

**COMMISSION ON HUMAN RIGHTS OF THE PHILIPPINES**

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**CALL FOR INPUTS FOR THE ISSUES FOR CONSIDERATION DURING A HALF-DAY GENERAL DISCUSSION IN PREPARATION FOR A GENERAL COMMENT ON ARTICLE 21 (RIGHT TO PEACEFUL ASSEMBLY) OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

**18 MARCH 2019**

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**Introduction**

1. The Commission on Human Rights of the Philippines (hereinafter the “Commission”)[[1]](#footnote-2) submits its written inputs to the Human Rights Committee as contribution to the general discussion for a general comment on Article 21 (right to peaceful assembly) of the International Covenant on Civil and Political Rights (ICCPR).
2. The inputs from the Commission took into consideration local and international reports from government, civil society, the media, and international non-government organizations. This submission also utilized the Commission’s own documentation of independent monitoring activities and statements, which were subjected to the internal deliberations of the Commission En Banc.

**Legal and legislative frameworks**

1. The rights to freedom of peaceful assembly and of association are enshrined in the 1987 Philippine Constitution and have been protected since the earlier Constitutions of the Philippines. It was only in the 1973 Constitution that the provision on the freedom to form unions, associations or societies for purposes not contrary to law was removed.[[2]](#footnote-3)
2. The 1987 Philippine Constitution under Article 3, Section 4 of the Bill of Rights provides, “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”, while Section 8 under the same Article states that, “The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged”. [[3]](#footnote-4)
3. The Philippines is a state party to the International Covenant on Civil and Political Rights (ICCPR) where it is bound to implement the rights enshrined in the treaty including articles 19 (right to hold opinions without interference), 21 (right of peaceful assembly), and 22 (right to freedom of association with others). However, the fifth periodic report of the Philippines that should update the Human Rights Committee of the State’s compliance to the treaty has been overdue since 31 October 2016.

***What are the unique features of the right to peaceful assembly, which distinguishes it from other related rights such as freedom of expression and political participation? What is the function, added value and rationale for this right in a social system based on democracy and human rights? Does the scope of the right differ depending on the context (for example, is it the same during political transitions)?***

1. In the case of Primicias v. Fugoso, the Supreme Court of the Philippines ruled that “[t]he 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…”[[4]](#footnote-5)
2. The Court likewise ruled that, “[f]reedom 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. Even prior to the 1935 Constitution, Justice Malcolm had occasion to stress that it is a necessary consequence of our republican institutions and complements the right of free speech. To paraphrase the opinion of Justice Rutledge, speaking for the majority of the American Supreme Court in Thomas v. Collins, it was not by accident or coincidence that the rights to freedom of speech and of the press were coupled in a single guarantee with the rights of the people peaceably to assemble and to petition the government for redress of grievances. All these rights, while not identical, are inseparable.”[[5]](#footnote-6)

***How should the term ‘peaceful assembly’ be understood? When is one dealing with an ‘assembly’? Does it require the expression of an idea through a gathering, and if so, what is the hallmark of such an expression of an idea (e.g. does it necessarily entail an appeal to the public opinion)? Does it cover strikes? Or do all gatherings (e.g., also sporting, religious, cultural events, or) qualify as ‘assemblies’? Does it matter whether the organizers pursue a commercial interest? In order to qualify as an assembly, are there requirements about where should the gathering should take place – in public, private or on-line? Can one person form an assembly? When is an assembly not ‘peaceful’, and fall outside the scope of the protection of the particular right? What level of violence (or mere disruption?) is required not to consider it peaceful? To what extent can the violent conduct of certain individuals participating in the assembly be attributed to the group as a whole and render an assembly as a whole not peaceful?***

1. In Sec. 3 (a) of Batas Pambansa No. 880, public assembly is defined as “any rally, demonstration, march, parade, procession or any other form of mass or concerted action held in a public place for the purpose of presenting a lawful cause; or expressing an opinion to the general public on any particular issue; or protesting or influencing any state of affairs whether political, economic or social; or petitioning the government for redress of grievances.”
2. The Supreme Court stated that “[n]ot every expression of opinion is a public assembly. The law refers to "rally, demonstration, march, parade, procession or any other form of mass or concerted action held in a public place." So it does not cover any and all kinds of gatherings.”[[6]](#footnote-7)
3. The Supreme Court also ruled that [t]he power to regulate the exercise of [the right to peaceful assembly] and other constitutional rights is termed the sovereign "police power," which is the power to prescribe regulations, to promote the health, morals, peace, education, good order or safety, and general welfare of the people. This sovereign police power is exercised by the government through its legislative branch by the enactment of laws regulating those and other constitutional and civil rights, and it may be delegated to political subdivisions, such as towns, municipalities and cities by authorizing their legislative bodies called municipal and city councils to enact ordinances for the purpose.[[7]](#footnote-8)
4. Sec. 11 of the Batas Pambasa No. 880, or the “Public Assembly Act” contains prohibitions on the exercise of the right to peaceably assemble, which states:

Sec. 13. Prohibited acts. – The following shall constitute violations of the Act:

(a) The holding of any public assembly as defined in this Act by any leader or organizer without having first secured that written permit where a permit is required from the office concerned, or the use of such permit for such purposes in any place other than those set out in said permit: Provided, however, That no person can be punished or held criminally liable for participating in or attending an otherwise peaceful assembly;

(b) Arbitrary and unjustified denial or modification of a permit in violation of the provisions of this Act by the mayor or any other official acting in his behalf;

(c) The unjustified and arbitrary refusal to accept or acknowledge receipt of the application for a permit by the mayor or any official acting in his behalf;

(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 in violation of Section 10 hereof;

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

1. the carrying of a deadly or offensive weapon or device such as firearm, pillbox, bomb, and the like;

2. the carrying of a bladed weapon and the like;

3. the malicious burning of any object in the streets or thoroughfares;

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.

***Is freedom of assembly an individual or a collective right, or both? Who is the bearer of the right? The participants – individually or collectively? The organizers? Does the right cover planning/publication/advertisement of the event, and if so when does this start - before notification or other similar requirements have been met? Does the right cover protection of participants on their way to and from an assembly?***

1. Freedom of assembly is both an individual and collective right, as such right may be exercised by an individual, seeking to assemble with others for the purposes stated in paragraph 8. It is also a collective right because once people have gathered, they are all collectively exercising their right to peaceably assembly. An organized group may exercise the same as well, where cases filed in the Supreme Court have shown that organized labor groups have been found to have legal standing to question the curtailment of their rights to peaceably assemble.[[8]](#footnote-9)

***Article 2 (1) of the ICCPR requires States to ‘respect and ensure’ the rights in the ICCPR. Article 21 provides that the right of peaceful assembly ‘shall be recognised’. Does this in general terms mean that there is a duty on the State to ‘facilitate’ peaceful assembly, and what does such a duty to ‘facilitate’ entail? Does it mean that, while people exercise this right, the focus of law enforcement officials should be primarily on protecting the rights of all concerned rather than upholding law and order? (Are States thus required to show a certain level of tolerance to conduct when engaged in as part of peaceful assembly, and not meet it with the same force of the law as it would otherwise do?) How should the obligation to allow assemblies to take place within ‘sight and sound’ of its target audience be interpreted?***

1. In BP 880, the State is required to take action on an application for a permit to exercise the right to peaceably assemble. Under the said law, the following are the specific actions that must be taken:

(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 application 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.

1. The same law also states in Sec. 9 that “[l]aw 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) meter away from the area of activity ready to maintain peace and order at all times.”
2. In Sec. 10, it is stated that “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 baton 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.

***More specifically, what are the (negative and positive) obligations placed by the right of peaceful assembly on the State? How should the right be respected by the State (e.g. through the adoption of laws providing for and regulating its exercise in accordance with international law)? How should it be protected? To what extent does the State have an obligation to protect those engaged in peaceful assembly from interference by other members of the public? And should counter-demonstrations be protected to the same extent? How should the obligation on States to take precautionary measures to prevent violations of rights be understood in this context (for example in the context of preventing and reducing violence)? Is there an obligation on the part of the authorities to attempt to engage with assembly organisers and participants prior to the holding of the assembly? Are organisers required to engage with the authorities? Is there a special role for NHRIs in this regard? And other stakeholders (such as local governments)?***

1. Please refer to the answers in the previous paragraphs regarding how the State should respect the right to peaceful assembly.
2. As for the special role of the NHRIs, the Commission on Human Rights of the Philippines has the following powers and functions under Sec. 18, Article 13 of the 1987 Philippine Constitution:

(1) Investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights;

(2) Adopt its operational guidelines and rules of procedure, and cite for contempt for violations thereof in accordance with the Rules of Court;

(3) Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection;

(4) Exercise visitorial powers over jails, prisons, or detention facilities;

(5) Establish a continuing program of research, education, and information to enhance respect for the primacy of human rights;

(6) Recommend to Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights, or their families;

(7) Monitor the Philippine Government’s compliance with international treaty obligations on human rights;

(8) Grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority;

(9) Request the assistance of any department, bureau, office, or agency in the performance of its functions;

(10) Appoint its officers and employees in accordance with law; and

(11) Perform such other duties and functions as may be provided by law.

1. The Commission has, in the past, sent its staff upon its own motion to monitor the exercise of the right to peaceably assemble by individuals and groups. The aim of the Commission is to protect those who are exercising their right from the State’s possible abuse of authority.
2. The following are recent statements and papers from the Commission relevant to its mandate in monitoring civil and political rights, particularly the right to peaceful assembly:

*Statement of CHR spokersperson, Atty Jacqueline Ann C. de Guia, on the violent dispersal of workers at the NutriAsia factory*

July 31, 2018

<http://chr.gov.ph/chr-spox-on-the-violent-dispersal-of-workers-at-the-nutriasia-factory/>

*Position Paper on House Bill No. 3023 and House Bill No.3789 on Peaceful Assembly*

July 31, 2017

<http://chr.gov.ph/position-paper-on-house-bill-no-3023/>

*CHR condemns violent dispersal, will conduct own investigation*

October 20, 2016

<http://chr.gov.ph/chr-condemns-violent-dispersal-will-conduct-own-investigation/>

*CHR releases Kidapawan Report*

May 30, 2016

<http://chr.gov.ph/chr-releases-kidapawan-report/>

***In interpreting article 21 of the ICCPR, should any weight be attached to possible differences between the right of peaceful assembly (droit de réunion); peaceful demonstration (or peaceful protest) (droit de manifestation) and the right of peaceful gathering (droit de rassemblement)?***

1. In the Philippine context, these three have always been associated with each other. The exercise of the rights of individuals and groups have been done involving a public assembly, where protests are made for the reasons stated in paragraph 8 of this submission. It is possible, however, to attach weight to the differences, as when there are special circumstances, as when the Philippines was under the Martial Law during the Marcos rule. In this period, even gathering in meetings was considered an offense, regardless of what was being discussed in the meetings.[[9]](#footnote-10)

**In all of the above please keep in mind the role of gender in assemblies and the role of new technologies: the use of social media to organise and advertise assemblies; the use of mobile phones and other devices (CCTV cameras, satellites) to record assemblies; the use of body-worn cameras; etc. Moreover, to what extent does the right of peaceful assembly apply in the digital space? Can ‘gathering’ online impose obligations on States and other actors to facilitate it? May unmanned weapon or surveillance systems (remote or autonomous) be used by law enforcement officials during demonstrations?**

1. This has not yet been considered in Philippine jurisprudence nor state laws. In the present context of the right to peaceably assemble, there is a need for physical presence, and a public gathering for the right to apply. In terms of the use of the digital space, the “gathering” online does not impose obligations on States because there can be no physical violence, or interference in online gatherings, that the State seeks to prevent. The Commission, however, released a statement in November 2018, on the proposal to empower Department of Information and Communications Technology (DICT) to shutdown social media pages that are “inimical to national interest” or are linked terrorism:

The Commission recognizes that the State must exercise its police power to prevent terrorism and uphold national security. However, the State must acknowledge that the proposal necessarily entails surveillance power, which impinges on the right to privacy of communication and correspondence as well as the sacred right to private life. It can also adversely impact the right to freedom of expression. Hence, safeguards are needed to guarantee that such measure will not be utilized to repress legitimate social protest nor to silence criticisms.

To ensure protection of basic freedoms and rights, the provisions must be very precise in order to guarantee utmost due process. The proposed measure should provide that such power can only be activated in the pursuit of a legitimate aim, must be utilized only when necessary, and the exercise of which must be proportionate to the threat. Further, the provisions must indicate that the State needs to be transparent about the methods, nature, and extent of its online surveillance. Such power must also require sufficient justification and specific and detailed benefits to the people.

The threat of terrorism must be expeditiously addressed but we must be scrupulous in ensuring that laws meant to protect the people from such horrors, will not compromise their personal safety, basic freedom, and human dignity.[[10]](#footnote-11)

1. As the National Human Rights Institution (NHRI) of the Philippines, the Commission on Human Rights of has the mandate vested by the 1987 Philippine Constitution and the Paris Principles to promote and protect the full range of human rights including civil and political rights, and economic, social and cultural rights. It has the responsibility to regularly report and monitor human rights situations and violations, and recommend steps in advancing the realization of human rights and dignity of all. The Commission has “A”-status accreditation from the Sub-Committee for Accreditation of the Global Alliance of National Human Rights Institutions (GANHRI). [↑](#footnote-ref-2)
2. The Constitutions of the Republic of the Philippines (Past & Present), *available at* <http://www.chanrobles.com/philsupremelaw.htm#.W1fSSC-B0Wo>. (Last accessed 24 July 2018). [↑](#footnote-ref-3)
3. [1987 Constitution of the Republic of the Philippines](https://www.lawphil.net/consti/cons1987.html), (Last accessed 15 July 2018). [↑](#footnote-ref-4)
4. 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> (last accessed 15 March 2019). [↑](#footnote-ref-5)
5. *Id.* *citing* Reyes v. Bagatsing, G.R. No. L-65366, November 9, 1983, 125 SCRA 553. [↑](#footnote-ref-6)
6. *Id.* [↑](#footnote-ref-7)
7. *Id.* *citing* Primicias v. Fugoso, 80 Phil. 71 (1948). [↑](#footnote-ref-8)
8. *See* Bayan vs. Ermita,G.R. No. 169838 [↑](#footnote-ref-9)
9. *See* In The Issuance Of The Writ Of Habeas Corpus For Dr. Aurora Parong, et al. v. Minister Juan Ponce Enrile, et al., G.R. No. L-61388, 20 April 1983. [↑](#footnote-ref-10)
10. Statement of the Commission on Human Rights on the proposal to empower DICT to shutdown social media pages that are “inimical to national interest” or are linked terrorism, November 29, 2018, *available at* <http://chr.gov.ph/statement-of-the-commission-on-human-rights-on-the-proposal-to-empower-dict-to-shutdown-social-media-pages-that-are-inimical-to-national-interest-or-are-linked-terrorism/> (Last accessed: 15 March 2019). [↑](#footnote-ref-11)