

MALACAÑANG
Manila

MFN/3578

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 464

ENSURING OBSERVANCE OF THE PRINCIPLE OF SEPARATION OF POWERS, ADHERENCE TO THE RULE ON EXECUTIVE PRIVILEGE AND RESPECT FOR THE RIGHTS OF PUBLIC OFFICIALS APPEARING IN LEGISLATIVE INQUIRIES IN AID OF LEGISLATION UNDER THE CONSTITUTION, AND FOR OTHER PURPOSES

WHEREAS, the Constitution guarantees the separation of powers of the Executive, Legislative and Judicial branches of the government;

WHEREAS, Article VI, Section 22 of the Constitution provides that heads of departments may, with the prior consent of the President, appear before and be heard by either House of Congress on any matter pertaining to their departments and, when the security of the State or the public interest so requires and the President so states in writing, such appearance shall be conducted in executive session;

WHEREAS, pursuant to the rule of executive privilege, the President and those who assist her must be free to explore alternatives in the process of shaping policies and making decisions since this is fundamental to the operation of the government and is rooted in the separation of powers under the Constitution;

WHEREAS, Article VI, Section 21 of the Constitution mandates that the rights of persons appearing in or affected by inquiries in aid of legislation by the Senate or House of Representatives shall be respected;

WHEREAS, recent events, particularly with respect to the invitation of a member of the Cabinet by the Senate as well as various heads of offices, civilian and military, have highlighted the need to ensure the observance of the principle of separation of powers, adherence to the rule on executive privilege and respect for the rights of persons appearing in such inquiries in aid of legislation and due regard to constitutional mandate;



WHEREAS, there is a need to prevent such inquiries in aid of legislation from being used for partisan political purposes, disrupting diplomatic relations with foreign governments, and weakening the stability of the State, thereby impeding the efforts of the government to generate and attract foreign investments;

WHEREAS, Republic Act No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees provides that public officials and employees shall not use or divulge confidential or classified information officially known to them by reason of their office and not made available to the public to prejudice the public interest;

WHEREAS, Article 229 of the Revised Penal Code prohibits any public officer from revealing any secret known to him by reason of his official capacity or wrongfully delivering papers or copies thereof which he may have charge and which should not be published;

WHEREAS, the 1987 Constitution and the Administrative Code of 1987 provide that the President shall have control of all government departments, bureaus and offices and shall ensure that all the laws be faithfully executed.

NOW, THEREFORE, I, GLORIA MACAPAGAL ARROYO, President of the Republic of the Philippines, by the powers vested in me by law, do hereby order:

SECTION 1. *Appearance by Heads of Departments Before Congress.* - In accordance with Article VI, Section 22 of the Constitution and to implement the Constitutional provisions on separation of powers between co-equal branches of the government, all heads of departments of the Executive Branch of the government shall secure the consent of the President prior to appearing before either House of Congress.

When the security of the State or the public interest so requires and the President so states in writing, the appearance shall only be conducted in executive session.

SECTION 2. *Nature, Scope and Coverage of Executive Privilege.* -

(a) *Nature and Scope.* - The rule of confidentiality based on executive privilege is fundamental to the operation of government and rooted in the separation of powers under the Constitution (*Almonte vs. Vasquez*, G.R. No. 95367, 23 May 1995). Further, Republic Act No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees provides that public officials and employees shall not use or divulge confidential or classified



information officially known to them by reason of their office and not made available to the public to prejudice the public interest.

Executive privilege covers all confidential or classified information between the President and the public officers covered by this executive order, including:

- (i) Conversations and correspondence between the President and the public officials covered by this executive order (***Almonte vs. Vasquez***, G.R. No. 95367, 23 May 1995; ***Chavez v. Public Estates Authority***, G.R. No. 133250, 9 July 2002);
- (ii) Military, diplomatic and other national security matters which in the interest of national security should not be divulged (***Almonte vs. Vasquez***, G.R. No. 95367, 23 May 1995; ***Chavez v. Presidential Commission on Good Government***, G.R. No. 130716, 9 December 1998);

Information between inter-government agencies prior to the conclusion of treaties and executive agreements (***Chavez v. Presidential Commission on Good Government***, G.R. No. 130716, 9 December 1998);

Discussions in closed-door Cabinet meetings (***Chavez v. Presidential Commission on Good Government***, G.R. No. 130716, 9 December 1998);

Matters affecting national security and public order (***Chavez v. Public Estates Authority***, G.R. No. 133250, 9 July 2002).

(b) ***Who are covered.*** – The following are covered by this executive order:

- (i) Senior officials of executive departments who in the judgment of the department heads are covered by the executive privilege;

Generals and flag officers of the Armed Forces of the Philippines and such other officers who in the judgment of the Chief of Staff are covered by the executive privilege;

Philippine National Police (PNP) officers with rank of chief superintendent or higher and such other officers who in the judgment of the Chief of the PNP are covered by the executive privilege;



Senior national security officials who in the judgment of the National Security Adviser are covered by the executive privilege; and

Such other officers as may be determined by the President.

SECTION 3. *Appearance of Other Public Officials Before Congress.* - All public officials enumerated in Section 2 (b) hereof shall secure prior consent of the President prior to appearing before either House of Congress to ensure the observance of the principle of separation of powers, adherence to the rule on executive privilege and respect for the rights of public officials appearing in inquiries in aid of legislation.

SECTION 4. *Repealing Clause.* - All executive issuances, orders, rules and regulations or parts thereof inconsistent with the provisions of this Executive Order are hereby repealed or modified accordingly.

SECTION 5. *Separability Clause.* - If any section or provision of this executive order shall be declared unconstitutional or invalid, the other sections or provisions not affected thereby shall remain in full force and effect.

SECTION 6. *Effectivity.* - This Executive Order shall take effect immediately.

DONE in the City of Manila, this 28th day of September in the Year of our Lord, Two Thousand and Five.

Gloria Arroyo

By the President:

Eduardo R. Ermita

EDUARDO R. ERMITA
Executive Secretary

