



## **PRIMER: YOUR RIGHTS UNDER MARTIAL LAW**

*Free Legal Assistance Group*

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*(Editor's note: This primer was made and updated by the Free Legal Assistance Group (FLAG), a nationwide human rights lawyers organization in the Philippines. It was first produced and disseminated during martial law during the Marcos regime. It was initially updated during the declaration by then President Gloria Macapagal-Arroyo of a state of rebellion in 2001 and later, Proclamation No. 1017 in 2006. President Rodrigo Duterte on Tuesday night declared martial law in the entire Mindanao island amid clashes between government troops and Maute group terrorists in Marawi City.)*

**UNDER THE CONSTITUTION, AND IN TIMES OF EMERGENCY THE PRESIDENT MAY RESORT TO ANY OF THESE EMERGENCY POWERS:**

The President, whenever it becomes necessary, may call out the armed forces to prevent or suppress lawless violence, invasion, or rebellion.

In case of invasion or rebellion, and only when the public safety requires it, the President may suspend the privilege of the writ of habeas corpus, or place the Philippines or any part thereof under martial law, but:

\* The President must submit a report to Congress within 48 hours from such suspension or declaration;

\* Congress, voting as one body, may revoke the suspension or shorten the period;

\* The President must respect the decision of Congress.

(a) The existence of an actual rebellion or invasion is not in itself a ground to suspend the privilege of the writ of habeas corpus or to declare martial law unless the public safety requires it.

(b) Congress may also extend the suspension or declaration upon the initiative of the President if the invasion or rebellion persists and the public safety requires it.

(c) If Congress is not in session when the suspension or declaration is made, it shall convene in 24 hours without need for call.

(d) The suspension of the privilege of the writ of habeas corpus or martial law shall last for a period not exceeding 60 days unless extended by Congress upon the initiative of the President. Congress cannot extend its duration if the President does not make the initiative.

(e) The suspension applies only to persons charged in court (not just in the fiscal's or prosecutor's office) for rebellion or offenses inherent in or directly connected with invasion. If the person arrested or detained is not charged in court within 3 days of his/her arrest, s/he must be immediately released.

(f) The declaration of martial law does not carry with it the automatic suspension of the privilege of the writ of habeas corpus, does not suspend the operation of the Constitution, supplant civilian courts, authorize the military to exercise jurisdiction over civilians, or give the President the power to legislate.

(g) The Supreme Court may review the sufficiency of the factual basis of the suspension or declaration upon petition of any citizen, who need not be a taxpayer. The Supreme Court may entertain the petition even during the first 60 days of the suspension or declaration, and must decide the case within 30 days from filing.

\* In times of national emergency, the President may temporarily take over or direct the operation of any privately owned public utility or business affected with public interest.

(a) A national emergency refers to a situation where there is a threat of external aggression or calamities or natural disasters, including military or economic dislocations. Labor strikes do not constitute a national emergency unless the strikes are of such proportion that they would paralyze government service.

(b) The take-over may only be done during the emergency and under reasonable terms. Only the operations of any privately owned business utility or business affected with public interest may be taken over. The transfer of ownership of such business is not required. The owner of any business taken over shall be properly compensated, when prejudiced by the take-over. The owner cannot prevent the take-over during the period of emergency but may contest it later.

(c) The President may not resort to sequestration by virtue of the state of emergency.

\* The President may, in the interest of national welfare or defense, establish and operate vital industries. Upon payment of just compensation, the government may also transfer to public ownership utilities and other enterprises to be operated by it.

The President may exercise powers authorized or delegated by Congress.

(a) The powers that may be authorized by Congress do not include the power to legislate. The areas over which Congress may delegate to the President certain authority must be limited to meet the exigency of the emergency and nothing more.

(b) The powers that may be authorized by Congress must cease upon withdrawal by, or next adjournment of, Congress. Hence, the exercise of such powers is not coextensive with the existence of the emergency.

**IN ANY SITUATION, YOU DO NOT LOSE YOUR BASIC RIGHTS, SUCH AS:**

The right to life;

The right not to be tortured, nor subjected to cruel, Inhuman or degrading treatment or punishment;

The right not to be subjected to forced labor;

The right not to be imprisoned for non-payment of debt;

The right not to be punished for an act which was not yet a crime at the time of its commission;

The right to be recognized and treated as a person; and

The right to freedom of thought, conscience and religion.

These rights are absolute. Under no condition can their fulfillment or enjoyment be suspended. This is true even when martial, law or any other state of public emergency has been declared. These are non-derogable rights under the International Covenant on Civil and Political Rights to which the Philippine Government is a party.

There are other rights that are considered inalienable and inviolable, such as:

The right not to have your house searched without a search warrant issued by a Judge, and not to have anything seized which is not specified in the search warrant. However, if you are legally arrested, your person and immediate surroundings may be searched for dangerous weapons, and any evidence found on your person or Immediate vicinity (only on your person and immediate vicinity) which may have been used to commit the crime for which you are being arrested may be seized.

The right to liberty and security of person. You can be deprived of liberty only on grounds and procedures established by the Constitution and existing law.

The right not to be arrested except on evidence that a crime has been committed and that you probably committed it. You may be arrested only on the strength of a warrant of arrest issued by a Judge, except:

\* When you have committed, are actually committing, or are attempting to commit an offense in the presence of the arresting officer;

\* When an offense has just been committed and the arresting officer has probable cause to believe, based on personal knowledge of facts and circumstances, that you committed the offense;

\* When you have escaped from prison or detention or while being transferred from one confinement to another.

The legality of your arrest must be determined in an inquest proceeding conducted by a civilian prosecutor. The prosecutor, in a summary proceeding, can:

- (a) Order your release (this may or may not be subject to a full-blown preliminary investigation);
- (b) Affirm the legality of your arrest, and prepare the corresponding complaint or information with the trial court.
- (c) Often the inquest prosecutor will ask the person arrested if s/he desires a preliminary investigation; in which case s/he will be asked to sign a waiver. Do not sign the waiver without being duly informed of the nature and consequences of signing it. Signing the waiver may—and often does—mean that you are going to remain in detention, pending a preliminary investigation. It may also mean that you are waiving your right to file cases against those who arrested you.

While under arrest or detention, if you are questioned or investigated by the police or military, you have the following rights:

- \* To be informed of your right to remain silent and other constitutional rights;
- \* To have competent and independent counsel preferably of your own choice; and
- \* To be provided with counsel if you cannot afford one.

In all criminal prosecutions, you have the following rights:

- \* Not to be compelled to testify against yourself;
- \* To remain silent and to counsel;
- \* To be informed of the nature and cause of the accusation against you;
- \* To have a speedy, public and impartial trial;
- \* To appeal any conviction;
- \* To be presumed innocent until the contrary is proven;
- \* To be present and heard by yourself and counsel;
- \* To avail of court processes to secure the compulsory attendance of witnesses and the presentation of evidence in your defense; and
- \* To meet the witnesses face-to-face and to cross-examine them.
- \* The right to a preliminary investigation.

- \* The right against double jeopardy.
- \* Before conviction, the right to bail except for capital offenses when evidence of guilt is strong.
- \* The right to be treated with humanity and with respect for your personal dignity.
- \* The right to liberty of abode and the right to travel.

What to do

#### IF YOUR HOUSE OR OFFICE IS SEARCHED:

\* Your house or office cannot be searched without a warrant duly issued by a Judge. When a valid search warrant is issued, the searching party can only seize those things that are particularly described in the search warrant, unless you consent, or the articles are contraband in plain view. However, if you are arrested, your person and immediate surroundings may be searched for dangerous weapons and evidence that you committed the crime for which you are being arrested; any evidence which may be found on your person or immediate vicinity can be seized.

\* A search warrant is valid if:

- It is signed by the Judge;
- It specifies one offense only;
- It describes with particularity the exact location and/or address of the place to be searched and lists down exactly what things are to be seized;
- It is used within ten days from its issuance.

\* A search warrant must be served during the daytime unless the affidavit supporting it asserts that the property is on the person or in the place ordered to be searched, in which case the warrant must specifically direct that it can be served at any time of the day or night.

\* If the warrant is invalid, the search and seizure is unlawful, Any evidence obtained as a result of an unlawful search and seizure cannot be used as evidence in any proceeding. You may peacefully refuse, without liability, an unlawful search and seizure. You may also file criminal, civil or disciplinary action cases against the officer serving an unlawful warrant.

\* Where there is no search warrant, do not voluntarily submit yourself to a search. Object immediately. Do not agree to be searched but do not physically resist. A warrantless search without your express, prior and voluntary consent is illegal.

During a search:

\* Before allowing your home or office to be searched, ask for and read the search warrant. Examine it carefully to see if it:

- (a) states your address;
- (b) describes the items to be seized with particularity;
- (c) is signed by a civilian judge;
- (d) specifies only one offense; and
- (e) is being used within 10 days from its issuance.

\* Contact your lawyer by the most expedient means (telephone, text message) and inform him/her that your home or office is about to be searched.

The search party has the right to break any outer or inner door or window to effect the search if the search party is refused admittance to the place of the search after giving notice of the purpose and authority for the search.

\* If it is a valid warrant, only then should you allow the search to be conducted. Upon letting the search party enter your premises, ask for their names, rank, and the office or unit to which they belong. Get the name and rank of the commanding officer.

\* During the search, accompany the group conducting the search at all times. This lessens the possibility of their planting documents, weapons or other materials in your home or office.

Remember: The search party is allowed to conduct the search only in the presence of the lawful occupant or any member of his/her family, If no occupant or family member is present, the search must be conducted in the presence of two witnesses of sufficient age and discretion who reside in the locality. This means that every room, compartment, section or portion of the place cannot be searched unless the above witnesses are present.

\* If anything is taken from your home or office, the officer seizing the property must give you a detailed receipt. Before signing the receipt—

- (a) Go over it carefully to ensure its accuracy in designation, description and quantity;
- (b) If there are blank spaces that might be used by unscrupulous police officers to "add" items that were not actually found during the search, ask the officer to place a line across the blank space.
- (c) Insist that you be given a copy of the receipt; if they agree, make sure that the copy accurately reflects the original.

(d) If there is anything in the receipt that tends or appears to be incriminating, tell the searching party you are invoking your right to a lawyer and to remain silent and that you refuse to sign anything without talking to your lawyer first.

\* You may be asked to sign an affidavit of orderly search. If the search was not conducted in an orderly manner, do not sign the affidavit. Instead, register your objection. In any case, read it very carefully and tell the police officers you want to consult your lawyer before you sign anything.