



International  
Commission  
of Jurists

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**HON. ROGER G. MERCADO**

Chairperson

Committee on Constitutional Amendments

House of Representatives

Batasang Pambansa Complex

Quezon City, Philippines

Dear Congressman Mercado:

The International Commission of Jurists (ICJ) is a global organization composed of 60 distinguished judges and lawyers from all legal traditions and regions of the world. It was established in 1952 and is active today in five continents. The ICJ works to advance the understanding of the respect for the rule of law and the legal protection of human rights throughout the world.

I write today to express the ICJ's concern regarding the changes proposed by Subcommittee 2 of the Committee on Constitutional Amendments on Section 4, Article III of the 1987 Philippine Constitution. The changes, if approved, would add the following four-word qualifier (in bold text) to the existing provision so that it would read: "No law shall be passed abridging the **responsible exercise of 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."

The proposed amendment, if adopted, would bring the Philippines into breach of its international human rights obligations. This is because the fundamental freedoms of expression and assembly are protected under international law, while the proposed qualification of "responsible exercise" is not. Qualifying these human rights with exceptions not recognized under international law is incompatible with the Philippines' international obligations, including under the International Covenant on Civil and Political Rights (ICCPR) to which it has been a State Party since 1986.

## **Freedom of Expression and Peaceful Assembly**

Article 19(2) protects the right to freedom of expression, which includes, among other elements, the freedom to seek, receive, and impart information of all kinds, including through the media of choice. Freedom of expression may only be restricted under those narrow circumstances identified in Article 19(3): “any restrictions “shall only be provided by law and are necessary: (a) for respect of the rights and reputations of others; (b) for the protection of national security or of public order (*ordre public*), or of public health or morals.”

Article 21 of the ICCPR protects the right of freedom of peaceful assembly. Similar to Article 19(3), the possible restrictions are narrow: “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 (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

On its face, the requirement that the exercise of freedom of expression and freedom of assembly must be “reasonable” would go far beyond the permissible set of restrictions set out in the ICCPR. Furthermore, it would also effectively be destructive of the right, since it could disallow for the expression of a wide range of ideas.

The UN Human Rights Committee, the body charged with the authoritative interpretation of the ICCPR, explained the scope of freedom expression in its General Comment No. 34. It said that “when a State party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself.”<sup>1</sup> In a similar vein, the UN Special Rapporteur on the rights of peaceful assembly and association, echoing the Committee’s general views on restrictions, has emphasized that “in adopting laws providing for restrictions ... States should always be guided by the principle that the restrictions must not impair the essence of the right.”<sup>2</sup>

## **Principle of Legality**

Furthermore, the proposed amendment does not accord with the principle of legality, which requires that a legal norm be formulated with sufficient clarity and precision to allow those to whom they are addressed to conform their behavior in accordance with the said norm. As the Human Rights Committee has stressed, a law limiting freedom of expression “must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.” “A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.”<sup>3</sup>

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<sup>1</sup> UN Human Rights Committee, *General Comment No. 34 on Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/GC/34 (2011), para. 21.

<sup>2</sup> Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc A/HRC/20/27 (2012), para. 16

<sup>3</sup> UN Human Rights Committee, *General Comment No. 34 on Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/GC/34 (2011), at para. 25.

The term "responsible exercise" is so vague and ambiguous that it will not enable an individual to regulate his or her conduct accordingly. Its vagueness and ambiguity would also give persons tasked to execute this law the unfettered discretion to determine what is "reasonable" in an individual's exercise of freedom of expression and assembly. This type of restriction on freedom of speech and expression clearly puts in jeopardy the right itself. These rights belong to the rights holders, all individuals, and the authority to determine how they are exercised cannot be arrogated to the authorities that have the responsibility to protect them.

In sum, imposing the phrase "responsible exercise" as a precondition to the exercise of freedom of expression and assembly constitutes an impermissible limitation on these rights under international human rights law, both because it impairs the essence of the right and because it cannot meet the standard of legality.

In consideration of the above, we urge the Sub-Committee to remove the phrase "responsible exercise" as a precondition for the exercise of the fundamental freedoms of expression and assembly as it is incompatible with the obligations of the Philippines under international human rights law.

Sincerely yours,



**Frederick Rawski**  
Regional Director for Asia and the Pacific  
International Commission of Jurists

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