, the EMB Regional Director or his duly authorized representative shall inform the local government unit (province/municipality/city) concerned regarding the implementation thereof by furnishing it with copies of the Orders received from the Board;
2. Upon arrival at the respondent's premises, the implementing team shall present proper identification as well as its mission Order duly signed by the EMB Regional Director;
3. The head of the implementing team shall serve the CDO on the Managing Head and the Pollution Control Officer, or in their absence to any person in charge, by thoroughly explaining to them the contents thereof;
4. The team shall proceed with the execution of the CDO by padlocking and sealing the source responsible for generating the effluent or emission, and thereafter requesting the Managing Head and the Pollution Control Officer to affix their signatures to the duplicate copy of the CDO as proof of service;
5. Should there be refusal on the part of the respondent to have the CDO implemented, the head of the implementing team shall report such incident to the EMB Regional Director, without prejudice to such respondent being declared in contempt and other criminal liability under relevant laws;
6. The Regional Director, whenever it is deemed necessary, may seek the assistance of the Local Government Units (LGUs) and/or Philippine National Police (PNP) through its PNP Regional Director. The written communication shall state the urgency of having the CDO implemented within the seventy-two (72) hour period as prescribed in the existing Rules;
7. The LGUs and/or the PNP together with the same implementing team may break into respondent's premises for the purpose of implementing the CDO in accordance with number four (4) above; and
8. Upon serving of the CDO, the Regional Office shall document the same by taking of photographs and/or videos and thereafter advising respondent that removing or breaking the padlocks and seals constitutes is a criminal offense punishable by existing environmental laws, rules and regulations without prejudice to such respondent being declared in contempt and other liability under relevant laws.

SECTION 7. Show Cause Order. — Instead of issuing a CDO, the Board may opt to direct respondent to Show Cause why no CDO should be issued against it, subject to these criteria:

1. The results of a series of effluent samplings shows a marked decrease in the values of the relevant parameters; or
2. The values of the relevant parameters are not far from the DENR Standards.

These statutory framework and mechanisms are absent in the Proclamation.

Recalling the enabling clause of the Proclamation:

NOW, THEREFORE, I, RODRIGO ROA DUTERTE, President of the Philippines, by virtue of the powers vested in me by the Constitution and existing laws, do hereby declare a State of Calamity in the barangays of Balabag, Manoc-Manoc and Yapak (Island of Boracay) in the Municipality of Malay, Aklan. In this regard, the temporary closure of the Island as a tourist destination for six (6) months starting 26 April 2018, or until 25 October 2018, is hereby ordered, subject to applicable laws, rules, regulations and jurisprudence.

Concerned government agencies shall, as may be necessary or appropriate, undertake the remedial measures during a State of Calamity as provided in RA No. 10121 and other applicable laws, rules and regulations, such as control of the prices of basic goods and commodities for the affected areas, employment of negotiated procurement and utilization of appropriate funds, including the National Disaster Risk Reduction and Management Fund, for relief and rehabilitation efforts in the area. All departments and other concerned government agencies are also hereby directed to coordinate with and provide or augment the basic services and facilities of affected local government units, if necessary.

....

All departments, agencies and offices, including government-owned or controlled corporations and affected local government units are hereby directed to implement and execute the abovementioned closure and the appropriate rehabilitation works, in accordance with pertinent operational plans and directives, including the Boracay Action Plan.

....

The Municipality of Malay, Aklan is also hereby directed to ensure that no tourist will be allowed entry to the Island of Boracay until such time that the closure has been lifted by the President.

All tourists, residents and establishment owners in the area are also urged to act within the bounds of the law and to comply with the directives herein provided for the rehabilitation and restoration of the ecological balance of the Island which will be for the benefit of all concerned.

The Proclamation makes two (2) basic and broad sets of directives to all agencies.

The first set relates to prices of basic goods, employment of procurement, and disbursement of funds, and for relief and rehabilitation. This is contained in the first paragraph after the enabling clause, thus:

All departments and other concerned government agencies are also hereby directed to coordinate with and provide or augment the basic services and facilities of affected local government units, if any.

The second set of directives relate to "appropriate rehabilitation works" where the primacy of "pertinent action plans and directives," including a "Boracay Action Plan," not appended to the Proclamation, is mentioned. Thus:

All departments, agencies and offices, including government-owned or controlled corporations and affected local government units are hereby directed to implement and execute the abovementioned closure and the appropriate rehabilitation works, in accordance with pertinent operational plans and directives, including the Boracay Action Plan.

The Proclamation completely negates the framework of enforcement and implementation of Republic Act No. 9275.

The form of the Presidential action contributes to its vagueness.

Executive Order No. 292 or the Administrative Code makes a clear distinction between an Executive Order and a

Proclamation, thus:

SECTION 2. Executive Orders. — Acts of the President providing for rules of a general or permanent character in implementation or execution of constitutional or statutory powers shall be promulgated in executive orders.

....

SECTION 4. Proclamations. — Acts of the President fixing a date or declaring a status or condition of public moment or interest, upon the existence of which the operation of a specific law or regulation is made to depend, shall be promulgated in proclamations which shall have the force of an executive order.

The Presidential action is in the form of a Proclamation, which appears to state a "status or condition," namely a "state of calamity," intending to signal the operation of Republic Act No. 10121 or Republic Act No. 9275.[55] However, as demonstrated, the provisions of the Proclamation amends the framework and implementation of the Civil Code and the Clean Water Act.

VI

Thirdly, the Proclamation transgresses due process of law in that it is not based on Republic Act No. 10121.

The majority finds that Proclamation No. 475 is in the nature of a valid police power measure. It defined police power as the "state authority to enact legislation that may interfere with personal liberty or property in order to promote general welfare." [56] Police power does not need to be supported by the Constitution since "it is inborn in the very fact of statehood and sovereignty." [57]

A valid exercise of police power by the President requires that it be exercised within the framework of both the Constitution and statutes.

In *David v. Arroyo*, [58] this Court invalidated Presidential Decree No. 1017 insofar as the president is granted authority to promulgate "decrees." Legislative power is vested solely in the legislature. Our Constitution provides:

Article VI

The Legislative Department

SECTION 1. The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.

To determine whether there is a valid delegation of legislative power, it must pass the completeness test and the sufficient standard test. The first test requires that the law must be complete in all its terms and conditions when it leaves the legislature, so much so that when it reaches the delegate, the only thing left is to enforce the law. The second test requires adequate guidelines in law to provide the boundaries of the delegate's authority. [59]

These tests ensure that the delegate does not step into the shoes of the legislature and exercise legislative power. [60] In *Belgica v. Ochoa*, [61] this Court reminded the parties that "the powers of the government must be divided to avoid concentration of these powers in any one branch, the division, it is hoped, would avoid any single branch from lording its power over the other branches of the citizenry." [62]

The majority, accepting the premise of respondents, cites Republic Act No. 10121 [63] as statutory basis for the validity of Proclamation No. 475. Such reliance is erroneous.

Republic Act No. 10121 defines state of calamity as:

SECTION 3. Definition of Terms. — For purposes of this Act, the following shall refer to:

....

(II)

"State of Calamity"—a condition involving mass casualty and/or major damages to property, disruption of means of livelihoods, roads and normal way of life of people in the affected areas as a result of the occurrence of natural or human-induced hazard. (Emphasis supplied)

Not all man-made intrusions and pollution into our environment justify as severe an intervention as the "state of calamity envisioned in Republic Act 10121. The environmental disaster must (a) be of such gravity, (b) its cause so known that (c) the response required under that law IS necessary.

The imminence of mass casualty or major damage to property or disruption of the means of livelihoods and the normal life of the people must be demonstrated. Any action of human beings may cause the unintended consequences of affecting whole communities. The profligate use of plastics is affecting our oceans and endangering our fish stock. The pervasiveness of livestock and the demand for meat may be causing the release of inordinate amounts of carbon and methane causing climate change. The release of anthropogenic gases and other human activities causing climate change have resulted in scientists warning that the "sixth mass extinction event" for our planet may be underway.[64]

Yet, not all of this evolving disasters—as the disaster involving fecal coliform in the beaches of Boracay—would be the state of calamity envisioned by Republic Act No. 10121. Rather, the problem of coliform formation may be due to many other factors that should be addressed by our building codes, sanitation codes, and other environmental laws. Each of these laws provide the means of redress as well as the process of weeding out the source of the disasters. Furthermore, in situations where the violations are rampant, the government may also want to invoke our anti-corruption laws to weed out the causes at its roots.

The nature of the calamity envisioned by Republic Act No. 10121 can be further discerned not only from the nature of the acts prohibited. Section 19 of the law provides:

SECTION 19. Prohibited Acts. — Any person, group or corporation who commits any of the following prohibited acts shall be held liable and be subjected to the penalties as prescribed in Section 20 of this Act:

(a)

Dereliction of duties which leads to destruction, loss of lives, critical damage of facilities and misuse of funds;

(b)

Preventing the entry and distribution of relief goods in disaster-stricken areas, including appropriate technology, tools, equipment, accessories, disaster teams/experts;

(c)

Buying, for consumption or resale, from disaster relief agencies any relief goods, equipment or other aid commodities which are intended for distribution to disaster affected communities;

(d)

Buying, for consumption or resale, from the recipient disaster affected persons any relief goods, equipment or other aid commodities received by them;

(e)

Selling of relief goods, equipment or other aid commodities which are intended for distribution to disaster victims;

(f)

Forcibly seizing relief goods, equipment or other aid commodities intended for or consigned to a specific group of victims or relief agency;

(g)

Diverting or misdelivery of relief goods, equipment or other aid commodities to persons other than the rightful recipient or consignee;

(h)

Accepting, possessing, using or disposing relief goods, equipment or other aid commodities not intended for nor consigned to him/her;

(i)

Misrepresenting the source of relief goods, equipment or other aid commodities by:

(1)

Either covering, replacing or defacing the labels of the containers to make it appear that the goods, equipment or other aid commodities came from another agency or persons;

(2)

Repacking the goods, equipment or other aid commodities into containers with different markings to make it appear that the goods, came from another agency or persons or was released upon the instance of a particular agency or persons;

(3)

Making false verbal claim that the goods, equipment or other aid commodity in its untampered original containers actually came from another agency or persons or was released upon the instance of a particular

agency or persons;

(j)

Substituting or replacing relief goods, equipment or other aid commodities with the same items or inferior/cheaper quality;

(k)

Illegal solicitations by persons or organizations representing others as defined in the standards and guidelines set by the NDRRMC;

(l)

Deliberate use of false or inflated data in support of the request for funding, relief goods, equipment or other aid commodities for emergency assistance or livelihood projects; and

(m)

Tampering with or stealing hazard monitoring and disaster preparedness equipment and paraphernalia.

The nature of the contingency for the state of calamity envisioned in Republic Act No. 10121 is such that casualties have actually been suffered and property actually damaged. This may take the form of typhoons, tsunamis, or earthquakes where government's relief is needed. It does not include human induced ecological disasters like the formation of fecal coliform on our beaches, which requires a more systematic, deliberate, structural, and institutional approach.

VII

The express and implied powers contained in the Proclamation exceeds that which is granted by Republic Act No. 10121.

Section 17 of that law contains a listing of the competences that may be exercised during states of calamities:

SECTION 17. Remedial Measures. — The declaration of a state of calamity shall make mandatory the immediate undertaking of the following remedial measures by the member-agencies concerned as defined in this Act:

(a)

Imposition of price ceiling on basic necessities and prime commodities by the President upon the recommendation of the implementing agency as provided for under Republic Act No. 7581, otherwise known as the "Price Act", or the National Price Coordinating Council;

(b)

Monitoring, prevention and control by the Local Price Coordination Council of overpricing/profitteering and

hoarding of prime commodities, medicines and petroleum products;

(c)

Programming/reprogramming of funds for the repair and safety upgrading of public infrastructures and facilities; and

(d)

Granting of no-interest loans by government financing or lending institutions to the most affected section of the population through their cooperatives or people's organizations.

The law expands the power of the executive branch during emergencies. In passing Republic Act No. 10121, the legislature did not contemplate allowing the President to exercise any and all powers amounting to a suspension of existing legislation. Precisely, Republic Act No. 10121 is the legislation that limits that expansion of executive powers during that emergency.

The acknowledgement of the possible abuse of the executive's power to declare a state of calamity and to exercise powers not contemplated in the law is seen with two (2) salient features of the law. First, the declaration of a state of calamity may not be done without a recommendation. Section 16 provides:

SECTION 16. Declaration of State of Calamity. — The National Council shall recommend to the President of the Philippines the declaration of a cluster of barangays, municipalities, cities, provinces, and regions under a state of calamity, and the lifting thereof, based on the criteria set by the National Council. The President's declaration may warrant international humanitarian assistance as deemed necessary.

The declaration and lifting of the state of calamity may also be issued by the local sanggunian, upon the recommendation of the LDRRC, based on the results of the damage assessment and needs analysis.

Second, the limited powers granted in Section 17 of Republic Act No. 10121 is also implied in other provisions, which guard against the possibility for abuse. The law contains both active Congressional Oversight as well as a sunset provision:

SECTION 26. Congressional Oversight Committee. — There is hereby created a Congressional Oversight Committee to monitor and oversee the implementation of the provisions of this Act. The Committee shall be composed of six (6) members from the Senate and six (6) members from the House of Representatives with the Chairpersons of the Committees on National Defense and Security of both the Senate and the House of Representatives as joint Chairpersons of this Committee. The five (5) other members from each Chamber are to be designated by the Senate President and the Speaker of the House of Representatives, respectively. The minority shall be entitled to pro rata representation but shall have at least two (2) representatives from each Chamber.

SECTION 27. Sunset Review. — Within five (5) years after the effectivity of this Act, or as the need arises, the Congressional Oversight Committee shall conduct a sunset review. For purposes of this Act, the term "sunset review" shall mean a systematic evaluation by the Congressional Oversight Committee of the accomplishments and impact of this Act, as well as the performance and organizational structure of its implementing agencies, for purposes of determining remedial legislation.

The provisions in statutes should not be read in isolation from the purpose of the legislation and in light of its other provisions. The grant of power given to the president when a state of calamity is declared should thus be

read in a limited fashion. *Expressio unius est exclusio alterius*.

Definitely, a total closure of an entire island is not contemplated in the law invoked by Proclamation No. 475.

VIII

More disturbingly, the Proclamation's violations of specific provisions contained in Republic Act No. 10121 patently shows that the latter cannot be the statutory basis for the exercise of executive power.

The period of the state of calamity provided in Proclamation No. 475 contravenes Republic Act No. 10121. In the Proclamation, it is made dependent exclusively on the President.

Proclamation No. 475 provides:

The State of Calamity in the Island of Boracay shall remain in force and effect until lifted by the President, notwithstanding the lapse of the six-month closure period. (Emphasis supplied)

However, in Republic Act No. 10121, the period is conditioned on several factors. Thus:

SECTION 16. Declaration of State of Calamity. — The National Council shall recommend to the President of the Philippines the declaration of a cluster of barangays, municipalities, cities, provinces, and regions under a state of calamity, and the lifting thereof, based on the criteria set by the National Council. The President's declaration may warrant international humanitarian assistance as deemed necessary.

The declaration and lifting of the state of calamity may also be issued by the local sanggunian, upon the recommendation of the LDRRMC, based on the results of the damage assessment and needs analysis. (Emphasis supplied)

Executive issuances cannot amend statutes under which they are issued. It is clear in Proclamation No. 475 that it only grants the President the power to lift the state of calamity. The power of the President to lift the state of calamity is not qualified in the Proclamation, and neither is there a standard. Likewise, it does not mention any other authority that can lift the state of calamity. Incidentally, there is also no standard for the six (6)-month closure of the island.

However, Republic Act No. 10121, under which the Proclamation claims authority, allows the Municipal Sanggunian, upon the recommendation of its Local Disaster Risk Reduction and Management Council, to lift the state of calamity based on a "damage assessment and needs analysis."^[65]

The Proclamation and the law are clearly contradictory.

IX

Moreover, the Proclamation transgresses both the Constitution's grant and the statutory elaboration of local autonomy.

The majority admits the intrusion of the President into the autonomy of the local government units, but finds it too trivial to warrant any consideration from this Court.^[66]

I cannot agree.

Article X, Section 2 of the Constitution grants local autonomy to all territorial and political subdivisions. Section 4 of the same article provides that the president's power over local government units is merely of general supervision and excludes control:

ARTICLE X

Local Government

General Provisions

SECTION 2. The territorial and political subdivisions shall enjoy local autonomy.

....

SECTION 4. The President of the Philippines shall exercise general supervision over local governments. Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays shall ensure that the acts of their component units are within the scope of their prescribed powers and functions.

In issuing Proclamation No. 475, the President exercised control over the local government units. The Proclamation orders affected local government units to implement and execute the closure. This is definitely a measure of control, not mere supervision.

The distinction between supervision and control of local government units is settled in jurisprudence.

In *Pimentel v. Aguirre*,^[67] this Court clarified the connection between supervision and control. The Constitution provides a president only with the power of supervision and not control over local government units. This power enables him or her to see to it that local government officials perform tasks within the bounds of law. He or she may not impair or infringe upon the power given to local government units by law.

This Court differentiated the powers of control and supervision in *Drilon v. Lim*.^[68] The power of control is the power to lay rules in the performance of an act. This power includes the ability to order the act done and redone, while supervisory power only necessitates that rules are followed. Under the power of supervision, there is no discretion to alter the rules. In short, supervisory power entails that rules are observed and nothing more.

In *Taule v. Santos* ^[69]we ruled that the Chief Executive's power over local governments was merely that of checking whether the officials were performing their duties within the bounds of law.

In *Province of Batangas v. Romulo*,^[70] then President Joseph Ejercito Estrada (President Estrada) issued Executive Order No. 48 entitled, "Establishing a Program for Devolution Adjustment and Equalization." The program was established to facilitate the process of enhancing the capacities of local government units in the discharge of the functions and services devolved to them by the national government agencies concerned under the Local Government Code.

The Oversight Committee under Executive Secretary Ronaldo Zamora passed resolutions, which were approved by President Estrada on October 6, 1999. The guidelines formulated by the Oversight Committee required local government units to identify the projects eligible for funding under the Local Government Service Equalization Fund, and submit them to the Department of Interior and Local Government for appraisal. Then, the Oversight Committee serves notice to the Department of Budget and Management for the subsequent release of the funds.

This Court struck down the resolutions as infringing on the fiscal autonomy of local government units as provided in the Constitution:

Article II

Declaration of Principles and State Policies

....

SECTION 25. The State shall ensure the autonomy of local governments.

An entire article of the Constitution has been devoted to guaranteeing and promoting the autonomy of local government units. Article X, Section 2 of the Constitution reiterates the State policy in this wise:

SECTION 2. The territorial and political subdivisions shall enjoy local autonomy.

Consistent with the principle of local autonomy, the Constitution confines the President's power over local government units to that of general supervision. This provision has been interpreted to exclude the power of control. The distinction between the two (2) powers was enunciated in *Drilon v. Lim*:

An officer in control lays down the rules in the doing of an act. If they are not followed, he may, in his discretion, order the act undone or re-done by his subordinate or he may even decide to do it himself. Supervision does not cover such authority. The supervisor or superintendent merely sees to it that the rules are followed, but he himself does not lay down such rules, nor does he have the discretion to modify or replace them. If the rules are not observed, he may order the work done or re-done but only to conform to the prescribed rules. He may not prescribe his own manner for doing the act. He has no judgment on this matter except to see to it that the rules are followed.[71]

The Local Government Code of 1991 was enacted to flesh out the mandate of the Constitution. The State policy on local autonomy is amplified in Section 2, thus:

SECTION 2. Declaration of Policy. — (a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the National Government to the local government units.

In *National Liga ng mga Barangay v. Paredes*,[72] the Department of Interior and Local Government was appointed as interim caretaker to administer and manage the affairs of the Liga ng mga Barangay in giving remedy to alleged violations made by its incumbent officer in the conduct of their elections. It issued memorandum circulars that alter, modify, nullify, or set aside the actions of the Liga ng mga Barangay.

This Court ruled:

These acts of the DILG went beyond the sphere of general supervision and constituted direct interference with the political affairs, not only of the Liga, but more importantly, of the barangay as an institution. The election of Liga officers is part of the Liga's internal organization, for which the latter has already provided guidelines. In succession, the DILG assumed stewardship and jurisdiction over the Liga affairs, issued supplemental guidelines for the election, and nullified the effects of the Liga-conducted elections. Clearly, what the DILG wielded was the power of control which even the President does not have.

Furthermore, the DILG assumed control when it appointed respondent Rayos as president of the Liga-Caloocan Chapter prior to the newly scheduled general Liga elections, although petitioner David's term had not yet expired. The DILG substituted its choice, who was Rayos, over the choice of majority of the punong barangay of Caloocan, who was the incumbent President, petitioner David. The latter was elected and had in fact been sitting as an ex-officio member of the sangguniang panlungsod in accordance with the Liga Constitution and By-Laws. Yet, the DILG extended the appointment to respondent Rayos although it was aware that the position was the subject of a quo warranto proceeding instituted by Rayos himself, thereby preempting the outcome of that case. It was bad enough that the DILG assumed the power of control, it was worse when it made use of the power with evident bias and partiality.

As the entity exercising supervision over the Liga ng mga Barangay, the DILG's authority over the Liga is

limited to seeing to it that the rules are followed, but it cannot lay down such rules itself, nor does it have the discretion to modify or replace them. In this particular case, the most that the DILG could do was review the acts of the incumbent officers of the Liga in the conduct of the elections to determine if they committed any violation of the Liga's Constitution and By-laws and its implementing rules. If the National Liga Board and its officers had violated Liga rules, the DILG should have ordered the Liga to conduct another election in accordance with the Liga's own rules, but not in obeisance to DILG- dictated guidelines. Neither had the DILG the authority to remove the incumbent officers of the Liga and replace them, even temporarily, with unelected Liga officers.

Like the local government units, the Liga ng mga Barangay is not subject to control by the Chief Executive or his alter ego.[73]

Supervisory power has been defined as "the power of mere oversight over an inferior body; it does not include any restraining authority over such body." [74]

The relationship between the President and local governments is a constitutional matter. Constitutional relationships are never trivial nor should it be trivialized.

X

Significantly, the Proclamation is even contrary to the law that it alleges to implement. It totally misunderstands the statutory approach for disaster risk and reduction management. Section 2 of Republic Act No. 10121 provides:

SECTION 2. Declaration of Policy. — It shall be the policy of the State to:

(a)

Uphold the people's constitutional rights to life and property by addressing the root causes of vulnerabilities to disasters, strengthening the country's institutional capacity for disaster risk reduction and management and building the resilience of local communities to disasters including climate change impacts;

(b)

Adhere to and adopt the universal norms, principles, and standards of humanitarian assistance and the global effort on risk reduction as concrete expression of the country's commitment to overcome human sufferings due to recurring disasters;

(c)

Incorporate internationally accepted principles of disaster risk management in the creation and implementation of national, regional and local sustainable development and poverty reduction strategies, policies, plans and budgets;

(d)

Adopt a disaster risk reduction and management approach that is holistic, comprehensive, integrated, and proactive in lessening the socioeconomic and environmental impacts of disasters including climate change, and promote the involvement and participation of all sectors and all stakeholders concerned, at all levels, especially the local community;

(e)

Develop, promote, and implement a comprehensive National Disaster Risk Reduction and Management Plan (NDRRMP) that aims to strengthen the capacity of the national government and the local government units (LGUs), together with partner stakeholders, to build the disaster resilience of communities, and to institutionalize arrangements and measures for reducing disaster risks, including projected climate risks, and enhancing disaster preparedness and response capabilities at all levels;

(f)

Adopt and implement a coherent, comprehensive, integrated, efficient and responsive disaster risk reduction program incorporated in the development plan at various levels of government adhering to the principles of good governance such as transparency and accountability within the context of poverty alleviation and environmental protection;

(g)

Mainstream disaster risk reduction and climate change in development processes such as policy formulation, socioeconomic development planning, budgeting, and governance, particularly in the areas of environment, agriculture, water, energy, health, education, poverty reduction, land-use and urban planning, and public infrastructure and housing, among others;

(h)

Institutionalize the policies, structures, coordination mechanisms and programs with continuing budget appropriation on disaster risk reduction from national down to local levels towards building a disaster-resilient nation and communities;

(i)

Mainstream disaster risk reduction into the peace process and conflict resolution approaches in order to minimize loss of lives and damage to property, and ensure that communities in conflict zones can immediately go back to their normal lives during periods of intermittent conflicts;

(j)

Ensure that disaster risk reduction and climate change measures are gender responsive, sensitive to indigenous knowledge systems, and respectful of human rights;

(k)

Recognize the local risk patterns across the country and strengthen the capacity of LGUs for disaster risk reduction and management through decentralized powers, responsibilities, and resources at the regional and local levels;

(l)

Recognize and strengthen the capacities of LGUs and communities in mitigating and preparing for, responding to, and recovering from the impact of disaster's;

(m)

Engage the participation of civil society organizations (CSOs), the private sector and volunteers in the government's disaster risk reduction programs towards complementation of resources and effective delivery of services to the citizenry;

(n)

Develop and strengthen the capacities of vulnerable and marginalized groups to mitigate, prepare for, respond to, and recover from the effects of disasters;

(o)

Enhance and implement a program where humanitarian aid workers, communities, health professionals, government aid agencies, donors, and the media are educated and trained on how they can actively support breastfeeding before and during a disaster and/or an emergency; and

(p)

Provide maximum care, assistance and services to individuals and families affected by disaster, implement emergency rehabilitation projects to lessen the impact of disaster, and facilitate resumption of normal social and economic activities.

The President cannot take over what has been statutorily granted to local governments units. To allow him to do so would be to violate his oath of office under Article VII, Section 5 of the Constitution.[75]

Republic Act No. 10121 itself creates a whole structure to address preparation and management of the kinds of disasters envisioned in that law. Thus:

SECTION 6. Powers and Functions of the NDRRMC. — The National Council, being empowered with policy-making, coordination, integration, supervision, monitoring and evaluation functions, shall have the following responsibilities:

(a)

Develop a NDRRMF which shall provide for a comprehensive, all-hazards, multi-sectoral, inter-agency and community-based approach to disaster risk reduction and management. The Framework shall serve as the principal guide to disaster risk reduction and management efforts in the country and shall be reviewed on a five (5)-year interval, or as may be deemed necessary, in order to ensure its relevance to the times;

(b)

Ensure that the NDRRMP is consistent with the NDRRMF;

(c)

Advise the President on the status of disaster preparedness, prevention, mitigation, response and rehabilitation operations being undertaken by the government, CSOs, private sector, and volunteers; recommend to the President the declaration of a state of calamity in areas extensively damaged; and submit proposals to restore normalcy in the affected areas, to include calamity fund allocation;

(d)

Ensure a multi-stakeholder participation in the development, updating, and sharing of a Disaster Risk Reduction and Management Information System and Geographic Information System-based national risk map as policy, planning and decision-making tools;

(e)

Establish a national early warning and emergency alert system to provide accurate and timely advice to national or local emergency response organizations and to the general public through diverse mass media to include digital and analog broadcast, cable, satellite television and radio, wireless communications, and landline communications;

(f)

Develop appropriate risk transfer mechanisms that shall guarantee social and economic protection and increase resiliency in the face of disaster;

(g)

Monitor the development and enforcement by agencies and organizations of the various laws, guidelines, codes or technical standards required by this Act;

(h)

Manage and mobilize resources for disaster risk reduction and management including the National Disaster Risk Reduction and Management Fund;

(i)

Monitor and provide the necessary guidelines and procedures on the Local Disaster Risk Reduction and Management Fund (LDRRMF) releases as well as utilization, accounting and auditing thereof;

(j)

Develop assessment tools on the existing and potential hazards and risks brought about by climate change to vulnerable areas and ecosystems in coordination with the Climate Change Commission;

(k)

Develop vertical and horizontal coordination mechanisms for a more coherent implementation of disaster risk reduction and management policies and programs by sectoral agencies and LGUs;

(l)

Formulate a national institutional capability building program for disaster risk reduction and management to address the specific weaknesses of various government agencies and LGUs, based on the results of a biennial baseline assessment and studies;

(m)

Formulate, harmonize, and translate into policies a national agenda for research and technology development on disaster risk reduction and management;

(n)

In coordination with the Climate Change Commission, formulate and implement a framework for climate change adaptation and disaster risk reduction and management from which all policies, programs, and projects shall be based;

(o)

Constitute a technical management group composed of representatives of the abovementioned departments, offices, and organizations, that shall coordinate and meet as often as necessary to effectively manage and sustain national efforts on disaster risk reduction and management;

(p)

Task the OCD to conduct periodic assessment and performance monitoring of the member-agencies of the NDRRMC, and the Regional Disaster Risk Reduction and Management Councils (RDRRMCs), as defined in the NDRRMP; and

(q)

Coordinate or oversee the implementation of the country's obligations with disaster management treaties to which it is a party and see to it that the country's disaster management treaty obligations be incorporated in its disaster risk reduction and management frameworks, policies, plans, programs and projects.

SECTION 7. Authority of the NDRRMC Chairperson. — The Chairperson of the NDRRMC may call upon other instrumentalities or entities of the government and nongovernment and civic organizations for assistance in terms of the use of their facilities and resources for the protection and preservation of life and properties in the whole range of disaster risk reduction and management. This authority includes the power to call on the reserve force as defined in Republic Act No. 7077 to assist in relief and rescue during disasters or calamities.

SECTION 8. The Office of Civil Defense. — The Office of Civil Defense (OCD) shall have the primary mission of administering a comprehensive national civil defense and disaster risk reduction and management program by providing leadership in the continuous development of strategic and systematic approaches as well as measures to reduce the vulnerabilities and risks to hazards and manage the consequences of disasters.

The Administrator of the OCD shall also serve as Executive Director of the National Council and, as such, shall have the same duties and privileges of a department undersecretary. All appointees shall be universally acknowledged experts in the field of disaster preparedness and management and of proven honesty and integrity. The National Council shall utilize the services and facilities of the OCD as the secretariat of the National Council.

SECTION 9. Powers and Functions of the OCD. — The OCD shall have the following powers and functions:

(a)

Advise the National Council on matters relating to disaster risk reduction and management consistent with the policies and scope as defined in this Act;

(b)

Formulate and implement the NDRRMP and ensure that the physical framework, social, economic and environmental plans of communities, cities, municipalities and provinces are consistent with such plan. The National Council shall approve then DRRMP;

(c)

Identify, assess and prioritize hazards and risks in consultation with key stakeholders;

(d)

Develop and ensure the implementation of national standards in carrying out disaster risk reduction programs including preparedness, mitigation, prevention, response and rehabilitation works, from data collection and analysis, planning, implementation, monitoring and evaluation;

(e)

Review and evaluate the Local Disaster Risk Reduction and Management Plans (LDRRMPs) to facilitate the integration of disaster risk reduction measures into the local Comprehensive Development Plan (CDP) and Comprehensive Land-Use Plan (CLUP);

(f)

Ensure that the LGUs, through the Local Disaster Risk Reduction and Management Offices (LDRRMOs) are properly informed and adhere to the national standards and programs;

(g)

Formulate standard operating procedures for the deployment of rapid assessment teams, information sharing among different government agencies, and coordination before and after disasters at all levels;

(h)

Establish standard operating procedures on the communication system among provincial, city, municipal, and barangay disaster risk reduction and management councils, for purposes of warning and alerting them and for gathering information on disaster areas before, during and after disasters;

(i)

Establish Disaster Risk Reduction and Management Training Institutes in such suitable location as may be deemed appropriate to train public and private individuals, both local and national, in such subject as disaster risk reduction and management among others. The Institute shall consolidate and prepare training materials and publications of disaster risk reduction and management books and manuals to assist disaster risk reduction and management workers in the planning and implementation of this program and projects.

The Institute shall conduct research programs to upgrade knowledge and skills and document best practices on disaster risk reduction and management.

The Institute is also mandated to conduct periodic awareness and education programs to accommodate new elective officials and members of the LDRRMCs;

(j)

Ensure that all disaster risk reduction programs, projects and activities requiring regional and international support shall be in accordance with duly established national policies and aligned with international agreements;

(k)

Ensure that government agencies and LGUs give top priority and take adequate and appropriate measures in disaster risk reduction and management;

(l)

Create an enabling environment for substantial and sustainable participation of CSOs, private groups, volunteers and communities, and recognize their contributions in the government's disaster risk reduction efforts;

(m)

Conduct early recovery and post-disaster needs assessment institutionalizing gender analysis as part of it;

(n)

Establish an operating facility to be known as the National Disaster Risk Reduction and Management Operations Center (NDRRMOC) that shall be operated and staffed on a twenty-four (24) hour basis;

(o)

Prepare the criteria and procedure for the enlistment of accredited community disaster volunteers (ACDVs). It shall include a manual of operations for the volunteers which shall be developed by the OCD in consultation with various stakeholders;

(p)

Provide advice and technical assistance and assist in mobilizing necessary resources to increase the overall capacity of LGUs, specifically the low income and in high-risk areas;

(q)

Create the necessary offices to perform its mandate as provided under this Act; and

(r)

Perform such other functions as may be necessary for effective operations and implementation of this Act.

SECTION 10. Disaster Risk Reduction and Management Organization at the Regional Level. — The current Regional Disaster Coordinating Councils shall henceforth be known as the Regional Disaster Risk Reduction and Management Councils (RDRRMCs) which shall coordinate, integrate, supervise, and evaluate the activities of the LDRRMCs. The RDRRMC shall be responsible in ensuring disaster sensitive regional development plans, and in case of emergencies shall convene the different regional line agencies and concerned institutions and authorities.

The RDRRMCs shall establish an operating facility to be known as the Regional Disaster Risk Reduction and Management Operations Center (RDRRMOC) whenever necessary.

The civil defense officers of the OCD who are or may be designated as Regional Directors of the OCD shall serve as chairpersons of the RDRRMCs. Its Vice Chairpersons shall be the Regional Directors of the DSWD, the DILG, the DOST, and the NEDA. In the case of the Autonomous Region in Muslim Mindanao (ARMM), the Regional Governor shall be the RDRRMC Chairperson. The existing regional offices of the OCD shall serve as secretariat of the RDRRMCs. The RDRRMCs shall be composed of the executives of regional offices and field stations at the regional level of the government agencies.

SECTION 11. Organization at the Local Government Level. — The existing Provincial, City, and Municipal Disaster Coordinating Councils shall henceforth be known as the Provincial, City, and Municipal Disaster Risk Reduction and Management Councils. The Barangay Disaster Coordinating Councils shall cease to exist and its powers and functions shall henceforth be assumed by the existing Barangay Development Councils (BDCs) which

shall serve as the LDRRMCs in every barangay.

(a)

Composition: The LDRRMC shall be composed of, but not limited to, the following:

(1)

The Local Chief Executives, Chairperson;

(2)

The Local Planning and Development Officer, member;

(3)

The Head of the LDRRMO, member;

(4)

The Head of the Local Social Welfare and Development Office, member;

(5)

The Head of the Local Health Office, member;

(6)

The Head of the Local Agriculture Office, member;

(7)

The Head of the Gender and Development Office, member;

(8)

The Head of the Local Engineering Office, member;

(9)

The Head of the Local Veterinary Office, member;

(10)

The Head of the Local Budget Office, member;

(11)

The Division Head/Superintendent of Schools of the DepED, member;

(12)

The highest-ranking officer of the Armed Forces of the Philippines (AFP) assigned in the area, member;

(13)

The Provincial Director/City/Municipal Chief of the Philippine National Police (PNP), member;

(14)

The Provincial Director/City/Municipal Fire Marshall of the Bureau of Fire Protection (BFP), member;

(15)

The President of the Association of Barangay Captains (ABC), member;

(16)

The Philippine National Red Cross (PNRC), member;

(17)

Four (4) accredited CSOs, members; and

(18)

(1) private sector representative, member.

(b)

The LDRRMCs shall have the following functions:

(1)

Approve, monitor and evaluate the implementation of the LDRRMPs and regularly review and test the plan consistent with other national and local planning programs;

(2)

Ensure the integration of disaster risk reduction and climate change adaptation into local development plans, programs and budgets as a strategy in sustainable development and poverty reduction;

(3)

Recommend the implementation of forced or preemptive evacuation of local residents, if necessary; and

(4)

Convene the local council once every three (3) months or as necessary.

SECTION 12. Local Disaster Risk Reduction and Management Office (LDRRMO). — (a) There shall be established an LDRRMO in every province, city and municipality, and a Barangay Disaster Risk Reduction and Management Committee (BDRRMC) in every barangay which shall be responsible for setting the direction, development, implementation and coordination of disaster risk management programs within their territorial jurisdiction.

(b)

The LDRRMO shall be under the office of the governor, city or municipal mayor, and the punong barangay in case of the BDRRMC. The LDRRMOs shall be initially organized and composed of a DRRMO to be assisted by three (3) staff responsible for: (1) administration and training; (2) research and planning; and (3) operations

and warning. The LDRRMOs and the BDRRMCs shall organize, train and directly supervise the local emergency response teams and the ACDVs.

(c)

The provincial, city and municipal DRRMOs or BDRRMCs shall perform the following functions with impartiality given the emerging challenges brought by disasters of our times:

(1)

Design, program, and coordinate disaster risk reduction and management activities consistent with the National Council's standards and guidelines;

(2)

Facilitate and support risk assessments and contingency planning activities at the local level;

(3)

Consolidate local disaster risk information which includes natural hazards, vulnerabilities, and climate change risks, and maintain a local risk map;

(4)

Organize and conduct training, orientation, and knowledge management activities on disaster risk reduction and management at the local level;

(5)

Operate a multi-hazard early warning system, linked to disaster risk reduction to provide accurate and timely advice to national or local emergency response organizations and to the general public, through diverse mass media, particularly radio, landline communications, and technologies for communication within rural communities;

(6)

Formulate and implement a comprehensive and integrated LDRRMP in accordance with the national, regional and provincial framework, and policies on disaster risk reduction in close coordination with the local development councils (LDCs);

(7)

Prepare and submit to the local sanggunian through the LDRRMC and the LDC the annual LDRRMO Plan and

budget, the proposed programming of the LDRRMF, other dedicated disaster risk reduction and management resources, and other regular funding source/s and budgetary support of the LDRRMO/BDRRMC;

(8)

Conduct continuous disaster monitoring and mobilize instrumentalities and entities of the LGUs, CSOs, private groups and organized volunteers, to utilize their facilities and resources for the protection and preservation of life and properties during emergencies in accordance with existing policies and procedures;

(9)

Identify, assess and manage the hazards, vulnerabilities and risks that may occur in their locality;

(10)

Disseminate information and raise public awareness about those hazards, vulnerabilities and risks, their nature, effects, early warning signs and counter-measures;

(11)

Identify and implement cost-effective risk reduction measures/strategies;

(12)

Maintain a database of human resource, equipment, directories, and location of critical infrastructures and their capacities such as hospitals and evacuation centers;

(13)

Develop, strengthen and operationalize mechanisms for partnership or networking with the private sector, CSOs, and volunteer groups;

(14)

Take all necessary steps on a continuing basis to maintain, provide, or arrange the provision of, or to otherwise make available, suitably-trained and competent personnel for effective civil defense and disaster risk reduction and management in its area;

(15)

Organize, train, equip and supervise the local emergency response teams and the ACDVs, ensuring that humanitarian aid workers are equipped with basic skills to assist mothers to breastfeed;

(16)

Respond to and manage the adverse effects of emergencies and carry out recovery activities in the affected area, ensuring that there is an efficient mechanism for immediate delivery of food, shelter and medical supplies for women and children, endeavor to create a special place where internally-displaced mothers can find help with breastfeeding, feed and care for their babies and give support to each other;

(17)

Within its area, promote and raise public awareness of and compliance with this Act and legislative provisions relevant to the purpose of this Act;

(18)

Serve as the secretariat and executive arm of the LDRRMC;

(19)

Coordinate other disaster risk reduction and management activities;

(20)

Establish linkage/network with other LGUs for disaster risk reduction and emergency response purposes;

(21)

Recommend through the LDRRMC the enactment of local ordinances consistent with the requirements of this Act;

(22)

Implement policies, approved plans and programs of the LDRRMC consistent with the policies and guidelines laid down in this Act;

(23)

Establish a Provincial/City/Municipal/Barangay Disaster Risk Reduction and Management Operations Center;

(24)

Prepare and submit, through the LDRRMC and the LDC, the report on the utilization of the LDRRMF and other dedicated disaster risk reduction and management resources to the local Commission on Audit (COA), copy furnished the regional director of the OCD and the Local Government Operations Officer of the DILG; and

(25)

Act on other matters that may be authorized by the LDRRMC.

(d)

The BDRRMC shall be a regular committee of the existing BDC and shall be subject thereto. The punong barangay shall facilitate and ensure the participation of at least two (2) CSO representatives from existing and active community-based people's organizations representing the most vulnerable and marginalized groups in the barangay.

The Proclamation, even as it claims to be based on this law, inexplicably undermines this structure.

The law tasks the local government units to lead in meeting disasters. Thus, in Section 2 of Republic Act No. 10121:

(l)

Recognize and strengthen the capacities of LGUs and communities in mitigating and preparing for, responding to, and recovering from the impact of disaster's;

(m)

Engage the participation of civil society organizations (CSOs), the private sector and volunteers in the government's disaster risk reduction programs towards complementation of resources and effective delivery of services to the citizenry;

(n)

Develop and strengthen the capacities of vulnerable and marginalized groups to mitigate, prepare for, respond to, and recover from the effects of disasters;

Furthermore, in Section 15:

SECTION 15. Coordination During Emergencies. — The LDRRMCs shall take the lead in preparing for, responding to, and recovering from the effects of any disaster based on the following criteria:

(a)

The BDC, if a barangay is affected;

(b)

The city/municipal DRRMCs, if two (2) or more barangays are affected;

(c)

The provincial DRRMC, if two (2) or more cities/municipalities are affected;

(d)

The regional DRRMC, if two (2) or more provinces are affected; an

(e)

The NDRRMC, if two (2) or more regions are affected.

The NDRRMC and intermediary LDRRMCs shall always act as support to LGUs which have the primary responsibility as first disaster responders. Private sector and civil society groups shall work in accordance with the coordination mechanism and policies set by the NDRRMC and concerned LDRRMCs. (Emphasis supplied)

Even if we assume that the Proclamation was a valid exercise of police power, only the Municipality of Malay, Aldan has been directly affected by the calamity. This means that, statutorily, the Municipality's Local Disaster Risk Reduction and Management Council should take charge. Yet, the Proclamation reduces the local government unit into a minor player in the rehabilitation of the island.

Being contrary to the very law it alleges to be its framework, Proclamation No. 475 is not a valid exercise of police power.

XI

The situation in Boracay is not the only ecological disaster that we face as a nation. The majority creates a dangerous precedent.

For instance, climate change is an urgent and serious calamity faced by the entire world. Our climate is changing faster now than at any point in history.[76] We have been experiencing a tremendous increase in carbon dioxide in the air, melting icecaps, a consequent rise in sea levels, frigid cold, and extreme heat. Scientists have attributed this to human activity. The rapid rise in our temperatures only started in 1880, during the second industrial revolution, and most of the warming occurred in the last 35 years.

Scientists at the Intergovernmental Panel on Climate Change are urging the world to keep global warming to a maximum of 1.5 degrees Celsius (1.5 °C) for the next 12 years. We are currently one degree Celsius (1 °C) warmer than preindustrial levels. This change is the reason for the hurricanes in the United States, drought in Cape Town, and forest fires in the Arctic. Half a degree more than the 1.5 °C target will worsen droughts, floods, and extreme weather conditions. Coral reefs may disappear completely. Polar ice caps will melt, causing our sea levels to rise.[77] Heat waves will be more intense. Cold spells will be a lot worse; consequently, plant, insect, and animal species will disappear, and human lives will suffer.[78] Countries such as ours without financial and other resources at our disposal will suffer more.

We need to address this situation perhaps more urgently than the fecal coliform formation in our tourist areas.

Yet, these urgent anthropogenic crises cannot be solved by indulging our impatience. Rather, solutions will require both better governance and democratic participation.

Instead of relying on the beguiling pragmatism of a strongman, we should, now more than ever, have the humility to harness our abilities as humans to consult, deliberate, and act together. We should be aware that short-term solutions, which produce short-term effects, may mask the true problems and abuse those who live in our society's margins.

The growth of fecal coliform may be arrested with a drastic and draconian clean-up. Clearly, without addressing its true causes, the ecological remedy will be temporary. The costs may be too high if such temporary relief is purchased with the suspension of the rights of those affected—especially the informal and marginal workers on the island—with a legal precedent that does not take the long view. That is why our environmental laws are permanent statutes, and states of calamity are only temporary and declared under very limiting conditions.

Many of our tourist areas may have become what economists call as open access areas. These areas are subject to

what Garrett Hardin, an American ecologist and philosopher, more than four (4) decades ago called the "tragedy of the commons." [79] In this situation, businesses, residents, and tourists cannot see beyond the short-term enjoyment of the resource while well aware of the degradation that others will cause. The solution to such a tragedy is a more accountable enforcement of the rules for the enjoyment of the environment and the evolution of a stronger community. To assure the existence of a true common property regime, everyone involved must do what is expected of them.

The legitimization of the closure of Boracay through the Proclamation at issue here easily opens the slippery slope for ecological authoritarianism.

Boracay, originally home to the Ati, was discovered as a pristine island. It attracted migrants, allowed them to establish abodes, and claim ownership. Then, a catena of administrations promoted it as a tourist attraction, compelling its residents to adjust their lives accordingly. Businesses flourished without an understanding of Boracay's ecology's carrying capacity.

Worse, unscrupulous individuals created profits purchased through illicit collusion with those who should have regulated where they built, how they built, how they dealt with their sewage, where they would get their water. Boracay was destroyed by the shortsightedness of some of the public officials in charge and the unbelievable ignorance of the establishments that profited from what should have been the sustainability of their ecology.

Boracay is victim to the callousness driven by short-term profits and insatiable greed. It is increasingly vulnerable because of the growing absence of a genuine community on the island.

This Court should assure those who are affected that it will offer a genuine reflection of the constitutional order, under which it seeks to find pragmatic yet longer lasting solutions to our problems. This Court is the forum where we can assure an ordinary sandcastle builder, a driver, or an informal worker on the island that we all can be an active part of the solution, as envisioned by our democracy.

I regret that the liberality of the majority in not seeing the constitutional and statutory violations of the Proclamation, and the actions it spawned, will undermine this constitutional order.

Authoritarian solutions based on fear are ironically weak. We still are a constitutional order that will become stronger with a democracy participated in by enlightened citizens. Ours is not, and should never be, a legal order ruled by diktat.

For these reasons, I dissent.

ACCORDINGLY, I vote to GRANT the Petition.

[1] Rep. Act No. 10121 (2010), Philippine Disaster Risk Reduction and Management Act of 2010.

[2] Rep. Act No. 9275 (2004), Philippine Clean Water Act of 2004.

[3] G.R. No. 197930, April 17, 2018, <
<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/april2018/197930.pdf> > [Per J. Reyes, Jr., En Banc].

[4] See J. Leonen, Separate Concurring Opinion in Subido Pagente Certeza and Mendoza Law Offices v. Court of Appeals et al., 802 Phil. 314 (2016) [Per J. Perez, En Banc].

[5] Samuel D. Warren and Louis D. Brandeis, The Right to Privacy, 4 HARV. L. REV 193-195 (1890). See also

Irwin R. Kramer, The Birth of Privacy Law: A Century Since Warren & Brandeis, 39 CATH. U.L. REV. 703 (1990).

[6] Secretary of National Defense, et al. v. Manalo, et al., 589 Phil. 1 (2008) [Per Puno C.J., En Banc]. >See also J. Leonen, Separate Opinion in International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines), 774 Phil. 508 (2015) [Per J. Villarama, Jr. En Banc].

[7] See CIVIL CODE, arts. 415 (10), 417, 519, 520, 521, 613, 721, and 722.

[8] Secretary of National Defense, et al. v. Manalo, et al., 589 Phil. 1 (2008) [Per Puno C.J., En Banc].

[9] Id. at 50.

[10] 495 Phil. 289 (2005) [Per J. Tinga, En Banc].

[11] Id. at 316-317.

[12] Id. at 317 citing Roth v. Board of Regents, 408 U.S. 572 (1972).

[13] Id. citing Lawrence v. Texas, 539 U.S. 558 (2003).

[14] G.R. No. 225442, August 8, 2017, 835 SCRA 350 [Per J. Perlas-Bernabe, En Banc].

[15] See J. Leonen, Concurring Opinion in Samahan ng mga Progresibong Kabataan (SPARK) et al., v. Quezon City et al., G.R. No. 225442, August 8, 2017, 835 SCRA 350, 445-447 [Per J. Perlas-Bernabe, En Banc].

[16] Rollo, p. 22.

[17] Philippine Blooming Employees Organization v. Philippine Blooming Mills, 151-A Phil. 656, 676 (1973) [Per J. Makasiar, En Banc].

[18] 127 Phil. 306 (1967) [Per J. Fernando, En Banc].

[19] Id. at 324.

[20] G.R. No. 199669, April 25, 2017, 824 SCRA 164 [Per J. Reyes, En Banc].

[21] Ponencia, p. 24.

[22] G.R. No. 199669, April 25, 2017, 824 SCRA 164 [Per J. Reyes, En Banc].

[23] 127 Phil. 306 (1967) [Per J. Fernando, En Banc].

[24] Id. at 316.

[25] Id. at 319.

[26] 495 Phil. 289 (2005) [Per J. Tinga, En Banc].

[27] Id. at 307-308.

[28] 596 Phil. 444 (2009) [Per J. Tinga, En Banc].

[29] Id. at 462-463.

[30] 706 Phil. 138 (2013) [Per J. Mendoza, En Banc].

[31] G.R. No. 225442, August 8, 2017, 835 SCRA 350 [Per J. Perlas-Bernabe, En Banc].

[32] See J. Leonen, Concurring Opinion in *Samahan ng mg Progresibong Kabataan (SPARK) et al., v. Quezon City et al.*, G.R. No. 225442 835 SCRA 350, 451-453 (2017) [Per J. Perlas-Bernabe, En Banc].

[33] CONST. Art. II, sec. 9.

[34] CONST. Art. II, sec. 9.

[35] CONST. Art. II, sec. 11.

[36] 596 Phil. 444 2009 [Per J. Tinga, En Banc].

[37] *Id.* at 469.

[38] Proc. No. 475 (2018), Whereas clauses.

[39] 596 Phil. 444 (2009) [Per J. Tinga, En Banc].

[40] Duterte slams Boracay as 'cesspool,' threatens to shut down island, ABS-CBN NEWS, February 10, 2018, < <https://news.abs-cbn.com/news/02/10/18/duterte-slams-boracay-as-cesspool-threatens-to-shut-down-island> > (last accessed February 14, 2019).

[41] Pia Ranada, Duterte to declare state of calamity in Boracay, warns courts not to interfere, RAPPLER, March 6, 2018, < <https://www.rappler.com/nation/197573-duterte-boracay-state-calamity-courts-interfere> > (last accessed February 14, 2019).

[42] Nestor Corrales, Duterte approves 6-month closure of Boracay, starting April 26, INQUIRER.NET, April 4, 2018, < <https://newsinfo.inquirer.net/980185/boracay-closure-rodrigo-duterte> > (last accessed February 14, 2019).

[43] See Rambo Talabong, LIST: New Boracay rules during 6-month closure, RAPPLER, April 12, 2018, < <https://www.rappler.com/nation/200122-list-new-rules-boracay-closure> > (last accessed February 14, 2019); see also Dharel Placido, No visitors, no tourists: DILG releases Boracay rules during 6-month closure, ABS-CBN NEWS, April 17, 2018, < <https://news.abs-cbn.com/news/04/17/18/no-visitors-no-tourists-dilg-releases-boracay-rules-during-6-month-closure> > (last accessed February 14, 2019).

[44] Boy Ryan Zabal, Police deployed in Boracay enough to stop crimes, lootings - PNP, RAPPLER, May 1, 2018, < <https://www.rappler.com/nation/201475-police-boracay-enough-stop-crimes-looting> > (last accessed February 14, 2019).

[45] Rambo Talabong, LIST: New Boracay rules during 6-month closure, RAPPLER, April 12, 2018, < <https://www.rappler.com/nation/200122-list-new-rules-boracay-closure> > (last accessed February 14, 2019); see also Dharel Placido, No visitors, no tourists: DILG releases Boracay rules during 6-month closure, ABS-CBN NEWS, April 17, 2018, < <https://news.abs-cbn.com/news/04/17/18/no-visitors-no-tourists-dilg-releases-boracay-rules-during-6-month-closure> > (last accessed February 14, 2019).

[46] Proc. No. 475 (2018).

[47] Proc. No. 475 (2018).

[48] G.R. Nos. 231658, 231771 & 231774, July 4, 2017 [Per J. Del Castillo, En Banc].

[49] J. Leonen, Dissenting Opinion in *Lagman v. Medialdea*, G.R. No. 231658, July 4, 2017, 829 SCRA 1, 531-538 [Per J. Del Castillo, En Banc].

[50] *Id.*

[51] CIVIL CODE, arts. 696 and 697.

[52] CIVIL CODE, art. 699.

[53] CIVIL CODE, arts. 698, 700, 701, 702, 703 and 704.

[54] PAB Reso. No. 001-10 (June 29, 2010), Rule I, sec. 2 and Rule III, sec. 1 (B) (2), Revised Rules of the Pollution Adjudicatory Board on Pleading, Practice and Procedure in Pollution Cases.

[55] See Proc. No. 475.

[56] Ponencia, p. 21. citing *Edu v. Ericta*, 146 Phil. 469 (1970) [Per J. Fernando, En Banc].

[57] *Id.* citing *Philippine Association of Service Exporters, Inc. v. Hon. Drilon*, 246 Phil. 393, 398 (1988) [Per J. Sarmiento, En Banc].

[58] 522 Phil. 705 (2006) [Per J. Sandoval-Guitierrez, En Banc].

[59] *Eastern Shipping Lines v. POEA et al.*, 248 Phil. 762, 772 (1988) [Per J. Cruz, First Divison].

[60] *Id.*

[61] 721 Phil. 416 (2013) [Per J. Pelas-Bernabe, En Banc].

[62] *Id.* at 534.

[63] An Act Strengthening the Philippine Disaster Risk Reduction and Management System, Providing for the National Disaster Risk Reduction and Management Framework and Institutionalizing the National Disaster Risk Reduction and Management Plan, Appropriating Funds Therefor and for Other Purposes.

[64] Damian, Carrington, Earth's sixth mass extinction event under way, scientists warn, THE GUARDIAN, July 10, 2017, available at <https://www.theguardian.com/environment/2017/jul/10/earths-sixth-mass-extinction-event-already-underway-scientists-warn?CMP=share_btn_tw> (last visited on February 12, 2019).

[65] Rep. Act No. 10121 (2010), sec. 16.

[66] Ponencia, p. 26.

[67] 391 Phil. 84 (2000) [Per J. Panganiban, En Banc].

[68] 305 Phil. 146 (1994) [J. Cruz, En Banc].

[69] 277 Phil. 584 (1991) [J. Gancayco, En Banc].

[70] 473 Phil. 806 (2004) [Per J. Callejo Sr., En Banc].

[71] *Id.* at 152.

[72] 482 Phil. 331 (2004) [Per J. Tinga, En Banc].

[73] *Id.* at 358-359.

[74] *Taule v. Santos*, 277 Phil. 584, 598 (1991) [J. Gancayco, En Banc].

[75] CONST., art. VII, Sec. 5 provides: Before they enter on the execution of their office, the President, the Vice-President, or the acting President shall take the following oath or affirmation:

I do solemnly swear (or affirm) that I will faithfully and conscientiously fulfill my duties as President (or

Vice-President or Acting President) of the Philippines, preserve and defend its Constitution, execute its laws, do justice to every man, and consecrate myself to the service of the Nation. So help me God. (In case of affirmation, last sentence will be omitted.)

[76] Understand Climate Change, available at < <https://www.globalchange.gov/climate-change> > (last visited on February 12, 2019).

[77] Jonathan Watts, We have 12 years to limit climate change catastrophe, warns UN, THE GUARDIAN, available at <https://www.theguardian.com/environment/2018/oct/08/global-warming-must-not-exceed-15c-warns-landmark-un-report> > (last visited on February 12, 2019).

[78] Global Climate Change, available at < <https://climate.nasa.gov/> > (last visited on February 12, 2019).

[79] Garrett Hardin, The Tragedy of the Commons, 162 Science 1243-1248 (1968), available at < http://pages.mtu.edu/~asmayer/rural_sustain/governance/Hardin%201968.pdf > (last visited on February 12, 2019).

CONCURRING AND DISSENTING OPINION

JARDELEZA, J.:

The following are the basic facts of the case:

On April 26, 2018, President Rodrigo R. Duterte issued Proclamation No. 475 declaring a state of calamity in the Island of Boracay in Malay, Aklan, and ordered the closure of the island as a tourist destination for six months, or until October 25, 2018. Petitioners Mark Anthony Zabal (Zabal), Thiting Estoso Jacosalem (Jacosalem), and Odon S. Bandiola (Bandiola) filed this special civil action for prohibition and mandamus (with application for temporary restraining order, preliminary injunction and/or status quo ante order) seeking to, among others, enjoin the implementation of Proclamation No. 475 and compel public respondents to allow the entry of both tourists and residents into Boracay Island.

Before going into the substance of the issues raised in the petition, I note that petitioners sought direct recourse with this Court on the ground, among others, that "[t]here are no factual issues raised in this case, only questions of law x x x." [1] Indeed, this Court exercises original jurisdiction over petitions for prohibition and mandamus concurrently with the Court of Appeals (CA) and the Regional Trial Courts (RTCs). [2] The doctrine of hierarchy of courts, however, dictates that such actions first be filed before the trial courts. Save for the specific instance provided under the Constitution, [3] this Court is not a trier of facts. [4] Its original jurisdiction cannot be invoked to resolve issues which are inextricably connected with underlying questions of fact.

This Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the Constitution. [5] Direct recourse to this Court may, as petitioners correctly suggest, be allowed only to resolve questions which do not require the prior adjudication of factual issues. It is thus on this basis that I will examine and resolve the present petition.

Petitioners challenge the legality of Proclamation No. 475 [6] insofar as it ordered the closure of Boracay Island on the following grounds: (1) it is an invalid exercise by the President of legislative power; (2) it violates the right to travel insofar as it seeks to restrict the entry of tourists and non-residents into the island; (3) it operates to deprive

persons working in the island of their means of livelihood without due process of law; and (4) it violates the principle of local autonomy insofar as affected local government units are ordered to implement the closure.[7]

My examination of the issues raised and arguments offered by petitioners shows that, of the four principal issues raised against the constitutionality of Proclamation No. 475, only the first issue poses a question the complete resolution of which does not involve underlying questions of fact. On the other hand, and as I shall later demonstrate, the three remaining issues involve underlying questions of fact which cannot be resolved by this Court at the first instance.

I

Petitioners claim that Proclamation No. 475 is an invalid exercise by the President of legislative power.[8] According to petitioners, access to Boracay can be validly restricted (as part of the right to travel) only through the exercise of police power, that is, by law. They maintain that no such law exists; thus, the President, by restricting and altogether prohibiting entry to Boracay Island, has arrogated unto himself legislative powers rightfully belonging to the Congress.[9]

The primary legal question therefore is whether there is a law which allows for a restriction on the right to travel to Boracay. If the Court finds that there is none, then this litigation should end with the grant of the petition. If, however, the Court finds that such a law exists, it must then determine whether there was a valid delegation to the President of the power to restrict travel.

I find that the President has the authority, under Republic Act No. (RA) 10121,[10] to issue the challenged Proclamation as an exercise of his power of subordinate legislation.

First, the text of the Proclamation clearly counts RA 10121 among its legal bases for the temporary closure of Boracay Island. I quote:

WHEREAS, pursuant to RA No. 10121, or the Philippine Disaster Risk Reduction and Management Act of 2010, the National Disaster Risk Reduction and Management Council has recommended the declaration of a State of Calamity in the Island of Boracay and the temporary closure of the Island as a tourist destination to ensure public safety and public health, and to assist the government in its expeditious rehabilitation, as well as in addressing the evolving socio-economic needs of affected communities;

x x x[11]

Second, RA 10121 allows for a restriction on the right to travel under certain circumstances.

The expressed legislative intention in RA 10121 was "for the development of policies and plans and the implementation of actions and measures pertaining to all aspects of disaster risk reduction and management." [12] Disaster risk reduction and management was, in turn, defined under Section 3(o) as follows:

(o) "Disaster Risk Reduction and Management" - the systematic process of using administrative directives, organizations, and operational skills and capacities to implement strategies, policies and improved coping capacities in order to lessen the adverse impacts of hazards and the possibility of disaster. Prospective disaster risk reduction and management refers to risk reduction and management activities that address and seek to avoid the development of new or increased disaster risks, especially if risk reduction policies are not put in place.[13]

Disaster risk reduction and management measures can run the gamut from disaster prevention to disaster mitigation, disaster preparedness, and disaster response, all of which are also defined under RA 10121 as follows:

Sec. 3. Definition of Terms. - For purposes of this Act, the following shall refer to:

x x x x

(h) "Disaster" - a serious disruption of the functioning of a community or a society involving widespread human, material, economic or environmental losses and impacts, which exceeds the ability of the affected community or society to cope using its own resources. Disasters are often described as a result of the combination of: the exposure to a hazard; the conditions of vulnerability that are present; and insufficient capacity or measures to reduce or cope with the potential negative consequences. Disaster impacts may include loss of life, injury, disease and other negative effects on human, physical, mental and social well-being, together with damage to property, destruction of assets, loss of services, social and economic disruption and environmental degradation.

(i) "Disaster Mitigation" - the lessening or limitation of the adverse impacts of hazards and related disasters. Mitigation measures encompass engineering techniques and hazard-resistant construction as well as improved environmental policies and public awareness.

(j) "Disaster Preparedness" - the knowledge and capacities developed by governments, professional response and recovery organizations, communities and individuals to effectively anticipate, respond to, and recover from, the impacts of likely, imminent or current hazard events or conditions. Preparedness action is carried out within the context of disaster risk reduction and management and aims to build the capacities needed to efficiently manage all types of emergencies and achieve orderly transitions from response to sustained recovery. Preparedness is based on a sound analysis of disaster risk and good linkages with early warning systems, and includes such activities as contingency planning, stockpiling of equipment and supplies, the development of arrangements for coordination, evacuation and public information, and associated training and field exercises. These must be supported by formal institutional, legal and budgetary capacities.

(k) "Disaster Prevention" - the outright avoidance of adverse impacts of hazards and related disasters. It expresses the concept and intention to completely avoid potential adverse impacts through action taken in advance such as construction of dams or embankments that eliminate flood risks, land-use regulations that do not permit any settlement in high-risk zones, and seismic engineering designs that ensure the survival and function of a critical building in any likely earthquake.

(l) "Disaster Response" - the provision of emergency services and public assistance during or immediately after a disaster in order to save lives, reduce health impacts, ensure public safety and meet the basic subsistence needs of the people affected. Disaster response is predominantly focused on immediate and short-term needs and is sometimes called "disaster relief."

x x x x[14]

Thus, within the range of disaster risk reduction and management measures can be found forced or preemptive evacuation and prohibitions against settlement in high-risk zones, both of which necessarily implicate some restriction on a person's liberty of movement to ensure public safety.

Third, in obvious recognition of its inability to "cope directly with the myriad problems"[15] attending the matter, the Congress created administrative agencies, such as the National Disaster Risk Reduction and Management Council (NDRRMC) and the Local Disaster Risk Reduction and Management Councils (LDRRMCs), to help implement the legislative policy of disaster risk reduction and management under RA 10121.

Under the law, the NDRRMC, for example, was tasked to, among others, develop a national disaster risk reduction and management framework (NDRRMF), which shall serve as "the principal guide to disaster risk reduction and management efforts in the country,"[16] advise the President on the status of disaster preparedness, recommend the declaration (and lifting) by the President of a state of calamity in certain areas, and submit proposals to restore normalcy in affected areas.[17] Under Section 25, it was also expressly tasked to come up

with "the necessary rules and regulations for the effective implementation of [the] Act."

These, to me, are evidence of a general grant of quasi-legislative power, or the power of subordinate legislation, in favor of the implementing agencies. With this power, administrative bodies may implement the broad policies laid down in a statute by "filling in" the details which the Congress may not have the opportunity or competence to provide.[18] In *Abakada Guro Party List v. Purisima*, [19] this Court explained:

Congress has two options when enacting legislation to define national policy within the broad horizons of its legislative competence. It can itself formulate the details or it can assign to the executive branch the responsibility for making necessary managerial decisions in conformity with those standards. In the latter case, the law must be complete in all its essential terms and conditions when it leaves the hands of the legislature. Thus, what is left for the executive branch or the concerned administrative agency when it formulates rules and regulations implementing the law is to fill up details (supplementary rule-making) or ascertain facts necessary to bring the law into actual operation (contingent rule-making).[20] (Citations omitted.)

This results in delegated legislation[21] which, to be valid, should not only be germane to the objects and purposes of the law; it must also conform to (and not contradict) the standards prescribed by the law.[22]

Pursuant to the broad authority given to them, the NDRRMC and the President, following standards provided under the law, thus sought to fill in the details on how the provisions of RA 10121 may be enforced, including, but not limited to, identification of: the conditions that must exist before a state of calamity can be declared; the effects of a declaration of a state of calamity;[23] the length of time the state of calamity will be enforced; the formulation and implementation of evacuation plans, including the guidelines on when, where, how, and who will be evacuated; the agency who will implement the evacuation plan; and other details.

Fourth, Proclamation No. 475 is a valid exercise of the power of subordinate legislation.

Here, after consideration of the conditions existing in the Island of Boracay,[24] the President, upon recommendation of the NDRRMC, decided to place the island under a State of Calamity.[25] This is a power expressly lodged in the President under Section 16, which reads:

Sec. 16. Declaration of State of Calamity. - The National Council shall recommend to the President of the Philippines the declaration of a cluster of barangays, municipalities, cities, provinces, and regions under a state of calamity, and the lifting thereof, based on the criteria set by the National Council. The President's declaration may warrant international humanitarian assistance as deemed necessary.

The declaration and lifting of the state of calamity may also be issued by the local sanggunian, upon the recommendation of the LDRRMC, based on the results of the damage assessment and needs analysis.

As set forth in Proclamation No. 475 itself, the conditions in the island were such that it became "necessary to implement urgent measures to address x x x human-induced hazards, to protect and promote the health and well-being of its residents, workers and tourists, and to rehabilitate the Island in order to ensure the sustainability of the area and prevent further degradation of its rich ecosystem." [26] I thus find that the avowed purpose of the Proclamation, which is "to ensure public safety and public health, and to assist the government in its expeditious rehabilitation," is unarguably germane to the object and purpose of RA 10121, which is disaster risk reduction and management.

In *The Conference of Maritime Manning Agencies, Inc. v. Philippine Overseas Employment Administration*, [27] this Court, speaking through former Chief Justice Hilario Davide, Jr., noted that the following have been held sufficient standards for purposes of subordinate legislation: "public welfare," "necessary in the interest of law and order," "public interest," "justice and equity," "public convenience and welfare," "justice and equity and

substantial merits of the case," "simplicity, economy and efficiency," and "national interest." [28] I find that the challenged action of the President conforms with the standards under RA 10121, which include public safety, public health, and disaster mitigation, among others.

Fifth, in carrying RA 10121 into effect, the implementing agencies have consistently interpreted their power to "evacuate" [29] to necessarily include the power to restrict entry into a particular place. [30] This is evident in the alarm measures and systems of a number of government instrumentalities.

In the case of impending or actual volcanic eruptions, the Philippine Institute of Volcanology and Seismology (PHIVOLCS) has established alert levels in its monitoring of active volcanoes in the country. Each level has its own set of criteria and recommended course of action to be taken, including prohibiting entry into and expanding the danger zones. [31] Likewise, depending on the declared alert level, the NDRRMC, through its local counterparts, enforces forced evacuations and prohibits entry and farming in localities found within the danger zones. [32]

In cases of tropical cyclones or typhoons, the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA) uses public storm warning signals to describe the existing meteorological condition and impact of the winds. Each signal also indicates the precautionary measures which must be undertaken and what the affected areas must do. For public storm warning signals 3 and 4, evacuation and cancellation of all travel and outdoor activities are advised. [33]

Similarly, to mitigate the effects of flooding during heavy rains, Marikina City employs a three-stage alarm level system for the Marikina River, based on the depth of water in the river below the Sto. Niño Bridge:

- Alarm Level 1 (1 minute continuous airing), when the water is 15 meters above sea level, means "prepare."
- Alarm Level 2 (2 minutes intermittent airing), when the water is 16 meters above sea level, means "evacuate."
- Alarm Level 3 (5 minute continuous airing), when the water is 18 meters above sea level, means "forced evacuation." [34]

When the river's water level rises, the local Disaster Risk Reduction and Management office uses a siren to alert surrounding communities of the current alarm level. [35]

This contemporaneous construction by the NDRRMC, the different LDRRMCs, and local government units, as well as the other agencies tasked to implement the provisions of RA 10121, of their powers ordinarily controls the construction of the courts:

The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to the accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute. In *Asturias Sugar Central, Inc. v. Commissioner of Customs*, the Court stressed that executive officials are presumed to have familiarized themselves with all the considerations pertinent to the meaning and purpose of the law, and to have formed an independent, conscientious and competent expert opinion thereon. The courts give much weight to the government agency or officials charged with the implementation of the law, their competence, expertness, experience and informed judgment, and the fact that they frequently are drafters of the law they interpret. [36]

Sixth, administrative regulations and policies enacted by administrative bodies to interpret the law which they are entrusted to enforce have the force of law and enjoy a presumption of regularity.

In *Español v. Chairman, Philippine Veterans Administration*, [37] this Court held that the Philippine Veterans

Administration's (PVA) policy—which withheld the payment of pension to beneficiaries of veterans who are already receiving pension from United States (U.S.) Veterans Administration—has in its favor a presumption of validity. Thus, the Court ruled that it was only when this administrative policy was declared invalid can petitioner be said to have a cause of action to compel the PVA to pay her monthly pension.[38]

In *Rizal Empire Insurance Group v. NLRC*,[39] petitioner's appeal was dismissed for failure to follow the "no extension policy" set forth under the Rules of the National Labor Relations Commission. According to the Court, it is an elementary rule in administrative law that administrative regulations and policies, enacted by administrative bodies to interpret the law which they are entrusted to enforce, have the force of law and are entitled to great respect.[40]

More recently, in the case of *Alfonso v. Land Bank of the Philippines*,[41] this Court held that the formulas for the computation of just compensation, being an administrative regulation issued by the Department of Agrarian Reform pursuant to its rule-making and subordinate legislation power, have the force and effect of law. "Unless declared invalid in a case where its validity is directly put in issue, courts must consider their use and application." [42]

Even in the U.S., the government agency's own reading of a statute which it is charged with administering is given deference. In *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, [43] the U.S. Supreme Court employed a two-step test in determining what standard of review should be applied in assessing the government agency's interpretation and gave deference to the latter's interpretation:

When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.[44]

Finally, since the law's enactment in 2010, there has been no attempt on the part of Congress to correct or reverse the consistent contemporaneous construction of the law by the different agencies implementing RA 10121. This is especially noteworthy considering the existence of a Congressional Oversight Committee, composed of members from both its Houses, which was created precisely to "monitor and oversee the implementation of [RA 10121]" [45] and evaluate, among others, the performance of the law's implementing agencies.[46] That this Committee has not taken steps to correct, revise, or repeal the agencies' contemporaneous construction of RA 10121's provisions further buttresses the view that the construction given by the different administrative agencies conforms to the standards and the interpretation intended by the Legislature.

In sum, I find that the President has the authority, under RA 10121, to issue the challenged Proclamation as a valid exercise of his power of subordinate legislation. With this, I vote to DISMISS the petition. The Court should decline to resolve the remaining questions raised in the petition as, and which I shall hereafter discuss, they unavoidably involve questions of fact which this Court cannot entertain and resolve.

II

Petitioners' next two remaining arguments revolve around Proclamation No. 475's alleged violation of their fundamental rights to travel and due process of law. While petitioners claim that these arguments pose questions of law, I find that they actually raise and involve underlying questions of fact.

A

Indeed, the rights to travel and due process of law are rights explicitly guaranteed under the Bill of Rights. These rights, while fundamental, are not absolute.

Section 6, Article III of the Constitution itself provides for three instances when the right to travel may be validly impaired:

Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.[47]

Even prior to the Constitution, this Court, in the 1919 case of *Rubi v. Provincial Board of Mindoro*,[48] has held that there is no absolute freedom of locomotion. The right of the individual is necessarily subject to reasonable restraint for the common good, in the interest of the public health or public order and safety. In *Leave Division, Office of Administrative Services-Office of the Court Administrator (OCA) v. Heusdens*,[49] which involved an administrative case against a court employee for failure to secure authority to travel abroad in violation of OCA Circular No. 49-2003, the Court took occasion to identify the various constitutional, statutory, and inherent limitations regulating the right to travel.

This was reiterated in *Genuino v. De Lima*,[50] where this Court invalidated Department of Justice Circular No. 41—which purported to restrict the right to travel through the issuance of hold departure and watchlist orders—for lack of legal basis.[51]

In the United States, the U.S. Supreme Court, in the case of *Zemel v. Rusk*,[52] identified circumstances which may justify the restriction on the right to travel: (1) areas ravaged by flood, fire, or pestilence can be quarantined when it can be demonstrated that unlimited travel to the area would directly and materially interfere with the safety and welfare of the area or the Nation as a whole; and (2) weightiest considerations of national security. Likewise, the case of *Alexander v. City of Gretna*[53] emphasized that compelling safety and welfare reasons, the preservation of order and safety, and health concerns can serve to justify an intrusion on the fundamental right to interstate travel. In *State v. Wright*[54] and later, in *Sim v. State Parks & Recreation*,[55] the Washington Supreme Court upheld the State Parks & Recreation Commission's authority, at reasonable times, at reasonable places, and for reasonable reasons, consistent with public safety and recreational activities, to temporarily close ocean beach highways to motor vehicular traffic.

Similarly, the right of a person to his labor is deemed to be property within the meaning of constitutional guarantees, that is, he cannot be deprived of his means of livelihood, a property right, without due process of law.[56] Nevertheless, this property right, not unlike the right to travel, is not absolute. It may be restrained or burdened, through the exercise of police power, to secure the general comfort, health, and prosperity of the State.[57] To justify such interference, two requisites must concur: (a) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State; and (b) the means employed are reasonably necessary to the attainment of the object sought to be accomplished and not unduly oppressive upon individuals. In other words, the proper exercise of the police power requires the concurrence of a lawful subject and a lawful method.[58]

B

Having established that the rights to travel and due process are not absolute, as they can in fact be validly subject to restrictions under certain specified circumstances, it seems to me that petitioners' issues against Proclamation No. 475 respecting their rights to travel and due process hinge not so much on whether said Proclamation imposes

a restriction, but whether the restrictions it imposed are reasonable.[59] Specifically, petitioners argue that: the ordered closure of Boracay Island is an extreme measure;[60] it is overly broad, oppressive, unreasonable, and arbitrary; and that there are more less restrictive and more narrowly drawn measures which the government can employ to protect the State's interest.[61]

What is "reasonable," however, is not subject to exact definition or scientific formulation. There is no all-embracing test of reasonableness;[62] its determination rests upon human judgment as applied to the facts and circumstances of each particular case.[63]

In this case, the following factual circumstances were considered, which led to the issuance of Proclamation No. 475:

- High concentration of fecal coliform due to insufficient sewer lines and illegal discharge of untreated waste water into the beach, with daily tests revealing consistent failure in compliance with acceptable water standards, with an average result of 18,000 most probable number (MPN)/100 ml, exceeding the standard level of 400 MPN/100 ml;
- Failure of most commercial establishments and residences to connect to the sewerage infrastructure of Boracay Island;
- Improper waste disposal, in violation of environmental laws, rules, and regulations;
- Majority (14 out of 51) of the establishments near the shore are not compliant with the Philippine Clean Water Act of 2004;
- Degradation of the coral reefs and coral cover of Boracay Island as a consequence of continued exposure to dirty water caused by increased tourist arrivals;
- Solid waste within Boracay Island is at a generation rate of 90 to 115 tons per day, while the hauling capacity of the local government is only 30 tons per day;
- The natural habitats of Puka shells, nesting grounds of marine turtles, and roosting grounds of flying foxes or fruit bats have been damaged and/or destroyed;
- Only four out of nine wetlands in Boracay Island remain due to illegal encroachment of structures;
- Beach erosion is prevalent in Boracay Island due to storms, extraction of sand along the beach to construct properties and structures along the foreshore, and discharge of waste water near the shore, causing degradation of coral reefs and seagrass meadows;
- Direct discharge of waste water near the shore has resulted in frequent algal bloom and coral deterioration; and
- The continuous rise of tourist arrivals, the insufficient sewer and waste management system, and environmental violations of establishments aggravate the environmental degradation and destroy the ecological balance of the Island of Boracay, resulting in major damage to property and natural resources, as well as the disruption of the normal way of life of the people therein.

After due consideration of the above, the President, upon the NDRRMC's recommendation, declared a State of Calamity in the Island of Boracay and ordered its closure as a tourist destination for a period of six months. Petitioners take issue with the reasonableness of the measures taken and seek to take the President and the implementing agencies to task on this account. Arriving at a conclusion regarding the propriety and reasonableness of the above measures, however, will necessarily require examining the factual circumstances which formed the premise for Proclamation No. 475's issuance.

Permit me to illustrate, using some of Proclamation No. 475's factual considerations.

On the high concentration of fecal coliform in the water: To prove unreasonableness, petitioners may present evidence to prove that closure, if at all, for a shorter period of time (less than six months) is needed for the water coliform level to return to acceptable standards. Evidence may also be presented to show that closure of the island as a tourist destination is not even necessary to address the insufficiency of sewer lines and illegal discharge of untreated waste water into the beach.

On the non-connection of the commercial establishments and residences to the island's sewerage infrastructure: To prove unreasonableness, petitioners may present evidence to show that closure of the island is not even necessary to connect all establishments to the existing sewerage infrastructure. Even assuming that some closure is necessary, petitioners may present evidence to show that connection may be done on a one-barangay-at-a-time basis (instead of simultaneously closing off all three barangays), and for a period shorter than six months.

On the establishments' non-compliance with the Philippine Clean Water Act: To prove unreasonableness, petitioners may present evidence that the simple issuance of notices of violation would be sufficient to compel establishments to comply with the requirements of the Act.

On the degradation of the coral reefs and coral cover in the island because of dirty water: To prove unreasonableness, petitioners may present evidence to show that the local government is unable to meet the waste generation rate in the island; that there is no rational relation between the environmental issues (such as the destruction of the natural habitats of the various animals, existence of illegal encroachments, beach erosion, and other conditions existing in the island) and the purported closure of the island to tourists for six months.

The foregoing, however, involve questions of fact which cannot be entertained by this Court. Questions of fact indispensable to the disposition of a case, as in this case, are cognizable by the trial courts; petitioners should thus have filed the petition before them. Failure to do so, in fact, is sufficient to warrant the Court's dismissal of the case.^[64]

For similar reasons, I find that the Court should also decline to resolve the fourth issue raised by petitioners, that is, whether Proclamation No. 475 violates the principle of local autonomy insofar as it orders local government units to implement the closure. Similar with the ponencia's finding, I find that, contrary to petitioners' arguments, the text of RA 10121 actually recognizes and even empowers the local government unit in disaster risk reduction and management.^[65] I also hasten to add that whether or not Proclamation No. 475 did, in fact, cause an actual intrusion into an affected local government unit's powers is still largely a question of fact. In fact, even assuming that petitioners are able to show such intrusion, again it seems to me that their issue against such would involve a question into the reasonableness of the same under the circumstances. This issue, as already shown, still involves the resolution of underlying issues of fact. For example, petitioners would have to present evidence to show, among others, that the local government unit concerned had recommended a less drastic course of action to address the situation than those taken under the Proclamation, and that this recommendation was not considered and/or actually overruled by the President and/or NDRRMC.

Petitioners cite *White Light Corporation v. City of Manila*,^[66] *Lucena Grand Central Terminal, Inc. v. JAC Liner, Inc.*,^[67] and *Metropolitan Manila Development Authority v. Viron Transportation, Co., Inc.*^[68] to demonstrate how this Court has stricken down measures which have been shown to be unreasonable and/or not the least restrictive means to pursue a particular government interest. To my mind, however, none of the foregoing cases are useful to further petitioners' cause. Rather than justify direct resort pursuant to this Court's original jurisdiction over certain cases, the foregoing cases all the more highlight the necessity of following the hierarchy of courts.

In *White Light Corporation*, the validity of Manila City Ordinance No. 7774, entitled "An Ordinance Prohibiting Short-Time Admission, Short-Time Admission Rates, and Wash-Up Rate Schemes in Hotels, Motels, Inns, Lodging Houses, Pension Houses, and Similar Establishments in the City of Manila," was challenged on the ground that it violated sacred constitutional rights to liberty, due process, and equal protection of law.

In *Lucena Grand Central Terminal, Inc.*, the constitutionality of City Ordinance Nos. 1631 and 1778—which granted a franchise to petitioner and regulated entrance into the city, respectively—was challenged on the ground that they constituted an invalid exercise of police power, an undue taking of private property, and a violation of the constitutional prohibition against monopolies.

In *Metropolitan Manila Development Authority (MMDA)*, petitioners therein questioned the MMDA's authority to order the closure of provincial bus terminals along Epifanio de los Santos Avenue and major thoroughfares of Metro Manila.

It appears to escape petitioners' notice that while the above cases did involve constitutional challenges, none involved a direct recourse to this Court. The challenges were initially filed before the RTC, who had the first opportunity to evaluate and resolve the same, after the parties were able to thresh out the factual issues, enter into stipulations, or agree on the conduct of proceedings. By so doing, by the time the cases reached this Court, only questions of law remained to be settled.[69] This, to my mind, results in a more judicious use of the Court's limited time and resources. A strict observance of the rule on hierarchy of courts would save the Court from having to resolve factual questions (which, in the first place, it is ill-equipped to do, much less in the first instance) and enable it to focus on the more fundamental tasks assigned to it under the Constitution.

C

It is beyond dispute that the rights to travel and to due process of law are fundamental.[70] This is significant because, traditionally, liberty interests are protected only against arbitrary government interference, that is, a claim to a liberty interest may fail upon a showing by the government of a rational basis to believe that its interference advances a legitimate legislative objective.[71] Where, however, a liberty interest has been accorded an "elevated" fundamental right status, the government is subject to a higher burden of proof to justify intrusions into these interests, namely, the requirements of strict scrutiny in equal protection cases[72] and that of compelling state interest in due process cases.[73]

In his Concurring Opinion in *Estrada v. Sandiganbayan*,[74] Justice Vicente Mendoza wrote:

Petitioner cites the dictum in *Ople v. Torres* that "when the integrity of a fundamental right is at stake, this Court will give the challenged law, administrative order, rule or regulation stricter scrutiny" and that "It will not do for authorities to invoke the presumption of regularity in the performance of official duties." As will presently be shown, "strict scrutiny," as used in that decision, is not the same thing as the "strict scrutiny" urged by petitioner. Much less did this Court rule that because of the need to give "stricter scrutiny" to laws abridging fundamental freedoms, it will not give such laws the presumption of validity.[75]

Similarly, mere invocation of a fundamental right, or an alleged restriction thereof, would not operate to excuse a pleader from proving his case. Lest petitioners forget, Proclamation No. 475, issued by the President pursuant to his power of subordinate legislation under RA 10121, enjoys the presumption of constitutionality and legality. To overcome this, facts establishing invalidity must be proven through the presentation of evidence. In *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*,[76] citing *O'Gorman & Young v. Hartford Fire Insurance Co.*,[77] this Court stressed:

It admits of no doubt therefore that there being a presumption of validity the necessity for evidence to rebut it

is unavoidable, unless the statute or ordinance is void on its [face,] which is not the case here. The principle has been nowhere better expressed than in the leading case of *O'Gorman & Young v. Hartford Fire Insurance Co.*, where the American Supreme Court through Justice Brandeis tersely and succinctly summed up the matter thus:

The statute here questioned deals with a subject clearly within the scope of the police power. We are asked to declare it void on the ground that the [specific] method of regulation prescribed is unreasonable and hence deprives the plaintiff of due process of law. As underlying questions of fact may condition the constitutionality of legislation of this character, the presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute.

No such factual foundation being laid in the present case, the lower court deciding the matter on the pleadings and the stipulation of [facts], the presumption of validity must prevail and the judgment against the ordinance set aside.[78]

Thus, and until it is set aside with finality in an appropriate case by a competent court,[79] Proclamation No. 475 has the force and effect of law and must be enforced accordingly. The burden of proving its unconstitutionality rests on the party assailing the governmental regulations and administrative issuances.[80]

More importantly, the doctrine of hierarchy of courts requires that factual questions first be submitted to trial courts who are more properly equipped to receive evidence on, and ultimately resolve, issues of fact. Where, as in this case, the resolution of the issue on constitutionality requires the determination and evaluation of extant factual circumstances, this Court should decline to exercise its original jurisdiction and, instead, reserve judgment until such time that the question is properly brought before it on appeal.

For all the foregoing reasons, I vote to DISMISS the petition.

[1] Rollo, p. 6.

[2] CONSTITUTION, Art. VIII, Sec. 5(1); and Sections 9(1) and 21(1) of Batas Pambansa Bilang 129, otherwise known as The Judiciary Reorganization Act of 1980.

[3] Third paragraph, Sec. 18, Art. VII of the Constitution provides:

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ [of habeas corpus] or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

[4] Sec. 2, Rule 3 of the Internal Rules of the Supreme Court (A.M. No. 10-4-20-SC). See *Mafinco Trading Corporation v. Ople*, G.R. No. L-37790, March 25, 1976, 70 SCRA 139, 161.

[5] *Vergara, Sr. v. Suelto*, G.R. No. L-74766, December 21, 1987, 156 SCRA 753, 766.

[6] I find that petitioners have legal standing to file the present suit. In *Agan, Jr. v. Philippine International Air Terminals Co., Inc.* (G.R. Nos. 155001, 155547, & 155661, May 5, 2003, 402 SCRA 612), an interest to protect oneself from financial prejudice and loss of source of income has been held sufficient to confer petitioners therein with legal standing to challenge the contracts of Philippine International Air Terminals Co., Inc. Here, Zabal and Jacosalem have shown that with the closure of Boracay Island, they are also in imminent danger of losing their sources of income, as sandcastle maker and tourist driver, respectively, operating in the said island.

Similarly, and consistent with this Court's ruling in *Samahan Ng Mga Progresibong Kabataan (SPARK) v. Quezon City* (G.R. No. 225442, August 8, 2017), I find that petitioner Bandiola also has legal standing to raise the

issue affecting the right to travel insofar as he has alleged that he is a non-resident who will no longer be allowed entry to Boracay Island beginning April 26, 2018.

[7] Rollo, pp. 4, 58.

[8] *Id.* at 14-17, 58.

[9] *Id.* at 20, 75-76, 78.

[10] Otherwise known as the Philippine Disaster Risk Reduction and Management Act of 2010.

[11] Emphasis and underscoring supplied.

[12] Sec. 4 of RA 10121. Emphasis supplied.

[13] Emphasis and underscoring supplied.

[14] Emphasis and underscoring supplied.

[15] *Eastern Shipping Lines, Inc. v. POEA*, G.R. No. L-76633, October 18, 1988, 166 SCRA 533, 544.

[16] Sec. 6(a) of RA 10121.

[17] Sections 6(c) and 16 of RA 10121.

[18] *The Conference of Maritime Manning Agencies, Inc. v. Philippine Overseas Employment Administration*, G.R. No. 114714, April 21, 1995, 243 SCRA 666, 674, citing *Eastern Shipping Lines, Inc. v. POEA*, *supra*.

[19] G.R. No. 166715, August 14, 2008, 562 SCRA 251. On filling in the details, see *Holy Spirit Homeowners Association, Inc. v. Defensor*, G.R. No. 163980, August 3, 2006, 497 SCRA 581, 600. On ascertaining facts, see *Irene R. Cortes, Philippine Administrative Law: Cases and Materials*, Revised 2nd edition, 1984, p. 117, citing *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935), *Cruz v. Youngberg*, 56 Phil. 234 (1931), and *Lovina v. Moreno*, G.R. No. 17821, November 29, 1963, 9 SCRA 557.

[20] *Id.* at 288.

[21] *Bellosillo, J., Separate Opinion, Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 119761, August 29, 1996, 261 SCRA 236, 256. Also cited in *Smart Communications, Inc. (SMART) v. National Telecommunications Commission (NTC)*, G.R. Nos. 151908 & 152063, August 12, 2003, 408 SCRA 678, 686.

[22] *Smart Communications, Inc. (SMART) v. National Telecommunications Commission (NTC)*, *supra* at 686-687.

[23] Note that Section 17 of RA 10121 provides that a declaration of a state of calamity shall make mandatory the immediate undertaking of four remedial measures. The law, however, does not expressly limit to these four remedial measures the effects and consequences of declaring an area in a state of calamity.

[24] Including high concentration of fecal coliform in the beaches, degradation of nearby coral reefs and coral cover, disproportionate level between generation of solid waste and capacity to haul/dispose, destruction of the natural habitats of animals endemic to the island, and other environmental degradation.

[25] Under Section 3(II) of RA 10121, a State of Calamity is defined thus:

(II) "State of Calamity" - a condition involving mass casualty and/or major damages to property, disruption of means of livelihoods, roads and normal way of life of people in the affected areas as a result of the occurrence of natural or human-induced hazard.

[26] [10[th]] WHEREAS Clause, Proclamation No. 475.

[27] Supra note 18.

[28] Id. at footnote 13. Citations omitted.

[29] "Evacuate" means "to remove from some place in an organized way, especially as a protective measure" or "to remove inhabitants of a place or area," Webster's Third New International Dictionary of the English Language Unabridged (1993), p. 786.

[30] Under Section 11(b)(3) of RA 10121, local governments, through the recommendation of the NDRRMC's local counterparts, may issue pre-emptive and forced evacuation orders. See National Disaster Preparedness Plan.

See <https://lga.gov.ph/media/uploads/2/Publications%20PDF/Book/NDPP%20Vol%201.pdf>, last accessed January 22, 2019. For an illustration of a local government unit's evacuation guideline; see also https://www.academia.edu/23793398/EO_No._10_Forced_Evac, last accessed January 22, 2019.

[31] See <https://www.phivolcs.dost.gov.ph/index.php/volcano-hazard/volcano-alert-level>, last accessed January 2, 2019.

[32] NDRRMC Update SitRep No. 18 re: Mayan Volcano Eruption. See: <http://webcache.googleusercontent.com/search?q=cache:> http://www.ndrrmc.gov.ph/attachments/article/3293/SitRep_No._18_re_Mayon_Volcano_Eruption_as_of_27JAN2018_8AM.pdf, last accessed November 25, 2018.

[33] See <https://www1.pagasa.dost.gov.ph/index.php/20-weather>, last accessed February 12, 2019.

[34] See <https://www.rappler.com/move-ph/issues/disasters/181894-guide-marikina-river-alarm-level-system>, last accessed December 27, 2018.

[35] Id.

[36] Energy Regulatory Board v. Court of Appeals, G.R. Nos. 113079 & 114923, April 20, 2001, 357 SCRA 30, 40, citing Nestle Philippines, Inc. v. Court of Appeals, G.R. No. 86738, November 13, 1991, 203 SCRA 504, 510-511, citing In re Allen, 2 Phil. 630 (1903).

[37] G.R. No. L-44616, June 29, 1985, 137 SCRA 314.

[38] Id. at 319.

[39] G.R. No. L-73140, May 29, 1987, 150 SCRA 565.

[40] Id. at 568-569.

[41] G.R. Nos. 181912 & 183347, November 29, 2016, 811 SCRA 27.

[42] Id. at 74-75. Citation omitted.

[43] 467 U.S. 837 (1984).

[44] Id. See also City of Arlington, Texas, et al. v. Federal Communications Commission, et al., 569 U.S. 290 (2013).

[45] Sec. 26. Congressional Oversight Committee. - There is hereby created a Congressional Oversight Committee to monitor and oversee the implementation of the provisions of this Act. The Committee shall be

composed of six (6) members from the Senate and six (6) members from the House of Representatives with the Chairpersons of the Committees on National Defense and Security of both the Senate and the House of Representatives as joint Chairpersons of this Committee. The five (5) other members from each Chamber are to be designated by the Senate President and the Speaker of the House of Representatives, respectively. The minority shall be entitled to pro rata representation but shall have at least two (2) representatives from each Chamber.

[46] Sec. 27. Sunset Review. -Within five (5) years after the effectivity of this Act, or as the need arises, the Congressional Oversight Committee shall conduct a sunset review. For purposes of this Act, the term "sunset review" shall mean a systematic evaluation by the Congressional Oversight Committee of the accomplishments and impact of this Act, as well as the performance and organizational structure of its implementing agencies, for purposes of determining remedial legislation.

[47] Emphasis and underscoring supplied.

[48] 39 Phil. 660 (1919).

[49] A.M. No. P-11-2927, December 13, 2011, 662 SCRA 126, 134-135.

[50] G.R. 197930, April 17, 2018.

[51] In this case, the Court stressed that, in addition to the three considerations provided under the Constitution, there must also be an explicit provision of statutory law which provides for the impairment of the right to travel.

[52] 381 U.S. 1 (1965).

[53] 2008 U.S. Dist. LEXIS 109090, December 3, 2008.

[54] 84 Wn. 2d 645, December 12, 1974.

[55] 94 Wn. 2d 552, October 16, 1980.

[56] Phil. Movie Pictures Workers' Assn. v. Premiere Productions, Inc., 92 Phil. 843 (1953). See also JMM Promotion Management, Inc. v. Court of Appeals, G.R. No. 120095, August 5, 1996, 260 SCRA 319, 330.

[57] United States v. Gomez Jesus, 31 Phil. 218 (1915).

[58] Southern Luzon Drug Corporation v. The Department of Social Welfare and Development, G.R. No. 199669, April 25, 2017.

[59] Mirasol v. Department of Public Works and Highways, G.R. No. 158793, June 8, 2006, 490 SCRA 318, 349.

[60] Rollo, pp. 83-84.

[61] Id. at 20, 22-25, 82, 84-85, 89.

[62] Mirasol v. Department of Public Works and Highways, *supra* at 348, citing City of Raleigh v. Norfolk Southern Railway.Co., 165 S.E.2d 745 (1969).

[63] Id., citing Board of Zoning Appeals of Decatur v. Decatur, Ind. Co. of Jehovah's Witnesses, 117 N.E.2d 115 (1954). Italics supplied.

[64] Chamber of Real Estate and Builders Associations, Inc. (CREBA) v. Secretary of Agrarian Reform, G.R. No. 183409, June 18, 2010, 621 SCRA 295, 312; Mangaliag v. Catubig-Pastoral, G.R. No. 143951, October 25, 2005, 474 SCRA 153, 161-162.

[65] Ponencia, pp. 26-27.

[66] G.R. No. 122846, January 20, 2009, 576 SCRA 416.

[67] G.R. No. 148339, February 23, 2005, 452 SCRA 174.

[68] G.R. No. 170656, August 15, 2007, 530 SCRA 341.

[69] In *White Light Corporation*, the parties agreed to submit the case for decision without trial as the case involved a purely legal question; in *Lucena Grand Central Terminal, Inc.*, the parties agreed to dispense with the presentation of evidence and to submit the case for resolution solely on the basis of the pleadings filed; and in *Metropolitan Manila Development Authority*, the parties limited the issues, entered into stipulations, and agreed to file their respective position papers in lieu of hearings.

[70] See *Samahan Ng Mga Progresibong Kabataan (SPARK) v. Quezon City*, G.R. No. 225442, August 8, 2017 and *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, G.R. No. 148208, December 15, 2004, 446 SCRA 299.

[71] David Crump, "How do the Courts Really Discover Unenumerated Fundamental Rights? Cataloguing the Methods of Judicial Alchemy," 19 Harv. J. L. & Pub. Pol'y 795 (1996), pp. 799-800.

[72] See *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, *supra* at footnote 16.

[73] See *Obergefell v. Hodges*, 576 U.S. (2015), footnote 19.

[74] G.R. No. 148560, November 19, 2001, 369 SCRA 394.

[75] *Id.* at 461-462. Citations omitted. Emphasis supplied.

[76] G.R. No. L-24693, July 31, 1967, 20 SCRA 849.

[77] 282 U.S. 251 (1931).

[78] *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, *supra*. (Emphasis supplied.) See also *Agustin v. Edu*, G.R. No. L-49112, February 2, 1979, 88 SCRA 195; Justice Teodoro R. Padilla's Separate Opinion in *Guazon v. De Villa*, G.R. No. 80508, January 30, 1990, 181 SCRA 623; and the US case of *Nashville, C. & St. LR Co. v. Walters*, 294 U.S. 405 (1935).

[79] *Abakada Guro Party List v. Purisima*, *supra* note 19 at 289.

[80] *Mirasol v. Department of Public Works and Highways*, G.R. No. 158793, June 8, 2006, 490 SCRA 318, 348.

DISSENTING OPINION

CAGUIOA, J.:

"As one great furnace flamed, yet from those flames
No light, but rather darkness visible." [1]

On April 26, 2018, President Rodrigo R. Duterte issued Proclamation No. 475 [2] (Proclamation 475), declaring a

state of calamity in the island of Boracay and ordering its temporary closure for a maximum of six months.

Petitioners Mark Anthony Zabal (Zabal) and Thiting Estoso Jacosalem (Jacosalem), residents and workers in Boracay, filed the present Petition to assail the temporary closure of the island. They are joined herein by petitioner Odon Bandiola (Bandiola), a regular visitor of Boracay for business and pleasure.

Together, petitioners claim that Proclamation 475 is unconstitutional as it constitutes an invalid exercise of legislative power which places undue restrictions on their constitutional rights to travel and due process.

The ponencia denies the Petition, and affirms the validity of Proclamation 475, viewing it as an executive measure which does not pose an actual impairment on the right to travel and due process.[3] Moreover, the ponencia is of the view that even if Proclamation 475 were to be construed as restrictive of these fundamental rights, its issuance remains justified as a reasonable exercise of police power occasioned by the pressing state of Boracay island.[4]

The judicial confirmation of Proclamation 475's purported validity comes after Boracay's re-opening. The temporary closure has come to an end; its decreed rehabilitation now complete. It appears that the proverbial ship has now sailed, as "paradise" appears to have been restored. Its restoration, however, has been forged at great expense — the indiscriminate impairment of fundamental rights.

I cannot, in conscience, give my imprimatur to yet another constitutional shortcut. In a democratic state governed by the rule of law, fundamental rights cannot be traded in exchange for the promise of paradise. Without question, under the rule of law, the end does not, and can never ever, justify the means.

I register my dissent not because I refuse to acknowledge the serious problems that Boracay has faced. On the contrary, I recognize that there was a problem; a disaster that, in fact, needed action. The necessity for action did not, however, justify the measures which the Executive chose to take.

Our country's form of government – democratic, republican, and presidential – characterized by separation, coordination, and the interdependence of its branches, has long been criticized for having burdensome processes that slow down program execution, particularly, in the realm of disaster response. However, as long as this form of government is in place, and so long as our Constitution subscribes to the ideals of separation of powers, no shortcuts of any kind may or should be allowed. I find Proclamation 475 unconstitutional. It finds absolutely no basis in law, and unduly permits the consequent impairment of the rights to travel and due process by executive fiat.

Thus, I am impelled to dissent upon the insistence that the Constitution must be, at all times, respected. As the bedrock of our civil society, the Constitution deserves no less.

The constitutional right to travel

The right to travel is a chief element of the constitutional guarantee of liberty which was first introduced by the Congress of the United States to the Philippines during the early days of the American regime.[5]

In *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*[6] (*Spark*), the Court held that the right to travel refers to "the right to move freely from the Philippines to other countries or within the Philippines" and covers, among others, "the power of locomotion".[7] In the simplest of terms, it is the freedom to move where one chooses to go.

As a fundamental constitutional right, the protection afforded by the right to travel inures to every citizen. The provision granting such right is self-executing; its exercise is not contingent upon further legislation governing its enforcement.[8]

The same does not hold true, however, with respect to the right's impairment.

Section 6, Article III of the Constitution is clear — the right to travel may only be restricted by law

The impairment of the right to travel, while permissible, is subject to the strict requirements set forth under Section 6, Article III of the Constitution, thus:

Section 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law. (Emphasis supplied)

The import of the provision is crystal clear — the right to travel may only be impaired in the interest of national security, public safety or public health, on the basis of a law explicitly providing for the impairment.

Expounding on these parameters, the Court, in *Genuino v. De Lima*[9] (*Genuino*), unequivocally held:

Clearly, under the provision, there are only three considerations that may permit a restriction on the right to travel: national security, public safety or public health. As a further requirement, there must be an explicit provision of statutory law or the Rules of Court providing for the impairment. The requirement for a legislative enactment was purposely added to prevent inordinate restraints on the person's right to travel by administrative officials who may be tempted to wield authority under the guise of national security, public safety or public health. This is in keeping with the principle that ours is a government of laws and not of men and also with the canon that provisions of law limiting the enjoyment of liberty should be construed against the government and in favor of the individual.

The necessity of a law before a curtailment in the freedom of movement may be permitted is apparent in the deliberations of the members of the Constitutional Commission. In particular, Fr. Joaquin Bernas, in his sponsorship speech, stated thus:

On Section 5, in the explanation on page 6 of the annotated provisions, it says that the phrase "and changing the same" is taken from the 1935 version; that is, changing the abode. The addition of the phrase WITHIN THE LIMITS PRESCRIBED BY LAW ensures that, whether the rights be impaired on order of a court or without the order of a court, the impairment must be in accordance with the prescriptions of law; that is, it is not left to the discretion of any public officer.[10] (Emphasis and underscoring supplied)

The requirement of a law authorizing the curtailment of the right to travel is, to repeat, crystal clear — any restriction imposed upon such right in the absence of the law, whether through a statute enacted through the legislative process, or provided in the Constitution itself,[11] necessarily renders the restriction null and void.

Proclamation 475 poses an actual restriction on the right to travel

The dismissal of the Petition is primarily grounded on the premise that any effect which Proclamation 475 may have on the right to travel is "merely corollary to the closure of Boracay," and as such, a necessary incident of the island's rehabilitation.[12] This premise gives rise to the conclusion that Proclamation 475 need not comply with the requirements set forth under Section 6, Article III, as its effect on the right to travel is only indirect and merely incidental.

I disagree.

The requirements under the Constitution are spelled out in clear and absolute terms — neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law. The provision does not distinguish between measures that directly restrict the right to travel and those which do so indirectly, in the furtherance of another State purpose. *Ubi lex non distinguit, nec nos distinguere debemus.*

This interpretation is grounded on the text of the Constitution and finds basis in case law both here and in the United States.

In *Shapiro v. Thompson*[13] (*Shapiro*), the Supreme Court of the United States (SCOTUS) was confronted with a constitutional challenge against certain statutory provisions enacted in Connecticut, Pennsylvania and the District of Columbia (D.C). The assailed provisions denied welfare assistance to applicants who have not resided in the cities' respective jurisdictions for at least a year immediately preceding the filing of their applications. These provisions, according to the appellants therein, had been crafted as "a protective device to preserve the fiscal integrity of state public assistance programs." [14]

Resolving the case, SCOTUS ruled that the assailed provisions violate the constitutional guarantee of interstate movement, among others, insofar as they create classifications which effectively penalize the exercise of the right to travel,[15] thus:

We do not doubt that the one-year waiting period device is well suited to discourage the influx of poor families in need of assistance. An indigent who desires to migrate, resettle, find a new job, and start a new life will doubtless hesitate if he knows that he must risk making the move without the possibility of falling back on state welfare assistance during his first year of residence, when his need may be most acute. But the purpose of inhibiting migration by needy persons into the State is constitutionally impermissible.

This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement. x x x

x x x x

Thus, the purpose of deterring the in-migration of indigents cannot serve as justification for the classification created by the one-year waiting period, since that purpose is constitutionally impermissible. If a law has "no other purpose . . . than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it [is] patently unconstitutional." [16] (Citations omitted)

Following *Shapiro*, SCOTUS handed down its decision in *Attorney General of New York v. Soto-Lopez*[17] (*Soto-Lopez*), holding that "[a] state law implicates the right to travel when it actually deters such travel, x x x [whether] impeding travel is its primary objective, x x x or when it uses 'any classification which serves to penalize the exercise of that right.'" [18] *Soto-Lopez* involved a challenge against the employment preference afforded by the New York Constitution and Civil Service Law to New York resident-veterans honorably discharged from the Armed Forces.[19]

More recently, in *State of Ohio v. Burnett*[20] (*Burnett*), the Supreme Court of Ohio was confronted with an action questioning the validity of a Cincinnati ordinance which established "drug-exclusion zones" within the city for the purpose of controlling drug-related activity in the area. These zones were identified as those where the number of drug-related arrests were significantly higher than other similarly situated and sized areas of the city. The establishment of these zones had the incidental effect of prohibiting persons from entering the zones within a specified "exclusion period" upon the threat of arrest for criminal trespass. Thus, the Cincinnati ordinance was questioned for being violative of the right to travel, among others.

While conceding that the Cincinnati ordinance had been grounded on a compelling state interest, the Ohio Supreme Court nevertheless ruled that it had the incidental effect of "unconstitutionally burdening" the right to travel.[21] Hence, the Supreme Court of Ohio held:

Cincinnati asserts that the purposes of Chapter 755 are "restoring the quality of life and protecting the health, safety, and welfare of citizens using the public ways" in drug-exclusion zones and "allowing the public to use

and enjoy the facilities in such areas without interference arising from illegal drug abuse and/or illegal drug abuse related crimes." We agree with the city that these asserted interests are compelling. The destruction of some neighborhoods by illegal drug activity has created a crisis of national magnitude, and governments are justified in attacking the problem aggressively. When legislation addressing the drug problem infringes certain fundamental rights, however, more than a compelling interest is needed to survive constitutional scrutiny. The statute must also be narrowly tailored to meet the compelling interest. It is our opinion that while Chapter 755 is justified by a compelling interest, it fails constitutional analysis because the ordinance is not narrowly tailored to restrict only those interests associated with illegal drug activity, but also restricts a substantial amount of innocent conduct. (Citations omitted; emphasis supplied)

Though these cases are not binding in this jurisdiction, the Court has regarded American case law as a rich source of persuasive jurisprudence^[22] that may guide the bench.

That said, the Court need not look beyond its own jurisprudence to find the answers that it seeks.

In the recent case of *Spark*, the Court characterized curfew ordinances as restrictive of minors' right to travel, albeit imposed primarily for the interest of public safety, particularly the promotion of juvenile safety and prevention of juvenile crime.^[23] To stress anew, the Court therein referred to the right to travel as "the right to move freely from the Philippines to other countries or within the Philippines," and a "right embraced within the general concept of liberty" which, in turn, includes "the power of locomotion and the right of citizens to be free to use their faculties in lawful ways and to live and work where they desire or where they can best pursue the ends of life."^[24]

The afore-cited cases tell us that measures which impede the right to travel in furtherance of other state interests, whether impermissible (as in *Shapiro*) or even permissible (as in *Burnett and Spark*), are treated in the same manner as those which directly restrict the right.

The foregoing cases, taken together with the text of the Constitution, unequivocally negate the assertion that Proclamation 475 does not cause a substantive impairment on the right to travel so as to exempt it from the requirements set forth in Section 6, Article III.

In this regard, I disagree with the contention that the effect of the closure of Boracay on a person's ability to travel is merely incidental in nature; hence, conceptually remote from the right's proper sense. To my mind, that an assailed government act only indirectly or incidentally affects a constitutional right is inconsequential as any impairment of constitutionally-protected rights must strictly comply with the mandate of the Constitution. As held in *Genuino*:

The DOJ would however insist that the resulting infringement of liberty is merely incidental, together with the consequent inconvenience, hardship or loss to the person being subjected to the restriction and that the ultimate objective is to preserve the investigative powers of the DOJ and public order. It posits that the issuance ensures the presence within the country of the respondents during the preliminary investigation. Be that as it may, no objective will ever suffice to legitimize desecration of a fundamental right. To relegate the intrusion as negligible in view of the supposed gains is to undermine the inviolable nature of the protection that the Constitution affords.^[25] (Emphasis supplied)

As well, Proclamation 475 cannot be likened to government regulations that amount to the "cordoning-off" of areas ravaged by calamities, where access by people thereto may be prohibited pursuant to public safety considerations. This is because local government units are already explicitly authorized under the Local Government Code to close down roads for such purpose, to wit:

Section 21. Closure and Opening of Roads. — (a) A local government unit may, pursuant to an ordinance,

permanently or temporarily close or open any local road, alley, park, or square falling within its jurisdiction: Provided, however, That in case of permanent closure, such ordinance must be approved by at least two-thirds (2/3) of all the members of the sanggunian, and when necessary, an adequate substitute for the public facility that is subject to closure is provided.

x x x x

(c) Any national or local road, alley, park, or square may be temporarily closed during an actual emergency, or fiesta celebrations, public rallies, agricultural or industrial fairs, or an undertaking of public works and highways, telecommunications, and waterworks projects, the duration of which shall be specified by the local chief executive concerned in a written order: x x x (Emphasis supplied)

Thus, I submit that the present case cannot be likened to a "cordonning-off" situation, considering that the latter actually complies with Section 6, Article III, i.e., that the restriction be grounded on either national security, public safety or public health, and that the restriction be provided by law. Accordingly, I maintain my position that the resolution of this case hinges on the right to travel.

There is no law which grants the President any form of police power so as to authorize the impairment of the right to travel during a state of calamity

The ponencia alternatively holds that the issuance of Proclamation 475 is valid as a police power measure. It cites Republic Act No. (RA) 10121 and RA 9275 as statutory bases for the validity of the proclamation.

The ponencia, as well as respondents, rely on the provisions of RA 10121 which empower the National Disaster Risk Reduction and Management Council (NDRRMC) to recommend to the President the declaration of state of calamity. In particular, they cite the following provisions:

SEC. 6. Powers and Functions of the NDRRMC. — The National Council, being empowered with policy-making, coordination, integration, supervision, monitoring and evaluation functions, shall have the following responsibilities:

x x x x

(c) Advise the President on the status of disaster preparedness, prevention, mitigation, response and rehabilitation operations being undertaken by the government, CSOs, private sector, and volunteers; recommend to the President the declaration of a state of calamity in areas extensively damaged; and submit proposals to restore normalcy in the affected areas, to include calamity fund allocation;

x x x

SEC. 16. Declaration of State of Calamity. — The National Council shall recommend to the President of the Philippines the declaration of a cluster of barangays, municipalities, cities, provinces, and regions under a state of calamity, and the lifting thereof, based on the criteria set by the National Council. x x x

From the foregoing provisions, the ponencia argues that "the statutes from which [Proclamation 475] draws authority and the constitutional provisions which serve as its framework are primarily concerned with the environment and health, safety, and well-being of the people, the promotion and securing of which are clearly legitimate objectives of governmental efforts and regulations." [26] The ponencia then concludes that Proclamation 475 is a valid police power measure.

I differ.

First, the afore-cited provisions of RA 10121 only empower the NDRRMC to recommend to the President the declaration of a "state of calamity" and submit to him "proposals to restore normalcy in the affected areas." In

turn, the actions or programs to be undertaken by the President during a state of calamity, to be valid, must still be within the powers granted to him under the Constitution and other laws.

To be sure, there is absolutely nothing in RA 10121 from which it could reasonably be inferred that the law empowers the NDRRMC or the President to close an entire island. In fact, RA 10121 does not even refer to the President, except in connection with the declaration of a state of calamity in Section 16, quoted above.

Parenthetically, it should be emphasized that, under RA 10121, a "state of calamity" only authorizes the President to impose the following remedial measures:

- (a) Imposition of price ceiling on basic necessities and prime commodities by the President upon the recommendation of the implementing agency as provided for under Republic Act No. 7581, otherwise known as the "Price Act", or the National Price Coordinating Council;
- (b) Monitoring, prevention and control by the Local Price Coordination Council of overpricing/profitteering and hoarding of prime commodities, medicines and petroleum products;
- (c) Programming/reprogramming of funds for the repair and safety upgrading of public infrastructures and facilities; and
- (d) Granting of no-interest loans by government financing or lending institutions to the most affected section of the population through their cooperatives or people's organizations.[27]

The very narrow scope of the President's powers during a state of calamity as declared in accordance with RA 10121 becomes more apparent when placed in contrast with those granted by the statute in favor of the NDRRMC.

The powers and prerogatives of the NDRRMC are detailed under RA 10121 as follows:

SEC. 6. Powers and Functions of the NDRRMC. — The National Council, being empowered with policy-making, coordination, integration, supervision, monitoring and evaluation functions, shall have the following responsibilities:

- (a) Develop a NDRRMF which shall provide for a comprehensive, all-hazards, multi-sectoral, inter-agency and community-based approach to disaster risk reduction and management. The Framework shall serve as the principal guide to disaster risk reduction and management efforts in the country and shall be reviewed on a five (5)-year interval, or as may be deemed necessary, in order to ensure its relevance to the times;
- (b) Ensure that the NDRRMP is consistent with the NDRRMF;
- (c) Advise the President on the status of disaster preparedness, prevention, mitigation, response and rehabilitation operations being undertaken by the government, CSOs, private sector, and volunteers; recommend to the President the declaration of a state of calamity in areas extensively damaged; and submit proposals to restore normalcy in the affected areas, to include calamity fund allocation;
- (d) Ensure a multi-stakeholder participation in the development, updating, and sharing of a Disaster Risk Reduction and Management Information System and Geographic Information System-based national risk map as policy, planning and decision-making tools;
- (e) Establish a national early warning and emergency alert system to provide accurate and timely advice to national or local emergency response organizations and to the general public through diverse mass media to include digital and analog broadcast, cable, satellite television and radio, wireless communications, and landline communications;
- (f) Develop appropriate risk transfer mechanisms that shall guarantee social and economic protection and

increase resiliency in the face of disaster;

(g) Monitor the development and enforcement by agencies and organizations of the various laws, guidelines, codes or technical standards required by this Act;

(h) Manage and mobilize resources for disaster risk reduction and management including the National Disaster Risk Reduction and Management Fund;

(i) Monitor and provide the necessary guidelines and procedures on the Local Disaster Risk Reduction and Management Fund (LDRRMF) releases as well as utilization, accounting and auditing thereof;

(j) Develop assessment tools on the existing and potential hazards and risks brought about by climate change to vulnerable areas and ecosystems in coordination with the Climate Change Commission;

(k) Develop vertical and horizontal coordination mechanisms for a more coherent implementation of disaster risk reduction and management policies and programs by sectoral agencies and LGUs;

(l) Formulate a national institutional capability building program for disaster risk reduction and management to address the specific weaknesses of various government agencies and LGUs, based on the results of a biennial baseline assessment and studies;

(m) Formulate, harmonize, and translate into policies a national agenda for research and technology development on disaster risk reduction and management;

(n) In coordination with the Climate Change Commission, formulate and implement a framework for climate change adaptation and disaster risk reduction and management from which all policies, programs, and projects shall be based;

(o) Constitute a technical management group composed of representatives of the abovementioned departments, offices, and organizations, that shall coordinate and meet as often as necessary to effectively manage and sustain national efforts on disaster risk reduction and management;

(p) Task the OCD to conduct periodic assessment and performance monitoring of the member-agencies of the NDRRMC, and the Regional Disaster Risk Reduction and Management Councils (RDRRMCs), as defined in the NDRRMP; and

(q) Coordinate or oversee the implementation of the country's obligations with disaster management treaties to which it is a party and see to it that the country's disaster management treaty obligations be incorporated in its disaster risk reduction and management frameworks, policies, plans, programs and projects.

x x x x

Section 15. Coordination During Emergencies. — The LDRRMCs shall take the lead in preparing for, responding to, and recovering from the effects of any disaster based on the following criteria:

(a) The BDC, if a barangay is affected;

(b) The city/municipal DRRMCs, if two (2) or more barangays are affected;

(c) The provincial DRRMC, if two (2) or more cities/municipalities are affected;

(d) The regional DRRMC, if two (2) or more provinces are affected; and

(e) The NDRRMC, if two (2) or more regions are affected.

RA 10121 likewise established Local Disaster Risk Reduction and Management Councils/Offices (LDRRMCs/LDRRMOs) in every province, city, and municipality in the country, which are "responsible for

setting the direction, development, implementation and coordination of disaster risk management programs within their [respective] territorial jurisdiction[s]."[28] Specifically, LDRRMOs are empowered to, among others, (i) identify, assess, and manage the hazards, vulnerabilities and risks that may occur in their locality;[29] (ii) identify and implement cost-effective risk reduction measures/strategies;[30] and (iii) respond to and manage the adverse effects of emergencies and carry out recovery activities in the affected area.[31]

Notably, majority of those who compose the LDRRMCs are officials of local government units[32] (LGUs) over whom the President only exercises supervision, instead of control.[33] Restated, it is very clear that the intent of the law — in directing the LDRRMCs to "take the lead", and in declaring that the NDRRMC would only take over "if two (2) or more regions are affected" — is to favor local autonomy in disaster preparedness and disaster response.

From the foregoing, there can be no serious doubt that the six--month closure of Boracay, as ordered by Proclamation 475, cannot be anchored on RA 10121. To conclude as such requires an Olympic leap in logic which is totally unwarranted, considering that RA 10121: (i) gave preference to local actors, not national ones, as regards disaster response and (ii) only granted the President authority to implement limited remedial measures following a declaration of a "state of calamity".

The case of *Review Center Association of the Philippines v. Executive Secretary Ermita*[34] is on point. Therein, the President issued an executive order authorizing the Commission on Higher Education (CHED) to supervise review centers and similar establishments. The petitioner therein sought to declare the executive order unconstitutional on the ground that CHED had no supervisory authority over them and that the executive order constitutes a usurpation of legislative power by the President. Ruling in favor of the petitioner, the Court held:

The scopes of EO 566 and the RIRR clearly expand the CHED's coverage under RA 7722. The CHED's coverage under RA 7722 is limited to public and private institutions of higher education and degree-granting programs in all public and private post-secondary educational institutions. EO 566 directed the CHED to formulate a framework for the regulation of review centers and similar entities.

The definition of a review center under EO 566 shows that it refers to one which offers "a program or course of study that is intended to refresh and enhance the knowledge or competencies and skills of reviewees obtained in the formal school setting in preparation for the licensure examinations" given by the PRC. It also covers the operation or conduct of review classes or courses provided by individuals whether for a fee or not in preparation for the licensure examinations given by the PRC.

x x x x

The President has no inherent or delegated legislative power to amend the functions of the CHED under RA 7722. Legislative power is the authority to make laws and to alter or repeal them, and this power is vested with the Congress under Section 1, Article VI of the 1987 Constitution which states:

Section 1. The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.

x x x

Police power to prescribe regulations to promote the health, morals, education, good order or safety, and the general welfare of the people flows from the recognition that *salus populi est suprema lex* — the welfare of the people is the supreme law. Police power primarily rests with the legislature although it may be exercised by the President and administrative boards by virtue of a valid delegation. Here, no delegation of police power exists under RA 7722 authorizing the President to regulate the operations of non-degree granting review centers.[35]

(Emphasis and underscoring supplied; emphasis in the original omitted)

Second, police power is an inherent attribute of sovereignty which has been defined as the power to "make, ordain, and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the commonwealth, and for the subjects of the same." [36] Our Constitutional design, however, lodges police power primarily on the Legislature.

That police power is lodged primarily in the Legislature does not appear to be in dispute. This is apparent from the ponencia itself, which defines police power as the "state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare." [37]

Clearly, police power cannot be exercised by any group or body of individuals not possessing legislative power; its exercise, therefore, is contingent upon a valid delegation. [38]

In fact, a look at the powers at the President's disposal in times of calamity leads to the inevitable conclusion that Proclamation 475 does not find basis in any law.

Under the Constitution, the President, on whom Executive power is vested by Section 1, Article VII of the Constitution, may, in times of calamity, exercise:

(1) calling out powers, an ordinary police action [39] to call on the armed forces to prevent or suppress three specific instances - lawless violence, invasion, or rebellion; [40]

(2) emergency powers, which, even then, may only be exercised in times of war or after Congress considers the calamity as a "national emergency" and passes a law authorizing the President to exercise "powers necessary and proper to carry out a declared national policy"; [41] and

(3) taking over powers, which include taking over of, or directing the operation of any privately-owned public utility or business affected with public interest; [42] and the power to establish and operate vital industries in the interest of national welfare or defense, and the power to transfer to public ownership utilities and other private enterprises to be operated by the Government upon payment of just compensation. [43]

Under RA 7160 or the Local Government Code of 1991, the President may also exercise general supervision over LGUs, [44] and augment the basic services and facilities assigned to an LGU when the need arises, that is, when such services or facilities are not made available or, if made available, are inadequate to meet the requirements of its inhabitants. [45]

Further, in cases of epidemics, pestilence, and other widespread public health dangers, the Secretary of Health may, upon the direction of the President and in consultation with the LGU concerned, temporarily assume direct supervision and control over health operations in any LGU for the duration of the emergency, but in no case exceeding a cumulative period of six (6) months. [46]

Finally, in areas declared by the President to be in a state of calamity, the President may enact a supplemental budget by way of budgetary realignment, to set aside appropriations for the purchase of supplies and materials, or for the payment of services which are exceptionally urgent or absolutely indispensable to prevent imminent danger to, or loss of life or property, in the jurisdiction of an LGU concerned. [47]

From the foregoing, it is thus clear that the President has no power to close an entire island, even in a calamitous situation, and despite the blanket invocation of the State's police power.

The authority to restrict the right to travel cannot be implied from the executive department's power, under RA 9275, to "take measures necessary to upgrade the water quality"

The ponencia also views RA 9275[48] as another statutory basis for the issuance of Proclamation 475.[49] This position is anchored on Section 6 of said statute which reads:

SEC. 6. Management of Non-attainment Areas. — The [DENR] shall designate water bodies, or portions thereof, where specific pollutants from either natural or man-made source have already exceeded water quality guidelines as non-attainment areas for the exceeded pollutant. x x x

The [DENR] shall, in coordination with [National Water Resource Board], Department of Health (DOH), Department of Agriculture (DA), governing board and other concerned government agencies and private sectors shall take measures as may be necessary to upgrade the quality of such water in non-attainment areas to meet the standards under which it has been classified. (Emphasis and underscoring supplied)

Again, I disagree.

While the language used by RA 9275 was general, such that it may include any measure to upgrade the quality of water in a particular area, the provision in question is still bound by the limitations imposed by the Constitution and other applicable laws.

Specifically, RA 9275 itself provides that "[t]he LGUs shall prepare and implement contingency plans and other measures including relocation, whenever necessary, for the protection of health and welfare of the residents within potentially affected areas." [50] It is apparent, therefore, that it is again the LGUs who are tasked with the implementation of contingency plans when measures need to be taken for the protection of the health and welfare of the residents in the area concerned. The DENR's, and consequently the President's, jurisdiction is limited to the adoption of measures for the treatment of water, that is, any method, technique, or process designed to alter the physical, chemical or biological and radiological character or composition of any waste or wastewater to reduce or prevent pollution.[51]

More importantly, even if the language employed by RA 9275 was as general as it could be to allow leeway for the DENR as to the means it would undertake to clean the water, the DENR would still inarguably be bound by Section 6, Article III of the Constitution, which, as discussed, requires that the curtailment of the right to travel be done on the basis of a law.

The right to travel cannot be impaired by a mere Presidential Proclamation

As discussed, the existence of a law – which may either refer to the Constitution or to a statute necessarily enacted by the Legislature – is a prerequisite for the curtailment of the right to travel. The case of *Ople v. Torres*[52] (*Ople*) lends guidance.

In *Ople*, the President sought to establish a national computerized identification reference system, or National ID System, through a mere administrative order. The petitioner in the said case questioned the legality of the administrative order on the ground that, among others, the subject of the administrative order should properly be contained in a law, not a mere administrative issuance. In declaring the administrative order unconstitutional, the Court explained at length:

Petitioner's sedulous concern for the Executive not to trespass on the lawmaking domain of Congress is understandable. The blurring of the demarcation line between the power of the Legislature to make laws and the power of the Executive to execute laws will disturb their delicate balance of power and cannot be allowed. Hence, the exercise by one branch of government of power belonging to another will be given a stricter scrutiny by this Court.

The line that delineates Legislative and Executive power is not indistinct. Legislative power is "the authority, under the Constitution, to make laws, and to alter and repeal them." The Constitution, as the will of the people

in their original, sovereign and unlimited capacity, has vested this power in the Congress of the Philippines. The grant of legislative power to Congress is broad, general and comprehensive. The legislative body possesses plenary power for all purposes of civil government. Any power, deemed to be legislative by usage and tradition, is necessarily possessed by Congress, unless the Constitution has lodged it elsewhere. In fine, except as limited by the Constitution, either expressly or impliedly, legislative power embraces all subjects and extends to matters of general concern or common interest.

While Congress is vested with the power to enact laws, the President executes the laws. The executive power is vested in the President. It is generally defined as the power to enforce and administer the laws. It is the power of carrying the laws into practical operation and enforcing their due observance.

As head of the Executive Department, the President is the Chief Executive. He represents the government as a whole and sees to it that all laws are enforced by the officials and employees of his department. He has control over the executive department, bureaus and offices. This means that he has the authority to assume directly the functions of the executive department, bureau and office, or interfere with the discretion of its officials. Corollary to the power of control, the President also has the duty of supervising the enforcement of laws for the maintenance of general peace and public order. Thus, he is granted administrative power over bureaus and offices under his control to enable him to discharge his duties effectively.

Administrative power is concerned with the work of applying policies and enforcing orders as determined by proper governmental organs. It enables the President to fix a uniform standard of administrative efficiency and check the official conduct of his agents. To this end, he can issue administrative orders, rules and regulations.

Prescinding from these precepts, we hold that A.O. No. 308 involves a subject that is not appropriate to be covered by an administrative order. An administrative order is:

"[Section] 3. Administrative Orders. — Acts of the President which relate to particular aspects of governmental operation in pursuance of his duties as administrative head shall be promulgated in administrative orders."

An administrative order is an ordinance issued by the President which relates to specific aspects in the administrative operation of government. It must be in harmony with the law and should be for the sole purpose of implementing the law and carrying out the legislative policy. We reject the argument that A.O. No. 308 implements the legislative policy of the Administrative Code of 1987. x x x

x x x x

It cannot be simplistically argued that A.O. No. 308 merely implements the Administrative Code of 1987. It establishes for the first time a National Computerized Identification Reference System. Such a System requires a delicate adjustment of various contending state policies — the primacy of national security, the extent of privacy interest against dossier-gathering by government, the choice of policies, etc. Indeed, the dissent of Mr. Justice Mendoza states that the A.O. No. 308 involves the all-important freedom of thought. As said administrative order redefines the parameters of some basic rights of our citizenry vis-a-vis the State as well as the line that separates the administrative power of the President to make rules and the legislative power of Congress, it ought to be evident that it deals with a subject that should be covered by law.

Nor is it correct to argue as the dissenters do that A.O. No. 308 is not a law because it confers no right, imposes no duty, affords no protection, and creates no office. Under A.O. No. 308, a citizen cannot transact business with government agencies delivering basic services to the people without the contemplated identification card. No citizen will refuse to get this identification card for no one can avoid dealing with government. It is thus clear as daylight that without the ID, a citizen will have difficulty exercising his rights and enjoying his privileges. Given this reality, the contention that A.O. No. 308 gives no right and imposes no duty cannot stand.

Again, with due respect, the dissenting opinions unduly expand the limits of administrative legislation and consequently erodes the plenary power of Congress to make laws. This is contrary to the established approach defining the traditional limits of administrative legislation. As well stated by Fisher: "x x x Many regulations however, bear directly on the public. It is here that administrative legislation must be restricted in its scope and application. Regulations are not supposed to be a substitute for tire general policy-making that Congress enacts in the form of a public law. Although administrative regulations are entitled to respect, the authority to prescribe rules and regulations is not an independent source of power to make laws." [53] (Emphasis and underscoring supplied)

In the present case, the order to close Boracay for six months was issued in a form of a proclamation. Title 1, Book III of Executive Order No. 292 or the Revised Administrative Code of 1987 (Administrative Code) enumerates the different powers of the Office of the President. Chapter 2 of the same – which contains the ordinance powers of the President – defines a "proclamation" as follows:

BOOK III

Office of the President

TITLE I

Powers of the President

CHAPTER 1

Power of Control

SECTION 1. Power of Control. — The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

CHAPTER 2

Ordinance Power

SEC. 2. Executive Orders. — Acts of the President providing for the rules of a general or permanent character in implementation or execution of constitutional or statutory powers shall be promulgated in executive orders.

SEC. 3. Administrative Orders. — Acts of the President which relate to particular aspects of governmental operations in pursuance of his duties as administrative head shall be promulgated in administrative orders.

SEC. 4. Proclamations. — Acts of the President fixing a date or declaring a status or condition of public moment or interest, upon the existence of which the operation of a specific law or regulation is made to depend, shall be promulgated in proclamations which shall have the force of an executive order.

SEC. 5. Memorandum Orders. — Acts of the President on matters of administrative detail or of subordinate or temporary interest which only concern a particular officer or office of the Government shall be embodied in memorandum orders.

SEC. 6. Memorandum Circulars. — Acts of the President on matters relating to internal administration, which the President desires to bring to the attention of all or some of the departments, agencies, bureaus or offices of the Government, for information or compliance, shall be embodied in memorandum circulars.

SEC. 7. General or Special Orders. — Acts and commands of the President in his capacity as Commander-in-Chief of the Armed Forces of the Philippines shall be issued as general or special orders. (Emphasis supplied)

The declaration of a state of calamity in the present case was embodied in a "proclamation". But that is not all that was covered by the "proclamation". Along with the declaration of a state of calamity, Proclamation 475 also

ordered the closure of an entire island — an order which directly impacts fundamental rights, particularly, the right to travel and due process. Borrowing the words of the Court in *Ople*, when an issuance "redefines the parameters of some basic rights of our citizenry vis- a-vis the State,"[54] then such is a subject matter that should be contained in a law. Such matters are beyond the power of the President to determine, and cannot be undertaken merely upon the authority of a proclamation.

As explained by Justice Dante O. Tinga in *David v. Macapagal- Arroyo*:^[55]

x x x The power of the President to make proclamations, while confirmed by statutory grant, is nonetheless rooted in an inherent power of the presidency and not expressly subjected to constitutional limitations. But proclamations, by their nature, are a species of issuances of extremely limited efficacy. As defined in the Administrative Code, proclamations are merely "acts of the President fixing a date or declaring a status or condition of public moment or interest upon the existence of which the operation of a specific law or regulation is made to depend". A proclamation, on its own, cannot create or suspend any constitutional or statutory rights or obligations. There would be need of a complementing law or regulation referred to in the proclamation should such act indeed put into operation any law or regulation by fixing a date or declaring a status or condition of a public moment or interest related to such law or regulation. And should the proclamation allow the operationalization of such law or regulation, all subsequent resultant acts cannot exceed or supersede the law or regulation that was put into effect.^[56] (Emphasis supplied)

In sum, as the governmental action at hand involves the curtailment of the constitutionally guarded right to travel, it was thus invalid for the President to have done so (i) without enabling legislation and (ii) in the form of a mere proclamation.

The authority to curtail the right to travel is neither subsumed in the President's duty to execute laws, nor can it be deemed inherent in the President's power to promote the general welfare

In the absence of statutory and Constitutional basis, it is imperative to stress that the restriction of the right to travel, as imposed through Proclamation 475, cannot be justified as a necessary incident of the Executive's duty to execute laws.

The faithful execution clause is found in Section 17, Article VII of the Constitution. It states:

SEC. 17. The President shall have control of all the executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed.

The foregoing clause should not be understood as a grant of power, but rather, an obligation imposed upon the President.^[57] In turn, this obligation should not be construed in the narrow context of the particular statute to be carried out, but, more appropriately, in conjunction with the very document from which such obligation emanates. Hence, speaking of the faithful execution clause, the Court has ruled:

[The faithful execution clause] simply underscores the rule of law and, corollarily, the cardinal principle that the President is not above the laws but is obliged to obey and execute them. This is precisely why the law provides that "administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution."^[58] (Emphasis supplied)

Based on these premises, I cannot subscribe to the position that the restriction of the right to travel imposed as a consequence of Boracay's closure is valid simply because it is necessary for the island's rehabilitation. The fact that the restriction of the right to travel is deemed necessary to achieve the avowed purpose of Proclamation 475 does not take such restriction away from the scope of the Constitutional requirements under Section 6, Article III.

As well, I cannot agree with respondents' contention that the authority to restrict the right to travel is inherent in

the exercise of the President's residual power to protect and promote the general welfare.[59] This claim appears to result from an analogy drawn from the Court's rulings in *Silverio v. Court of Appeals*[60] (*Silverio*) and *Leave Division, Office of the Administrative Services, Office of the Court Administrator v. Heusdens*[61] (*Leave Division*), which speak of the inherent powers of the judicial and legislative departments.

A close reading of these cases reveals, however, that respondents' claim does not find support in either *Silverio* or *Leave Division*.

In *Silverio*, the petitioner therein had been charged with a violation of the Revised Securities Act. The petitioner assailed the order issued by the handling Regional Trial Court (RTC) which directed: (i) the Department of Foreign Affairs to cancel his passport; and (ii) then Commission on Immigration to prevent him from leaving the Philippines.[62] The petitioner further argued that the RTC could not validly impair his right to travel on the basis of grounds other than national security, public safety and public health.[63]

Resolving the issue, the Court held that Section 6, Article III should not be construed to limit the inherent power of the courts to use all means necessary to carry their orders into effect, thus:

Petitioner takes the posture, however, that while the 1987 Constitution recognizes the power of the Courts to curtail the liberty of abode within the limits prescribed by law, it restricts the allowable impairment of the right to travel only on grounds of interest of national security, public safety or public health, as compared to the provisions on freedom of movement in the 1935 and 1973 Constitutions.

x x x x

Petitioner x x x theorizes that under the 1987 Constitution, Courts can impair the right to travel only on the grounds of "national security, public safety, or public health."

The submission is not well taken.

Article III, Section 6 of the 1987 Constitution should be interpreted to mean that while the liberty of travel may be impaired even without Court Order, the appropriate executive officers or administrative authorities are not armed with arbitrary discretion to impose limitations. They can impose limits only on the basis of "national security, public safety, or public health" and "as may be provided by law," a limitative phrase which did not appear in the 1973 text x x x. Apparently, the phraseology in the 1987 Constitution was a reaction to the ban on international travel imposed under the previous regime when there was a Travel Processing Center, which issued certificates of eligibility to travel upon application of an interested party x x x.

Article III, Section 6 of the 1987 Constitution should by no means be construed as delimiting the inherent power of the Courts to use all means necessary to carry their orders into effect in criminal cases pending before them. When by law jurisdiction is conferred on a Court or judicial officer, all auxiliary writs, process and other means necessary to carry it into effect may be employed by such Court or officer x x x.

x x x x

Petitioner is facing a criminal charge. He has posted bail but has violated the conditions thereof by failing to appear before the Court when required. Warrants for his arrest have been issued. Those orders and processes would be rendered nugatory if an accused were to be allowed to leave or to remain, at his pleasure, outside the territorial confines of the country. Holding an accused in a criminal case within the reach of the Courts by preventing his departure from the Philippines must be considered as a valid restriction on his right to travel so that he may be dealt with in accordance with law. The offended party in any criminal proceeding is the People of the Philippines. It is to their best interest that criminal prosecutions should run their course and proceed to finality without undue delay, with an accused holding himself amenable at all times to Court Orders and processes.[64] (Emphasis and underscoring supplied; citations omitted)

In Leave Division, petitioner therein argued that the Office of the Court Administrator (OCA) Circular No. 49-2003 (B), which requires court employees to secure a travel authority as a requisite for foreign travel, unduly restricts the right to travel.

Speaking of "inherent limitations on the right to travel", the Court in Leave Division held:

Inherent limitations on the right to travel are those that naturally emanate from the source. These are very basic and are built-in with the power. An example of such inherent limitation is the power of the trial courts to prohibit persons charged with a crime to leave the country. In such a case, permission of the court is necessary. Another is the inherent power of the legislative department to conduct a congressional inquiry in aid of legislation. In the exercise of legislative inquiry, Congress has the power to issue a subpoena and subpoena duces tecum to a witness in any part of the country, signed by the chairperson or acting chairperson and the Speaker or acting Speaker of the House; or in the case of the Senate, signed by its Chairman or in his absence by the Acting Chairman, and approved by the Senate President.[65] (Emphasis supplied)

While the foregoing cases decree that the requirements of Section 6, Article III should not be interpreted to unduly negate the inherent powers belonging to the judicial and legislative departments, these cases do not purport to sanction the curtailment of the right to travel solely on the basis of implication.

To be sure, the authority to restrict the right to travel, while inherent in the exercise of judicial power and in the conduct of legislative inquiry, do not stem from mere abstraction, but rather, proceed from specific grants of authority under the Constitution. These grants of authority therefore satisfy the requirement that the restriction be provided for by law.

To recall, Section 5(5), Article VIII of the Constitution vests unto the Court the power to promulgate rules concerning, among others, the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts. Pursuant to such authority, the Court promulgated the Rules 135 of the Rules of Court, which reads:

SEC. 6. Means to carry jurisdiction into effect. — When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears comfortable to the spirit of the said law or rules.

In this connection, the jurisdiction to exercise judicial power and exert all means necessary to carry such jurisdiction into effect is conferred upon the lower courts by law, specifically, under Batas Pambansa Bilang 129.

Similarly, the Legislature's power to promulgate rules governing the conduct of a congressional inquiry stems from Section 21, Article VI of the Constitution, thus:

SEC. 21. The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

In turn, the Congress' power to resort to coercive measures in the course of legislative inquiry have been detailed in their respective internal rules promulgated pursuant to Section 21.[66]

Plainly, there is no basis to conclude that these inherent powers constitute exceptions to the parameters set forth by Section 6, Article III, for the reason that the Constitution itself provides the basis for their exercise.

Nevertheless, respondents argue, by analogy, that the authority to restrict the right to travel is inherent in the President's exercise of residual powers to protect general welfare.[67] In support of this proposition, respondents

rely on *Marcos v. Manglapus*[68] (*Marcos*), the relevant portion of which reads:

x x x The power involved is the President's residual power to protect the general welfare of the people. It is founded on the duty of the President, as steward of the people. To paraphrase Theodore Roosevelt, it is not only the power of the President but also his duty to do anything not forbidden by the Constitution or the laws that the needs of the nation demand. x x x

x x x The President is not only clothed with extraordinary powers in times of emergency, but is also tasked with attending to the day-to-day problems of maintaining peace and order and ensuring domestic tranquillity in times when no foreign foe appears on the horizon. Wide discretion, within the bounds of law, in fulfilling presidential duties in times of peace is not in any way diminished by the relative want of an emergency specified in the commander-in-chief provision. x x x[69] (Citations omitted)

I cannot subscribe to this position.

To echo the Court's words in *Genuino*, the imposition of a restriction on the right to travel may not be justified by resorting to an analogy.[70]

A closer look at the very limited cases in which the President's unstated "residual powers" and "broad discretion" have been recognized[71] reveals that the exercise of these residual powers can only be justified in the existence of circumstances posing a threat to the general welfare of the people so imminent that it requires immediate action on the part of the government.

In *Marcos*, these circumstances were "the catalytic effect of the return of the Marcoses that may pose a serious threat to the national interest and welfare",[72] the fact that the country was only then "beginning to recover from the hardships brought about by the plunder of the economy attributed to the Marcoses and their close associates and relatives, many of whom are still here in the Philippines in a position to destabilize the country, while the Government has barely scratched the surface, in its efforts to recover the enormous wealth stashed away by the Marcoses in foreign jurisdictions".[73] The distinctiveness of these circumstances impelled the Court to thus treat its pronouncement therein as *sui generis*:

This case is unique. It should not create a precedent, for the case of a dictator forced out of office and into exile after causing twenty years of political, economic and social havoc in the country and who within the short space of three years seeks to return, is in a class by itself.[74] (Emphasis supplied)

I submit, therefore, that respondents' reliance on the Court's ruling in *Marcos* as basis to determine the scope of the President's "residual powers" is erroneous.

In any case, the "residual powers" as referred to in Section 20, Chapter 7, Title I, Book III of the Administrative Code, refers to the President's power to "exercise such other powers and functions vested [in the President] which are provided for under the laws and which are not specifically enumerated above, or which are not delegated by the President in accordance with law."

While residual powers are, by their nature, "unstated," these powers are vested in the President in furtherance of the latter's duties under the Constitution. To exempt residual powers from the restrictions set forth by the very same document from which they emanate is absurd. While residual powers are "unstated", they are not extra-constitutional.

Indeed, while the President possesses the residual powers in times of calamity, these powers are limited by, and must therefore be wielded within, the bounds set forth by the Constitution and applicable laws enabling such powers' exercise. As aptly observed by the Supreme Court in *Rodriguez, Sr. v. Gella*:[75]

Shelter may not be sought in the proposition that the President should be allowed to exercise emergency powers for the sake of speed and expediency in the interest and for the welfare of the people, because we have the Constitution, designed to establish a government under a regime of justice, liberty and democracy. x x x Much as it is imperative in some cases to have prompt official action, deadlocks in and slowness of democratic processes must be preferred to concentration of powers in any one man or group of men for obvious reasons. The framers of the Constitution, however, had the vision of and were careful in allowing delegation of legislative powers to the President for a limited period "in times of war or other national emergency." They had thus entrusted to the good judgment of the Congress the duty of coping with any national emergency by a more efficient procedure; but it alone must decide because emergency in itself cannot and should not create power. In our democracy the hope and survival of the nation lie in the wisdom and unselfish patriotism of all officials and in their faithful adherence to the Constitution." [76] (Emphasis supplied)

Inasmuch as the President has the power to ensure the faithful execution of laws, [77] and to protect the general welfare of the people, such power can, by no means, be wielded at every turn, or be unduly expanded to create "inherent restrictions" upon fundamental rights protected by the Constitution.

There are Constitutionally permissible measures to address the problem

In the resolution of this Petition, the ponencia and the related concurring opinions appear to harp on the necessity of the governmental action involved, i.e., closure of the entire island to solve the problem at hand. The ponencia, for instance, states:

Certainly, the closure of Boracay, albeit temporarily, gave the island its much needed breather, and likewise afforded the government the necessary leeway in its rehabilitation program. Note that apart from review, evaluation and amendment of relevant policies, the bulk of the rehabilitation activities involved inspection, testing, demolition, relocation, and construction. These works could not have easily been done with tourists present. The rehabilitation works in the first place were not simple, superficial or mere cosmetic but rather quite complicated, major, and permanent in character as they were intended to serve as long-term solutions to the problem. Also, time is of the essence. Every precious moment lost is to the detriment of Boracay's environment and of the health and well-being of the people thereat. Hence, any unnecessary distraction or disruption is most unwelcome. Moreover, as part of the rehabilitation efforts, operations of establishments in Boracay had to be halted in the course thereof since majority, if not all of them, need to comply with environmental and regulatory requirements in order to align themselves with the government's goal to restore Boracay into normalcy and develop its sustainability. Allowing tourists into the island while it was undergoing necessary rehabilitation would therefore be pointless as no establishment would cater to their accommodation and other needs. Besides, it could not be said that Boracay, at the time of the issuance of the questioned proclamation, was in such a physical state that would meet its purpose of being a tourist destination. For one, its beach waters could not be said to be totally safe for swimming. In any case, the closure, to emphasize, was only for a definite period of six months, i.e., from April 26, 2018 to October 25, 2018. To the mind of the Court, this period constitutes a reasonable time frame, if not to complete, but to at least put in place the necessary rehabilitation works to be done in the island. Indeed, the temporary closure of Boracay, although unprecedented and radical as it may seem, was reasonably necessary and not unduly oppressive under the circumstances. It was the most practical and realistic means of ensuring that rehabilitation works in the island are started and carried out in the most efficacious and expeditious way. x x x [78] (Emphases and underscoring supplied)

As I earlier intimated in this opinion, I concede and recognize that Boracay was facing a critical problem that necessitated its closure. I do acknowledge that there was both necessity and urgency to act on the island's problem. Nonetheless, at the risk of being repetitive, I reiterate that the closure was invalid without an enabling law enacted for the purpose — a requirement that is neither impossible nor unreasonable to comply with.

To illustrate, under the Constitution, the President may certify a bill as urgent "to meet a public calamity or emergency." [79] Thus:

No bill passed by either House shall become a law unless it has passed three readings on separate days, and printed copies thereof in its final form have been distributed to its Members three days before its passage, except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency. Upon the last reading of a bill, no amendment thereto shall be allowed, and the vote thereon shall be taken immediately thereafter, and the yeas and nays entered in the Journal. (emphasis supplied)

In *Tolentino vs. Secretary of Finance*, [80] the Court ruled that the President's certification dispenses with the requirement of (i) three readings on separate days and (ii) of printing and distribution three days before its passage. This constitutional mechanism allows the President to communicate to Congress what the government's priority measures are, and allows these same bills to "skip" what otherwise would be a rather burdensome and time-consuming procedure in the legislative process. Stated differently, this certification provides a constitutionally sanctioned procedure for the passing of urgent matters that needed to be in the form of a law.

Indeed, this is not uncharted territory. The Court can take judicial notice [81] of the fact that, for instance, the bill that would later on become the Bangsamoro Organic Law was certified as urgent on May 29, 2018. [82] In less than two months, or by July 26, 2018, the bill was already signed into law. [83] Another example is the passage of the Responsible Parenthood and Reproductive Health Act. After its second reading in the House of Representatives on December 12, 2012, the Reproductive Health (RH) Bill was certified as urgent by the then President on December 13, 2012. [84] The House of Representatives and Senate approved the measure on third reading on December 17, 2012 and ratified its final version on December 19, 2012. [85] By December 21, 2012, or merely eight days from the certification of the bill as urgent, the RH Bill was signed into law. [86]

There is thus clear precedent on the effectiveness of this mechanism. Regrettably, it was not resorted to in addressing Boracay's problems. Instead, an unconstitutional shortcut was taken by merely issuing a proclamation to close the island.

This unconstitutional shortcut is, to repeat, the *raison d'être* for this dissent. The situation in Boracay is undoubtedly dire; yet, there are constitutionally permissible measures that the government could, and should, have taken to address the problem.

The protection afforded by the right to due process, as asserted in connection with one's right to work, applies with equal force to all persons, regardless of their profession

Finally, the ponencia declares that petitioners Zabal and Jacosalem, being part of the informal economy sector where earnings are not guaranteed, cannot be said to have already acquired vested rights to their sources of income in Boracay. Since their earnings are contingent, the ponencia proceeds to conclude that petitioners have no vested rights to their sources of income as to be entitled to due process. [87]

I disagree.

Section 1, Article III on the Bill of Rights of the Constitution provides that "[n]o person shall be deprived of life, liberty, or property without due process of law x x x." Property protected under this constitutional provision includes the right to work and the right to earn a living.

In *JMM Promotion and Management, Inc. v. Court of Appeals*, [88] which was cited by the ponencia, the Court held that "[a] profession, trade or calling is a property right within the meaning of our constitutional guarantees. One cannot be deprived of the right to work and the right to make a living because these rights are property rights, the arbitrary and unwarranted deprivation of which normally constitutes an actionable wrong." [89]

Notwithstanding this constitutional protection, the right to property is not absolute as it may be curtailed through a valid exercise of the State's police power.[90] However, such deprivation must be done with due process.

The ponencia concedes that one's profession or trade is considered a property right covered by the due process clause.[91] However, the ponencia is of the position that petitioner Zabal and Jacosalem's right thereto is merely inchoate, reasoning as follows:

In any case, petitioners, particularly Zabal and Jacosalem, cannot be said to have already acquired vested rights to their sources of income in Boracay. As heretofore mentioned, they are part of the informal sector of the economy where earnings are not guaranteed. x x x

x x x Clearly, said petitioners' earnings are contingent in that, even assuming tourists are still allowed in the island, they will still earn nothing if no one avails of their services. Certainly, they do not possess any vested right on their sources of income, and under this context, their claim of lack of due process collapses. To stress, only rights which have completely and definitely accrued and settled are entitled protection under the due process clause.[92]

There is no question that petitioners have no vested right to their future income. However, what is involved here is not necessarily the right to their future income; rather, it is petitioners' existing and present right to work and to earn a living. To belabor the point, such right is not inchoate — on the contrary, it is constitutionally recognized and protected. The fact that petitioner Zabal and Jacosalem's professions yield variable income (as opposed to fixed income) does not, in any way, dilute the protection afforded them by the Constitution.

On this score, I take exception to the position that petitioners Zabal and Jacosalem lack legal standing to file the present Petition.[93]

Locus standi or legal standing is the right of appearance in a court of justice on a given question.[94] In order to possess the necessary legal standing, a party must show a personal and substantial interest in the case such that s/he has sustained or will sustain direct injury as a result of the challenged governmental act.[95] This requirement of direct injury "guarantees that the party who brings suit has such personal stake in the outcome of the controversy and, in effect, assures 'that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.'"[96]

In their petition, petitioners stated that:

106. Petitioners Zabal and Jacosalem's daily earnings from their tourism-related activities are absolutely necessary to put food on the table, send their children to school, and cover the daily expenses of their families.

107. Without such sources of income – even if only for a period of six (6) months – said petitioners' families will go hungry and, worse, be uprooted or forced to relocate to other places. Such a development would disrupt their children's schooling and work untold hardships upon their families.

108. Petitioners have every right to continue to earn a living in the manner they so choose which, and depriving them of their livelihood violates such right and creates untold hardships for them and their families.[97]

Applying jurisprudential standards, the inescapable conclusion is that petitioners Zabal and Jacosalem unquestionably have legal standing. Undoubtedly, they have a personal and substantial interest in this case and they have shown that they would sustain direct injury as a result of the Boracay closure.

In denying petitioners any legal standing, the ponencia cites *Galicto v. Aquino III*,[98] (*Galicto*) a case involving the constitutionality of Executive Order No. (E.O.) 7 issued by President Benigno Aquino III which ordered, among others, a moratorium on the increases in the salaries and other forms of compensation of all government

owned and controlled corporations (GOCCs). The ponencia summarized the ruling therein as follows:

x x x The Court held that Galicto, an employee of the GOCC Philhealth, has no legal standing to assail [E.O.] 7 for his failure to demonstrate that he has a personal stake or material interest in the outcome of the case. His interest, if any, was speculative and based on a mere expectancy. Future increases in his salaries and other benefits were contingent events or expectancies to which he has no vested rights. Hence, he possessed no locus standi to question the curtailment thereof.[99]

Applying the foregoing principles, the ponencia finds that petitioners Zabal and Jacosalem do not have standing to file the instant petition, reasoning that:

x x x, Zabal is a sandcastle maker and Jacosalem, a [tricycle] driver. The nature of their livelihood is one wherein earnings are not guaranteed. As correctly pointed out by respondents, their earnings are not fixed and may vary depending on the business climate in that while they can earn much on peak seasons, it is also possible for them not to earn anything on lean seasons, especially when the rainy days set in. Zabal and Jacosalem could not have been oblivious to this kind of situation, they having been in the practice of their trade for a considerable length of time. Clearly, therefore, what Zabal and Jacosalem could lose in this case are mere projected earnings which are in no way guaranteed, and are sheer expectancies characterized as contingent, subordinate, or consequential interest, just like in Galicto. Concomitantly, an assertion of direct injury on the basis of loss of income does not clothe Zabal and Jacosalem with legal standing.[100]

Contrary to the foregoing supposition, Galicto is inapplicable in this case.

In Galicto, the Court correctly ruled that Galicto's interest was merely speculative and based on a mere expectancy because he has no vested rights to salary increases and, therefore, the absence of such right deprives him of legal standing to assail E.O. 7. The same ruling cannot be applied in the instant case. The impairment of petitioners' rights as a consequence of the closure of Boracay gives rise to interests that are real, and not merely speculative. There is no doubt that they will be directly affected by the closure because they derive their income on tourism-related activities in Boracay. While Galicto was concerned about future increases, what is involved in the present case is petitioners' constitutionally protected right to work and earn a living.[101] To stress, the fact that petitioners Zabal and Jacosalem's professions yield variable income does not, in any way, dilute the protection they are entitled to under the Constitution.

Conclusion

I end this discourse fully cognizant of the unfortunate realities that the island of Boracay has faced. I do not attempt to ignore the degradation it has suffered in the hands of those who have refused to comply with statutes, rules and regulations crafted for its protection.

When the exigencies of times call for limitations on fundamental rights, it is incumbent upon Congress to respond to the need by explicitly authorizing such limitations through law.[102] While the President has the power, nay, duty, to address such exigencies, the necessity of impairing constitutional rights in connection therewith is not for him to determine, more so, unilaterally impose, most particularly in cases where, as here, there is an absence of any indication that Congress would be unable to respond to the call.

The requirements under Section 6, Article III of the Constitution are as clear as they are absolute. The parameters for their application have been drawn in deft strokes by the Court in Genuino promulgated just nine (9) months ago. Respondents' shotgun attempt to carve out an exception to these requirements in order to justify the issuance of Proclamation 475 actually betrays their complete awareness of the Proclamation's nullity. In Genuino, the Court warned against the sacrifice of individual liberties for a perceived good as this is disastrous to a democracy. Therein, the Court emphasized:

One of the basic principles of the democratic system is that where the rights of the individual are concerned, the end does not justify the means. It is not enough that there be a valid objective; it is also necessary that the means employed to pursue it be in keeping with the Constitution. Mere expediency will not excuse constitutional shortcuts. There is no question that not even the strongest moral conviction or the most urgent public need, subject only to a few notable exceptions, will excuse the bypassing of an individual's rights. It is no exaggeration to say that a person invoking a right guaranteed under Article III of the Constitution is a majority of one even as against the rest of the nation who would deny him that right.[103]

The Court did not hesitate to protect the Constitution against the threat of executive overreach in *Genuino*. The refusal to do so now is nothing less than bewildering.

The judicial validation of Proclamation 475 lends itself to abuse. It grants the President the power to encroach upon fundamental constitutional rights at whim, upon the guise of "faithful execution," and under a sweeping claim of "necessity." The ponencia lauds the "bold and urgent action" taken by the present government, but in the process, lost sight that it did so at the expense of fundamental rights. Undue premium has been placed on the underlying necessity for which the remedial action was taken, and the speed in which it was implemented. As a consequence, the inviolability of constitutionally protected rights has been forgotten.

I invite everyone, both within and outside the confines of this judicial institution, to learn from history. The Berlin Wall — the border system that divided a country physically and ideologically for nearly three decades — was said to have been built overnight. For a modern democracy, such as ours, that is struggling to strike a balance between maintaining the integrity of its institutions and dealing with its inefficiencies, the swiftness with which the Berlin Wall was built may be astonishing, if not enviable.

Yet, it is well to be reminded that the Berlin Wall was constructed at the initiative of a leader perceived by many as a dictator. If this country is to remain a democracy — as opposed to a dictatorship — the challenge for all of us is to accept that progressive and sustainable changes require much time.

To my mind, this ponencia, which prioritizes swiftness of action over the rule of law, leads to the realization of the very evil against which the Constitution had been crafted to guard against — tyranny, in its most dangerous form. To say that we believe in our Constitution, and yet discard it so easily because of expediency, is to champion hypocrisy to the detriment of our national soul.

In view of the foregoing, I vote to GRANT the Petition.

[1] Milton, J., *Paradise Lost* (1667).

[2] DECLARING A STATE OF CALAMITY IN THE BARANGAYS OF BALABAG, MANOC-MANOC AND YAPAK (ISLAND OF BORACAY) IN THE MUNICIPALITY OF MALAY, AKLAN, AND TEMPORARY CLOSURE OF THE ISLAND AS A TOURIST DESTINATION.

[3] Ponencia, pp. 18, 24 and 28.

[4] See *id.* at 21-22.

[5] Joaquin G. Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 867- 870 (2003 ed.)

[6] G.R. No. 225442, August 8, 2017, 835 SCRA 350.

[7] *Id.* at 402-403.

[8] As a general rule, the provisions of the Constitution are considered self-executing, and do not require future legislation for their enforcement. For if they are not treated as self-executing, the mandate of the fundamental law can be easily nullified by the inaction of Congress. See generally *Tondo Medical Center Employees Association v. Court of Appeals*, 554 Phil. 609, 625 (2007).

[9] G.R. Nos. 197930, 199034 and 199046, April 17, 2018.

[10] *Id.* at 17-18.

[11] See Justice Leonen's Separate Opinion in *Genuino*, *supra* note 9.

[12] Ponencia, p. 20.

[13] 394 U.S. 618 (1969). Penned for the majority by Associate Justice William J. Brennan, Jr., with Chief Justice Earl Warren, and Associate Justices Hugo Black and John Marshall Harlan dissenting. Chief Justice Warren and Associate Justice Black were of the position that Congress has the power to impose and authorize nationwide residence requirements under the "commerce clause". (*Id.* at 651.) Justice Harlan, on the other hand, was of the view that "a number of considerations militate in favor of [the] constitutionality [of the assailed provisions]", particularly, that (i) "legitimate governmental interests are furthered by [the] residence requirements"; (ii) "the impact of the requirements upon the freedom of individuals to travel to interstate is indirect" and "according to [the] evidence, x x x insubstantial"; (iii) the assailed provisions are not attempts to interfere with the right of citizens to travel, but a case where the states act within the terms of a limited authorization by the National Government; and (iv) the legislatures which have enacted the assailed provisions have rejected appellees' objections after "mature deliberation". (*Id.* at 674.)

[14] *Id.* at 627.

[15] *Id.*

[16] *Id.* at 629-631.

[17] 476 U.S. 898 (1986). Penned for the majority by Associate Justice William J. Brennan, Jr., with Associate Justices Sandra Day O' Connor, William Rehnquist and John Paul Stevens dissenting. Justice O' Connor, with whom Justices Rehnquist and Stevens concur, opined that the New York veterans' preference scheme assailed in the case does not penalize the right to migrate, and is thus, permissible.

[18] *Id.* at 903.

[19] *Id.* at 900.

[20] 93 Ohio St. 3d 419. Penned by Chief Justice Thomas J. Moyer for the unanimous Court.

[21] *Id.*

[22] *Social Justice Society (SJS) v. Dangerous Drugs Board*, 591 Phil 393, 409 (2008).

[23] *Spark*, *supra* note 6, at 405-408.

[24] *Id.* at 402-403. Emphasis and underscoring supplied.

[25] *Genuino*, *supra* note 9, at 27.

[26] Ponencia, p. 22.

[27] RA 10121, Sec. 17.

- [28] Id., Sec. 12(a).
- [29] Id., Sec. 12(c)(9).
- [30] Id., Sec. 12(c)(11).
- [31] Id., Sec. 12(c)(16).
- [32] See id., Sec. 11(a).
- [33] *San Juan v. Civil Service Commission*, 273 Phil. 271, 280 (1991).
- [34] 602 Phil. 342 (2009).
- [35] Id. at 364-369.
- [36] *Gancayco v. City Government of Quezon City*, 674 Phil. 637, 651 (2011), citing *MMDA v. Bel-Air Village Association*, 385 Phil. 586, 601 (2000).
- [37] Ponencia, p. 21, citing Gorospe, Rene, B., *Constitutional Law, Notes and Readings on the Bill of Rights, Citizenship and Suffrage*, Volume 1 (2006), p. 9, further citing *Edu v. Ericta*, 146 Phil. 469 (1970).
- [38] *MMDA v. Bel-Air Village Association*, supra note 36, at 601.
- [39] *David v. Macapagal-Arroyo*, 522 Phil. 705, 780 (2006).
- [40] 1987 CONSTITUTION, Art. VII, Sec. 18.
- [41] Id., Art. VI, Sec. 23(2).
- [42] Id., Art. XII, Sec. 17.
- [43] Id., Art. XII, Sec. 18.
- [44] RA 7160, Sec. 25.
- [45] Id., Sec. 17(f).
- [46] Id., Sec. 105.
- [47] Id., Sec. 321.
- [48] Otherwise referred to as the PHILIPPINE CLEAN WATER ACT.
- [49] Ponencia, p. 22.
- [50] RA 9275, Sec. 6.
- [51] Id., Sec. 4(kk).
- [52] 354 Phil. 948 (1998).
- [53] Id. at 966-970.
- [54] Ople, id. at 969.
- [55] J. Tinga, Dissenting Opinion, supra note 39, at 818-854.
- [56] Id. at 820-821.

[57] *Almario v. Executive Secretary*, 714 Phil. 127, 164 (2013).

[58] *Id.* at 164.

[59] Ponencia, p. 8.

[60] 273 Phil. 128 (1991).

[61] 678 Phil. 328 (2011).

[62] *Silverio*, supra note 60, at 130.

[63] *Id.* at 131, 132.

[64] *Id.* at 132-135.

[65] Leave Division, supra note 61, at 340-340.

[66] Sections 17 and 18 of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation state, in part:

Sec. 17. Powers of the Committee. — The Committee shall have the powers of an investigating committee, including the power to summon witnesses and take their testimony and to issue subpoena and subpoena duces tecum, signed by its Chairman, or in his absence by the Acting Chairman, and approved by the President. Within Metro Manila, such process shall be served by the Sergeant-at-Arms or his assistant. Outside of Metro Manila, service may be made by the police of a municipality or city, upon request of the Secretary. x x x

Sec. 18. Contempt. — (a) The Chairman with the concurrence of at least one (1) member of the Committee, may punish or cite in contempt any witness before the Committee who disobeys any order of the Committee or refuses to be sworn or to testify or to answer a proper question by the Committee or any of its members, or testifying, testifies falsely or evasively, or who unduly refuses to appear or bring before the Committee certain documents and/or object evidence required by the Committee notwithstanding the issuance of the appropriate subpoena therefor. A majority of all the members of the Committee may, however, reverse or modify the aforesaid order of contempt within seven (7) days.

A contempt of the Committee shall be deemed a contempt of the Senate. Such witness may be ordered by the Committee to be detained in such place as it may designate under the custody of the Sergeant-at-Arms until he/she agrees to produce the required documents, or to be sworn or to testify, or otherwise purge himself/herself of that contempt.

On the other hand, Section 7 of the House of Representatives Rules of Procedure Governing Inquiries in Aid of Legislation states, in part:

Section 7. Compulsory Attendance of Witnesses. — The committee shall have the power to issue subpoena and subpoena duces tecum to witnesses in any part of the country, signed by the chairperson or acting chairperson and the Speaker or acting Speaker x x x.

[67] Ponencia, p. 8.

[68] 258 Phil. 479 (1989); see Ponencia, p. 8.

[69] *Marcos*, id. at 504-505.

[70] Supra note 9, at 45-46.

[71] *Marcos*, supra note 68; *Sanidad v. COMELEC*, 165 Phil. 303, 336 (1976).

[72] *Id.* at 508.

[73] Id. at 509.

[74] Id. at 492.

[75] 92 Phil. 603 (1953).

[76] Id. at 611-612.

[77] 1987 CONSTITUTION, Art. VII, Sec. 17.

[78] Ponencia, pp. 23-24.

[79] 1987 CONSTITUTION, Art. VI, Sec. 26(2).

[80] 305 Phil. 686 (1994).

[81] RULES OF COURT, Rule 129, Sec. 1 provides:

SECTION 1. Judicial notice, when mandatory. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions. (Emphasis and underscoring supplied)

[82] Dharel Placide, "Duterte certifies BBL as urgent," ABS-CBN News, < <https://news.abs-cbn.com/news/05/29/18/duterte-certifies-bbl-as-urgent> > (last accessed January 22, 2019).

[83] "Duterte signs Bangsamoro Law," ABS-CBN News, < <https://news.abs-cbn.com/news/07/26/18/duterte-signs-bangsamoro-law> > (last accessed January 22, 2019).

[84] Willard Cheng, "PNoy certifies RH bill as urgent" ABS-CBN News, < <https://news.abs-cbn.com/nation/12/14/12/pnoy-certifies-rh-bill-urgent> > (last accessed January 22, 2019).

[85] Angela Casauay, "President Aquino signs RH bill into law," < <https://www.rappler.com/nation/18728-aquino-signs-rh-bill-into-law> > (last accessed January 22, 2019).

[86] Karen Boncocan, "RH Bill finally signed into law," Inquirer, < <https://newsinfo.inquirer.net/331395/gonzales-aquino-signed-rh-bill-into-law> > (last accessed January 22, 2019).

[87] Ponencia, pp. 24-26.

[88] 329 Phil. 87 (1996).

[89] Id. at 99-100.

[90] Id. at 100.

[91] Ponencia, p. 24.

[92] Id. at 25-26.

[93] Id. at 14.

[94] *Advocates For Truth in Lending, Inc. v. Bangko Sentral Monetary Board*, 701 Phil. 483, 493 (2013).

[95] *Francisco, Jr. v. The House of Representatives*, 460 Phil. 830, 893 (2003).

[96] *The Provincial Bus Operators Association of the Philippines v. DOLE and LTFRB*, G.R. No. 202275, July 17, 2018, p. 17.

[97] Petition, p. 25.

[98] 683 Phil. 141 (2012).

[99] Ponencia, p. 13.

[100] *Id.* at 13-14.

[101] 1987 CONSTITUTION, ART. II, SEC. 18 and ART. XIII, SEC. 3. provide:

Section 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

xxxx

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

[102] See *Genuino*, supra note 9, at 20.

[103] *Genuino*, *id.* at 27, citing *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 256 Phil. 777, 809 (1989).

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