

“ON THE PROTECTION OF HUMAN RIGHTS AND THE DECLARATION OF THE STATE OF NATIONAL EMERGENCY”

On Friday, 24 February 2006 President Gloria Macapagal Arroyo issued Proclamation No. 1017 Declaring a State of National Emergency.

The Proclamation cited unrestrained political opposition “engaged in a concerted and systematic conspiracy, over a broad front, to bring down the duly-constituted Government elected in May 2004,” and invokes Article 2, Section 4 of the Constitution which provides that “the defense and preservation of the democratic institutions and the State is the primary duty of Government.”

The 1987 Constitution created an independent Commission on Human Rights with the mandate to ensure that the state indeed “values the dignity of every human person and guarantees full respect of human rights.” (Article II, Section 11, 1987 Philippine Constitution)

The Commission, in the exercise of this mandate, issues this advisory to remind the Government and the general public of the pertinent provisions of human rights treaties to which the Philippines is a state party. In particular, the Philippines ratified on 23 January 1987 the International Covenant on Civil and Political Rights.

The Philippine Government is legally obligated to comply with its provisions, as follows:

“ x x x

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (ICCPR Art 2, Sec. 1).

To ensure that any person whose rights or freedom as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity (ICCPR Art. 2, Sec. 3a). x x x”

Recognizing that there are indeed situations when a state is allowed to derogate from a part of its obligation to the ICCPR, Article 4 provides:

- In time of public emergency which threatens the life of the nation, and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin.
- No derogation from articles 6, 7, 8 (par. 1&2), 11, 15, 16 and 18 may be made under this provision.
- Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present covenant, through the intermediary of the Secretary General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made through the same intermediary on the date on which it terminates such derogation.

In plain language, the ICCPR proscribes (or prohibits) derogation from the following rights:

Article 6 The Right to life: No arbitrary deprivation of life, duty to investigate state killings, duty to punish offenders for state killings, duty to protect persons from killings by non-state actors, Death Penalty for the most serious of crimes, right to seek pardon, commutation, no imposition for death sentence for minors, no execution for pregnant women, no delay in abolition of the Death Penalty.

Article 7 Prohibition of torture or cruel, inhuman, degrading punishment or treatment: all persons deprived of their liberty must be treated with humanity and respect for dignity or human person, no medical or scientific experimentation without valid consent, no justification or extenuating

circumstances may be invoked to excuse torture, cruel, inhuman, degrading treatment or punishment.

Article 8 Prohibition of slavery, slave trade, servitude, forced or compulsory labor: Slavery occurs where one human being owns another that the former can exploit latter with impunity, Servitude refers to other forms of egregious economic exploitation or dominance or ‘slavery – like practices, Force or Compulsory Labor defined as ‘all work or service which is extracted from any person under the menace of any penalty and for which he has not offered himself voluntarily.

Article 11 Prohibition of imprisonment because of inability to fulfill a contractual obligation: no imprisonment for private law civil obligations due to ‘inability’ which indicates incapability rather than unwillingness.

Article 15 The principle of legality in the field of criminal law: prohibition of retroactive criminal laws, no crime except in accordance with law or *nullum crimen sine lege*, no punishment except in accordance with law or *nulla poena sine lege*, no punishment under extremely vague laws.

Article 16 Recognition of everyone as a person before the law (a person’s humanity must be legally recognized).

Article 18 Freedom of thought conscience and religion (freedom to adopt a religion or belief of his choice, freedom to manifest individually or in community with others in public or private, in worship, observance, practice and teaching, freedom to manifest one’s religion or beliefs subject only to limitations prescribed by law and are necessary to protect public safety, order, health or morals or fundamental rights and freedoms of others).

The fundamental rights of the Filipino People cannot be overemphasized. These rights must be in the context of the Universal Declaration of Human Rights which provides:

“x x x

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 (Art. 29, Sec. 2).”

This is of paramount importance for the system of protection for human rights under the ICCPR. While it allows the unilateral derogation from a part of its obligations thereto, the measure of derogation must be of an exceptional and temporary measure. Government must consider primordial, even in a state of emergency, the fundamental rights of the Filipino People. Thus, it must be subject to a specific regime of safeguards where the restoration of a state of normalcy must be the predominant objective.

The Commission on Human Rights urges the Philippine government to manifest its commitments by demonstrating its compliance to the obligations set forth in the said Covenant.

Done in Quezon City, Philippines on this 27 th day of February 2006.

Joseph, Schultz and Castan, International Covenant on Civil and Political Rights: Cases, Materials and Commentary 2000, pp 109 - 137

Human Rights Committee General Comment No. 20 adopted at its 44 th Session, 1992

Joseph, Schultz and Castan, International Covenant on Civil and Political Rights: Cases, Materials and Commentary 2000, 199

Ibid., p 198-9

ILO Convention No. 29 on Forced and Compulsory Labor.

Joseph et al, p 201

Nowak, CCPR Commentary, quoted in Joseph, Schultz and Castan, International Covenant on Civil and Political Rights: Cases, Materials and Commentary 2000, p 342

Joseph, Schultz and Castan, International Covenant on Civil and Political Rights: Cases, Materials

and Commentary 2000, pp 201-2

Human Rights Committee General Comment No. 22 adopted at its 48 th session, 1993

Human Rights Committee General Comment No. 29 adopted at its 1950 th session, 2001