EN BANC

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

Promulgated:
February 12, 2019

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

DISSENTING OPINION

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

Naomi Klein

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

Vandana Shiva

LEONEN, *J.*:

With respect to my esteemed colleagues, I dissent.

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

It violates the right to life and liberty properly invoked by petitioners without due process of law. The Proclamation imposes a closure and a deprivation of the livelihood of those who have not been shown to have caused the high levels of fecal coliform and other human made incursions into Boracay's ecology which invited President Rodrigo Duterte's drastic

actions. The specific actions and programs to be undertaken during the closure of the entire island, so as to properly advise the residents, workers, and others interested, are not clearly stated. The six (6)-month duration of the closure is arbitrary. The state of calamity will persist even after the closure expires. The lifting of the declaration of the state of calamity is not preceded by any discernible standard. The Department of the Interior and Local Government "Guidelines" (DILG Guidelines) for the closure were issued prior to the promulgation of the Proclamation. It is inconsistent with the latter, containing provisions with serious constitutional implications.

The Proclamation is unduly vague. It is unconstitutionally broad.

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

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

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

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

I

The Petition raises questions relating to petitioners' right to travel and right to due process. I join Associate Justice Alfredo Benjamin Caguioa's

---

1 Rep. Act No. 10121 (2010), Philippine Disaster Risk Reduction and Management Act of 2010.
2 Rep. Act No. 9275 (2004), Philippine Clean Water Act of 2004.

view that the right to travel has been violated especially in light of the most recent unanimous decision of this Court in *Genuino v De Lima.*[3] Fundamentally, however, I vote to grant the Petition on due process grounds.

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

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

The due process clause is written as a proscription.[4] It implies a sphere of individual autonomy that is constitutionally protected. As early as 1890, in the seminal work of Louis D. Brandeis and Samuel Warren, this sphere was referred to as the "right to be left alone" from interference by the State. Reviewing its evolution in common law:

> That the individual shall have full protection in person and in property is a principle as old as the common law; but it has been found necessary from time to time to define anew the exact nature and extent of such protection. Political, social and economic changes entail the recognition of new rights, and the common law, in its eternal youth, grows to meet the demands of society. Thus, in very early times, the law gave a remedy only for physical interference with life and property, for trespasses *vi et armis*. Then the "right to life" served only to protect the subject from battery in its various forms; liberty meant freedom from actual restraint; and the right to property secured to the individual his lands and his cattle. Later, there came a recognition of man's spiritual nature, of his feelings and his intellect. Gradually the scope of these legal rights broadened; and now the right to life has come to mean the right to enjoy life,—the right to be let alone; the right to liberty secures the exercise of extensive civil privileges; and the term "property" has grown to comprise every form of possession— intangible, as well as tangible.
>
> Thus, with the recognition of the legal value of sensations, the protection against actual bodily injury was extended to prohibit mere attempts to do such injury; that is, the putting another in fear of such injury. From the action of battery grew that of assault. Much later there came a qualified protection of the individual against offensive noises and odors, against dust and smoke and excessive vibration. The law of nuisance was developed. So regard for human emotions soon extended the scope of personal immunity beyond the body of the individual. His reputation, the standing among his fellow-men, was considered, and the law of slander and libel arose. Man's family relations became a part of the legal conception of his life, and the alienation of a wife's affections was held remediable. Occasionally the law halted,—as in its refusal to recognize the intrusion by seduction upon the honor of the family. But

---

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

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

> even here the demands of society were met. A mean fiction, the action per *quod servitium amisit*, was resorted to, and by allowing damages for injury to the parents' feelings, an adequate remedy was oridinarily afforded. Similar to the expansion of the right to life was the growth of the legal conception of property. From corporeal property arose the incorporeal rights issuing out of it; and then there opened the wide realm of intangible property, in the products and processes of the mind, as works of literature and art, goodwill, trade secrets, and trademarks.
>
> This development of the law was inevitable.[5] (Citations omitted)

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

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

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

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

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

---

5 Samuel D. Warren and Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV 193–195 (1890). See also Irwin R. Kramer, *The Birth of Privacy Law: A Century Since Warren & Brandeis*, 39 CATH. U.L. REV. 703 (1990).

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

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

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

9 Id. at 50.

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

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

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

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

Thereafter:

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

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

> Speaking of life and its protection does not merely entail ensuring biological subsistence. It is not just a proscription against killing. Likewise, speaking of liberty and its protection does not merely involve a lack of physical restraint. The objects of the constitutional protection of due process are better understood dynamically and from a frame of consummate human dignity. They are likewise better understood integrally, operating in a synergistic frame that serves to secure a person's integrity.
>
> "Life, liberty and property" is akin to the United Nations' formulation of "life, liberty, and security of person" and the American formulation of "life, liberty and the pursuit of happiness." As the American Declaration of Independence postulates, they are "unalienable rights" for which "[g]overnments are instituted among men" in order that they may be secured. Securing them denotes pursuing and obtaining

---

[11] Id. at 316–317.
[12] Id. at 317 *citing Roth v. Board of Regents*, 408 U.S. 572 (1972).
[13] Id. *citing* Lawrence v. Texas, 539 U.S. 558 (2003).
[14] G.R. No. 225442, August 8, 2017, 835 SCRA 350 [Per J. Perlas-Bernabe, En Banc].

them, as much as it denotes preserving them. The formulation is, thus, an aspirational declaration, not merely operating on factual givens but enabling the pursuit of ideals.

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

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

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

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

---

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

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

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

I disagree.

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

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

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

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

In contrast, property rights may be readily qualified as evidenced by the many rules and laws that have been enacted on property ownership and

---

[16] *Rollo*, p. 22.

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

possession. Article XII, Section 6 of the Constitution qualifies the right to property:

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

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

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

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

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

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

---

[18] 127 Phil. 306 (1967) [Per J. Fernando, En Banc].
[19] Id. at 324.
[20] G.R. No. 199669, April 25, 2017, 824 SCRA 164 [Per J. Reyes, En Banc].

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

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

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

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

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

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

Certainly, this is not the judicial approach sanctioned by our Constitution. Article II, Sections 9 and 10 of the Constitution call attention to sensitivity to social justice, thus:

> SECTION 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social

---

[21] *Ponencia*, p. 24.

> services, promote full employment, a rising standard of living, and an improved quality of life for all.
>
> SECTION 10. The State shall promote social justice in all phases of national development.

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

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

II

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

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

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

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

In that case, the Court viewed due process as merely requiring that the challenged action "must not outrun the bounds of reasons and result in sheer

---

22 G.R. No. 199669, April 25, 2017, 824 SCRA 164 [Per J. Reyes, En Banc].
23 127 Phil. 306 (1967) [Per J. Fernando, En Banc].
24 Id. at 316.

oppression. Due process is thus hostile to any official action marred by lack of reasonableness. Correctly has it been identified as freedom from arbitrariness. It is the embodiment of the sporting idea of fair play."[25]

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

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

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

> The general test of the validity of an ordinance on substantive due process grounds is best tested when assessed with the evolved footnote 4 test laid down by the U.S. Supreme Court in *U.S. v. Carolene Products.* Footnote 4 of the *Carolene Products* case acknowledged that the judiciary would defer to the legislature unless there is a discrimination against a "discrete and insular" minority or infringement of a "fundamental right". Consequently, two standards of judicial review were established: strict scrutiny for laws dealing with freedom of the mind or restricting the political process, and the rational basis standard of review for economic legislation.
>
> A third standard, denominated as heightened or immediate scrutiny, was later adopted by the U.S. Supreme Court for evaluating classifications based on gender and legitimacy. Immediate scrutiny was adopted by the U.S. Supreme Court in *Craig*, after the Court declined to do so in *Reed v. Reed.* While the test may have first been articulated in equal protection analysis, it has in the United States since been applied in all substantive due process cases as well.
>
> We ourselves have often applied the rational basis test mainly in analysis of equal protection challenges. Using the rational basis examination, laws or ordinances are upheld if they rationally further a legitimate governmental interest. Under intermediate review, governmental interest is extensively examined and the availability of less restrictive measures is considered. Applying strict scrutiny, the focus is on

---

25 Id. at 319.
26 495 Phil. 289 (2005) [Per J. Tinga, En Banc].
27 Id. at 307–308.
28 596 Phil. 444 (2009) [Per J. Tinga, En Banc].

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

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

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

> An appraisal of due process and equal protection challenges against government regulation must admit that the gravity of interests invoked by the government and the personal liberties or classification affected are not uniform. Hence, the three (3) levels of analysis that demand careful calibration: the rational basis test, intermediate review, and strict scrutiny. Each level is typified by the dual considerations of: first, the interest invoked by the government; and second, the means employed to achieve that interest.
>
> The rational basis test requires only that there be a legitimate government interest and that there is a reasonable connection between it and the means employed to achieve it.
>
> Intermediate review requires an important government interest. Here, it would suffice if government is able to demonstrate substantial connection between its interest and the means it employs. In accordance with *White Light,* "the availability of less restrictive measures [must have been] *considered.*" This demands a conscientious effort at devising the least restrictive means for attaining its avowed interest. It is enough that the means employed is *conceptually* the least restrictive mechanism that the government may apply.
>
> Strict scrutiny applies when what is at stake are fundamental freedoms or what is involved are suspect classifications. It requires that there be a compelling state interest and that the means employed to effect it are narrowly-tailored, *actually* — not only conceptually — being the least restrictive means for effecting the invoked interest. Here, it does not suffice that the government contemplated on the means available to it. Rather, it must show an active effort at demonstrating the inefficacy of all possible alternatives. Here, it is required to not only explore all possible

---

29 Id. at 462–463.

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

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

avenues but to even debunk the viability of alternatives so as to ensure that its chosen course of action is the sole effective means. To the extent practicable, this must be supported by sound data gathering mechanisms.

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

> Under most circumstances, the Court will exercise judicial restraint in deciding questions of constitutionality, recognizing the broad discretion given to Congress in exercising its legislative power. Judicial scrutiny would be based on the "rational basis" test, and the legislative discretion would be given deferential treatment.
>
> *But if the challenge to the statute is premised on the denial of a fundamental right, or the perpetuation of prejudice against persons favored by the Constitution with special protection, judicial scrutiny ought to be more strict.* A weak and watered down view would call for the abdication of this Court's solemn duty to strike down any law repugnant to the Constitution and the rights it enshrines. This is true whether the actor committing the unconstitutional act is a private person or the government itself or one of its instrumentalities. Oppressive acts will be struck down regardless of the character or nature of the actor.

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

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

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

---

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

33 CONST. Art. II, sec. 9.

34 CONST. Art. II, sec. 9.

35 CONST. Art. II, sec. 11.

peoples, farmers and farmworkers, labor in general enjoy significant protection.

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

III

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

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

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

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

---

[36] 596 Phil. 444 2009 [Per J. Tinga, En Banc].
[37] Id. at 469.

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

> WHEREAS, the investigations and validation undertaken revealed that:
>
> . . . .
>
> b. Most commercial establishments and residences are not connected to the sewerage infrastructure of Boracay Island, and waste products are not being disposed through the proper sewerage infrastructures in violation of environmental law, rules, and regulations;
>
> c. Only 14 out of 51 establishments near the shores of Boracay Island are compliant with the provisions of Republic Act (RA) No. 9275 or the Philippine Clean Water Act of 2004;
>
> . . . .
>
> e. Solid waste within Boracay Island is at a generation rate of 90 to 115 tons per day, while the hauling capacity of the local government is only 30 tons per day, hence leaving approximately 85 tons of waste in the Island daily;
>
> . . . .
>
> g. Only four (4) out of nine (9) wetlands in Boracay Island remain due to illegal encroachment of structures, including 937 identified illegal structures constructed on forestlands and wetlands, as well as 102 illegal structures on areas already classified as easements, and the disappearance of the wetlands, which act as natural catchments, enhances flooding in the area[.][38]

There are commercial establishments and residential areas connected to the sewage infrastructure. There are at least 14 establishments who comply with Republic Act No. 9275 or the Philippine Clean Water Act of 2004. There are wetlands that are not affected by illegal structures. There are residents and commercial establishments whose garbage are collected properly. More importantly, petitioners are not shown to have contributed to the formation of fecal coliform in the targeted beaches of Boracay.

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

---

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

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

IV

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

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

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

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

On their websites, publications Rappler and ABS-CBN reported that the Department of Interior and Local Government issued guidelines for the

---

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

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

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

closure,[43] and that 630 police and military personnel have been deployed on the island.[44]

The DILG Guidelines provide:

> 1. **No going beyond Jetty Port.** Identified tourists will not be allowed into the island and will be stopped at the Jetty Port in Malay, Aklan.
>
> 2. **No ID, no entry.** Residents/workers/resort owners will be allowed entry into the island subject to the presentation of identification cards specifying a residence in Boracay. All government-issued IDs will be recognized. Non-government IDs are acceptable as long as they are accompanied by a barangay certification of residency.
>
> 3. **Swimming for locals only.** Generally, swimming shall not be allowed anywhere on the island. However, residents may be allowed to swim only at Angol Beach in station 3 from 6 am to 5 pm.
>
> 4. **One condition for entry.** No visitors of Boracay residents shall be allowed entry, except under emergency situations, and with the clearance of the security committee composed of DILG representative, police, and local government officials.
>
> 5. **Journalists need permission to cover.** Media will be allowed entry subject to prior approval from the Department of Tourism, with a definite duration and limited movement.
>
> 6. **No floating structures.** No floating structures shall be allowed up to 15 kilometers from the shoreline.
>
> 7. **Foreign residents to be checked.** The Bureau of Immigration will revalidate the papers of foreigners who have found a home in Boracay.
>
> 8. **One entry, one exit point.** There will only be one transportation point to Boracay Island. Authorities have yet to decide where.[45] (Emphasis in the original)

---

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

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

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

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

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

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

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

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

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

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

The Proclamation provides:

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

> Concerned government agencies shall, as may be necessary or appropriate, undertake the remedial measures during a State of Calamity as provided in RA No. 10121 and other applicable laws, rules and regulations, such as control of the prices of basic goods and commodities for the affected areas, employment of negotiated procurement and utilization of appropriate funds, including the National Disaster Risk Reduction and Management Fund, for relief and rehabilitation efforts in the area. All departments and other concerned government agencies are also hereby directed to coordinate with and provide or augment the basic services and facilities of affected local government units, if necessary.
>
> The State of Calamity in the Island of Boracay shall remain in force and effect until lifted by the President, notwithstanding the lapse of the six-month closure period.
>
> All departments, agencies and offices, including government-owned or controlled corporations and affected local government units are hereby directed to implement and execute the abovementioned closure and the appropriate rehabilitation works, in accordance with pertinent operational plans and directives, including the Boracay Action Plan.
>
> The Philippine National Police, the Philippine Coast Guard and other law enforcement agencies, with the support of the Armed Forces of the Philippines, are hereby directed to act with restraint and within the bounds of the law in the strict implementation of the closure of the Island and ensuring peace and order in the area.
>
> The Municipality of Malay, Aklan is also hereby directed to ensure that no tourist will be allowed entry to the Island of Boracay until such time that the closure has been lifted by the President.
>
> All tourists, residents and establishment owners in the area are also urged to act within the bounds of the law and to comply with the directives herein provided for the rehabilitation and restoration of the ecological balance of the Island which will be for the benefit of all concerned.[46] (Emphasis in the original)

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

---

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

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

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

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

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

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

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

> The doctrine of void for vagueness is a ground for invalidating a statute or a governmental regulation for being *vague*. The doctrine requires that a statute be sufficiently explicit as to inform those who are subject to it what conduct on their part will render them liable to its penalties. In *Southern Hemisphere v. Anti-Terrorism Council*:
>
> > A statute or act suffers from the defect of vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application. It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by

---

47 Proc. No. 475 (2018).

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

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

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

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

> Hence, it cannot plausibly be contended that the law does not give a fair warning and sufficient notice of what it seeks to penalize. Under the circumstances, petitioner's reliance on the "void-for-vagueness" doctrine is manifestly misplaced. The doctrine has been formulated in various ways, but is most commonly stated to the effect that a statute establishing a criminal offense must define the offense with sufficient definiteness that persons of ordinary intelligence can understand what conduct is prohibited by the statute. It can only be invoked against that specie of legislation that is utterly vague on its face, *i.e.*, that which cannot be clarified either by a saving clause or by construction.
>
> A statute or act may be said to be vague when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ in its application. In such instance, the statute is repugnant to the Constitution in two (2) respects — it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of what conduct to avoid; and, it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle. But the doctrine does not apply as against legislations that are merely couched in imprecise language but which nonetheless specify a standard though defectively phrased; or to those that are apparently ambiguous yet fairly applicable to certain types of activities. The first may be "saved" by proper construction, while no challenge may be mounted as against the second whenever directed against such activities. With more reason, the doctrine cannot be invoked where the assailed statute is clear and free from ambiguity, as in this case.

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

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

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

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

In *Adiong v. Commission on Elections,* the Court applied the doctrine in relation to the Due Process Clause of the Constitution. Thus, in *Adiong,* the Commission on Elections issued a Resolution prohibiting the posting of decals and stickers not more than eight and one-half (8 ½) inches in width and fourteen (14) inches in length *in any place, including mobile places whether public or private* except in areas designated by the COMELEC. The Court characterized the regulation as void for being "so broad," thus:

> Verily, the restriction as to where the decals and stickers should be posted is so broad that it encompasses even the citizen's private property, which in this case is a privately-owned vehicle. In consequence of this prohibition, another cardinal rule prescribed by the Constitution would be violated. Section 1, Article III of the Bill of Rights provides "that no person shall be deprived of his property without due process of law."
>
> Property is more than the mere thing which a person owns, it includes the right to acquire, *use,* and dispose of it; and the Constitution, in the 14th Amendment, protects these essential attributes.
>
> Property is more than the mere thing which a person owns. It is elementary that it includes the right to acquire, use, and dispose of it. The Constitution protects these essential attributes of property. . . Property consists of the free use, enjoyment, and disposal of a person's acquisitions without control or diminution save by the law of the land.

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

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

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

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

> Also, the charge of invalidity of this section based on the overbreadth doctrine will not hold water since the specific conducts proscribed *do not intrude into guaranteed freedoms like speech.* Clearly, what this section regulates are specific actions: the acquisition, use, misuse or deletion of personal identifying data of another. There is no fundamental right to acquire another's personal data.
>
> . . . .
>
> But this rule admits of exceptions. *A petitioner may for instance mount a "facial" challenge to the constitutionality of a statute even if he claims no violation of his own rights under the assailed statute where it involves free speech on grounds of overbreadth or vagueness of the statute.* The rationale for this exception is to counter the "chilling effect" on protected speech that comes from statutes violating free speech. A person who does not know whether his speech constitutes a crime under an overbroad or vague law may simply restrain himself from speaking in order to avoid being charged of a crime. The overbroad or vague law thus chills him into silence.

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

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

> The confusion apparently stems from the interlocking relation of the *overbreadth and vagueness* doctrines as grounds for a *facial* or *as-applied* challenge against a penal statute (under a claim of violation of due process of law) or a speech regulation (under a claim of abridgement of the freedom of speech and cognate rights).
>
> *To be sure, the doctrine of vagueness and the doctrine of overbreadth do not operate on the same plane.*
>
> . . . .
>
> The allowance of a facial challenge in free speech cases is justified by the aim to avert the chilling effect on protected speech, the exercise of which should not at all times be abridged. As reflected earlier, this rationale is inapplicable to plain penal statutes that generally bear an *in terrorem* effect in deterring socially harmful conduct. In fact, the legislature may even forbid and penalize acts formerly considered innocent and lawful, so long as it refrains from diminishing or dissuading the exercise of constitutionally protected rights.

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

> By its nature, the overbreadth doctrine has to necessarily apply a facial type of invalidation in order to plot areas of protected speech, inevitably almost always under situations not before the court, that are impermissibly swept by the substantially overbroad regulation. Otherwise stated, a statute cannot be properly analyzed for being substantially overbroad if the court confines itself only to facts as applied to the litigants.
>
> . . . .
>
> In restricting the overbreadth doctrine to free speech claims, the Court, in at least two cases, observed that the US Supreme Court has not recognized an overbreadth doctrine outside the limited context of the First Amendment, and that claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words. In *Virginia v. Hicks,* it was held that rarely, if ever, will an overbreadth challenge succeed against a law or regulation that is not specifically addressed to speech or speech-related conduct. Attacks on overly broad statutes are justified by the "transcendent value to all society of constitutionally protected expression."

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

> In this jurisdiction, the void-for-vagueness doctrine asserted under the due process clause has been utilized in examining the constitutionality of criminal statutes. In at least three cases, the Court brought the doctrine into play in analyzing an ordinance penalizing the non-payment of municipal tax on fishponds, the crime of illegal recruitment punishable under Article 132 (b) of the Labor Code, and the vagrancy provision under Article 202 (2) of the Revised Penal Code. Notably, the petitioners in these three cases, similar to those in the two *Romualdez* and *Estrada* cases, were actually charged with the therein assailed penal statute, unlike in the present case.
>
> From these pronouncements, it is clear that what is relevant in the application of the void-for-vagueness doctrine is not whether it is a freedom of speech case, but rather whether it violates the Due Process Clause of the Constitution for failure to accord persons a fair notice of which conduct to avoid; and whether it leaves law enforcers unbridled discretion in carrying out their functions.[49] (Emphasis in the original, citations omitted)

V

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

The Civil Code acknowledges the concept of nuisance, thus:

> ARTICLE 694. A nuisance is any act, omission, establishment, business, condition of property, or anything else which:
>
> (1) Injures or endangers the health or safety of others; or
> (2) Annoys or offends the senses; or
> (3) Shocks, defies or disregards decency or morality; or
> (4) Obstructs or interferes with the free passage of any public highway or street, or any body of water; or
> (5) Hinders or impairs the use of property.
>
> ARTICLE 695. Nuisance is either public or private. A public nuisance affects a community or neighborhood or any considerable number of persons, although the extent of the annoyance, danger or damage upon individuals may be unequal. A private nuisance is one that is not included in the foregoing definition.

---

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

[50] Id.

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

> ARTICLE 696. Every successive owner or possessor of property who fails or refuses to abate a nuisance in that property started by a former owner or possessor is liable therefor in the same manner as the one who created it.
>
> ARTICLE 697. The abatement of a nuisance does not preclude the right of any person injured to recover damages for its past existence.[51]

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

> ARTICLE 699. The remedies against a public nuisance are:
>
> (1) A prosecution under the Penal Code or any local ordinance: or
> (2) A civil action; or
> (3) Abatement, without judicial proceedings.[52]

Abatement of a public nuisance is provided, thus:

> ARTICLE 698. Lapse of time cannot legalize any nuisance, whether public or private.
>
> ARTICLE 700. The district health officer shall take care that one or all of the remedies against a public nuisance are availed of.
>
> ARTICLE 701. If a civil action is brought by reason of the maintenance of a public nuisance, such action shall be commenced by the city or municipal mayor.
>
> ARTICLE 702. The district health officer shall determine whether or not abatement, without judicial proceedings, is the best remedy against a public nuisance.
>
> ARTICLE 703. A private person may file an action on account of a public nuisance, if it is specially injurious to himself.
>
> ARTICLE 704. Any private person may abate a public nuisance which is specially injurious to him by removing, or if necessary, by destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury. But it is necessary:
>
> (1) That demand be first made upon the owner or possessor of the property to abate the nuisance;

---

51 CIVIL CODE, arts. 696 and 697.
52 CIVIL CODE, art. 699.

> (2) That such demand has been rejected;
>
> (3) That the abatement be approved by the district health officer and executed with the assistance of the local police; and
>
> (4) That the value of the destruction does not exceed three thousand pesos.[53]

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

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

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

> SECTION 6. *Management of Non-attainment Areas.* — The Department shall designate water bodies, or portions thereof, where specific pollutants from either natural or man-made source have already exceeded water quality guidelines as non-attainment areas for the exceeded pollutants. It shall prepare and implement a program that will not allow new sources of exceeded water pollutant in non-attainment areas without a corresponding reduction in discharges from existing sources: *Provided*, That if the pollutant is naturally occurring, e.g. naturally high boron and other elements in geothermal areas, discharge of such pollutant may be allowed: *Provided, further*, That the effluent concentration of discharge shall not exceed the naturally occurring level of such pollutant in the area: *Provided, finally*, That the effluent concentration and volume of discharge shall not adversely affect water supply, public health and ecological protection.
>
> The Department shall, in coordination with NWRB, Department of Health (DOH), Department of Agriculture (DA), governing board and other concerned government agencies and private sectors shall take such measures as may be necessary to upgrade the quality of such water in non-attainment areas to meet the standards under which it has been classified.
>
> Upgrading of water quality shall likewise include undertakings which shall improve the water quality of a water body to a classification that will meet its projected or potential use.
>
> The LGUs shall prepare and implement contingency plans and other measures including relocation, whenever necessary, for the protection of health and welfare of the residents within potentially affected areas.

---

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

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

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

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

> SECTION 27. *Prohibited Acts*. — The following acts are hereby prohibited:
>
> a) Discharging, depositing or causing to be deposited material of any kind directly or indirectly into the water bodies or along the margins of any surface water, where, the same shall be liable to be washed into such surface water, either by tide action or by storm, floods or otherwise, which could cause water pollution or impede natural flow in the water body;
>
> . . . .
>
> e) Unauthorized transport or dumping into sea waters of sewage sludge or solid waste as defined under Republic Act No. 9003;
>
> . . . .
>
> g) Operate facilities that discharge or allow to seep, willfully or through gross negligence, prohibited chemicals, substances or pollutants listed under Republic Act No. 6969, into water bodies or wherein the same shall be liable to be washed into such surface, ground, coastal, and marine water;
>
> h) Undertaking activities or development and expansion of projects, or operating wastewater/sewerage facilities in violation of Presidential Decree No. 1586 and its implementing rules and regulations;

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

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

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

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

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

. . . .

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

Section 28 of the same law provides further enforcement mechanisms:

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

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

> pesos (P500,000.00) per day for each day during which the omission and/or contamination continues.
>
> In case of gross violation of this Act, the PAB shall issue a resolution recommending that the proper government agencies file criminal charges against the violators. (Emphasis supplied)

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

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

> **RULE III**
>
> *Jurisdiction and Authority of the Board*
>
> SECTION 1. JURISDICTION OF THE BOARD
>
> . . . .
>
> B. Specific Jurisdiction. — Notwithstanding the general jurisdiction of the Board over adjudication of pollution cases, and all matters related thereto, the Board has specific jurisdiction, over the following cases:
>
> . . . .
>
> 2. Clean Water Act (RA 9275)
>
> The PAB has the *exclusive and original jurisdiction* with respect to adjudication of pollution cases based on exceedance of the DENR Effluent Standards and other acts defined as prohibited under Section 27 of R.A. 9275. (Emphasis supplied)

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

> **RULE X**
>
> *Orders, Resolutions and Decisions*
>
> SECTION 1. *Cease and Desist Order.* — Whenever the Board finds *prima facie* evidence that the emission or discharge of pollutants

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

constitutes an immediate threat to life, public health, safety or welfare, or to animal or plant life, or exceeds the allowable DENR Standards, it may issue or recommend to the DENR Secretary an *ex-parte order* directing the discontinuance of the same or the temporary suspension or cessation of operation of the establishment or person generating such pollutants, without need of a prior public hearing.

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

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

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

. . . .

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

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

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

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

The implementing team shall be designated by the Regional Director.

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

1. Upon issuance or receipt of the CDO by the Board, the EMB Regional Director or his duly authorized representative shall inform the local government unit (province/municipality/city) concerned regarding the implementation thereof by furnishing it with copies of the Orders received from the Board;

2. Upon arrival at the respondent's premises, the implementing team shall present proper identification as well as its mission Order duly signed by the EMB Regional Director;

3. The head of the implementing team shall serve the CDO on the Managing Head and the Pollution Control Officer, or in their absence to any person in charge, by thoroughly explaining to them the contents thereof;

4. The team shall proceed with the execution of the CDO by padlocking and sealing the source responsible for generating the effluent or emission, and thereafter requesting the Managing Head and the Pollution Control Officer to affix their signatures to the duplicate copy of the CDO as proof of service;

5. Should there be refusal on the part of the respondent to have the CDO implemented, the head of the implementing team shall report such incident to the EMB Regional Director, without prejudice to such respondent being declared in contempt and other criminal liability under relevant laws;

6. The Regional Director, whenever it is deemed necessary, may seek the assistance of the Local Government Units (LGUs) and/or Philippine National Police (PNP) through its PNP Regional Director. The written communication shall state the urgency of having the CDO implemented within the seventy-two (72) hour period as prescribed in the existing Rules;

7. The LGUs and/or the PNP together with the same implementing team may break into respondent's premises for the purpose of implementing the CDO in accordance with number four (4) above; and

8. Upon serving of the CDO, the Regional Office shall document the same by taking of photographs and/or videos and thereafter advising respondent that removing or breaking the padlocks and seals constitutes is a criminal offense punishable by existing environmental laws, rules and regulations without prejudice to such respondent being declared in contempt and other liability under relevant laws.

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

1. The results of a series of effluent samplings shows a marked decrease in the values of the relevant parameters; or

2. The values of the relevant parameters are not far from the DENR Standards.

These statutory framework and mechanisms are absent in the Proclamation.

Recalling the enabling clause of the Proclamation:

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

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

. . . .

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

. . . .

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

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

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

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

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

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

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

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

The form of the Presidential action contributes to its vagueness.

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

> SECTION 2. *Executive Orders.* — Acts of the President providing for rules of a general or permanent character in implementation or execution of constitutional or statutory powers shall be promulgated in executive orders.
>
> . . . .
>
> SECTION 4. *Proclamations.* — Acts of the President fixing a date or declaring a status or condition of public moment or interest, upon the existence of which the operation of a specific law or regulation is made to depend, shall be promulgated in proclamations which shall have the force of an executive order.

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

[55] *See* Proc. No. 475.

amends the framework and implementation of the Civil Code and the Clean Water Act.

VI

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

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

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

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

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

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

---

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

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

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

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

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

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

Republic Act No. 10121 defines state of calamity as:

> SECTION 3. Definition of Terms. — For purposes of this Act, the following shall refer to:
>
> . . . .
>
> *(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.* (Emphasis supplied)

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

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

---

60 Id.

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

62 Id. at 534.

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

64 Damian, Carrington, *Earth's sixth mass extinction event under way, scientists warn,* THE GUARDIAN, July 10, 2017, available at < https://www.theguardian.com/environment/2017/jul/10/earths-sixth-mass-

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

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

> SECTION 19. Prohibited Acts. — Any person, group or corporation who commits any of the following prohibited acts shall be held liable and be subjected to the penalties as prescribed in Section 20 of this Act:
>
> (a) Dereliction of duties which leads to destruction, loss of lives, critical damage of facilities and misuse of funds;
>
> (b) Preventing the entry and distribution of relief goods in disaster-stricken areas, including appropriate technology, tools, equipment, accessories, disaster teams/experts;
>
> (c) Buying, for consumption or resale, from disaster relief agencies any relief goods, equipment or other aid commodities which are intended for distribution to disaster affected communities;
>
> (d) Buying, for consumption or resale, from the recipient disaster affected persons any relief goods, equipment or other aid commodities received by them;
>
> (e) Selling of relief goods, equipment or other aid commodities which are intended for distribution to disaster victims;
>
> (f) Forcibly seizing relief goods, equipment or other aid commodities intended for or consigned to a specific group of victims or relief agency;
>
> (g) Diverting or misdelivery of relief goods, equipment or other aid commodities to persons other than the rightful recipient or consignee;
>
> (h) Accepting, possessing, using or disposing relief goods, equipment or other aid commodities not intended for nor consigned to him/her;

---

extinction-event-already-underway-scientists-warn?CMP=share_btn_tw> (last visited on February 12, 2019).

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

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

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

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

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

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

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

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

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

VII

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

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

> SECTION 17. Remedial Measures. — The declaration of a state of calamity shall make mandatory the immediate undertaking of the following remedial measures by the member-agencies concerned as defined in this Act:
>
> (a) Imposition of price ceiling on basic necessities and prime commodities by the President upon the recommendation of the implementing agency as provided for under Republic Act No. 7581, otherwise known as the "Price Act", or the National Price Coordinating Council;
>
> (b) Monitoring, prevention and control by the Local Price Coordination Council of overpricing/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.

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

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

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

Second, the limited powers granted in Section 17 of Republic Act No. 10121 is also implied in other provisions, which guard against the possibility

for abuse. The law contains both active Congressional Oversight as well as a sunset provision:

> SECTION 26. Congressional Oversight Committee. — There is hereby created a Congressional Oversight Committee to monitor and oversee the implementation of the provisions of this Act. The Committee shall be composed of six (6) members from the Senate and six (6) members from the House of Representatives with the Chairpersons of the Committees on National Defense and Security of both the Senate and the House of Representatives as joint Chairpersons of this Committee. The five (5) other members from each Chamber are to be designated by the Senate President and the Speaker of the House of Representatives, respectively. The minority shall be entitled to pro rata representation but shall have at least two (2) representatives from each Chamber.
>
> SECTION 27. Sunset Review. — Within five (5) years after the effectivity of this Act, or as the need arises, the Congressional Oversight Committee shall conduct a sunset review. For purposes of this Act, the term "sunset review" shall mean a systematic evaluation by the Congressional Oversight Committee of the accomplishments and impact of this Act, as well as the performance and organizational structure of its implementing agencies, for purposes of determining remedial legislation.

The provisions in statutes should not be read in isolation from the purpose of the legislation and in light of its other provisions. The grant of power given to the president when a state of calamity is declared should thus be read in a limited fashion. *Expressio unius est exclusio alterius.*

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

VIII

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

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

Proclamation No. 475 provides:

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

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

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

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

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

The Proclamation and the law are clearly contradictory.

IX

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

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

I cannot agree.

---

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

[66] *Ponencia*, p. 26.

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

> ARTICLE X
>
> Local Government
>
> General Provisions
>
> SECTION 2. The territorial and political subdivisions shall enjoy local autonomy.
>
> . . . .
>
> SECTION 4. The President of the Philippines shall exercise general supervision over local governments. Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays shall ensure that the acts of their component units are within the scope of their prescribed powers and functions.

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

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

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

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

---

[67] 391 Phil. 84 (2000) [Per J. Panganiban, En Banc].
[68] 305 Phil. 146 (1994) [J. Cruz, En Banc].

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

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

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

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

> Article II
> Declaration of Principles and State Policies
>
> . . . .
>
> SECTION 25. The State shall ensure the autonomy of local governments.

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

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

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

---

[69] 277 Phil. 584 (1991) [J. Gancayco, En Banc].
[70] 473 Phil. 806 (2004) [Per J. Callejo Sr., En Banc].

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

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

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

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

This Court ruled:

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

---

71 Id. at 152.

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

> *newly scheduled general Liga elections, although petitioner David's term had not yet expired. The DILG substituted its choice, who was Rayos, over the choice of majority of the punong barangay* of Caloocan, who was the incumbent President, petitioner David. The latter was elected and had in fact been sitting as an *ex-officio* member of the *sangguniang panlungsod* in accordance with the *Liga Constitution and By-Laws. Yet, the DILG extended the appointment to respondent Rayos although it was aware that the position was the subject of a quo warranto* proceeding instituted by Rayos himself, thereby preempting the outcome of that case. It was bad enough that the DILG assumed the power of control, it was worse when it made use of the power with evident bias and partiality.
>
> As the entity exercising supervision over the *Liga ng mga Barangay*, the DILG's authority over the *Liga is limited to seeing to it that the rules are followed, but it cannot lay down such rules itself, nor does it have the discretion to modify or replace them. In this particular case, the most that the DILG could do was review the acts of the incumbent officers of the Liga in the conduct of the elections to determine if they committed any violation of the Liga's Constitution and By-laws and its implementing rules. If the National Liga Board and its officers had violated Liga rules, the DILG should have ordered the Liga to conduct another election in accordance with the Liga's own rules, but not in obeisance to DILG-dictated guidelines. Neither had the DILG the authority to remove the incumbent officers of the Liga and replace them, even temporarily, with unelected Liga officers.*
>
> Like the local government units, the *Liga ng mga Barangay* is not subject to control by the Chief Executive or his *alter ego*.[73]

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

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

X

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

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

---

[73] Id. at 358–359.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

---

[75] CONST., art. VII, Sec. 5 provides:
Before they enter on the execution of their office, the President, the Vice-President, or the acting President shall take the following oath or affirmation:
I do solemnly swear (or affirm) that I will faithfully and conscientiously fulfill my duties as President (or Vice-President or Acting President) of the Philippines, preserve and defend its Constitution, execute its laws, do justice to every man, and consecrate myself to the service of the Nation. So help me God. (In case of affirmation, last sentence will be omitted.)

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

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

(b) Ensure that the NDRRMP is consistent with the NDRRMF;

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

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

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

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

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

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

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

(j) Develop assessment tools on the existing and potential hazards and risks brought about by climate change to vulnerable areas

and ecosystems in coordination with the Climate Change Commission;

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

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

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

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

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

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

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

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

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

reduce the vulnerabilities and risks to hazards and manage the consequences of disasters.

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

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

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

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

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

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

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

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

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

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

(i) Establish Disaster Risk Reduction and Management Training Institutes in such suitable location as may be deemed

appropriate to train public and private individuals, both local and national, in such subject as disaster risk reduction and management among others. The Institute shall consolidate and prepare training materials and publications of disaster risk reduction and management books and manuals to assist disaster risk reduction and management workers in the planning and implementation of this program and projects.

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

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

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

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

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

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

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

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

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

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

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

SECTION 10. Disaster Risk Reduction and Management Organization at the Regional Level. — The current Regional Disaster

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

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

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

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

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

(1) The Local Chief Executives, Chairperson;
(2) The Local Planning and Development Officer, member;
(3) The Head of the LDRRMO, member;
(4) The Head of the Local Social Welfare and Development Office, member;
(5) The Head of the Local Health Office, member;
(6) The Head of the Local Agriculture Office, member;
(7) The Head of the Gender and Development Office, member;
(8) The Head of the Local Engineering Office, member;
(9) The Head of the Local Veterinary Office, member;
(10) The Head of the Local Budget Office, member;
(11) The Division Head/Superintendent of Schools of the DepED, member;
(12) The highest-ranking officer of the Armed Forces of the Philippines (AFP) assigned in the area, member;
(13) The Provincial Director/City/Municipal Chief of the Philippine National Police (PNP), member;
(14) The Provincial Director/City/Municipal Fire Marshall of the Bureau of Fire Protection (BFP), member;
(15) The President of the Association of Barangay Captains (ABC), member;
(16) The Philippine National Red Cross (PNRC), member;

(17) Four (4) accredited CSOs, members; and
(18) One (1) private sector representative, member.

(b) The LDRRMCs shall have the following functions:

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

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

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

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

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

(b) The LDRRMO shall be under the office of the governor, city or municipal mayor, and the punong barangay in case of the BDRRMC. The LDRRMOs shall be initially organized and composed of a DRRMO to be assisted by three (3) staff responsible for: (1) administration and training; (2) research and planning; and (3) operations and warning. The LDRRMOs and the BDRRMCs shall organize, train and directly supervise the local emergency response teams and the ACDVs.

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

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

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

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

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

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

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

(7) Prepare and submit to the local sanggunian through the LDRRMC and the LDC the annual LDRRMO Plan and budget, the proposed programming of the LDRRMF, other dedicated disaster risk reduction and management resources, and other regular funding source/s and budgetary support of the LDRRMO/BDRRMC;

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

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

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

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

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

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

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

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

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

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

(18) Serve as the secretariat and executive arm of the LDRRMC;

(19) Coordinate other disaster risk reduction and management activities;

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

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

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

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

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

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

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

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

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

> (l) Recognize and strengthen the capacities of LGUs and communities in mitigating and preparing for, responding to, and recovering from the impact of disaster's;
>
> (m) Engage the participation of civil society organizations (CSOs), the private sector and volunteers in the government's disaster risk reduction programs towards complementation of resources and effective delivery of services to the citizenry;
>
> (n) Develop and strengthen the capacities of vulnerable and marginalized groups to mitigate, prepare for, respond to, and recover from the effects of disasters;

Furthermore, in Section 15:

> SECTION 15. Coordination During Emergencies. — ***The LDRRMCs shall take the lead in preparing for, responding to, and recovering from the effects of any disaster based on the following criteria***:
>
> (a) The BDC, if a barangay is affected;
>
> (b) The city/municipal DRRMCs, if two (2) or more barangays are affected;
>
> (c) The provincial DRRMC, if two (2) or more cities/municipalities are affected;
>
> (d) The regional DRRMC, if two (2) or more provinces are affected; and
>
> (e) The NDRRMC, if two (2) or more regions are affected.
>
> *The NDRRMC and intermediary LDRRMCs* ***shall always act*** *as support to LGUs which have the primary responsibility as first disaster responders.* Private sector and civil society groups shall work in accordance with the coordination mechanism and policies set by the NDRRMC and concerned LDRRMCs. (Emphasis supplied)

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

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

XI

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

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

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

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

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

Instead of relying on the beguiling pragmatism of a strongman, we should, now more than ever, have the humility to harness our abilities as humans to consult, deliberate, and act together. We should be aware that

---

[76] Understand Climate Change, available at <https://www.globalchange.gov/climate-change> (last visited on February 12, 2019).

[77] Jonathan Watts, *We have 12 years to limit climate change catastrophe, warns UN*, THE GUARDIAN, available at <https://www.theguardian.com/environment/2018/oct/08/global-warming-must-not-exceed-15c-warns-landmark-un-report> (last visited on February 12, 2019).

[78] *Global Climate Change*, available at <https://climate.nasa.gov/> (last visited on February 12, 2019).

short-term solutions, which produce short-term effects, may mask the true problems and abuse those who live in our society's margins.

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

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

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

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

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

---

[79] Garett Hardin, *The Tragedy of the Commons*, 162 Science 1243-1248 (1968), available at <http://pages.mtu.edu/~asmayer/rural_sustain/governance/Hardin%201968.pdf> (last visited on February 12, 2019).

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

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

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

Authoritarian solutions based on fear are ironically weak. We still are a constitutional order that will become stronger with a democracy participated in by enlightened citizens.

Ours is not, and should never be, a legal order ruled by diktat.

For these reasons, I dissent.

ACCORDINGLY, I vote to GRANT the Petition.

MARVIC M.V.F. LEONEN
Associate Justice