

*Republika ng Pilipinas*  
**Komisyon ng Karapatang Pantao**  
(Commission on Human Rights)

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**HUMAN RIGHTS ADVISORY**  
**CHR-A2004-004**

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**“ON THE NO PERMIT, NO RALLY POLICY”**

This is in reference with ordinances passed by key cities and municipalities in Metro Manila pertaining to the “NO PERMIT, NO RALLY POLICY”.

It is the stand of the Commission that such policy is a blatant violation of the Constitutional right of every citizen to peaceably assemble and to seek or air grievances which may be expressed through rallies.

**Article III, Section 4** <sup>of the 1987 Constitution</sup> provides:

*“No law shall be passed abridging the freedom of speech, of expression, <sup>of</sup> or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances.”*

This constitutes the fundamental and basic right of every citizen to air their insights to authorities and political leaders on matters involving public concern and interest for the protection of their civil, political and economic rights.

The right to assemble is guaranteed by the Bill of Rights and is not subject to prior restraint. Hence, it may not be conditioned upon the prior issuance of a permit or authorization from government authorities.

No less than the International Bill of Rights promotes respect for the rights to freedom of expression and freedom of peaceful assembly and association, to wit:

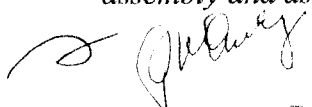


**Article 19 of the Universal Declaration of Human Rights** states:

*“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”*

and

**Article 20 of the Universal Declaration of Human Rights** states:

*“Everyone has the right to freedom of peaceful assembly and association”*

    
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Moreover, the Government of the Republic of the Philippines as a state party to the International Covenant on Civil and Political Rights wherein the following articles are enshrined is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant.

“ 1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

i. For respect of the rights or reputations of others;

ii. For the protection of national security or of public order, or of public health or morals.” (Article 19 of the ICCPR)

and

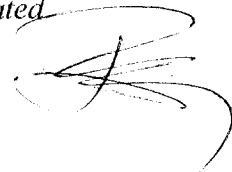
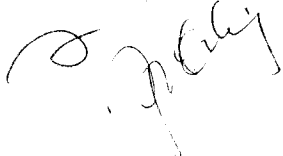
“The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of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

Further, it was ruled in the case of Primicias vs. Fugoso, 80 Phil 71 and subsequently in the case of Reyes vs. Bagatsing, 125 SCRA 553 that:

“If the 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.”

Likewise, BP 880 otherwise known as the Public Assembly Act of 1985, it is stated that:

“A permit to hold a public assembly shall not be necessary where 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. Where a permit is required, the written application shall be filed with the mayor's office at least 5 days before the scheduled meeting and shall be acted upon within two days, otherwise the permit shall be deemed granted.*

*Denial of the permit may be justified only upon clear and convincing evidence that the public assembly will create **a clear and present danger** to public order, safety, convenience, morals or health. Action on the application shall be communicated within 24 hours to the applicant, who may appeal the same to the appropriate court. Decision may be reached within 24 hours."*

Therefore, the burden of showing the existence of a clear and present danger that would justify an adverse action on the application of the permit lies on the mayor as the licensing authority. To justify such a limitation, there must be proof of such weight and sufficiency to satisfy the clear and present danger test.

Further, the Commission supports the Constitutional right of every citizen to peaceably assemble to seek redress of their grievances through rallies provided it will not prejudice the public welfare. Any unjustified and unreasonable form of curtailment of this freedom shall amount to a violation of the guaranteed human rights. It may be said therefore that the citizens are merely **"utilizing the weapons afforded them by the Constitution, that is, the untrammelled enjoyment of their basic human rights."**

Another point of controversy raised is: *In the event that the protesters are not armed with permits, and injuries are inflicted on them in the course of dispersal then should the PNP or other officers be held accountable for the commission of Human Rights violations?*

The Commission **stands on the affirmative** for the reason that although dispersal units of the PNP are allowed to use truncheons and tear gas on the protesters provided that maximum tolerance is exercised before these methods or means of dispersal shall be effected. The reasonableness of the means employed shall depend on the circumstances present during the protest because the allowed means of dispersal must be in consonance and relative with the danger which they seek to prevent.

In the absence of imminent danger to public order, safety, convenience, morals or health, then the use of these means of dispersal is clear violation of human rights.

Henceforth, whether or not the assembly or rally was effected with permit, then the PNP may be held liable for the commission of any human rights violation on account of the unreasonableness of the manner employed to effect the dispersal.

The case of **Republic vs. Sandoval, 220 SCRA 124,** shall find application where it was ruled that:

*"An officer cannot shelter himself by the plea that he is a public agent acting under the color of his office when his acts are wholly without authority.*

*While the Republic in this case is sued by name, the ultimate liability does not pertain to the government. **Although the military officers and personnel, then party defendants, were discharging their official functions***

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when the incident occurred, their functions ceased to be official the moment they exceeded their authority.

Immunity from suit cannot institutionalize irresponsibility and non-accountability nor grant a privileged status not claimed by any other official of the Republic.

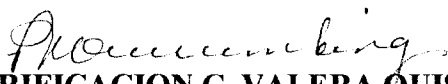
The military and police forces were deployed to ensure that the rally would be peaceful and orderly as well as to guarantee the safety of the very people that they are duty-bound to protect. However, the facts as found by the trial court showed that they fired at the unruly crowd to disperse the latter.

This court has made it quite clear that even a high position in the government does not confer a license to persecute or recklessly injure another.

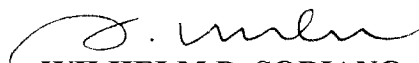
In line with the ruling of this court in *Shauf vs. Court of Appeals, 191 SCRA 713*, herein public officials, having been found to have acted beyond the scope of their authority, may be held liable for damages."


Thus, based from the foregoing decision of the Supreme Court, it may be inferred that "any abuse of authority committed by the dispersal units in the exercise of their functions shall amount to human rights violation resulting to liability, may it be criminal, civil or administrative."

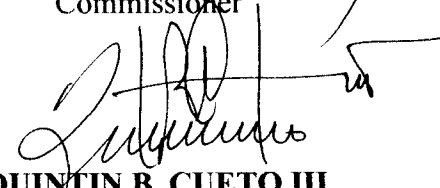
Done in Quezon City on this 20<sup>th</sup> of September 2004.

  
**PURIFICACION C. VALERA QUISUMBING**  
Chairperson

  
**ELIGIO B. MALLARI**  
Commissioner

  
**WILHELM D. SORIANO**  
Commissioner

  
**DOMINADOR N. CALAMBA II**  
Commissioner

  
**QUINTIN B. CUETO III**  
Commissioner