



Emergency Powers and COVID-19: The Philippines as a case study

Maria Ela L Atienza

What were the main mechanisms used to handle the COVID 19 challenges, both health and economic, in your country? How well did they work for the purpose?

As discussed in the introduction to the 2020 assessment of the 1987 Philippines Constitution in the context of COVID-19 (Atienza et al. 2020b, 7-8), with the first imported case of COVID-19 detected in the Philippines in late January 2020, different sectors suggested early on that the Government respond proactively and preventively. Initially, the administration downplayed the virus and claimed that the country was on top of the situation. However, in early February, the Government relented to public pressure and imposed a travel ban on flights from Wuhan (the epicenter of the virus in China), Macau, and Hong Kong. By February, voluntary repatriation of Filipinos from Wuhan was initiated.

After the first three cases of local transmission, on 8 March President Rodrigo Duterte declared a state of public health emergency in the country (Proclamation No. 922) and suspended classes in Metro Manila (also known as the National Capital Region (NCR)). This declaration was pursuant to the 1987 Constitution, particularly the State's policy to protect and promote the right to health of the people (Article II, Section 15), and the *Law on Reporting of Communicable Diseases* (Republic Act [RA] No. 11332), which provides that the Philippine President shall declare the state of public health emergency in case there is an epidemic of national and/or international concern that threatens national security. This enables the Government to mobilize governmental and nongovernmental agencies to respond to the threat.

On 12 March, a partial lockdown of Metro Manila from 15 March to 14 April was announced, together with suspension of land, domestic air, and domestic sea travel to and from Manila. On 16 March, the entire Luzon group of islands was placed under enhanced community quarantine (ECQ), which effectively is a total lockdown and would be the strictest category of lockdown imposed in certain parts of the country.¹ By 16 March, the President signed a proclamation (Proclamation No. 929) placing the country under a state of calamity due to COVID-19 for six months. This was again based on Article II, Section 15 of the Constitution and the *Philippines Disaster Risk Reduction and Management Act* (RA No. 10121). The proclamation allows the National Government and the local government units ample leeway to utilize appropriate funds in their disaster preparedness and response efforts to contain the spread of COVID-19 and for the continuing provision of basic services to their respective populations.

¹ In the next few months, the Government would impose various types of quarantine and the list of allowed and disallowed activities outside homes evolved based on the changing evaluations of the Inter-Agency Task Force on Emerging Infectious Diseases (IATF).

Various forms of lockdown continued around the country throughout April. After 15 May, there was a gradual easing of lockdown in certain areas depending on the number of COVID-19 cases, with the main aim of enabling economic recovery. NCR's ECQ was lifted on 1 June, with the area placed under general community quarantine (GCQ), which allowed some economic activities to resume and limited public transportation to operate. However, for the first half of August, Metro Manila or NCR as well as several neighboring provinces were put under modified ECQ (MECQ) which further limited economic activities after the high rise of cases of COVID-19 as well as demand of health workers' associations to allow the health and hospital system to "breathe" and be improved as hospitals were already exceeding capacity to handle COVID-19 patients. Since 19 August, NCR and the rest of those placed under MECQ are now under GCQ with the Government saying that the economy cannot handle another hard lockdown. Most of the rest of the country is now in modified general community quarantine (MGCQ), the loosest quarantine phase that permits many businesses such as restaurants and malls to open, and some social and physical activities with some limitations. Due to a spike in cases in the area, Cebu City was placed back under ECQ in July; after an assessment that there is downward trend in the COVID-19 cases in the city after strict quarantine, it is now again under GCQ.

In terms of legislation, on 23 and 24 March, the two Houses of Congress approved the *Bayanihan*² to Heal as One Act (Republic Act [RA] 11469) ("*Bayanihan Act*"), which was signed into law by President Duterte on 25 March. The law gave the President some emergency powers (for three months) to optimize efforts in the pandemic response. The law has eight policy objectives, which include mitigating the transmission of the virus; mobilizing the provision of basic necessities to families and individuals affected by the imposition of the community quarantine; undertaking measures to prevent overburdening the healthcare system; immediately and aptly providing healthcare to those affected by the virus; providing recovery and rehabilitation in the form of social amelioration and provision of safety nets to all affected sectors; ensuring sufficient, adequate, and readily available funding (including reprogramming, reallocating, and realigning savings from the 2020 budget); partnering with the private sector and other stakeholders to deliver measures and programs quickly and efficiently; and promoting and protecting the collective interests of Filipinos.

The *Bayanihan Act* expired on 25 June and the Office of the President requested the two Houses of Congress to pass a second *Bayanihan* law focused on recovery. As of 20 August 2020, the *Bayanihan to Recover as One* (or *Bayanihan 2*) proposed law, which lays out the country's COVID-19 response and allocates funds (a P165 billion stimulus package) to help struggling sectors cope with the pandemic's impacts, has been approved by the two Houses and the Bicameral Conference Committee. The Senate has ratified the Conference Committee version on 20 August and the House approved it on 24 August. It now only needs the President's signature to become a law.

In terms of impact, as stated in our 2020 discussion paper (Atienza et al. 2020b), on the positive front, the Government was able to improve and set up facilities dedicated to COVID-19 that prevented the Philippines' overall healthcare capacity from being overwhelmed by the pandemic during the strict lockdown phase. Slowly, there were improvements in testing, but still not enough due to operational issues such as lack of supplies and personnel. There are also problems in terms of contact tracing as there are not enough personnel to support these efforts. Due to the lifting of strict lockdown measures in the country, however, the cases are still rising and many hospitals have already reached full capacity

² *Bayanihan* is a Filipino cultural value used to refer to a spirit of communal unity and cooperation.

again. The health system as well as health personnel still need plenty of support to manage the pandemic.

Economically, the effect of the global pandemic and the lockdown on the Philippines was tremendous. The economy shrank to 16.5 percent in the second quarter, according to the Philippine Statistics Authority (PSA), mainly due to strict lockdown measures (Dela Cruz and Morales 2020). This is the Philippines' first recession in 29 years, destroying the pre-pandemic trend where it was among Asia's fastest growing economies. The PSA also reported 17.7 percent unemployment rate, an all-time high due to the lockdown, in April this year Lopez 2020). Rising unemployment leads to lower consumption and other impacts on the economy.

Was a constitutional emergency power available? If so, was it used? If not, why not?

Temporary emergency powers of the President are constitutional when obtained through legislative enactment specifically to allow the Executive Branch to better address a particular threat facing the Philippines and its people by means of a declared national policy. "In times of war or other national emergencies", the two Houses of Congress may, by law, "authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy." (Article VI, Section 23, cited in Tigno 2020)

Emergency powers are granted to the President by the *Bayanihan 1*³ Act. These are the first national health emergency powers legislated by Congress for the President to exercise since the ratification of the 1987 Constitution (Tigno 2020). However, this is not the first time that Congress granted special temporary emergency powers to the President and to the Executive Branch of government under the present Constitution. The previous instances were the following:

1. Declaration of state of national emergency and allowing the President to carry out economic reconstruction in the aftermath of the failed but economically destructive mutiny and rebellion of certain factions in the Armed Forces of the Philippines (1989);
2. Construction of irrigation projects due to impending crisis facing the agricultural sector (1991);
3. Entering into negotiated contracts for the construction, repair, rehabilitation, improvement of maintenance of power plants, projects, and facilities due to a power shortage (1993); and
4. Addressing issues related to a water crisis (1995) (Tigno 2020).

The declaration of the national health emergency in the *Bayanihan 1* Act did not invalidate the Constitution or any of its provisions. The Act provides that "nothing herein shall be construed as an impairment, restriction or modification of the provisions of the Constitution" (Section 7); these include the Bill of Rights and other constitutional guarantees.

Were other forms of emergency power used? If so, what were they? Were they consistent with the Constitution?

Aside from the emergency powers given by Congress in the *Bayanihan* Act, no other formal emergency powers were used to address the pandemic.

³ We are assuming as of this writing that *Bayanihan 2* will be signed by the President given that he made it a priority bill and will become a law.

In either case, was the legislature involved in the approval or scrutiny of the measures taken? How effective was legislative involvement?

As mentioned earlier, the two Houses of Congress passed the *Bayanihan* Act as an urgent measure. Under the law, the President and the Executive Branch are obliged to make an accounting to Congress of all actions taken by the Executive Branch throughout the period of national emergency and the President is required to submit a weekly report to Congress of all acts performed during the immediately preceding week; this includes the amount and utilization of funds pursuant to addressing the pandemic. The *Bayanihan* 1 Act also established a Congressional Oversight Committee, composed of four members from each House appointed by the Senate President and the House Speaker, to determine “which acts, orders, rules, and regulations are within the restrictions provided in the Act” (Tigno 2020).

However, it must also be pointed out that with COVID-19, the trends identified in an earlier publication on the performance of the 1987 Constitution (Atienza et al. 2020a) have been further exacerbated, with greater consolidation of power in the executive branch and a further weakening of the separation of powers, as the legislative branch has not taken deliberate measures to exercise its oversight functions over the executive. The swift approval of the *Bayanihan* 1 Act suggests the heightened influence of the President vis-à-vis Congress in times of emergency and a continuation of a trend under the 1987 Constitution (Atienza et al. 2020b, 10-11). The support of blocs allied with Duterte in both Houses of Congress as well as the high popularity ratings of the President likewise assured the *Bayanihan* 1 Act would be quickly enacted into law.

As for the exercise of oversight functions of Congress, our recent assessment (Atienza 2020b, 11) noted that currently, there is little information as to the extent that Congress has scrutinized the weekly reports submitted by the Office of the President to Congress or how much deliberation has surrounded their submission. Ideally, Congress should examine these reports prior to the enactment of the *Bayanihan* 2 Act, which was expected after the legal lapse of the law. However, both Houses’ leaderships and the Congressional Oversight Committee declared satisfaction with the performance of the Executive branch, despite opposition legislators’ insistence for more scrutiny, especially regarding how the huge amount of money involved in the COVID-19 response was spent.

Currently, the two Houses of Congress, through their general oversight functions, are conducting hearings related to the government’s responses to the pandemic, specifically possible corruption in the Philippine health insurance system. We have yet to see how these hearings might affect the legislators’ exercise of their oversight functions.

Were there other forms of oversight of the responses to the pandemic; for example, through courts?

Lower courts are involved when it comes to issues related to alleged violations committed in relation to the enforcement of the national health emergency powers given to the Executive Branch. Courts, despite their operations being affected by the pandemic, have in several instances pointed out that law enforcers, i.e. the police and local enforcers, have committed errors in their application of policies related not only to the *Bayanihan* Act but also quarantine laws and related local ordinances, particularly in arresting supposed violators.

Based on the 1987 Constitution, petitions can be filed in the Supreme Court to declare as unconstitutional laws and actions of the two other branches of government. In terms of the

constitutionality of the *Bayanihan* Act, there are some legal experts who point out that the granting of emergency powers, though not extreme in this law, was unnecessary and should be a last resort; they argue that Congress can actually give flexibility to the President by enacting supplementary budgets as needed (Atienza et al. 2020b, 11).

There was a petition filed requesting the Supreme Court to declare the *Bayanihan* Act unconstitutional based on “undue delegation” of legislative power to the President, among other reasons; however, the Court dismissed the petition on the grounds that the respondents “failed to show grave abuse of discretion” (Atienza et al. 2020b, 12). However, the judicial route is still open should certain sectors feel that specific actions, policies, regulations, etc. of the Government related to the *Bayanihan* Act may have violated other Constitutional provisions, including citizens’ rights.

Another possible source of oversight is the Commission on Audit, one of the independent accountability institutions established in the 1987 Constitution that have stayed relatively independent since Duterte became President. However, its auditing report on Government spending related to the pandemic and the *Bayanihan* Act will only be available after the year is over.

What do you expect to be the longer term consequences of this experience with emergency power on representative government in your country?

A long-term consequence of this experience with emergency power is the continued dominance – and perhaps further consolidation – of the Executive Branch, particularly with a popular President (at least before the pandemic since regular surveys on trust and performance ratings have not been conducted since the pandemic), over the other branches of government. In fact, even during the pandemic, we see how the President and other agencies continued to attack so-called critics, opposition figures and groups, media, legitimate dissent, and the private sector. As also pointed out in our performance assessment of the 1987 Constitution during the pandemic (Atienza et al. 2020b), the Executive Branch has been disproportionately led by former or retired military generals now occupying Cabinet positions and national responses to and during the pandemic have been largely dictated by them.

In terms of global comparisons, the V-Dem Pandemic Democratic Violations Index (PanDem), which captures the extent to which state responses to the pandemic violate democratic standards for emergency responses, mentioned that the Philippines is one of seven countries with a high risk of pandemic backsliding (V-Dem 2020). In International IDEA’s new COVID-19 Monitor, it pointed out three worrying areas of concern from a democratic and human rights standpoint; these are in the areas of freedom of expression, media integrity, and predictable enforcement (International IDEA 2020).

What positive or negative lessons can be taken from this experience in your country for the use of emergency procedures and the role that representation plays?

Negative lessons include the urgency to balance many powers given to the Executive Branch with a more independent Congress exercising its legislative and oversight functions, a more independent Judiciary that would scrutinize without fear all issues it need to resolve, more civilian oversight over the military and the institutionalization of security sector reforms, stronger political parties and reforms in the electoral system to produce representatives accountable to the people, and protecting independent accountability institutions as well as the rights of citizens and groups.

However, positive lessons from the use of emergency powers during this pandemic is:

- the galvanization of more citizens and groups scrutinizing government actions and responses to the pandemic,
- building of coalitions among various political groups and sectors including health workers calling for faster government action on various issues and reforms in various political institutions and processes,
- pro-active local governments and local officials responding to the challenges of the pandemic in innovative ways,
- civil society and private sector groups responding to the needs of sectors affected negatively not only by the pandemic but also by the lockdown,
- greater demand and appreciation for verified, accurate information and data provided by the academe and other sectors independent of government,
- increasing support for media freedom, and
- relentless attempts to file cases in the Supreme Court about the constitutionality of various laws and actions, including not just the *Bayanihan* Act but also the Anti-Terrorism Act.

It is still too early to tell if these positive developments will lead to reforms that will strengthen representative institutions but more and more people are now involved in deliberations, with emphasis on exercise of rights and freedom of expression, voter education in view of the 2022 elections, preparation for clean and fair elections, and reforms in the electoral and political system.

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Biography: Maria Ela L. Atienza, PhD is Professor, Department of Political Science, University of the Philippines (UP) Diliman and Co-Convenor, Program on Social and Political Change, UP Center for Integrative and Development Studies. She is the editor of the *Philippine Political Science Journal*. She also served as Chair of the Department of Political Science, UP Diliman; Director of the UP Third World Studies Center (2010-2013); and President of the Philippine Political Science Association (2007-2009). Professor Atienza's research interests and publications cover local governance and devolution, human security, health policy and politics, and disaster governance. Her current research projects are on constitutional performance assessment of the 1987 Constitution since 1987 until the present, prospects for alternative institutional arrangements in Metro Manila for health service delivery in the midst of the current charter change debates and the pandemic, localization of humanitarianism, and impact of COVID-19 on the Philippines' health governance and health workers.