G.R. No. 238467 – *MARK ANTHONY V. ZABAL, THITING ESTOSO JACOSALEM, and ODON S. BANDIOLA v. RODRIGO R. DUTERTE, President of the Republic of the Philippines, SALVADOR C. MEDIALDEA, Executive Secretary, and EDUARDO M. AÑO, Officer-in-Charge of the Department of Interior and Local Government.*

Promulgated:

February 12, 2019

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CONCURRING AND DISSENTING OPINION

JARDELEZA, J.:

The following are the basic facts of the case:

On April 26, 2018, President Rodrigo R. Duterte issued Proclamation No. 475 declaring a state of calamity in the Island of Boracay in Malay, Aklan, and ordered the closure of the island as a tourist destination for six months, or until October 25, 2018. Petitioners Mark Anthony Zabal (Zabal), Thiting Estoso Jacosalem (Jacosalem), and Odon S. Bandiola (Bandiola) filed this special civil action for prohibition and *mandamus* (with application for temporary restraining order, preliminary injunction and/or *status quo ante* order) seeking to, among others, enjoin the implementation of Proclamation No. 475 and compel public respondents to allow the entry of both tourists and residents into Boracay Island.

Before going into the substance of the issues raised in the petition, I note that petitioners sought direct recourse with this Court on the ground, among others, that "[t]here are no factual issues raised in this case, only questions of law x x x."[1] Indeed, this Court exercises original jurisdiction over petitions for prohibition and mandamus concurrently with the Court of Appeals (CA) and the Regional Trial Courts (RTCs).[2] The doctrine of hierarchy of courts, however, dictates that such actions first be filed before the trial courts. Save for the specific instance provided under the Constitution,[3] this Court is not a trier of facts.[4] Its original jurisdiction cannot be invoked to resolve issues which are inextricably connected with underlying questions of fact.

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[1] *Rollo*, p. 6.

[2] CONSTITUTION, Art. VIII, Sec. 5(1); and Sections 9(1) and 21(1) of Batas Pambansa Bilang 129, otherwise known as The Judiciary Reorganization Act of 1980.

[3] Third paragraph, Sec. 18, Art. VII of the Constitution provides:

> The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ [of habeas corpus] or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

[4] Sec. 2, Rule 3 of the Internal Rules of the Supreme Court (A.M. No. 10-4-20-SC). See *Mafinco Trading Corporation v. Ople*, G.R. No. L-37790, March 25, 1976, 70 SCRA 139, 161.

This Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the Constitution.[5] Direct recourse to this Court may, as petitioners correctly suggest, be allowed only to resolve questions which do not require the prior adjudication of factual issues. It is thus on this basis that I will examine and resolve the present petition.

Petitioners challenge the legality of Proclamation No. 475[6] insofar as it ordered the closure of Boracay Island on the following grounds: (1) it is an invalid exercise by the President of legislative power; (2) it violates the right to travel insofar as it seeks to restrict the entry of tourists and non-residents into the island; (3) it operates to deprive persons working in the island of their means of livelihood without due process of law; and (4) it violates the principle of local autonomy insofar as affected local government units are ordered to implement the closure.[7]

My examination of the issues raised and arguments offered by petitioners shows that, of the four principal issues raised against the constitutionality of Proclamation No. 475, only the first issue poses a question the complete resolution of which does not involve underlying questions of fact. On the other hand, and as I shall later demonstrate, the three remaining issues involve underlying questions of fact which cannot be resolved by this Court at the first instance.

I

Petitioners claim that Proclamation No. 475 is an invalid exercise by the President of legislative power.[8] According to petitioners, access to Boracay can be validly restricted (as part of the right to travel) only through the exercise of police power, that is, by law. They maintain that no such law exists; thus, the President, by restricting and altogether prohibiting entry to Boracay Island, has arrogated unto himself legislative powers rightfully belonging to the Congress.[9]

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5 *Vergara, Sr. v. Suelto*, G.R. No. L-74766, December 21, 1987, 156 SCRA 753, 766.

6 I find that petitioners have legal standing to file the present suit. In *Agan, Jr. v. Philippine International Air Terminals Co., Inc.* (G.R. Nos. 155001, 155547, & 155661, May 5, 2003, 402 SCRA 612), an interest to protect oneself from financial prejudice and loss of source of income has been held sufficient to confer petitioners therein with legal standing to challenge the contracts of Philippine International Air Terminals Co., Inc. Here, Zabal and Jacosalem have shown that, with the closure of Boracay Island, they are also in imminent danger of losing their sources of income, as sandcastle maker and tourist driver, respectively, operating in the said island.

Similarly, and consistent with this Court's ruling in *Samahan Ng Mga Progresibong Kabataan (SPARK) v. Quezon City* (G.R. No. 225442, August 8, 2017), I find that petitioner Bandiola also has legal standing to raise the issue affecting the right to travel insofar as he has alleged that he is a non-resident who will no longer be allowed entry to Boracay Island beginning April 26, 2018.

7 *Rollo*, pp. 4, 58.

8 *Id.* at 14-17, 58.

9 *Id.* at 20, 75-76, 78.

The primary legal question therefore is whether there is a law which allows for a restriction on the right to travel to Boracay. If the Court finds that there is none, then this litigation should end with the grant of the petition. If, however, the Court finds that such a law exists, it must then determine whether there was a valid delegation to the President of the power to restrict travel.

I find that the President has the authority, under Republic Act No. (RA) 10121,[10] to issue the challenged Proclamation as an exercise of his power of subordinate legislation.

First, the text of the Proclamation clearly counts RA 10121 among its legal bases for the temporary closure of Boracay Island. I quote:

> **WHEREAS**, **pursuant to RA No. 10121**, or the Philippine Disaster Risk Reduction and Management Act of 2010, the National Disaster Risk Reduction and Management Council has recommended **the declaration of a State of Calamity in the Island of Boracay and the temporary closure of the Island as a tourist destination** to ensure public safety and public health, and to assist the government in its expeditious rehabilitation, as well as in addressing the evolving socio-economic needs of affected communities;
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> x x x x[11]

Second, RA 10121 allows for a restriction on the right to travel *under certain circumstances*.

The expressed legislative intention in RA 10121 was "for the development of policies and plans and **the implementation of actions and measures pertaining to all aspects of disaster risk reduction and management.**"[12] Disaster risk reduction and management was, in turn, defined under Section 3(o) as follows:

> (o) "Disaster Risk Reduction and Management" - **the systematic process of using administrative directives, organizations, and operational skills and capacities to implement strategies, policies and improved coping capacities in order to lessen the adverse impacts of hazards and the possibility of disaster**. Prospective disaster risk reduction and management refers to risk reduction and management activities that address and seek to avoid the development of new or increased disaster risks, especially if risk reduction policies are not put in place.[13]

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10 Otherwise known as the Philippine Disaster Risk Reduction and Management Act of 2010.
11 Emphasis and underscoring supplied.
12 Sec. 4 of RA 10121. Emphasis supplied.
13 Emphasis and underscoring supplied.

Disaster risk reduction and management measures can run the gamut from disaster prevention to disaster mitigation, disaster preparedness, and disaster response, all of which are also defined under RA 10121 as follows:

> Sec. 3. *Definition of Terms.* - For purposes of this Act, the following shall refer to:
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> x x x x
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> (h) "Disaster" - a serious disruption of the functioning of a community or a society **involving widespread human, material, economic or environmental losses and impacts**, which exceeds the ability of the affected community or society to cope using its own resources. Disasters are often described as a result of the combination of: the exposure to a hazard; the conditions of vulnerability that are present; and insufficient capacity or measures to reduce or cope with the potential negative consequences. Disaster impacts may include loss of life, injury, disease and other negative effects on human, physical, mental and social well-being, together with damage to property, destruction of assets, loss of services, social and economic disruption and **environmental degradation**.
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> (i) "Disaster Mitigation" - the lessening or limitation of the adverse impacts of hazards and related disasters. Mitigation measures encompass engineering techniques and hazard-resistant construction as well as improved environmental policies and public awareness.
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> (j) "Disaster Preparedness" - the knowledge and capacities developed by governments, professional response and recovery organizations, communities and individuals to **effectively anticipate, respond to, and recover from, the impacts of likely, imminent or current hazard events or conditions**. Preparedness action is carried out within the context of disaster risk reduction and management and aims to build the capacities needed to efficiently manage all types of emergencies and achieve orderly transitions from response to sustained recovery. **Preparedness is based on a sound analysis of disaster risk and good linkages with early warning systems, and includes such activities as contingency planning, stockpiling of equipment and supplies, the development of arrangements for coordination, evacuation and public information, and associated training and field exercises**. These must be supported by formal institutional, legal and budgetary capacities.
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> (k) "Disaster Prevention" - the outright avoidance of adverse impacts of hazards and related disasters. It expresses the concept and intention to completely avoid potential adverse impacts through **action taken in advance** such as construction of dams or embankments that eliminate flood risks, **land-use regulations that do not**

> **permit any settlement in high-risk zones**, and seismic engineering designs that ensure the survival and function of a critical building in any likely earthquake.
>
> (l) "Disaster Response" - the provision of emergency services and public assistance during or immediately after a disaster in order to save lives, **reduce health impacts, ensure public safety** and meet the basic subsistence needs of the people affected. Disaster response is predominantly focused on immediate and short-term needs and is sometimes called "disaster relief."
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> x x x x[14]

Thus, within the range of disaster risk reduction and management measures can be found **forced or preemptive evacuation** and **prohibitions against settlement in high-risk zones**, both of which necessarily implicate some restriction on a person's liberty of movement to ensure public safety.

Third, in obvious recognition of its inability to "cope directly with the myriad problems"[15] attending the matter, the Congress created administrative agencies, such as the National Disaster Risk Reduction and Management Council (NDRRMC) and the Local Disaster Risk Reduction and Management Councils (LDRRMCs), to help implement the legislative policy of disaster risk reduction and management under RA 10121.

Under the law, the NDRRMC, for example, was tasked to, among others, **develop** a national disaster risk reduction and management framework (NDRRMF), which shall serve as "the principal guide to disaster risk reduction and management efforts in the country,"[16] **advise** the President on the status of disaster preparedness, **recommend** the declaration (and lifting) by the President of a state of calamity in certain areas, and **submit proposals** to restore normalcy in affected areas.[17] Under Section 25, it was also expressly tasked to come up with "the necessary rules and regulations for the effective implementation of [the] Act."

These, to me, are evidence of a general grant of quasi-legislative power, or the power of subordinate legislation, in favor of the implementing agencies. With this power, administrative bodies may implement the broad policies laid down in a statute by "filling in" the details which the Congress may not have the opportunity or competence to provide.[18] In *Abakada Guro Party List v. Purisima*,[19] this Court explained:

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[14] Emphasis and underscoring supplied.

[15] *Eastern Shipping Lines, Inc. v. POEA*, G.R. No. L-76633, October 18, 1988, 166 SCRA 533, 544.

[16] Sec. 6(a) of RA 10121.

[17] Sections 6(c) and 16 of RA 10121.

[18] *The Conference of Maritime Manning Agencies, Inc. v. Philippine Overseas Employment Administration*, G.R. No. 114714, April 21, 1995, 243 SCRA 666, 674, citing *Eastern Shipping Lines, Inc. v. POEA, supra.*

[19] G.R. No. 166715, August 14, 2008, 562 SCRA 251. On filling in the details, see *Holy Spirit Homeowners Association, Inc. v. Defensor*, G.R. No. 163980, August 3, 2006, 497 SCRA 581, 600. On

> Congress has two options when enacting legislation to define national policy within the broad horizons of its legislative competence. It can itself formulate the details or it can assign to the executive branch the responsibility for making necessary managerial decisions in conformity with those standards. In the latter case, the law must be complete in all its essential terms and conditions when it leaves the hands of the legislature. Thus, what is left for the executive branch or the concerned administrative agency when it formulates rules and regulations implementing the law is to fill up details (supplementary rule-making) or ascertain facts necessary to bring the law into actual operation (contingent rule-making).[20] (Citations omitted.)

This results in *delegated legislation*[21] which, to be valid, should not only be germane to the objects and purposes of the law; it must also conform to (and not contradict) the standards prescribed by the law.[22]

Pursuant to the broad authority given to them, the NDRRMC and the President, following standards provided under the law, thus sought to fill in the details on how the provisions of RA 10121 may be enforced, including, but not limited to, identification of: the conditions that must exist before a state of calamity can be declared; the effects of a declaration of a state of calamity;[23] the length of time the state of calamity will be enforced; the formulation and implementation of evacuation plans, including the guidelines on when, where, how, and who will be evacuated; the agency who will implement the evacuation plan; and other details.

Fourth, Proclamation No. 475 is a valid exercise of the power of subordinate legislation.

Here, after consideration of the conditions existing in the Island of Boracay,[24] the President, upon recommendation of the NDRRMC, decided to place the island under a State of Calamity.[25] This is a power expressly lodged in the President under Section 16, which reads:

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ascertaining facts, see Irene R. Cortes, Philippine Administrative Law: Cases and Materials, Revised 2nd edition, 1984, p. 117, citing *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935), *Cruz v. Youngberg*, 56 Phil. 234 (1931), and *Lovina v. Moreno*, G.R. No. 17821, November 29, 1963, 9 SCRA 557.

[20] *Id.* at 288.

[21] Bellosillo, J., Separate Opinion, *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 119761, August 29, 1996, 261 SCRA 236, 256. Also cited in *Smart Communications, Inc. (SMART) v. National Telecommunications Commission (NTC)*, G.R. Nos. 151908 & 152063, August 12, 2003, 408 SCRA 678, 686.

[22] *Smart Communications, Inc. (SMART) v. National Telecommunications Commission (NTC)*, *supra* at 686-687.

[23] Note that Section 17 of RA 10121 provides that a declaration of a state of calamity shall make mandatory the immediate undertaking of four remedial measures. The law, however, does not expressly limit to these four remedial measures the effects and consequences of declaring an area in a state of calamity.

[24] Including high concentration of fecal coliform in the beaches, degradation of nearby coral reefs and coral cover, disproportionate level between generation of solid waste and capacity to haul/dispose, destruction of the natural habitats of animals endemic to the island, and other environmental degradation.

[25] Under Section 3(ll) of RA 10121, a State of Calamity is defined thus:

> Sec. 16. *Declaration of State of Calamity.* - The National Council shall recommend to the President of the Philippines the declaration of a cluster of barangays, municipalities, cities, provinces, and regions under a state of calamity, and the lifting thereof, based on the criteria set by the National Council. The President's declaration may warrant international humanitarian assistance as deemed necessary.
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> The declaration and lifting of the state of calamity may also be issued by the local sanggunian, upon the recommendation of the LDRRMC, based on the results of the damage assessment and needs analysis.

As set forth in Proclamation No. 475 itself, the conditions in the island were such that it became "necessary to implement urgent measures to address x x x human-induced hazards, to protect and promote the health and well-being of its residents, workers and tourists, and to rehabilitate the Island in order to ensure the sustainability of the area and prevent further degradation of its rich ecosystem."[26] I thus find that the avowed purpose of the Proclamation, which is "to ensure public safety and public health, and to assist the government in its expeditious rehabilitation," is unarguably germane to the object and purpose of RA 10121, which is disaster risk reduction and management.

In *The Conference of Maritime Manning Agencies, Inc. v. Philippine Overseas Employment Administration*,[27] this Court, speaking through former Chief Justice Hilario Davide, Jr., noted that the following have been held sufficient standards for purposes of subordinate legislation: "public welfare," "necessary in the interest of law and order," "public interest," "justice and equity," "public convenience and welfare," "justice and equity and substantial merits of the case," "simplicity, economy and efficiency," and "national interest."[28] I find that the challenged action of the President conforms with the standards under RA 10121, which include public safety, public health, and disaster mitigation, among others.

Fifth, in carrying RA 10121 into effect, the implementing agencies have consistently interpreted their power to "evacuate"[29] to necessarily include the power to restrict entry into a particular place.[30] This is evident in

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

26 [10th] WHEREAS Clause, Proclamation No. 475.

27 *Supra* note 18.

28 *Id.* at footnote 13. Citations omitted.

29 "Evacuate" means "to remove from some place in an organized way, especially as a protective measure" or "to remove inhabitants of a place or area," Webster's Third New International Dictionary of the English Language Unabridged (1993), p. 786.

30 Under Section 11(b)(3) of RA 10121, local governments, through the recommendation of the NDRRMC's local counterparts, may issue pre-emptive and forced evacuation orders. See National Disaster Preparedness Plan.

the alarm measures and systems of a number of government instrumentalities.

In the case of impending or actual volcanic eruptions, the Philippine Institute of Volcanology and Seismology (PHIVOLCS) has established alert levels in its monitoring of active volcanoes in the country. Each level has its own set of criteria and recommended course of action to be taken, including prohibiting entry into and expanding the danger zones.[31] Likewise, depending on the declared alert level, the NDRRMC, through its local counterparts, enforces forced evacuations and **prohibits entry and farming in localities found within the danger zones**.[32]

In cases of tropical cyclones or typhoons, the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA) uses public storm warning signals to describe the existing meteorological condition and impact of the winds. Each signal also indicates the precautionary measures which must be undertaken and what the affected areas must do. For public storm warning signals 3 and 4, evacuation and cancellation of all travel and outdoor activities are advised.[33]

Similarly, to mitigate the effects of flooding during heavy rains, Marikina City employs a three-stage alarm level system for the Marikina River, based on the depth of water in the river below the Sto. Niño Bridge:

- Alarm Level 1 (1 minute continuous airing), when the water is 15 meters above sea level, means "prepare."
- Alarm Level 2 (2 minutes intermittent airing), when the water is 16 meters above sea level, means "**evacuate**."
- Alarm Level 3 (5 minute continuous airing), when the water is 18 meters above sea level, means "**forced evacuation**."[34]

When the river's water level rises, the local Disaster Risk Reduction and Management office uses a siren to alert surrounding communities of the current alarm level.[35]

This contemporaneous construction by the NDRRMC, the different LDRRMCs, and local government units, as well as the other agencies tasked

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See https://lga.gov.ph/media/uploads/2/Publications%20PDF/Book/NDPP%20Vol%201.pdf, last accessed January 22, 2019. For an illustration of a local government unit's evacuation guideline; see also https://www.academia.edu/23793398/EO_No._10_Forced_Evac, last accessed January 22, 2019.

[31] See https://www.phivolcs.dost.gov.ph/index.php/volcano-hazard/volcano-alert-level, last accessed January 2, 2019. .

[32] NDRRMC Update SitRep No. 18 re: Mayon Volcano Eruption, See: http://webcache.googleusercontent.com/search?q=cache:http://www.ndrrmc.gov.ph/attachments/article/3293/SitRep_No_18_re_Mayon_Volcano_Eruption_as_of_27JAN2018_8AM.pdf, last accessed November 25, 2018.

[33] See https://www1.pagasa.dost.gov.ph/index.php/20-weather, last accessed February 12, 2019.

[34] See https://www.rappler.com/move-ph/issues/disasters/181894-guide-marikina-river-alarm-level-system, last accessed December 27, 2018.

[35] *Id.*

to implement the provisions of RA 10121, of their powers ordinarily controls the construction of the courts:

> The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to the accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute. In *Asturias Sugar Central, Inc. v. Commissioner of Customs*, the Court stressed that executive officials are presumed to have familiarized themselves with all the considerations pertinent to the meaning and purpose of the law, and to have formed an independent, conscientious and competent expert opinion thereon. The courts give much weight to the government agency or officials charged with the implementation of the law, their competence, expertness, experience and informed judgment, and the fact that they frequently are drafters of the law they interpret.[36]

Sixth, administrative regulations and policies enacted by administrative bodies to interpret the law which they are entrusted to enforce have the force of law and enjoy a presumption of regularity.

In *Español v. Chairman, Philippine Veterans Administration*,[37] this Court held that the Philippine Veterans Administration's (PVA) policy—which withheld the payment of pension to beneficiaries of veterans who are already receiving pension from United States (U.S.) Veterans Administration—has in its favor a presumption of validity. Thus, the Court ruled that it was only when this administrative policy was declared invalid can petitioner be said to have a cause of action to compel the PVA to pay her monthly pension.[38]

In *Rizal Empire Insurance Group v. NLRC*,[39] petitioner's appeal was dismissed for failure to follow the "no extension policy" set forth under the Rules of the National Labor Relations Commission. According to the Court, it is an elementary rule in administrative law that administrative regulations and policies, enacted by administrative bodies to interpret the law which they are entrusted to enforce, have the force of law and are entitled to great respect.[40]

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[36] *Energy Regulatory Board v. Court of Appeals*, G.R. Nos. 113079 & 114923, April 20, 2001, 357 SCRA 30, 40, citing *Nestlé Philippines, Inc. v. Court of Appeals*, G.R. No. 86738, November 13, 1991, 203 SCRA 504, 510-511, citing *In re Allen*, 2 Phil. 630 (1903).

[37] G.R. No. L-44616, June 29, 1985, 137 SCRA 314.

[38] *Id.* at 319.

[39] G.R. No. L-73140, May 29, 1987, 150 SCRA 565.

[40] *Id.* at 568-569.

More recently, in the case of *Alfonso v. Land Bank of the Philippines*,[41] this Court held that the formulas for the computation of just compensation, being an administrative regulation issued by the Department of Agrarian Reform pursuant to its rule-making and subordinate legislation power, have the force and effect of law. "Unless declared invalid in a case where its validity is directly put in issue, courts must consider their use and application."[42]

Even in the U.S., the government agency's own reading of a statute which it is charged with administering is given deference. In *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*,[43] the U.S. Supreme Court employed a two-step test in determining what standard of review should be applied in assessing the government agency's interpretation and gave deference to the latter's interpretation:

> When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.[44]

Finally, since the law's enactment in 2010, there has been no attempt on the part of Congress to correct or reverse the consistent contemporaneous construction of the law by the different agencies implementing RA 10121. This is especially noteworthy considering the existence of a Congressional Oversight Committee, composed of members from both its Houses, which was created precisely to "monitor and oversee the implementation of [RA 10121]"[45] and evaluate, among others, the performance of the law's

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41 G.R. Nos. 181912 & 183347, November 29, 2016, 811 SCRA 27.

42 *Id.* at 74-75. Citation omitted.

43 467 U.S. 837 (1984).

44 *Id.* See also *City of Arlington, Texas, et al. v. Federal Communications Commission, et al.*, 569 U.S. 290 (2013).

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

implementing agencies.[46] That this Committee has not taken steps to correct, revise, or repeal the agencies' contemporaneous construction of RA 10121's provisions further buttresses the view that the construction given by the different administrative agencies conforms to the standards and the interpretation intended by the Legislature.

In sum, I find that the President has the authority, under RA 10121, to issue the challenged Proclamation as a valid exercise of his power of subordinate legislation. With this, I vote to DISMISS the petition. The Court should decline to resolve the remaining questions raised in the petition as, and which I shall hereafter discuss, they unavoidably involve questions of fact which this Court cannot entertain and resolve.

II

Petitioners' next two remaining arguments revolve around Proclamation No. 475's alleged violation of their fundamental rights to travel and due process of law. While petitioners claim that these arguments pose questions of law, I find that they actually raise and involve underlying questions of fact.

A

Indeed, the rights to travel and due process of law are rights explicitly guaranteed under the Bill of Rights. These rights, while fundamental, are not absolute.

Section 6, Article III of the Constitution itself provides for three instances when the right to travel may be validly impaired:

> Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. **Neither shall the right to travel be impaired <u>except in the interest of national security, public safety, or public health, as may be provided by law</u>.**[47]

Even prior to the Constitution, this Court, in the 1919 case of *Rubi v. Provincial Board of Mindoro*,[48] has held that there is no absolute freedom of locomotion. The right of the individual is necessarily subject to reasonable restraint for the common good, in the interest of the public health or public order and safety. In *Leave Division, Office of Administrative Services-Office*

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

[47] Emphasis and underscoring supplied.

[48] 39 Phil. 660 (1919).

of the Court Administrator (OCA) v. Heusdens,[49] which involved an administrative case against a court employee for failure to secure authority to travel abroad in violation of OCA Circular No. 49-2003, the Court took occasion to identify the various constitutional, statutory, and inherent limitations regulating the right to travel.

This was reiterated in *Genuino v. De Lima*,[50] where this Court invalidated Department of Justice Circular No. 41—which purported to restrict the right to travel through the issuance of hold departure and watchlist orders—for lack of legal basis.[51]

In the United States, the U.S. Supreme Court, in the case of *Zemel v. Rusk*,[52] identified circumstances which may justify the restriction on the right to travel: (1) areas ravaged by flood, fire, or pestilence can be quarantined when it can be demonstrated that unlimited travel to the area would directly and materially interfere with the safety and welfare of the area or the Nation as a whole; and (2) weightiest considerations of national security. Likewise, the case of *Alexander v. City of Gretna*[53] emphasized that compelling safety and welfare reasons, the preservation of order and safety, and health concerns can serve to justify an intrusion on the fundamental right to interstate travel. In *State v. Wright*[54] and later, in *Sim v. State Parks & Recreation*,[55] the Washington Supreme Court upheld the State Parks & Recreation Commission's authority, at reasonable times, at reasonable places, and for reasonable reasons, consistent with public safety and recreational activities, to temporarily close ocean beach highways to motor vehicular traffic.

Similarly, the right of a person to his labor is deemed to be property within the meaning of constitutional guarantees, that is, he cannot be deprived of his means of livelihood, a property right, without due process of law.[56] Nevertheless, this property right, not unlike the right to travel, is not absolute. It may be restrained or burdened, through the exercise of police power, to secure the general comfort, health, and prosperity of the State.[57] To justify such interference, two requisites must concur: (a) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State; and (b) the means employed are reasonably necessary to the attainment of the object sought to be accomplished and not

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[49] A.M. No. P-11-2927, December 13, 2011, 662 SCRA 126, 134-135.

[50] G.R. 197930, April 17, 2018.

[51] In this case, the Court stressed that, in addition to the three considerations provided under the Constitution, there must also be an explicit provision of statutory law which provides for the impairment of the right to travel.

[52] 381 U.S. 1 (1965).

[53] 2008 U.S. Dist. LEXIS 109090, December 3, 2008.

[54] 84 Wn. 2d 645, December 12, 1974.

[55] 94 Wn. 2d 552, October 16, 1980.

[56] *Phil. Movie Pictures Workers' Assn. v. Premiere Productions, Inc.*, 92 Phil. 843 (1953). See also *JMM Promotion Management, Inc. v. Court of Appeals*, G.R. No. 120095, August 5, 1996, 260 SCRA 319, 330.

[57] *United States v. Gomez Jesus*, 31 Phil. 218 (1915).

unduly oppressive upon individuals. In other words, the proper exercise of the police power requires the concurrence of a lawful subject and a lawful method.[58]

B

Having established that the rights to travel and due process are not absolute, as they can in fact be validly subject to restrictions under certain specified circumstances, it seems to me that petitioners' issues against Proclamation No. 475 respecting their rights to travel and due process hinge not so much on whether said Proclamation imposes a restriction, but whether the restrictions it imposed are *reasonable*.[59] Specifically, petitioners argue that: the ordered closure of Boracay Island is an extreme measure;[60] it is overly broad, oppressive, unreasonable, and arbitrary; and that there are more less restrictive and more narrowly drawn measures which the government can employ to protect the State's interest.[61]

What is "reasonable," however, is not subject to exact definition or scientific formulation. There is no all-embracing test of reasonableness;[62] its determination rests upon human judgment as *applied to the facts and circumstances* of each particular case.[63]

In this case, the following *factual* circumstances were considered, which led to the issuance of Proclamation No. 475:

a. High concentration of fecal coliform due to insufficient sewer lines and illegal discharge of untreated waste water into the beach, with daily tests revealing consistent failure in compliance with acceptable water standards, with an average result of 18,000 most probable number (MPN)/100 ml, exceeding the standard level of 400 MPN/100 ml;

b. Failure of most commercial establishments and residences to connect to the sewerage infrastructure of Boracay Island;

c. Improper waste disposal, in violation of environmental laws, rules, and regulations;

d. Majority (14 out of 51) of the establishments near the shore are not compliant with the Philippine Clean Water Act of 2004;

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[58] *Southern Luzon Drug Corporation v. The Department of Social Welfare and Development*, G.R. No. 199669, April 25, 2017.

[59] *Mirasol v. Department of Public Works and Highways*, G.R. No. 158793, June 8, 2006, 490 SCRA 318, 349.

[60] *Rollo*, pp. 83-84.

[61] *Id.* at 20, 22-25, 82, 84-85, 89.

[62] *Mirasol v. Department of Public Works and Highways*, *supra* at 348, citing *City of Raleigh v. Norfolk Southern Railway Co.*, 165 S.E.2d 745 (1969).

[63] *Id.*, citing *Board of Zoning Appeals of Decatur v. Decatur, Ind. Co. of Jehovah's Witnesses*, 117 N.E.2d 115 (1954). Italics supplied.

e. Degradation of the coral reefs and coral cover of Boracay Island as a consequence of continued exposure to dirty water caused by increased tourist arrivals;

f. Solid waste within Boracay Island is at a generation rate of 90 to 115 tons per day, while the hauling capacity of the local government is only 30 tons per day;

g. The natural habitats of Puka shells, nesting grounds of marine turtles, and roosting grounds of flying foxes or fruit bats have been damaged and/or destroyed;

h. Only four out of nine wetlands in Boracay Island remain due to illegal encroachment of structures;

i. Beach erosion is prevalent in Boracay Island due to storms, extraction of sand along the beach to construct properties and structures along the foreshore, and discharge of waste water near the shore, causing degradation of coral reefs and seagrass meadows;

j. Direct discharge of waste water near the shore has resulted in frequent algal bloom and coral deterioration; and

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

After due consideration of the above, the President, upon the NDRRMC's recommendation, declared a State of Calamity in the Island of Boracay and ordered its closure as a tourist destination for a period of six months. Petitioners take issue with the reasonableness of the measures taken and seek to take the President and the implementing agencies to task on this account. Arriving at a conclusion regarding the propriety and reasonableness of the above measures, however, will necessarily require examining the *factual* circumstances which formed the premise for Proclamation No. 475's issuance.

Permit me to illustrate, using some of Proclamation No. 475's factual considerations.

On the high concentration of fecal coliform in the water: To prove unreasonableness, petitioners may present evidence to prove that closure, if at all, for a shorter period of time (less than six months) is needed for the water coliform level to return to acceptable standards. Evidence may also be presented to show that closure of the island as a tourist destination is not

even necessary to address the insufficiency of sewer lines and illegal discharge of untreated waste water into the beach.

On the non-connection of the commercial establishments and residences to the island's sewerage infrastructure: To prove unreasonableness, petitioners may present evidence to show that closure of the island is not even necessary to connect all establishments to the existing sewerage infrastructure. Even assuming that *some* closure is necessary, petitioners may present evidence to show that connection may be done on *a one-barangay-at-a-time* basis (instead of simultaneously closing off all three barangays), and for a period shorter than six months.

On the establishments' non-compliance with the Philippine Clean Water Act: To prove unreasonableness, petitioners may present evidence that the simple issuance of notices of violation would be sufficient to compel establishments to comply with the requirements of the Act.

On the degradation of the coral reefs and coral cover in the island because of dirty water: To prove unreasonableness, petitioners may present evidence to show that the local government is unable to meet the waste generation rate in the island; that there is no rational relation between the environmental issues (such as the destruction of the natural habitats of the various animals, existence of illegal encroachments, beach erosion, and other conditions existing in the island) and the purported closure of the island to tourists for six months.

The foregoing, however, involve questions of fact which cannot be entertained by this Court. Questions of fact indispensable to the disposition of a case, as in this case, are cognizable by the trial courts; petitioners should thus have filed the petition before them. Failure to do so, in fact, is sufficient to warrant the Court's dismissal of the case.[64]

For similar reasons, I find that the Court should also decline to resolve the fourth issue raised by petitioners, that is, whether Proclamation No. 475 violates the principle of local autonomy insofar as it orders local government units to implement the closure. Similar with the *ponencia's* finding, I find that, contrary to petitioners' arguments, the text of RA 10121 actually recognizes and even empowers the local government unit in disaster risk reduction and management.[65] I also hasten to add that whether or not Proclamation No. 475 did, in fact, cause an *actual* intrusion into an affected local government unit's powers is still largely a question of fact. In fact, even assuming that petitioners are able to show such intrusion, again it seems to me that their issue against such would involve a question into the reasonableness of the same under the circumstances. This issue, as already

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[64] *Chamber of Real Estate and Builders Associations, Inc. (CREBA) v. Secretary of Agrarian Reform*, G.R. No. 183409, June 18, 2010, 621 SCRA 295, 312; *Mangaliag v. Catubig-Pastoral*, G.R. No. 143951, October 25, 2005, 474 SCRA 153, 161-162.

[65] *Ponencia*, pp. 26-27.

shown, *still* involves the resolution of underlying issues of fact. For example, petitioners would have to present evidence to show, among others, that the local government unit concerned had recommended a *less drastic* course of action to address the situation than those taken under the Proclamation, and that this recommendation was not considered and/or actually overruled by the President and/or NDRRMC.

Petitioners cite *White Light Corporation v. City of Manila*,[66] *Lucena Grand Central Terminal, Inc. v. JAC Liner, Inc.*,[67] and *Metropolitan Manila Development Authority v. Viron Transportation, Co, Inc.*[68] to demonstrate how this Court has stricken down measures which have been shown to be unreasonable and/or not the least restrictive means to pursue a particular government interest. To my mind, however, none of the foregoing cases are useful to further petitioners' cause. Rather than justify direct resort pursuant to this Court's original jurisdiction over certain cases, the foregoing cases all the more highlight the necessity of following the hierarchy of courts.

In *White Light Corporation*, the validity of Manila City Ordinance No. 7774, entitled "An Ordinance Prohibiting Short-Time Admission, Short-Time Admission Rates, and Wash-Up Rate Schemes in Hotels, Motels, Inns, Lodging Houses, Pension Houses, and Similar Establishments in the City of Manila," was challenged on the ground that it violated sacred constitutional rights to liberty, due process, and equal protection of law.

In *Lucena Grand Central Terminal, Inc.*, the constitutionality of City Ordinance Nos. 1631 and 1778—which granted a franchise to petitioner and regulated entrance into the city, respectively—was challenged on the ground that they constituted an invalid exercise of police power, an undue taking of private property, and a violation of the constitutional prohibition against monopolies.

In *Metropolitan Manila Development Authority (MMDA)*, petitioners therein questioned the MMDA's authority to order the closure of provincial bus terminals along Epifanio de los Santos Avenue and major thoroughfares of Metro Manila.

It appears to escape petitioners' notice that while the above cases did involve constitutional challenges, none involved a direct recourse to this Court. The challenges were initially filed before the RTC, who had the first opportunity to evaluate and resolve the same, *after* the parties were able to thresh out the factual issues, enter into stipulations, or agree on the conduct of proceedings. By so doing, by the time the cases reached this Court, only questions of law remained to be settled.[69] This, to my mind, results in a more

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[66] G.R. No. 122846, January 20, 2009, 576 SCRA 416.

[67] G.R. No. 148339, February 23, 2005, 452 SCRA 174.

[68] G.R. No. 170656, August 15, 2007, 530 SCRA 341.

[69] In *White Light Corporation*, the parties agreed to submit the case for decision without trial as the case involved a purely legal question; in *Lucena Grand Central Terminal, Inc.*, the parties agreed to dispense

judicious use of the Court's limited time and resources. A strict observance of the rule on hierarchy of courts would save the Court from having to resolve factual questions (which, in the first place, it is ill-equipped to do, much less in the first instance) and enable it to focus on the more fundamental tasks assigned to it under the Constitution.

C

It is beyond dispute that the rights to travel and to due process of law are fundamental.[70] This is significant because, traditionally, liberty interests are protected only against arbitrary government interference, that is, a claim to a liberty interest may fail upon a showing by the government of a rational basis to believe that its interference advances a legitimate legislative objective.[71] Where, however, a liberty interest has been accorded an "elevated" fundamental right status, the government is subject to a *higher* burden of proof to justify intrusions into these interests, namely, the requirements of strict scrutiny in equal protection cases[72] and that of compelling state interest in due process cases.[73]

In his Concurring Opinion in *Estrada v. Sandiganbayan*,[74] Justice Vicente Mendoza wrote:

> Petitioner cites the dictum in *Ople v. Torres* that "when the integrity of a fundamental right is at stake, this Court will give the challenged law, administrative order, rule or regulation stricter scrutiny" and that "It will not do for authorities to invoke the presumption of regularity in the performance of official duties." As will presently be shown, "strict scrutiny," as used in that decision, is not the same thing as the "strict scrutiny" urged by petitioner. **Much less did this Court rule that because of the need to give "stricter scrutiny" to laws abridging fundamental freedoms, it will not give such laws the presumption of validity**.[75]

Similarly, mere invocation of a fundamental right, or an alleged restriction thereof, would not operate to excuse a pleader from proving his case. Lest petitioners forget, Proclamation No. 475, issued by the President pursuant to his power of subordinate legislation under RA 10121, enjoys the presumption of constitutionality and legality. To overcome this, facts establishing *invalidity* must be proven through the presentation of evidence. In *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City*

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with the presentation of evidence and to submit the case for resolution solely on the basis of the pleadings filed; and in *Metropolitan Manila Development Authority*, the parties limited the issues, entered into stipulations, and agreed to file their respective position papers in lieu of hearings.

70 See *Samahan Ng Mga Progresibong Kabataan (SPARK) v. Quezon City*, G.R. No. 225442, August 8, 2017 and *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, G.R. No. 148208, December 15, 2004, 446 SCRA 299.

71 David Crump, "How do the Courts Really Discover Unenumerated Fundamental Rights? Cataloguing the Methods of Judicial Alchemy," 19 Harv. J. L. & Pub. Pol'y 795 (1996), pp. 799-800.

72 See *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, *supra* at footnote 16.

73 See *Obergefell v. Hodges*, 576 U.S. __ (2015), footnote 19.

74 G.R. No. 148560, November 19, 2001, 369 SCRA 394.

75 *Id.* at 461-462. Citations omitted. Emphasis supplied.

Mayor of Manila,[76] citing *O'Gorman & Young v. Hartford Fire Insurance Co.*,[77] this Court stressed:

> It admits of no doubt therefore that there being a presumption of validity, **the necessity for evidence to rebut it is unavoidable**, unless the statute or ordinance is void on its [face,] which is not the case here. The principle has been nowhere better expressed than in the leading case of *O'Gorman & Young v. Hartford Fire Insurance Co.*, where the American Supreme Court through Justice Brandeis tersely and succinctly summed up the matter thus:
>
> > The statute here questioned deals with a subject clearly within the scope of the police power. We are asked to declare it void on the ground that the [specific] method of regulation prescribed is unreasonable and hence deprives the plaintiff of due process of law. As underlying questions of fact may condition the constitutionality of legislation of this character, the presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute.
> >
> > **No such factual foundation being laid in the present case, the lower court deciding the matter on the pleadings and the stipulation of [facts], the presumption of validity must prevail and the judgment against the ordinance set aside.**[78]

Thus, and until it is set aside with finality in an appropriate case by a competent court,[79] Proclamation No. 475 has the force and effect of law and must be enforced accordingly. The burden of proving its unconstitutionality rests on the party assailing the governmental regulations and administrative issuances.[80]

More importantly, the doctrine of hierarchy of courts requires that factual questions first be submitted to trial courts who are more properly equipped to receive evidence on, and ultimately resolve, issues of fact. Where, as in this case, the resolution of the issue on constitutionality requires the determination and evaluation of extant factual circumstances, this Court should decline to exercise its original jurisdiction and, instead, reserve judgment until such time that the question is properly brought before it on appeal.

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[76] G.R. No. L-24693, July 31, 1967, 20 SCRA 849.

[77] 282 U.S. 251 (1931).

[78] *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, *supra*. (Emphasis supplied.) See also *Agustin v. Edu*, G.R. No. L-49112, February 2, 1979, 88 SCRA 195; Justice Teodoro R. Padilla's Separate Opinion in *Guazon v. De Villa*, G.R. No. 80508, January 30, 1990, 181 SCRA 623; and the US case of *Nashville, C. & St. LR Co. v. Walters*, 294 U.S. 405 (1935).

[79] *Abakada Guro Party List v. Purisima*, *supra* note 19 at 289.

[80] *Mirasol v. Department of Public Works and Highways*, G.R. No. 158793, June 8, 2006, 490 SCRA 318, 348.

For all the foregoing reasons, I vote to **DISMISS** the petition.

FRANCIS H. JARDELEZA
Associate Justice

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court