



Republika ng Pilipinas
Komisyon ng Karapatang Pantao ng Pilipinas
(Commission on Human Rights of the Philippines)

HUMAN RIGHTS ADVISORY
CHR-A2005-008

ON THE ADMINISTRATION'S
"CALIBRATED PREEMPTIVE RESPONSE (CPR) POLICY"

This Advisory has reference to the "Calibrated Preemptive Response" (CPR) Policy of the present Administration vis-à-vis international human rights standards and principles, as well as the constitutional guarantee on the right of the Filipino people to freedoms of the press, of expression, of assembly, and to petition government for redress of grievances.

The Commission on Human Rights, in the strongest possible terms, denounces the "Calibrated Preemptive Response" (CPR) policy implemented by the government, in response to the successive protest rallies being held by critics of President Gloria Macapagal-Arroyo.

The Administration claims that the CPR scheme is to pre-empt expected untoward incidents during street protest, especially in Metro Manila, that could perhaps harm the ordinary people and badly affect the economy if carried out inappropriately. Yet, such assumption is clear inference that all forms of rallies and demonstrations critical of the government are uncalled-for, if not legal, unjust and inequitable. It implies that democratic exercises, such as the right to peaceably assemble, are detrimental to our country, hence, should not be tolerated, but pre-emptive instead.

The Commission observes that with the CPR in place, law enforcers and other state agents involved in the implementation thereof would no longer exercise maximum tolerance during mass actions. Instead, they can disperse protesters / marchers and rallyists who do not have permit, notwithstanding that the purpose of such assemblies is legal and constitutional. Verify, the questioned policy infringes the specific provisions in international human rights instruments to which the Philippines is a State Party, as well as provisions in our Constitution, domestic legislation, and settled jurisprudence.

Firstly, it contravenes state obligations which the Philippine Government itself unequivocally committed to respect, protect and fulfill


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pursuant the International Covenant on Civil and Political Rights (ICCPR), Article 21 of which provides, thus:

"The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others." (Article 21 of the ICCPR.)

Also it runs counter to Article 20, paragraph 1, of the Universal Declaration of Human Rights which provides, thus:

"Everyone has the right to freedom of peaceful assembly and association." (Article 20, par.1)

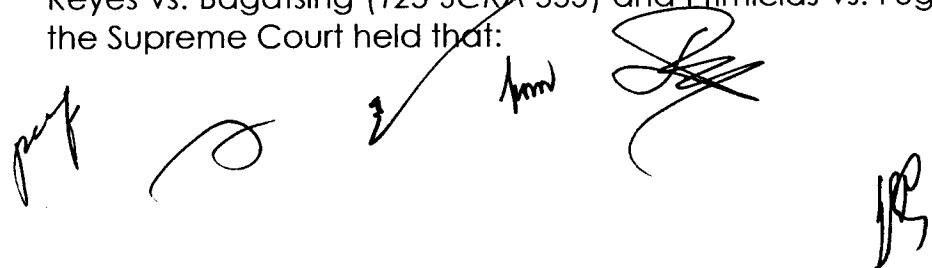
Secondly, it violates the Bill of Rights provision, specifically, Section 4, Article III, of the 1987 Constitution of the Philippines, to wit:

"No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people to peaceably assemble and petition the Government for redress of grievances." (Article III, section 4, 1987 Constitution of the Philippines).

We lay emphasis that the rights of free expression, free assembly and petition are not only civil rights but also political rights essential to man's enjoyment of his life, to his happiness and to his full and complete fulfillment. x x x. The citizen is accorded these rights so he can appeal to the appropriate governmental officers or agencies for redress and protection as well as for the imposition of the lawful sanctions on erring public officers and employees. (Bernas, *Constitutional Rights and Social Demands Part II*, 1996 edition)

Even Batas Pambansa Blg. 880, otherwise known as the Public Assembly Act of 1985, particularly, Section 3(c) thereof clearly speaks of "maximum tolerance" - which means the highest degree of restraint that the military, police and other peace keeping authorities shall observe during a public assembly or in the dispersal of the same.

Arbitrariness in governance is one of the worst forms of human rights violations. Government cannot stop protesters from holding demonstrations but can only regulate them to balance public interest (equal protection). There are times when permits are required but there should be no prior restraint. Moreover, the required permit, under Sec. 5 of BP 880, does not pertain to the holding of public assembly but is enforced only for purposes of regulation particularly the use of public place/street as ruled in the cases of *Reyes vs. Bagatsing* (125 SCRA 553) and *Primicias vs. Fugoso* (80 Phil 71) where the Supreme Court held that:

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"The requirement for permit must be construed as authorizing respondent to consider the time, place and manner of the rally to conserve public convenience;

"If a public assembly is to be held in a public place, **a permit for the use of such place, and not for the assembly itself, may be validly required.** But the power of local officials in this regard is **merely one of regulation, not prohibition.**" (Emphasis supplied)

The highest tribunal of the land has also stressed, there can be no previous restraints on the rights of free speech and peaceful assembly or subsequent liability whether in libel suits, prosecution for sedition or action for damages or contempt proceedings. A constitutional or valid infringement of human rights requires a more stringent criterion, namely, existence of a grave and immediate danger of a substantive evil, which the State has a right to prevent. (US vs Bustos, 37 Phil. 731; Quisumbing v. Lopez, 96 Phil. 510; US vs. Perfecto 43 Phil 58; Yap v. Boltron 100 Phil 324; People v. Alarcon 69 Phil 265; Gonzales vs. Comelec L-27833 27 SCRA 835, 857; L-27833 April 18, 1969, 27 SCRA 835) to wit:

Denial of the permit or curtailment of public assembly may be justified only:

1. Upon clear and convincing evidence that the public assembly will create a **clear and present danger to public order, safety, convenience, morals or health.** (Sec. 6, BP 880; Article 21 of the International Convention on Civil and Political Rights. Emphasis and underscoring provided.)
2. In the interest of national security and the protection of the rights and freedom of others (Art. 21, International Convention on Civil and Political Rights.)

The CPR policy also further negated Sections 4 and 6(b) of B.P. 880 which allow protesters to hold peaceful demonstrations notwithstanding the absence of permit in the following instances:

1. If the meeting is to be held in a private place, in the campus of a government-owned or operated educational institution, or in a freedom park;
2. If the authorities failed to act on the application for permit within two days after it was filed, the permit is deemed granted.

Therefore, any government policy like the CPR, in particular, in relation to the right of the citizens to freedom of speech, of the press, of expression, and to peaceably assemble and petition government for redress of grievances, should not include "prior restraint". Because the word "pre-emptive," for all intents and purposes, means taking action against something that is still not there, hence, prior restraint rather than a deterrent of any violence.



Finally, worth reflecting are the words of the learned justices and legal luminaries:

"The bill of rights is designed to preserve the ideals of liberty, equality and security against the assaults of opportunism, the expediency of the passing hour, the erosion of small encroachment and the scorn and derision of those who have no patience with general principles." (Justice Cardoso, Nature of Judicial Process, 90-93 Tanada and Fernando, Constitution of the Phil. 1952 ed.)

"In the hierarchy of civil liberties, the rights of free expressions and of assembly occupy a preferred position, as they are essential to the preservation and vitality of our civil and political institutions, (Terminiello v Chicago 337 US 1) and such priority gives these liberties the sanctity and the sanction not permitting dubious intrusions." (Thomas V. Collins 323 US 156.)

In summation, the Commission, as an independent national human rights institution, strongly calls on the administration to set aside the Calibrated Preemptive Response (CPR) policy and recognize and respect the hierarchy and sacredness of the human rights of the people to freedom of speech, of the press, of expression, of peaceful assembly and petition the government for redress of grievance.

ISSUED on this 15th day of December 2005, at Quezon City, Philippines.


PURIFICACION C. VALERA QUISUMBING
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