

EXTRAORDINARY PRESIDENTIAL POWERS¹

A. Commander-in-Chief Powers (Art. VII, Sec. 18, 1987 Constitution)

a. Call out Armed Forces

- i. To suppress lawless violence, invasion or rebellion
- ii. Not subject to congressional approval or judicial review²
- iii. President vested with full discretionary power to determine factual basis for calling out armed forces.

Note:

1. In *IBP v. Zamora*,³ the Supreme Court held: "When the President calls the armed forces to prevent or suppress lawless violence, invasion or rebellion, he necessarily exercises a discretionary power solely vested in his wisdom. This is clear from the intent of the framers and from the text of the Constitution itself. The Court, thus, cannot be called upon to overrule the President's wisdom or substitute its own. However, this does not prevent an examination of whether such power was exercised within permissible constitutional limits or whether it was exercised in a manner constituting grave abuse of discretion."⁴
- iv. Power exercised by President Joseph E. Estrada on 24 January 2000, ordering the Marines and the PNP to conduct joint visibility patrols to prevent and suppress crime. Power upheld by Supreme Court⁵

¹ FREE LEGAL ASSISTANCE GROUP, 14 October 2005

² II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 412 (1986).

³ GR No. 14128, 15 August 2000, *emphasis supplied*.

⁴ See Const. (1987), art. VIII, sec. 1, par. 1 - "Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

⁵ *IBP v. Zamora*, GR No. 14128, 15 August 2000.

- v. Power exercised by President Gloria Macapagal Arroyo on 1 May 2001, through General Order No. 1, directing the AFP and PNP to suppress and quell the rebellion

Notes:

1. Hold departure orders issued and implemented
2. Persons arrested without warrants and specific charges
3. Checkpoints set up
4. Order issued to disperse groups of 5 or more massing up near palace

b. Suspend the privilege of the writ of *habeas corpus*

- i. In cases of rebellion or invasion and when public safety so requires
- ii. Applies only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion

Note:

1. Refers specifically and categorically to those facing criminal charges filed in court, not to those facing investigations, preliminary or otherwise, before the fiscal, prosecutor or DOJ⁶

- iii. Persons arrested or detained must be judicially charged within 3 days, otherwise must be released
- iv. For period not exceeding 60 days; may be extended by Congress through majority vote of all members of Congress voting jointly, upon initiative of President if invasion or rebellion persists and public safety requires
- v. No congressional concurrence required, but Congress has power of revocation through majority vote of all members of Congress voting jointly;⁷ revocation cannot be set aside by President

Notes:

1. 236 members of House of Representatives; 23 Senators. 259 total members of Congress.

⁶ II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 427 (1986).

⁷ The only instance in the 1987 Constitution that requires Congress to vote jointly

2. Majority vote required for revocation or extension - 131
 3. No rules on joint voting in Senate or House
- vi. Subject to judicial review; decision must be promulgated within 30 days from filing
 - vii. If Congress is in session, President required to submit a report to Congress in person or in writing within 48 hours from suspension
 - viii. If Congress is not in session, all members required to convene without need of call within 24 hours from suspension

Notes:

1. Congress on recess since 13 October 2005; Senate resumes 24 October 2005 while House resumes 7 November 2005
2. No rule in Senate on convening without need of call; Rule 84, House of Representatives, replicates constitutional provision

c. Declare martial law

- i. In cases of rebellion or invasion and when public safety so requires
- ii. Does not suspend Constitution
- iii. Does not supplant functioning of civil courts or Congress
- iv. Does not authorize conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function
- v. Does not automatically suspend writ of *habeas corpus*
- vi. For period not exceeding 60 days; may be extended by Congress through majority vote of all members of Congress voting jointly, upon initiative of President if invasion or rebellion persists and public safety requires

- vii. No congressional concurrence required, but Congress has power of revocation through majority vote of all members of Congress voting jointly; revocation cannot be set aside by President

Notes:

1. 236 members of House of Representatives; 23 Senators. 259 total members of Congress.
2. Majority vote required for revocation or extension - 131
3. No rules on joint voting in Senate or House

- viii. Subject to judicial review; decision must be promulgated within 30 days from filing

- ix. If Congress is in session, President required to submit a report to Congress in person or in writing within 48 hours from declaration

- x. If Congress is not in session, all members required to convene without need of call within 24 hours from declaration

Notes:

1. Congress on recess since 13 October 2005; Senate resumes 24 October 2005 while House resumes 7 November 2005
2. No rule in Senate on convening without need of call; Rule 84, House of Representatives, replicates constitutional provision

B. Congressional Grant of Emergency Powers (Art. VI, Sec. 23, 1987 Constitution)

- a. In times of war or other national emergency ✓

Note:

- i. There must be a "compact" relationship between the declaration of war and powers granted to President⁸

⁸ II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 129 (1986).

b. By two-thirds of both Houses, voting separately in joint session

Notes:

- i. 236 members of House of Representatives; 157 votes needed to declare existence of war or national emergency
- ii. 23 Senators; 15 votes needed to declare existence of war or national emergency

c. For limited period

Note:

- i. In *Araneta v. Dinglasan*,⁹ the Supreme Court held: "The words 'limited period' as used in the Constitution are beyond question intended to mean restrictive in duration. Emergency, in order to justify the delegation of emergency powers, 'must be temporary or it can not be said to be an emergency.'"

d. Subject to restrictions Congress may prescribe

e. Unless withdrawn by Congress, powers cease at next adjournment

f. Emergency powers granted to President Corazon C. Aquino on 20 December 1989 through Republic Act 6826

Notes:

- i. RA 6826 granted President powers to:
 1. Protect people from hoarding, profiteering, injurious speculations, price manipulation, product deception, cartels, etc. of food, clothing, medicines, office and school supplies, fuel, fertilizers, etc. whether imported or manufactured locally
 2. Purchase any articles or commodities mentioned for storage, sale or distribution
 3. Fix maximum ceiling prices of articles or commodities mentioned
 4. Regulate fees charged by establishments in connection with production, milling, storage and distribution of articles or commodities mentioned
 5. Seize and confiscate hoarded foodstuffs and commodities, provided goods wrongfully seized shall be subject to payment of just compensation

⁹ L-2044, 26 August 1949, citation deleted.

6. Call upon and designate recognized NGOs and peoples organizations, and LGUs to assist government
7. Temporarily take over or direct the operation of any privately owned public utility or business affected with public interest that violates the declared national policy
8. Liberalize importation and grant incentives for manufacture, assembly, reconditioning or importation of vehicles or vessels for public transport
9. Ensure availability of credit to productive sectors, including lowering effective lending rates of interest and reserve requirements of lending institutions
10. Stagger work hours and adopt flexible work schedules for government workers and when necessary workers in the private sector
11. Conserve and regulate distribution and use of power, fuel, energy
12. Issue orders for recovery and accounting of all firearms, explosives and military equipage
13. Undertake such other measures as may be reasonable and necessary

ii. Actions taken by President Aquino include:¹⁰

1. Executive Order No. 384: Providing General Guidelines in the Implementation of Proclamation No. 503 (declaring a state of national emergency in the Philippines)
2. Executive Order No. 383: Directing Emergency Measures to Prevent Excessive Increases in the Prices of Certain Prime Commodities in the National Capital Region
3. Memorandum Order No. 267: Directing the Temporary Take-Over or Direction of the Operations of JD Transit, Inc. and DM Consortium, Inc.
4. Memorandum Order No. 269: Directing the Temporary Take-Over of the Operations of Manila Central Lines (MCL) Bus Company

¹⁰ See Veto Letter of President Corazon C. Aquino dated 21 December 1989 addressed to Senate President Jovito R. Salonga

5. Memorandum Order No. 270: Directing the Secretary of Trade and Industry to Ensure Adequate Supply of Cement for the Small and Medium-End Users

C. Emergency Powers (Art. XII, Sec. 17, 1987 Constitution)

a. In times of national emergency when public interest so requires

Note:

- i. National emergency may refer to threats from external aggression, calamities, natural disasters, strikes only when they are of such proportion as would paralyze government service, military national emergency, or economic dislocations¹¹

b. State may temporarily take over or direct the operation of any privately owned public utility or business affected with public interest

Notes:

- i. State refers to executive branch of government¹²
- ii. Business affected with public interest refers to businesses that have the characteristics of a public utility, with mass-based consumer group. "Entire business operations which are not treated as public utilities do not fall under the public utility regulation, but may already be so massive in terms of its consumption, especially as regards the low-income groups, that they should also be subject of the specific section."¹³

c. Does not authorize sequestration¹⁴

d. For duration of emergency

e. State prescribes reasonable terms¹⁵

¹¹ III RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 266, 648 (1986).

¹² III RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 647 (1986).

¹³ III RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 647-648 (1986).

¹⁴ III RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 649 (1986).

¹⁵ III RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 647 (1986).

i. The phrase "under reasonable terms prescribed by it" does not serve to stop the State from taking over the operation of any privately owned public utility or business¹⁶