Chapter 20

Bayan Muna v. Ermita: Validity of the Calibrated Preemptive Response (CPR) Policy*

The Petitions in these consolidated cases assailed (1) Batas Pambansa 880[1] -- in toto by petitioners; but only Sections 4, 5, 6, 12, 13(a), and 14(a) by others -- and (2) the so-called policy of "Calibrated Preemptive Response" (CPR).

The Facts

In brief, Batas Pambansa 880 (or the Public Assembly Act) of 1985 had laid down guidelines on the holding of public assemblies or rallies, including when and what to require[2] in applications for a permit,[3] what action to take on applications,[4] permissible conduct of law enforcement authorities,[5] and prohibited acts and their penalties.[6]

CPR, on the other hand, was a policy announced in a Malacañang press release dated September 21, 2005, the pertinent part of which states:

> "The rule of calibrated preemptive response is now in force, in lieu of maximum tolerance. The authorities will not stand aside while those with ill intent are herding a witting or unwitting mass of people and inciting them into actions that are inimical to public order, and the peace of mind of the national community.
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> "Unlawful mass actions will be dispersed. The majority of law-abiding citizens have the right to be protected by a vigilant and proactive government."

Petitioners contended that Batas Pambansa 880 violated the Constitution, as

well as the International Covenant on Civil and Political Rights and other human rights treaties of which the Philippines was a signatory. This law supposedly required a permit before one could stage a public assembly, regardless of the presence or absence of a clear and present danger. Batas Pambansa 880, they said, also curtailed the choice of venue and was thus repugnant to the freedom-of-expression clause, because the time and place of a public assembly formed part of the message for which expression was sought. Furthermore, this law was allegedly not content-neutral, as it did not apply to mass actions in support of the government.

As to the CPR policy, they argued that it was preemptive, in that the government could take action even before the rallyists performed their act; and was not supported by any statute. Moreover, CPR was said to have contravened the maximum tolerance policy of Batas Pambansa 880 and violated the Constitution, because the policy caused a chilling effect on the people's exercise of the right to assemble peaceably.

Respondents argued that CPR was simply the responsible and judicious use of means allowed by existing laws and ordinances to protect public interest and restore public order.

The Issues

On April 4, 2006, the Court called for Oral Argument on the following principal issues:

1. "On the constitutionality of Batas Pambansa No. 880, specifically Sections 4, 5, 6, 12 13(a) and 14(a) thereof, and Republic Act No. 7160:

   (a) Are these content-neutral or content-based regulations?
   (b) Are they void on grounds of overbreadth or vagueness?
   (c) Do they constitute prior restraint?

(d) Are they undue delegations of powers to Mayors?
(e) Do they violate international human rights treaties and the Universal Declaration of Human Rights?

2. "On the constitutionality and legality of the policy of Calibrated Preemptive Response (CPR):

(a) Is the policy void on its face or due to vagueness?
(b) Is it void for lack of publication?
(c) Is the policy of CPR void as applied to the rallies of September 26; and October 4, 5 and 6, 2005?"

The Court's Ruling

By a unanimous 13-0 vote,[7] the Court, through Justice Adolfo S. Azcuna, held that the standing of petitioners could not be seriously challenged. Their rights as citizens to engage in peaceful assembly and to petition for the redress of grievances, as guaranteed by the Constitution, were directly affected by Batas Pambansa 880, which required a permit for all who would publicly assemble in the nation's streets and parks.

Article III, Section 4 of the Constitution, provides:

> "SEC. 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances."

In the realm of constitutional protection, primacy is given to the right to assemble peaceably and petition for redress of grievances; as well as to exercise freedoms of speech, of expression, and of the press. These rights constitute the very basis of a functional democratic polity, without which all the other rights would be meaningless and unprotected.

No Absolute
Ban on Assemblies

Batas Pambansa 880, however, is not an absolute ban on public assemblies. It merely regulates the time, place and manner (TPM) of assemblies, as adverted to in *Osmeña v. Comelec*.[8] In that earlier case, the Court referred to Batas Pambansa 880 as a "content-neutral" regulation for holding public assemblies.[9]

A fair and impartial reading of the law readily shows that it applies to **all** kinds of public assemblies[10] that will use public places. Maximum tolerance is for the protection and benefit of all rallyists and is independent of the *content* of the expressions in the rally.

Furthermore, the permit can be denied only on the ground of clear and present danger to public order, public safety, public convenience, public morals or public health. This limitation on the exercise of the right is recognized even under the Universal Declaration of Human Rights[11] and the International Covenant on Civil and Political Rights.[12]

The law is not over-broad, because the exercise of the right to peaceful assembly and petition is regulated only to a certain extent: to that which is needed for avoiding the clear and present danger of the substantive evils that Congress has the right to prevent. Neither is there any *prior* restraint, since the content of the speech is not relevant to the regulation.

As to the delegation of powers to the mayors, the law provides a precise and sufficient standard – the clear and present danger test. The reference to "imminent and grave danger of a substantive evil" substantially means the same thing and does

not result in an inconsistent standard.

Creation of Freedom Parks

Finally, Section 15 of the law has provided for an alternative forum through the creation of freedom parks, where no prior permit is needed for peaceful assembly and petition at any time. This provision states:

> SEC. 15. *Freedom parks*. – Every city and municipality in the country shall within six months after the effectivity of this Act establish or designate at least one suitable "freedom park" or mall in their respective jurisdictions which, as far as practicable, shall be centrally located within the poblacion where demonstrations and meetings may be held at any time without the need of any prior permit.

The solicitor general stated during the Oral Argument, though, that to his knowledge only Cebu City had declared a freedom park: Fuente Osmeña.

The Court considered the existence of freedom parks an essential part of the law's system of regulation of the people's exercise of their right to assemble and petition peacefully. It was thus constrained to rule in this wise: after thirty (30) days from the finality of the Decision in this case, no prior permit may be required for the exercise of that right in any public park or plaza of a city or municipality, until that locality shall have complied with Section 15 of the law. Without this alternative forum, to deny the permit would in effect be to deny the right. Advance notices of any rally should, however, be given to the authorities to ensure proper coordination and orderly proceedings.

No Purpose
Served by CPR

The Court ruled that CPR served no valid purpose if it meant the same as the maximum tolerance mandated by the said law; otherwise, the policy was illegal. *Maximum tolerance* meant the highest degree of restraint that the military, police and other peace-keeping authorities should observe during the holding or the dispersal of a public assembly. Accordingly, such tolerance should be followed, as mandated by the law itself.[113]

The Supreme Court further addressed the kind of situation that arose when a rally was immediately dispersed, because the mayor had not acted on the application for a permit; and when the rallyists could not produce one after the police had demanded a permit. The Court held that, as a necessary consequence of maximum tolerance, rallyists who could show the police an application duly filed two days prior to the rally may assemble publicly in accordance with their application. They would not need to show a permit, the grant of which would then be presumed under the law. The authorities would have the burden to show that there was a denial of the application, in which case the rally may be peacefully dispersed following the procedure of maximum tolerance prescribed by law.

Summary

I reproduce below the Court's own summary of this Decision:

> "In sum, this Court reiterates its basic policy of upholding the fundamental rights of our people, especially freedom of expression and freedom of assembly. In several policy addresses, Chief Justice Artemio V. Panganiban has repeatedly vowed to uphold the liberty of our people and to nurture their prosperity. He said that 'in cases involving liberty, the scales of justice should weigh heavily against the government and in favor of the poor, the oppressed, the marginalized, the dispossessed and the weak. Indeed, laws and actions that restrict fundamental rights come to the courts with a heavy presumption against their validity. These laws and actions are subjected to **heightened** scrutiny.'

> "For this reason, the so-called calibrated preemptive response policy has no place in our legal firmament and must be struck down as a darkness that shrouds freedom. It merely confuses our people and is used by some police agents to justify abuses. On the other hand, B.P. No. 880 cannot be condemned as unconstitutional; it does not curtail or unduly restrict freedoms; it merely regulates the use of public places as to the time, place and manner of assemblies. Far from being insidious, "maximum tolerance" is for the benefit of rallyists, not the government. The delegation to the mayors of the power to issue rally "permits" is valid because it is subject to the constitutionally-sound "clear and present danger" standard.
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> "In this Decision, the Court goes even one step further in safeguarding liberty by giving local governments a deadline of 30 days within which to designate specific freedom parks as provided under B.P. No. 880. If, after that period, no such parks are so identified in accordance with Section 15 of the law, *all* public parks and plazas of the municipality or city concerned shall in effect be deemed freedom parks; no prior permit of whatever kind shall be required to hold an assembly therein. The only requirement will be written notices to the police and the mayor's office to allow proper coordination and orderly activities."

Thus, the Court was unanimous (1) in sustaining the **constitutionality** of Batas Pambansa 880; (2) in declaring as **null** and **void** the so-called Calibrated Preemptive Response, insofar as the policy purported to differ from or to be applied in lieu of the maximum tolerance that should be **strictly observed** by respondents; and (3) in directing the latter, more particularly the secretary of the Department of Interior and Local Government, to take all necessary steps -- within thirty (30) days from the finality of the Decision -- to comply immediately with Section 15 of Batas Pambansa 880. Compliance would be through the establishment or designation of at least one suitable freedom park or plaza in every city and municipality of the country.

Henceforth, except for the giving of advance notices, no prior permit shall be required to exercise the right to petition and assemble peaceably in the public parks or plazas of a city or municipality that has not yet complied with the law.

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* GR Nos. 169838, 169848 & 169881

[1] An Act Ensuring The Free Exercise by the People of Their Right Peaceably to Assemble and

Petition the Government [and] for Other Purposes.

[2] "SEC. 4. *Permit when required and when not required*.-- A written permit shall be required for any person or persons to organize and hold a public assembly in a public place. However, no permit shall be required if the public assembly shall be done or made in a freedom park duly established by law or ordinance or in private property, in which case only the consent of the owner or the one entitled to its legal possession is required, or in the campus of a government-owned and operated educational institution which shall be subject to the rules and regulations of said educational institution. Political meetings or rallies held during any election campaign period as provided for by law are not covered by this Act."

[3] "SEC. 5. *Application requirements*.-- All applications for a permit shall comply with the following guidelines:

"(a) The applications shall be in writing and shall include the names of the leaders or organizers; the purpose of such public assembly; the date, time and duration thereof, and place or streets to be used for the intended activity; and the probable number of persons participating, the transport and the public address systems to be used.

"(b) The application shall incorporate the duty and responsibility of applicant under Section 8 hereof.

"(c) The application shall be filed with the office of the mayor of the city or municipality in whose jurisdiction the intended activity is to be held, at least five (5) working days before the scheduled public assembly.

"(d) Upon receipt of the application, which must be duly acknowledged in writing, the office of the city or municipal mayor shall cause the same to immediately be posted at a conspicuous place in the city or municipal building."

[4] "SEC. 6. *Action to be taken on the application*. –

"(a) It shall be the duty of the mayor or any official acting in his behalf to issue or grant a permit unless there is clear and convincing evidence that the public assembly will create a clear and present danger to public order, public safety, public convenience, public morals or public health.

"(b) 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. Should for any reason the mayor or any official acting in his behalf refuse to accept the application for a permit, said application shall be posted by the applicant on the premises of the office of the mayor and shall be deemed to have been filed.

"(c) If the mayor is of the view that there is imminent and grave danger of a substantive evil warranting the denial or modification of the permit, he shall immediately inform the applicant who must be heard on the matter.

"(d) The action on the permit shall be in writing and served on the applica[nt] within twenty-four hours.

"(e) If the mayor or any official acting in his behalf denies the application or modifies the terms thereof in his permit, the applicant may contest the decision in an appropriate court of law.

"(f) In case suit is brought before the Metropolitan Trial Court, the Municipal Trial Court, the Municipal Circuit Trial Court, the Regional Trial Court, or the Intermediate Appellate court, its decisions may be appealed to the appropriate court within forty-eight (48) hours after receipt of the same. No appeal bond and record on appeal shall be required. A decision granting such

permit or modifying it in terms satisfactory to the applicant shall be immediately executory.

"(g) All cases filed in court under this section shall be decided within twenty-four (24) hours from date of filing. Cases filed hereunder shall be immediately endorsed to the executive judge for disposition or, in his absence, to the next in rank.

"(h) In all cases, any decision may be appealed to the Supreme Court.

"(i) Telegraphic appeals to be followed by formal appeals are hereby allowed."

[5] *See* discussion on maximum tolerance, infra.

[6] Sections 13 & 14.

[7] Only 13 voted, because Justices Reynato S. Puno and Minita Chico-Nazario were on leave.

[8] GR No. 132231, March 31, 1998, 288 SCRA 447.

[9] Id. p. 478.

[10] Except picketing or some other concerted action staged by workers and employees in a strike area as a result of a labor dispute, which is governed by the Labor Code and other labor laws; political meetings or rallies held during any election campaign period, as these are governed by the Election Code and other election-related laws; and public assemblies in the campus of a government-owned and -operated educational institution, as these are subject to the rules and regulations of the said educational institution. (Sec. 3[a] and Sec. 4 of Batas Pambansa 880)

[11] "Article 20.

1. Everyone has the right to freedom of peaceful assembly and association.

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"Article 29.

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations."

[12] "Article 19.

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:
   (a) For respect of the rights or reputations of others;
   (b) For the protection of national security or of public order (*ordre public*), or of public health or morals."

[13] SEC. 9, Batas Pambansa 880. The other relevant provisions on maximum tolerance are as follows:

"SEC. 9. *Non-interference by law enforcement authorities*. – Law enforcement agencies shall not interfere with the holding of a public assembly. However, to adequately ensure public safety, a law enforcement contingent under the command of a responsible police officer
may be detailed and stationed in a place at least one hundred (100) meters away from the area of activity ready to maintain peace and order at all times.

"SEC. 10. *Police assistance when requested*. – It shall be imperative for law enforcement agencies, when their assistance is requested by the leaders or organizers, to perform their duties always mindful that their responsibility to provide proper protection to those exercising their right peaceably to assemble and the freedom of expression is primordial. Towards this end, law enforcement agencies shall observe the following guidelines:

"(a) Members of the law enforcement contingent who deal with the demonstrators shall be in complete uniform with their nameplates and units to which they belong displayed prominently on the front and dorsal parts of their uniform and must observe the policy of "maximum tolerance" as herein defined;

"(b) The members of the law enforcement contingent shall not carry any kind of firearms but may be equipped with batons or riot sticks, shields, crash helmets with visor, gas masks, boots or ankle high shoes with shin guards;

"(c) Tear gas, smoke grenades, water cannons, or any similar anti-riot device shall not be used unless the public assembly is attended by actual violence or serious threats of violence, or deliberate destruction of property.

"*Sec.* 11. *Dispersal of public assembly with permit*. – No public assembly with a permit shall be dispersed. However, when an assembly becomes violent, the police may disperse such public assembly as follows:

"(a) At the first sign of impending violence, the ranking officer of the law enforcement contingent shall call the attention of the leaders of the public assembly and ask the latter to prevent any possible disturbance;

"(b) If actual violence starts to a point where rocks or other harmful objects from the participants are thrown at the police or at the non-participants, or at any property causing damage to such property, the ranking officer of the law enforcement contingent shall audibly warn the participants that if the disturbance persists, the public assembly will be dispersed;

"(c) If the violence or disturbance prevailing as stated in the preceding subparagraph should not stop or abate, the ranking officer of the law enforcement contingent shall audibly issue a warning to the participants of the public assembly, and after allowing a reasonable period of time to lapse, shall immediately order it to forthwith disperse;

"(d) No arrest of any leader, organizer or participant shall also be made during the public assembly unless he violates during the assembly a law, statute, ordinance or any provision of this Act. Such arrest shall be governed by Article 125 of the Revised Penal Code, as amended;

"(e) Isolated acts or incidents of disorder or breach of the peace during the public assembly shall not constitute a ground for dispersal.

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"SEC. 12. *Dispersal of public assembly without permit*. – When the public assembly is held without a permit where a permit is required, the said public assembly may be peacefully dispersed.

"SEC. 13. *Prohibited acts*. – The following shall constitute violations of this Act:

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"(d) Obstructing, impeding, disrupting or otherwise denying the exercise of the right to peaceful assembly;

"(e) The unnecessary firing of firearms by a member of any law enforcement agency or any person to disperse the public assembly;

"(f) Acts described hereunder if committed within one hundred (100) meters from the area of activity of the public assembly or on the occasion thereof:

x x x x x x x x x

4. the carrying of firearms by members of the law enforcement unit;

5. the interfering with or intentionally disturbing the holding of a public assembly by the use of a motor vehicle, its horns and loud sound systems."