

**G.R. No. 238467 – Mark Anthony V. Zabal, Thiting Estoso Jacosalem, and Odon S. Bandiola, *Petitioners*, v. Rodrigo R. Duterte, President of the Republic of the Philippines; Salvador C. Medialdea, Executive Secretary; and Eduardo M. Año, [Secretary] of the Department of Interior and Local Government, *Respondents*.**

Promulgated:

February 12, 2019

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## SEPARATE CONCURRING OPINION

**PERLAS-BERNABE, J.:**

I concur.

Among other points, I agree with the *ponencia* that “this case does not actually involve the right to travel in its essential sense contrary to what petitioners want to portray.”<sup>1</sup> In my view, there can be no violation of the right to travel because, in the first place, Proclamation No. 475<sup>2</sup> is not an issuance that substantively regulates such right.

To expound, the right to travel has been regarded as integral to personal liberty,<sup>3</sup> which Blackstone defines as “freedom from **restraint of the person**.”<sup>4</sup> The guarantee of free movement may be historically traced<sup>5</sup> to the Magna Carta of 1215 which assured the liberty for *anyone*, except those imprisoned, outlawed, and the natives of an enemy country, safe and secure entry to and exit from England. It likewise assured *merchants*, that they may enter, leave, stay, and move about England “unharmd and without fear.”<sup>6</sup> Much later, or in 1948, the Universal Declaration of Human Rights (UDHR) recognized *everyone’s* right to freedom of movement within the borders of

<sup>1</sup> *Ponencia*, p. 20.

<sup>2</sup> Entitled “DECLARING A STATE OF CALAMITY IN THE BARANGAYS OF BALABAG, MANOC-MANOC AND YAPAK (ISLAND OF BORACAY) IN THE MUNICIPALITY OF MALAY, AKLAN, AND TEMPORARY CLOSURE OF THE ISLAND AS A TOURIST DESTINATION,” signed on April 26, 2018.

<sup>3</sup> See McAdam, Jane “*An Intellectual History of Freedom of Movement in International Law: The Right to Leave as a Personal Liberty*.” *Melbourne Journal of International Law*, Vol. 12 (2011), p. 6.

<sup>4</sup> Shattuck, Charles E. “*The True Meaning of the Term ‘Liberty’ in Those Clauses in the Federal and State Constitutions Which Protect ‘Life, Liberty, and Property*.” *Harvard Law Review*, Vol. 4, No. 8 (1891), p. 377; citing William Blackstone, “*Absolute Right of Individuals*”; emphasis supplied. <[www.jstor.org/stable/1322046](http://www.jstor.org/stable/1322046)> (visited February 12, 2019).

<sup>5</sup> See Gould, William B. “*Right to Travel and National Security*,” 1961 *Wash. U. L. Q.* 334 (1961). <[http://openscholarship.wustl.edu/law\\_lawreview/vol1961/iss4/2](http://openscholarship.wustl.edu/law_lawreview/vol1961/iss4/2)> (visited February 12, 2019).

<sup>6</sup> See English translation of the Magna Carta of 1215 <<https://www.bl.uk/magna-carta/articles/magna-carta-english-translation>> (visited February 12, 2019).

each state, as well as the one's right to leave and return to his country.<sup>7</sup> The guarantee was likewise incorporated in the 1966 International Covenant on Civil and Political Rights,<sup>8</sup> which the Philippines signed in the same year.<sup>9</sup> This guarantee was incorporated in our fundamental law in the 1973 Constitution,<sup>10</sup> and now appears in the 1987 Constitution.<sup>11</sup>

An examination of local cases wherein the right to travel was involved will support the premise that the right to travel – if one were to understand the same in its proper sense – ought to pertain to government regulations that directly affect the individual's freedom of locomotion or movement. For instance, in *Samahan ng mga Progresibong Kabataan v. Quezon City*,<sup>12</sup> the minors' exercise of travel rights was restricted by the curfew ordinances. In several cases,<sup>13</sup> the accused in a criminal case, especially those released on bail, were held to be validly prevented from departing from the Philippines. In *Philippine Association of Service Exporters, Inc. v. Drilon*,<sup>14</sup> the deployment ban was imposed on female domestic overseas workers. Further, during medical emergencies, a person may be isolated or quarantined to prevent the spread of communicable diseases.<sup>15</sup>

<sup>7</sup> Adopted on December 10, 1948. <[https://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf)> (visited February 12, 2019). Article 13 of the UDHR provides:

Article 13.

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

<sup>8</sup> Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49. <<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>> (February 12, 2019).

Article 12, Part III of the 1966 International Covenant on Civil and Political Rights states:

Article 12.

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

<sup>9</sup> The Philippines signed on December 19, 1966. <[https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280004bf5&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280004bf5&clang=_en)> (February 12, 2019).

<sup>10</sup> Section 5, Article IV of the 1973 CONSTITUTION provides:

Section 5. The liberty of abode and of travel shall not be impaired except upon lawful order of the court, or when necessary in the interest of national security, public safety, or public health.

<sup>11</sup> See Section 6, Article III of the 1987 CONSTITUTION.

<sup>12</sup> G.R. No. 225442, August 8, 2017, 835 SCRA 350.

<sup>13</sup> See *Manotoc, Jr. v. Court of Appeals*, 226 Phil. 75 (1986), *Silverio v. Court of Appeals*, 273 Phil. 128 (1991). In *Marcos v. Sandiganbayan* (317 Phil. 149, 167 [1995]), the Court stated that "a person's right to travel is subject to the usual constraints imposed by the very necessity of safeguarding the system of justice." See also *Lee v. The State* (474 S.E.2d 281 [1996]), wherein the Court of Appeals of Georgia held that an arrest restrains a person's liberty to come and go as he pleases.

<sup>14</sup> See 246 Phil. 393 (1988).

<sup>15</sup> See Internal Health Regulations of the World Health Organization, 3<sup>rd</sup> Edition (2005), pp. 23-24 <<https://apps.who.int/iris/bitstream/handle/10665/246107/9789241580496-eng.pdf;jsessionid=7B5FCF4B030035B953CDCDEE7F92D6EC?sequence=1>> (February 12, 2019).

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Even the statutes recognized as validly impairing the right to travel have, for its proper object, a palpably direct restraint on a person's freedom of movement, *viz.*: (1) in the Human Security Act,<sup>16</sup> the law restricts the right to travel of an **individual charged** with the crime of terrorism even though such person is out on bail; (2) in the Philippine Passport Act of 1996,<sup>17</sup> the Secretary of Foreign Affairs or his authorized consular officer may refuse the issuance of, restrict the use of, or withdraw, a passport of a **Filipino citizen**; (3) in the Anti-Trafficking in Persons Act of 2003,<sup>18</sup> the Bureau of Immigration, in order to manage migration and curb trafficking in persons, issued Memorandum Order RADJR No. 2011-011,<sup>19</sup> allowing its Travel Control and Enforcement Unit to "offload **passengers** with fraudulent travel documents, doubtful purpose of travel, including possible victims of human trafficking" from the Philippine ports; and (4) in the Inter-Country Adoption Act of 1995,<sup>20</sup> the Inter-Country Adoption Board may issue rules restrictive of an **adoptee's** right to travel "to protect the Filipino child from abuse, exploitation, trafficking, and/or sale or any other practice in connection with adoption which is harmful, detrimental, or prejudicial to the child."<sup>21</sup>

In all these instances, the restrictions on the right to travel **were imposed on a person or group of persons**,<sup>22</sup> seemingly attaching unto them some form of "ball and chain" to limit their movement. **Clearly, this is not the situation presented in this case.** While the closure of Boracay pursuant to Proclamation No. 475 prohibited the entry of tourists and non-residents thereto, these people still remained free to move about in other parts of the country without arbitrary restraint. Thus, whatever effect such regulation may have on a person's ability to travel to such a specific place is merely incidental in nature and accordingly, is conceptually remote from the right's proper sense. To my mind, Proclamation No. 475 is more akin to government regulations that amount to the "cordonning-off" of areas ravaged by flood, fire, or other calamities, where access by people thereto may indeed be prohibited pursuant to considerations of safety and general welfare based on circumstantial exigencies. Thus, as the right to travel is not the correct vantage point to resolve this case, there is no need to determine whether or not an

<sup>16</sup> Republic Act No. (RA) 9372, entitled "AN ACT TO SECURE THE STATE AND PROTECT OUR PEOPLE FROM TERRORISM," approved on March 6, 2007.

<sup>17</sup> RA 8239, approved on November 22, 1996.

<sup>18</sup> RA 9208, entitled "AN ACT TO INSTITUTE POLICIES TO ELIMINATE TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION AND SUPPORT OF TRAFFICKED PERSONS, PROVIDING PENALTIES FOR ITS VIOLATIONS, AND FOR OTHER PURPOSES," approved on May 26, 2003.

<sup>19</sup> Entitled "STRENGTHENING THE TRAVEL CONTROL AND ENFORCEMENT UNIT (TCEU) UNDER AIRPORT OPERATIONS DIVISION (AOD) AND DEFINING THE DUTIES AND FUNCTIONS THEREOF" dated June 30, 2011.

<sup>20</sup> RA 8043, entitled "AN ACT ESTABLISHING THE RULES TO GOVERN INTER-COUNTRY ADOPTION OF FILIPINO CHILDREN, AND FOR OTHER PURPOSES," approved on June 7, 1995.

<sup>21</sup> See *Leave Division, Office of Administrative Services, Office of the Court Administrator v. Heusdens*, 678 Phil. 328, 339-340 (2011).

<sup>22</sup> See also the United Nations Convention relating to the Status of Refugees, adopted in 1951 and entered into force on 22 April 1954, which stresses refugees' freedom of movement, to wit:

*Article 26*

*Freedom of Movement*

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

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explicit statutory enactment exists to justify the impairment of said right as required under Section 6, Article III of the 1987 Constitution.<sup>23</sup>

Lest it be misunderstood, the extrication of this case from a “right to travel analysis” does not necessarily mean that the President is, by his sole accord, both *authorized and justified* in issuing Proclamation No. 475.

Fundamentally speaking, the President is the Chief of the Executive Department whose main task is to faithfully execute the laws. In its simple sense, his duty is not to make law, but rather, implement the law. Proclamation No. 475 is not law, but rather, an executive issuance which derives statutory imprimatur from existing laws and hence, has the “force and effect” of law. As its titular heading denotes, Proclamation No. 475 is a **declaration of a state of calamity** in the *barangays* of Balabag, Manoc-Manoc, and Yapak (Island of Boracay) in the Municipality of Malay, Aklan. In order to address the situation declared thereunder, it was necessary for the Executive to effect “expeditious rehabilitation,” and to implement this objective, the President had to direct the area’s temporary closure.

To be sure, insofar as this case is concerned, the power of the President to declare a state of calamity over a particular locality may be sourced from the Administrative Code of 1987<sup>24</sup> in relation to the Philippine Disaster Risk Reduction and Management Act of 2010.<sup>25</sup> Based on these laws, the President, pursuant to the recommendation of the National Disaster Risk Reduction and Management Council (NDRRMC), is authorized to “declare a state of calamity<sup>26</sup> in areas extensively damaged,” as well as to approve “proposals to restore normalcy in the affected areas.”<sup>27</sup> On this basis, the NDRRMC recommended to the President not only the declaration of a state of calamity in Boracay but also, as a means to restore normalcy therein, the “temporary closure of the Island as a tourist destination” for the purpose of assisting the

<sup>23</sup> See *Genuino v. De Lima* (G.R. Nos. 197930, 199034, and 199046, April 17, 2018) in relation to Section 6, Article III of the 1987 Constitution.

<sup>24</sup> Executive Order No. 292, entitled “INSTITUTING THE ADMINISTRATIVE CODE OF 1987” (August 3, 1988). The President’s ordinance power is explicitly stated in Section 4, Chapter 2, Title I, Book III of the Administrative Code of 1987, to wit:

Section 4. *Proclamations.* -- Acts of the President fixing a date or declaring a status or condition of public moment or interest, upon the existence of which the operation of a specific law or regulation is made to depend, shall be promulgated in proclamations which shall have the force of an executive order. (Underscoring supplied)

<sup>25</sup> RA 10121, entitled “AN ACT STRENGTHENING THE PHILIPPINE DISASTER RISK REDUCTION AND MANAGEMENT SYSTEM, PROVIDING FOR THE NATIONAL DISASTER RISK REDUCTION AND MANAGEMENT FRAMEWORK AND INSTITUTIONALIZING THE NATIONAL DISASTER RISK REDUCTION AND MANAGEMENT PLAN, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES,” May 27, 2010.

<sup>26</sup> Section 2 (II) of RA 10121 defines “**State of Calamity**” as “a condition involving mass casualty and/or major damages to property, disruption of means of livelihoods, roads and normal way of life of people in the affected areas as a result of the occurrence of natural or human-induced hazard.”

<sup>27</sup> See Section 6 (c) of RA 10121 which states:

Section 6. *Powers and Functions of the NDRRMC.* -- x x x  
x x x x

(c) x x x recommend to the President the declaration of a state of calamity in areas extensively damaged; and submit proposals to restore normalcy in the affected areas, to include calamity fund allocation[.] (Emphasis and underscoring supplied)

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government in the “expeditious rehabilitation” of the same.<sup>28</sup> Thus, as an offshoot of the declaration of a state of calamity, and acting upon the recommendation of the NDRRMC, the President found it necessary to decree the temporary closure of the affected areas if only to ensure the Island’s proper rehabilitation.

While it appears that the above-cited statutes do not spell out in “black-and-white” the President’s power to temporarily close-off an area, it is my opinion that a logical complement to the Executive’s power to faithfully execute the laws is the authority to perform all necessary and incidental acts that are reasonably germane to the statutory objective that the President is, after all, tasked to execute. What comes to mind is the doctrine of necessary implication which evokes that “[e]very statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms. *Ex necessitate legis*. And every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege.”<sup>29</sup> This principle, in its general sense, holds true in this case. By and large, I find it unreasonable that a President who declares a state of calamity, and who has been further prompted by a specialized government agency created for disaster operations pursuant to existing laws to effect a viable plan of action is nonetheless impotent to pursue the necessary steps to effect a viable plan of action. Surely, the President must be given reasonable leeway to address calamitous situations, else he be reduced to a mere mouthpiece of doom.

At this juncture, it is apt to state that Proclamation No. 475 explicitly recognizes in its “whereas clauses” the State’s constitutional duty to protect and advance the rights to health and to a balanced and healthful ecology,<sup>30</sup> which duty has been translated in numerous legislative enactments, such as the Philippine Clean Water Act of 2004,<sup>31</sup> and as mentioned, the Philippine Disaster Risk Reduction and Management Act of 2010, as well as the

<sup>28</sup> The last whereas clause of Proclamation No. 475 reads:

WHEREAS, pursuant to [RA 10121] x x x, the [NDRRMC] has recommended the declaration of a State of Calamity in the Island of Boracay and the temporary closure of the Island as a tourist destination to ensure public safety and public health, and to assist the government in its expeditious rehabilitation, as well as in addressing the evolving socio-economic needs of the affected communities[.] (Underscoring supplied)

<sup>29</sup> See *Robustum Agricultural Corporation v. Department of Agrarian Reform and Land Bank of the Philippines*, G.R. No. 221484, November 19, 2018.

<sup>30</sup> In *Oposa v. Factoran, Jr.* (G.R. No. 101083, July 30, 1993, 224 SCRA 792, 804-805), the Court held that “[w]hile the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation — aptly and fittingly stressed by the petitioners — the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind.” The Court also exclaimed that the right to a balanced and healthful ecology “unites with the right to health.”

<sup>31</sup> RA 9275, entitled “AN ACT PROVIDING FOR A COMPREHENSIVE WATER QUALITY MANAGEMENT AND FOR OTHER PURPOSES,” approved on March 22, 2004.

Administrative Code of 1987. The Philippine Clean Water Act of 2004 authorizes the Department of Environment and Natural Resources (DENR) to undertake emergency clean-up operations<sup>32</sup> to counter water pollution. As earlier mentioned, the Philippine Disaster Risk Reduction and Management Act of 2010 empowers the NDRRMC to recommend the declaration of a state of calamity in areas extensively damaged by either natural or human-induced hazards such as environment degradation, as well as proposals to restore normalcy in the affected areas, such as through **rehabilitation**<sup>33</sup> or the rebuilding of damaged infrastructures. Further, the Administrative Code of 1987 grants the DENR the power to “exercise supervision and control over [alienable public lands],”<sup>34</sup> such as Boracay, and the Department of Interior and Local Government the authority to implement programs “to meet national or local emergencies arising from natural or man-made disasters,”<sup>35</sup> such as environmental destruction.

Ultimately, the agglomeration of the above-stated laws reveals that the Executive Department has sufficient statutory authority to clean up the Island. Since the Constitution vests all executive power in the President, and on this score, grants him the power of control over all executive departments, he can, within the bounds of law, integrate and take on the above-stated functions, and in the exercise of which, issue a directive to implement an environmental rehabilitation program as recommended by the relevant state agency. At the risk of sounding repetitive, the temporary closure of the Island to tourists was necessary to effectively execute Boracay’s rehabilitation program pursuant to a declaration of a state of calamity. Therefore, the President had sufficient authority from both the Constitution and statutes to issue Proclamation No. 475. That being said, and as a point of clarification, I find it unnecessary to situate such authority in his unstated residual powers.<sup>36</sup>

Having discussed the President’s authority, the final question to be traversed is whether or not there was ample justification for the issuance of Proclamation No. 475.

As previously mentioned, this case should not be assessed against the parameters of the right to travel. As Proclamation No. 475 constitutes a restriction not against a person’s freedom of movement, but rather, a “place-based” regulation, I deem it appropriate to instead examine the issuance’s validity under the lens of petitioners’ right to property under Section 1, Article III of the 1987 Constitution. After all, this approach specifically corresponds

<sup>32</sup> Section 16, Article 3 of RA 9275 reads:

Section 16. *Clean-Up Operations.* – x x x *Provided,* That in the event emergency clean-up operations are necessary x x x **the Department**, in coordination with other government agencies concerned, shall **conduct containment, removal and clean-up operations.** x x x. (Emphasis supplied)

<sup>33</sup> Section 3 (ee) of RA 10121 defines “**Rehabilitation**” as “measures that ensure the ability of affected communities/areas to restore their normal level of functioning by rebuilding livelihood and damaged infrastructures and increasing the communities’ organizational capacity.”

<sup>34</sup> See Section 4 (4), Chapter I, Title XIV, Book IV of the Administrative Code of 1987.

<sup>35</sup> See Section 3 (5), Chapter I, Title XII, Book IV of the Administrative Code of 1987.

<sup>36</sup> In response to the discussions in Justice Alfredo Benjamin S. Caguioa’s Dissenting Opinion, pp. 17-27.

to petitioners' line of argumentation. In particular, as found in the petition, petitioners Mark Anthony V. Zabal (Zabal) and Thiting Estoso Jacosalem (Jacosalem) assail the validity of Proclamation No. 475 on the ground that it violated their right as persons earning a living in the Boracay Island. As alleged, Zabal earns a living by making sandcastles while Jacosalem works as a driver for tourists.<sup>37</sup> Accordingly, they submit that the exclusion of tourists from the Island drastically affected their trade or livelihood.<sup>38</sup>

Under the auspices of Section 1, Article III of the 1987 Constitution, protected property includes the right to work and the right to earn a living.<sup>39</sup> The purpose of the due process guaranty is "to prevent arbitrary governmental encroachment against the life, liberty, and property of individuals."<sup>40</sup> While the right to property is sheltered by due process provision, it is by no means absolute as it must yield to the general welfare.<sup>41</sup> Thus, the State may deprive persons of property rights provided that the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.<sup>42</sup>

In this case, although the exclusion of tourists from the Island drastically affected the trade or livelihood of those reliant on them, including petitioners, I submit that the government had a **legitimate State interest** in rehabilitating the affected localities of Boracay given the Island's current critical state. Findings of various government agencies in the Island reveal its precarious environmental condition, to wit: (a) high concentration of fecal coliform due to improper sewage infrastructure and sewer waste management system; (b) dirty water resulting in the degradation of coral reefs and coral cover; (c) improper solid waste management; (d) destruction of natural habitats in the island; (e) beach erosion caused by illegal extraction of sand along the beach; (f) illegal structures along the foreshore; and (g) unauthorized discharge of untreated waste water near the shore.<sup>43</sup> Notably, these environmental problems were found to have been aggravated by "tourist influx."<sup>44</sup>

To effectively remedy the Island's environmental woes, "expeditious rehabilitation" thereof became crucial, and in line therewith, the entry of tourists became necessary to suspend. As aptly rationalized in the *ponencia*:

<sup>37</sup> See Petition, p. 3.

<sup>38</sup> See *id.* at 20 and 22.

<sup>39</sup> See Senior Associate Justice Antonio T. Carpio's Separate Concurring Opinion in *Serrano v. Gallant Maritime Services, Inc.*, 601 Phil. 245, 307 (2009).

<sup>40</sup> *White Light Corporation v. City of Manila*, 596 Phil. 444, 461 (2009).

<sup>41</sup> See *Carlos Superdrug Corporation v. Department of Social Welfare and Development*, 553 Phil. 120, 132 (2007).

<sup>42</sup> In *Social Justice Society v. Atienza, Jr.* (568 Phil. 658, 702 [2008]), the Court held that the State "may be considered as having properly exercised [its] police power only if the following requisites are met: (1) the interests of the public generally, as distinguished from those of a particular class, require its exercise and (2) **the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.** In short, there must be a concurrence of a lawful subject and a lawful method." (Emphasis supplied)

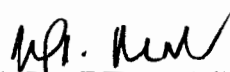
<sup>43</sup> See 4<sup>th</sup>-7<sup>th</sup> whereas clauses of Proclamation No. 475.

<sup>44</sup> See 8<sup>th</sup> and 9<sup>th</sup> whereas clauses of Proclamation No. 475.

Certainly, the closure of Boracay, albeit temporarily, gave the island its much needed breather, and likewise afforded the government the necessary leeway in its rehabilitation program. Note that apart from review, evaluation and amendment of relevant policies, **the bulk of the rehabilitation activities involved inspection, testing, demolition, relocation, and construction. These works could not have easily been done with tourists present. The rehabilitation works in the first place were not simple, superficial or mere cosmetic but rather quite complicated, major, and permanent in character as they were intended to serve as long-term solutions to the problem.** x x x Moreover, as part of the rehabilitation efforts, operations of establishments in Boracay had to be halted in the course thereof since majority, if not all of them, need to comply with environmental and regulatory requirements in order to align themselves with the government's goal to restore Boracay into normalcy and develop its sustainability. **Allowing tourists into the island while it was undergoing necessary rehabilitation would therefore be pointless as no establishment would cater to their accommodation and other needs.** Besides, it could not be said that Boracay, at the time of the issuance of the questioned proclamation, was in such a physical state that would meet its purpose of being a tourist destination. For one, its beach waters could not be said to be totally safe for swimming. x x x Indeed, the temporary closure of Boracay, although unprecedented and radical as it may seem, was reasonably necessary and not unduly oppressive under the circumstances. **It was the most practical and realistic means of ensuring that rehabilitation works in the island are started and carried out in the most efficacious and expeditious way.**<sup>45</sup> (Emphases supplied)

Moreover, the limited six (6)-month period shows that the closure was not unduly oppressive upon individuals, and was put in place only to implement the desired State objective. Therefore, all things considered, Proclamation No. 475 cannot be said to have been issued with grave abuse of discretion, and as such, remains constitutional.

Accordingly, I vote to **DISMISS** the petition.

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

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<sup>45</sup> *Ponencia*, pp. 23-24.

