EN BANC

G.R. No. 238467 — MARK ANTHONY V. ZABAL, THITING ESTOSO JACOSALEM, and ODON S. BANDIOLA, *petitioners, versus* **RODRIGO R. DUTERTE, President of the Republic of the Philippines; SALVADOR C. MEDIALDEA, Executive Secretary; and EDUARDO M. AÑO, [Secretary] of the Department of Interior and Local Government,** *respondents.*

Promulgated:

February 12, 2019

x----------x

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

---

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.

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

---

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.

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.

---

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.

> 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.

---

[10] Id. at 17-18.
[11] See Justice Leonen's Separate Opinion in *Genuino,* supra note 9.
[12] *Ponencia,* p. 20.

In *Shapiro v. Thomspon*[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)

---

[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.

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 Cincinatti 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)

---

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.

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**

---

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.

> **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 "cordoning-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

---

[25] *Genuino*, supra note 9, at 27.

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.

---

[26] *Ponencia,* p. 22.

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/profiteering 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

---

[27] RA 10121, Sec. 17.

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

---

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).

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 supervisorial 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**

[34] 602 Phil. 342 (2009).

> **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 <u>not</u> 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" **<u>and passes a law</u>** authorizing the President to exercise "powers necessary and proper to carry out a declared national policy";[41] and

---

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).

(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:

---

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.

> 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.

---

50 RA 9275, Sec. 6.
51 Id., Sec. 4(kk).
52 354 Phil. 948 (1998).

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 the 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)

---

[53] Id. at 966-970.

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

---

54 *Ople*, id. at 969.

55 J. Tinga, Dissenting Opinion, supra note 39, at 818-854.

56 Id. at 820-821.

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.*

---

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).

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 limitive 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

---

62 *Silverio*, supra note 60, at 130.
63 Id. at 131, 132.

> 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.

---

64 Id. at 132-135.

65 *Leave Division,* supra note 61, at 340-340.

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]

---

[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.

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

---

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.

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. <u>While residual powers are "unstated", they are *not* extra-constitutional</u>**.

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

---

73 Id. at 509.
74 Id. at 492.
75 92 Phil. 603 (1953).

> 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**

---

[76] Id. at 611-612.

[77] 1987 CONSTITUTION, Art. VII, Sec. 17.

> **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]

---

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).

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'etre* 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**.

---

[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.

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]

---

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.

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

---

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).

> 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.

---

[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.
>
> x x x x
>
> 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.

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

---

[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).

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.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice