



REPUBLIC OF THE PHILIPPINES
COMMISSION ON HUMAN RIGHTS

**POSITION PAPER ON THE PROPOSED NEW PUBLIC ASSEMBLY
ACT**

The Commission on Human Rights (hereinafter, the ‘Commission’) supports the enactment of a law that will strengthen the enjoyment and free exercise of the right to peaceful assembly and petition the government for redress of grievances as is proposed in House Bill No. 6297 or the “New Public Assembly Act.”¹ As the country’s national human rights institution² and in exercise of our constitutional mandate to protect and promote human rights,³ we submit this Position Paper⁴ to the Committee on People’s Participation (hereinafter, the ‘Committee’) of the House of Representatives, 18th Congress to explain our position of support and to recommend other measures to further strengthen the mechanisms provided in the Bill.

The right to peaceably assemble and petition the Government for redress of grievances is, together with the freedom of speech, of expression, and of the press, a right that enjoys primacy in the realm of constitutional protection.⁵ These rights constitute the very basis of a functional democratic polity, without which all the other rights would be meaningless and unprotected.⁶ These rights are essential components of democracy⁷ and ensure the strength and stability of the State.

The right to freedom of peaceful assembly is enshrined in the Universal Declaration of Human Rights.⁸ It is affirmed in the International Covenant on Civil and Political Rights (ICCPR), to which the Philippines is a State Party, which states that “the right of peaceful assembly shall be recognized”⁹ and that “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 freedom of others.”¹⁰ It is also constitutionally protected in accordance with the Bill of Rights which states that “no law shall be passed abridging... the right of the people peaceably to assemble and

¹ An Act Strengthening the Right of the People to Free Expression, To Peaceably Assemble and to Petition the Government for Redress of Grievances, Repealing for The Purpose Batas Pambansa Blg. 880 or The “Public Assembly Act of 1985”, H.B. No. 6297, 18th Cong., 1st Reg. Sess. (2020), introduced by Reps. Carlos Isagani T. Zarate, Ferdinand R. Gaité, and Eufemia C. Cullamat.

² Based on the *Principles relating to the status of national institutions or the Paris Principles* in relation to the CHR mandates in the 1987 Constitution. National Institutions for the Promotion and Protection of Human Rights, G.A. Res. 48/134, Annex, U.N. Doc. A/RES/48/134 (Dec. 20, 1993).

³ Phil. Const. art. XIII, sec. 18.

⁴ This Position Paper is an update of the previous Position Papers issued by the Commission last 31 July 2017, 19 November 2014, and 17 December 2012.

⁵ Article 2, Section 4, 1987 Philippine Constitution

⁶ Bayan, et al vs. Ermita, G.R. No. 169838, April 25, 2006

⁷ Human Rights Council Resolution 15/21

⁸ Article 20, Universal Declaration of Human Rights

⁹ Article 21, ICCPR

¹⁰ *Id.*

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petition the government for redress of grievances.”¹¹ It is therefore the State’s duty to respect and protect this right which can be done through the enactment of effective laws that will enable its free exercise by the people or through the repeal of old laws that limit the free exercise thereof, among others.

The right is not absolute, as is provided in the language of the ICCPR. In the case of *Primicias v. Fugoso*, the Supreme Court ruled that “the right to freedom of speech, and to peacefully assemble and petition the government for redress of grievances, are fundamental personal rights of the people recognized and guaranteed by the constitutions of democratic countries. But it is a settled principle growing out of the nature of well-ordered civil societies that the exercise of those rights is not absolute for it may be so regulated that it shall not be injurious to the equal enjoyment of others having equal rights, nor injurious to the rights of the community or society... .”¹² The Court likewise ruled that, “freedom of assembly connotes the right of the people to meet peaceably for consultation and discussion of matters of public concern. It is entitled to be accorded the utmost deference and respect. It is not to be limited, much less denied, except on a showing, as is the case with freedom of expression, of a clear and present danger of a substantive evil that the state has a right to prevent.”¹³

House Bill No. 6297 will enhance the free exercise of the right to peaceful assembly and petition the government for redress of grievances by establishing a positive presumption in favor of peaceful assembly.

The Commission notes that House Bill No. 6297 seeks to replace Batas Pambansa Bilang 880 (BP880),¹⁴ the existing law governing the exercise of the right to peaceful assembly which was enacted in 1985 during the Marcos Martial Law era. The Bill proposes to remove the requirement of a permit before any person could organize and hold a public assembly in a public place and replace it with a requirement of “notice”. The Explanatory Note of the Bill states that “more often than not, authorities invoke the ‘no permit, no rally’ rule to justify the dispersal of rallies”¹⁵ and that the law itself has been “the convenient excuse for state forces to suppress otherwise peaceful demonstrations, effectively curtailing the basic constitutional right to assembly, free speech and petition of government for redress of grievances.”¹⁶

The Commission agrees with this observation. In 2014, a protest along Commonwealth Avenue towards the House of Representatives where former President Aquino was to give his State of the Nation Address was violently dispersed by the police who claimed that the dispersal was because the groups did not have the necessary permits to hold the protest.¹⁷ The Quezon City Government had allegedly deliberately ignored acting on the request for the rally permit.¹⁸ Although the law provides that if the government fails to act on an application within a period of time, the application is deemed approved,¹⁹ the lack of an approved permit is being used to justify the dispersal. In this case, it is clear that the law is susceptible to being used to subject to any prior restraint the free exercise of the right to

¹¹ Phil. Const. art. III, sec. 4.

¹² *Bayan v. Ermita*, G.R. No. 169838, 25 April 2006 citing *Primicias v. Fugoso*, 80 Phil. 71 (1948), available at <http://sc.judiciary.gov.ph/jurisprudence/2006/april2006/G.R.%20No.%20169838.htm> (accessed 15 Jul. 2020).

¹³ *Id.* citing *Reyes v. Bagatsing*, G.R. No. L-65366, November 9, 1983, 125 SCRA 553.

¹⁴ An Act Ensuring the Free Exercise by the People of their Right Peaceably to Assemble and Petition the Government for other Purposes [The Public Assembly Act of 1985], Batas Pambansa Bilang 880 (1985).

¹⁵ H.B. No. 6297, Explanatory Note, *supra*.

¹⁶ *Id.*

¹⁷ Bea Cupin, Rappler, “SONA protesters file human rights case vs PNP,” available at <https://rappler.com/nation/militants-police-abuses-case> (accessed 15 Jul. 2020).

¹⁸ Written Statement submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status, Submitted to the UN Secretary General, A/HRC/29/NGO/55 (25 May 2015).

¹⁹ Batas Pambansa Bilang 880, sec. 6(b) states “The mayor or any official acting in his behalf shall act on the application within two (2) working days from the date the application was filed, failing which, the permit shall be deemed granted.”

peaceably assemble and petition the government for redress of grievances. Although it can be gleaned as a flaw in the implementation of the law, the same can be improved by giving primacy to the free exercise of the right, such that leaders and organizers will be required merely to submit a notice on the conduct of public assembly.

The proposed “notice” regime in the Bill establishes a positive presumption in favor of peaceful assembly.²⁰ By replacing the “permit” with a “notice” which shall not require the affirmative action by the local authority, the proposed regime creates a legal environment that facilitates the free exercise of the right to peaceful assembly and petition the government for redress of grievances. Also, in providing that the “notice” can be challenged by the City or Municipal Mayor in the Courts, the Bill transfers the power to determine whether to enjoin the conduct of a public assembly from the local chief executives to the judiciary which ensures stronger protection against arbitrary restrictions to exercise the right. The burden to prove that there is clear and present danger of a substantive evil will be placed upon the local authorities.

Aside from the proposal to replace the “permit” requirement with the “notice” requirement, the Bill also provides a shortened period of three (3) days (from five days in the existing law) prior to the date of the public assembly. The Commission agrees with this proposal as a shortened period allows individuals to exercise the right without having to wait too long and before fervent emotions that naturally accompany these assemblies become diluted with the passage of time.

House Bill No. 6297 provides for a mechanism to ensure a plan to conduct a public assembly shall not be injurious to the community or the society.

The Commission also notes that considerations as regards the regulation of the right to ensure its exercise shall not be injurious to others, the community, and the society are carefully balanced in the proposed law. It recommends therefore that the bill provides an opportunity for parties to negotiate and address the issues surrounding the conduct of a public assembly and should there still be non-settlement of issues, the aggrieved party can immediately bring it before the Courts to settle, as noted above.

We believe that this should not encumber local chief executives from ensuring public order and safety within their localities as they are presumed to have all the power and resources to bring the action to enjoin a public assembly to the Courts. Local chief executives, as public servants, should balance and accommodate within their power and resources the interests of both the general public and the people who need to exercise their democratic rights.

We emphasize that the default should always be in recognition of a fundamental right of the people and that all other consequent acts should be managed by concerned agencies including the leaders and organizers of the public assembly. In instances where violence and damage to property or even loss of lives are involved, there should be accountability both on the part of the actual perpetrators, including possibly the leaders and organizers or the law enforcement authorities themselves.

Recommendations

²⁰ In the “10 Principles for Proper Management of Assemblies: Implementation Checklist (A step-by-step checklist for monitoring implementation of the practical recommendations on the management of assemblies report by United Nations Special Rapporteurs Maina Kiai and Christof Heyns (A/HRC/31/66),” one of the guiding principles is that “the law establishes a positive presumption in favour of peaceful assembly.” Available at <https://www.ohchr.org/Documents/Issues/Fassociation/10PrinciplesProperManagementAssemblies.pdf> (accessed 15 Jul. 2020).

For the consideration of the Committee in finalizing the Bill, the Commission submits the following comments and recommendations to address some of the concerns raised by local government stakeholders during the Committee meetings and to improve some of the provisions of the Bill:

(1) *Amend or Repeal?*

We recommend the repeal of BP880 because an amendatory law should refer only to specific sections of the law to be amended. This bill substantially changes the nature of the conduct of public assemblies in the country. For example, aside from the submission of “notice” instead of a permit, this bill shifts the burden of proof that there is an existing clear and present danger to the local government executives in its efforts to enjoin the holding of a public assembly.

(2) *Section 3(1) – Definition of “Expression”²¹*

The bill defines expression as follows:

“Expression refers to any statement of opinion for the purpose of presenting any cause, articulation of political, economic or social advocacies, or manifestation of support in any partisan political activity through the use of any means or media.”

Clarifying the terms used in a law is encouraged but a definition may be limiting to the extent that those not mentioned in the law will possibly be excluded in the application of the term.

In the abovementioned definition, the word “expression” includes only statements of opinion, or manifestation of support in any partisan political activity through the use of any means or media. However, Article 19(2) of the ICCPR provides for a broader scope of the term expression, to wit:

“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.”

General Comment No. 34 paragraph 12 of the Human Rights Committee is helpful in interpreting the scope of the word “expression”:

“Paragraph 2 protects all forms of expression and the means of their dissemination. Such forms include spoken, written and sign language and such non-verbal expression as images and objects of art. Means of expression include books, newspapers, pamphlets, posters, banners, dress and legal submissions. They include all forms of audio-visual as well as electronic and internet-based modes of expression.”
(underscoring ours)

It is thus recommended to broaden the definition to include “all forms of expression and the means of their dissemination.” In connection thereto, all other forms of

²¹ Adopted from the CHR Position Paper issued in 2017

expression and their dissemination through any means, including a public assembly, as defined in the bill should be covered, including assemblages for religious purposes.

(3) *Section 4 – Assemblies Not Included in the Coverage*²²

In connection with the comment above, the Bill has made an exception from coverage the assemblies for religious purposes, picketing, and other concerted action in strike areas by workers and the political meetings of rallies allowed and held during election campaign periods. While it is understandable to exclude from coverage the last two types of public assembly, there should be a clearer reason for the exception of assemblies for religious purposes considering that the right to manifest or express one's religious belief is a fundamental right, the same as that of freedom of expression. We recommend that, absent a justification, there should be no exception of assemblies for religious purposes in the coverage of the law.

(4) *Section 3(3) – Definition of “Maximum Protection”*²³

The Commission respectfully recommends the addition of the phrase “observe and guarantee maximum respect for the exercise of the right to express and peaceably assemble...” in the definition of “Maximum Protection” so that it will read as follows:

“Maximum Protection refers to the highest degree of protection that the military, police, peacekeeping and law enforcement authorities are required to observe and guarantee maximum respect for the exercise of the right to express and peaceably assemble during a public assembly including the dispersal of the same;”

This will signify that the military, police, peacekeeping, and law enforcement authorities are not only obligated to provide the citizens maximum degree of protection during public assemblies, but also guarantees maximum restraint and tolerance towards the citizens during their exercise of such rights.

The phrase is more rights-based, as it equally focuses on the protection given the participants in the public assembly and the restraint or tolerance to be exercised by the public authorities. It is indicative of the state obligation to both protect and tolerate. In addition, it supports a content-neutral stance as it does not distinguish mass actions that need protection, whether in favor or against the government. Nor does it distinguish protection for both the participants of the mass action and the individuals, institutions or entities surrounding the place of assembly.

The protection will shift from protection of the individual and the collective right to freedom of expression, and to peaceably assembly, to the protection of the State when the expression interferes and/or does not comply with the limitations/requirements set forth by law. Specifically, a violent expression of the freedom would behoove public authorities to address the assembly accordingly.

(5) *Test for “clear and present danger”*

²² Adopted from the CHR Position Paper issued in 2017

²³ Adopted from the CHR Position Paper issued in 2017

We recommend that a definition or the parameters of “clear and present danger” be included in the Bill as this will set the test for when local chief executives act to request the Courts to enjoin a public assembly. Local chief executives should be guided on what kind of dangers they should look out to and should protect the general public from.

“Clear and present danger” should be of a substantive evil that the State has a right to prevent.²⁴ The danger should be of a character of both grave and imminent, of a serious evil to public safety, public morals, public health, or any other legitimate public interest that it can justify the limitation on the exercise of the right, so fundamental to the maintenance of democratic institutions.²⁵ The evil consequences sought to be prevented must be substantive, extremely serious, and the degree of imminence, extremely high.²⁶

(6) *Section 6 – Notice Requirements*

We recommend that the notice should include the places where the intended activity will be held.

(7) *Section 7 – Action to Enjoin the Public Assembly*

We recommend the rewording of this particular section to as follows:

“If there is a clear and convincing evidence based on personal knowledge that the public assembly will create a clear and present danger to public order, public safety, public morals or public health, the city or municipal mayor shall initiate negotiations with the leaders and organizers of the public assembly in question, in order to agree on courses of action to address any issue/s surrounding the conduct of the public assembly.

The negotiation between the City or Municipal Mayor and the leaders or organizers of the public assembly is limited within the two-day period from filing of notice, otherwise the public assembly should proceed as indicated in the notice.

If there was negotiation conducted and no agreement was reached, or if the negotiation did not push through within the two-day period by action or inaction of any of the parties, the one who is aggrieved on any matter concerning the conduct of the public assembly has a cause of action and shall not be barred from filing an action in court.

The RTC [or MTC] is duty-bound to decide on the action within 24 hours from date of filing. The failure of the RTC [or MTC] to render a decision within the prescribed period shall not be a basis against the holding of such assembly.

A decision denying the prayer to enjoin the public assembly shall be immediately executory.

²⁴ Reyes v. Bagatsing, G.R. No. L-65366, November 9, 1983

²⁵ *Id.*

²⁶ Chavez v. Gonzales, G.R. No. 168338, February 15, 2008

The decision of the RTC [or MTC] is appealable within 48 hours upon receipt of decision. No appeal bond or record on appeal shall be required.

In all cases, the decision may be appealed to the Regional Trial Court.

Electronically-transmitted appeals may be allowed to be followed by physical appeals, in accordance with the Rules of Court. [instead of referring to the old Public Assembly Act of 1985]"

This proposed wording ensures that there is sufficient mechanism to resolve all possible issues at first instance before actual filing in court.

Furthermore, while the paperless appeal mechanism which BP880 proposed should be carried over, the evolution of electronic technology should be reflected accordingly in the text of the new law, so we should replace "telegraphic" with e-mail or any other appropriate electronic form of transmittal.

To ensure effective implementation of this proposed mechanism, the definition of "clear and present danger" should be included, as noted above, to guide local chief executives and the court in determining when the exercise of the fundamental right to public assembly and petition the government for redress of grievances should be enjoined.

(8) *Section 9 – Responsibility of Leaders and Organizers*

We recommend the inclusion of the following as an additional sub-section:

"(f) To ensure that the public assembly will not cause violations of environmental laws including the Ecological Solid Waste Management Act, such that the place of assembly should be kept clean and properties therein remain as is before the conduct of mass action.

The leaders and organizers shall be primarily responsible in case of violations of the undertaking above, including any damages made to public or private properties, as a consequence of the violence that ensued during the public assembly, unless the violence was clearly caused by infiltrators with intent to cause violence and damages to property or by the law enforcers themselves."

(9) *Section 10 – Non-interference*

Private individuals or groups who do not agree with the purpose of the public assembly should not be prevented from exercising their freedom of speech or expression in relation to the subject of the public assembly. Thus, we recommend that Section 10 be amended as follows:

"Section 10. *Non-interference by Law Enforcement Authorities.* – Law enforcement authorities and their agents shall not interfere with the conduct of the public assembly.

To ensure public order and safety both for the participants of the public assembly and the individuals, institutions or entities surrounding the place of assembly, a law enforcement contingent may be detailed and positioned at least one hundred (100) meters away from the place of assembly.”

(10) *On Interruption and/or Dispersal*

The Commission recommends inclusion of a provision when interruption and/or dispersal of public assemblies may be allowed. Dispersal should be dependent only on the existence and persistence of actual violence or disturbance and not merely threat thereof. When allowed, it must not entail an amount of force more than is necessary to disperse the crowd and must not harm anyone.

Use of excessive force in the dispersal of a public assembly should be made illegal. Although the use of force may ultimately be examined on a case to case basis, it should always be congruent to the principle of proportionality enunciated in the international human rights instruments where it is mandated that use of force, if required and necessary, should be commensurate to the legitimate objective to be achieved.²⁷

Use of force, much less excessive force, should always be avoided. As much as possible the law enforcement units should be able to allow the leaders and organizers to police their own ranks. They should maintain constant communication with the leaders and organizers and allow them considerable time to control the crowd. Thus, we support the adoption of Section 12 of the Bill.

Also, we recommend that Section 11 be amended as follows:

“Section 11. *Requirement for the Law Enforcement Authorities Contingent during Public Assemblies.* – The law enforcement contingent mentioned in Section 10 shall protect the participants of the public assembly and the public in general and shall observe the following guidelines and rules of conduct:

- (a) Members of the law enforcement contingent shall wear their complete and official uniform with nameplates and unit numbers displayed prominently on the front and dorsal parts of the uniform. Crash helmets with visor, gas masks, boots or ankle high shoes with shin guards may be used;
- (b) Maximum protection shall be observed at all times;
- (c) Members of the law enforcement contingent shall not carry any kind of firearms except batons or riot sticks and shields; and
- (d) Members of the law enforcement contingent shall not use tear gas, smoke grenade, water cannons, or any similar anti-riot device unless the public assembly is attended with actual violence, serious threats of violence, or deliberate destruction of property;

²⁷ Article 3, Code of Conduct of Law Enforcement Officials, General Assembly Resolution 34/169 of 17 Dec. 1979.

- (e) Isolated act or incidents of disorder or breach of the peace during the public assembly does not constitute a ground for dispersal.”

(11) *Section 13 – Prohibited Acts*

We recommend that sub-section (a) be amended as follows:

“(a) On the part of the leaders and organizers of the public assembly, willful failure to perform acts specified in their undertaking as mentioned in Sec. 9 of this Act, or the holding of a public assembly without notice when such notice is required. No person may be punished or held criminally liable for participating in or attending an otherwise peaceful assembly.”

Also, and in relation to the comment above, we recommend the amendment of sub-section (c) as follows:

“(c) On the part of the police or other law enforcement agency, or by any military personnel, the carrying of any kind of firearm, or any other deadly or offensive weapon or device such as pillbox, bomb, and the like, within 100 meters of the public assembly, or on occasion thereof, including the firing of firearms to disperse the public assembly or the commission of acts in the violation of Section 11 of this Act.”

Sub-section (d) should be adopted in the final version of the Bill because the act it considers criminal is clearly an act done to disrupt the free exercise of the right. The act pertained to in this section is not a legitimate exercise of the right of citizens to free speech and expression since it merely intends to disrupt public order to an otherwise peaceful mass action.

(12) *Section 16 – Freedom Parks*

We recommend the inclusion of a provision here for the automatic designation or establishment of Freedom Parks as certain cities or municipalities continue to fail to do so despite the span of years since the enactment of BP880. It may be provided that unless a different Freedom Park is established or designated by the local chief executive, the quadrangle in front of city or municipal halls or building or the city or municipal plaza or park within their areas of jurisdiction shall be automatically designated as Freedom Parks where peaceful assemblies can be freely held even without notice. Thus, we recommend to amend this Section as follows:

“Section 16. *Freedom Parks.* – In every city and municipality, there is designated at least one Freedom Park which shall be the quadrangle in front of the city or municipal halls or buildings of the city or municipal plaza or park, unless a different Freedom Park is designated or established by the City or Municipal Mayor; *Provided* that the Freedom Park to be established by the City or Municipal Mayor shall be an open

space centrally located in the city or municipality, or the national parks within their areas of jurisdiction.

Free access to Freedom Parks is provided to persons or groups exercising their right to peaceful assembly, even without notice, under the provisions of this Act.”

The Commission recognizes the importance of having a new law to govern the free exercise of the constitutional right of the people to peaceably assemble and petition the government for redress of grievances. House Bill No. 6297 is a welcome proposal to strengthen the legal framework that ensures respect, protection, and fulfillment of the rights of the people in a democratic society.

ISSUED this 13th day of August 2020, Quezon City, Philippines.



JOSE LUIS MARTIN C. GASCON
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