

**PHILIP SIGFRID A. FORTUN AND ALBERT LEE G. ANGELES,
PETITIONERS, VS. GLORIA MACAPAGAL-ARROYO, AS
COMMANDER-IN-CHIEF AND PRESIDENT OF THE REPUBLIC OF THE
PHILIPPINES, EDUARDO ERM...**

G.R. No. 190293. March 20, 2012

Ponente: ABAD, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-190293/>

ABAD, J.:

These cases concern the constitutionality of a presidential proclamation of martial law and suspension of the privilege of habeas corpus in 2009 in a province in Mindanao which were withdrawn after just eight days.

The Facts and the Case

The essential background facts are not in dispute. On November 23, 2009 heavily armed men, believed led by the ruling Ampatuan family, gunned down and buried under shoveled dirt 57 innocent civilians on a highway in Maguindanao. In response to this carnage, on November 24 President Arroyo issued Presidential Proclamation 1946, declaring a state of emergency in Maguindanao, Sultan Kudarat, and Cotabato City to prevent and suppress similar lawless violence in Central Mindanao.

Believing that she needed greater authority to put order in Maguindanao and secure it from large groups of persons that have taken up arms against the constituted authorities in the province, on December 4, 2009 President Arroyo issued Presidential Proclamation 1959 declaring martial law and suspending the privilege of the writ of habeas corpus in that province except for identified areas of the Moro Islamic Liberation Front.

Two days later or on December 6, 2009 President Arroyo submitted her report to Congress in accordance with Section 18, Article VII of the 1987 Constitution which required her, within 48 hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, to submit to that body a report in person or in writing of her action.

In her report, President Arroyo said that she acted based on her finding that lawless men have taken up arms in Maguindanao and risen against the government. The President described the scope of the uprising, the nature, quantity, and quality of the rebels' weaponry, the movement of their heavily armed units in strategic positions, the closure of the Maguindanao Provincial Capitol, Ampatuan Municipal Hall, Datu Unsay Municipal Hall, and 14 other municipal halls, and the use of armored vehicles, tanks, and patrol cars with unauthorized "PNP/Police" markings.

On December 9, 2009 Congress, in joint session, convened pursuant to Section 18, Article VII of the 1987 Constitution to review the validity of the President's action. But, two days later or on December 12 before Congress could act, the President issued Presidential Proclamation 1963, lifting martial law and restoring the privilege of the writ of habeas corpus in Maguindanao.

Petitioners Philip Sigfrid A. Fortun and the other petitioners in G.R. 190293, 190294, 190301, 190302, 190307, 190356, and 190380 brought the present actions to challenge the constitutionality of President Arroyo's Proclamation 1959 affecting Maguindanao. But, given the prompt lifting of that proclamation before Congress could review it and before any serious question affecting the rights and liberties of Maguindanao's inhabitants could arise, the Court deems any review of its constitutionality the equivalent of beating a dead horse.

Prudence and respect for the co-equal departments of the government dictate that the Court should be cautious in entertaining actions that assail the constitutionality of the acts of the Executive or the Legislative department. The issue of constitutionality, said the Court in *Biraogo v. Philippine Truth Commission* of 2010,[1] must be the very issue of the case, that the resolution of such issue is unavoidable.

The issue of the constitutionality of Proclamation 1959 is not unavoidable for two reasons:

One. President Arroyo withdrew her proclamation of martial law and suspension of the privilege of the writ of habeas corpus before the joint houses of Congress could fulfill their automatic duty to review and validate or invalidate the same. The pertinent provisions of Section 18, Article VII of the 1987 Constitution state:

Sec. 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without any need of a call.

x x x x

Although the above vests in the President the power to proclaim martial law or suspend the privilege of the writ of habeas corpus, he shares such power with the Congress. Thus:

1. The President's proclamation or suspension is temporary, good for only 60 days;
2. He must, within 48 hours of the proclamation or suspension, report his action in person or in writing to Congress;
3. Both houses of Congress, if not in session must jointly convene within 24 hours of the proclamation or suspension for the purpose of reviewing its validity; and
4. The Congress, voting jointly, may revoke or affirm the President's proclamation or suspension, allow their limited effectivity to lapse, or extend the same if Congress deems warranted.

It is evident that under the 1987 Constitution the President and the Congress act in tandem in exercising the power to proclaim martial law or suspend the privilege of the writ of habeas corpus. They exercise the power, not only sequentially, but in a sense jointly since, after the President has initiated the proclamation or the suspension, only the Congress can maintain the same based on its own evaluation of the situation on the ground, a power that the President does not have.

Consequently, although the Constitution reserves to the Supreme Court the power to review the sufficiency of the factual basis of the proclamation or suspension in a proper suit, it is implicit that the Court must allow Congress to exercise its own review powers, which is automatic rather than initiated. Only when Congress defaults in its express duty to defend the Constitution through such review should the Supreme Court step in as its final rampart. The constitutional validity of the President's proclamation of martial law or suspension of the writ of habeas corpus is first a political question in the hands of Congress before it becomes a justiciable one in the hands of the Court.

Here, President Arroyo withdrew Proclamation 1959 before the joint houses of Congress, which had in fact convened, could act on the same. Consequently, the petitions in these cases have become moot and the Court has nothing to review. The lifting of martial law and restoration of the privilege of the writ of habeas corpus in Maguindanao was a supervening event that obliterated any justiciable controversy.[2]

Two. Since President Arroyo withdrew her proclamation of martial law and suspension of the privilege of the writ of habeas corpus in just eight days, they have not been meaningfully implemented. The military did not take over the operation and control of local government units in Maguindanao. The President did not issue any law or decree affecting Maguindanao that should ordinarily be enacted by Congress. No indiscriminate mass arrest had been reported. Those who were arrested during the period were either released or promptly charged in court. Indeed, no petition for habeas corpus had been filed with the Court respecting arrests made in those eight days. The point is that the President intended by her action to address an uprising in a relatively small and sparsely populated province. In her judgment, the rebellion was localized and swiftly disintegrated in the face of a determined and amply armed government presence.

In *Lansang v. Garcia*,[3] the Court received evidence in executive session to determine if President Marcos' suspension of the privilege of the writ of habeas corpus in 1971 had sufficient factual basis. In *Aquino, Jr. v. Enrile*,[4] while the Court took judicial notice of the factual bases for President Marcos' proclamation of martial law in 1972, it still held hearings on the petitions for habeas corpus to determine the constitutionality of the arrest and detention of the petitioners. Here, however, the Court has not bothered to examine the evidence upon which President Arroyo acted in issuing Proclamation 1959, precisely because it felt no need to, the proclamation having been withdrawn within a few days of its issuance.

Justice Antonio T. Carpio points out in his dissenting opinion the finding of the Regional Trial Court (RTC) of Quezon City that no probable cause exist that the accused before it committed rebellion in Maguindanao since the prosecution failed to establish the elements of the crime. But the Court cannot use such finding as basis for striking down the President's proclamation and suspension. For, firstly, the Court did not delegate and could not delegate to the RTC of Quezon City its power to determine the factual basis for the presidential proclamation and suspension. Secondly, there is no showing that the RTC of Quezon City passed upon the same evidence that the President, as Commander-in-Chief of the Armed Forces, had in her possession when she issued the proclamation and suspension.

The Court does not resolve purely academic questions to satisfy scholarly interest, however intellectually challenging these are.[5] This is especially true, said the Court in *Philippine Association of Colleges and Universities v. Secretary of Education*,[6] where the issues "reach constitutional dimensions, for then there comes into play regard for the court's duty to avoid decision of constitutional issues unless avoidance becomes evasion." The Court's duty is to steer clear of declaring unconstitutional the acts of the Executive or the Legislative department, given the assumption that it carefully studied those acts and found them consistent with the fundamental law before taking them. "To doubt is to sustain." [7]

Notably, under Section 18, Article VII of the 1987 Constitution, the Court has only 30 days from the filing of an appropriate proceeding to review the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus. Thus –

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus or the extension thereof, and must promulgate its decision thereon within thirty days from its filing. (Emphasis supplied)

More than two years have passed since petitioners filed the present actions to annul Proclamation 1959. When the Court did not decide it then, it actually opted for a default as was its duty, the question having become moot and academic.

Justice Carpio of course points out that should the Court regard the powers of the President and Congress respecting the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus as sequential or joint, it would be impossible for the Court to exercise its power of review within the 30 days given it.

But those 30 days, fixed by the Constitution, should be enough for the Court to fulfill its duty without pre-empting congressional action. Section 18, Article VII, requires the President to report his actions to Congress, in person or in writing, within 48 hours of such proclamation or suspension. In turn, the Congress is required to convene without need of a call within 24 hours following the President's proclamation or suspension. Clearly, the Constitution calls for quick action on the part of the Congress. Whatever form that action takes, therefore, should give the Court sufficient time to fulfill its own mandate to review the factual basis of the proclamation or suspension within 30 days of its issuance.

If the Congress procrastinates or altogether fails to fulfill its duty respecting the proclamation or suspension within the short time expected of it, then the Court can step in, hear the petitions challenging the President's action, and ascertain if it has a factual basis. If the Court finds none, then it can annul the proclamation or the suspension. But what if the 30 days given it by the Constitution proves inadequate? Justice Carpio himself offers the answer in his dissent: that 30-day period does not operate to divest this Court of its jurisdiction over the case. The settled rule is that jurisdiction once acquired is not lost until the case has been terminated.

The problem in this case is that the President aborted the proclamation of martial law and the suspension of the privilege of the writ of habeas corpus in Maguindanao in just eight days. In a real sense, the proclamation and the suspension never took off. The Congress itself adjourned without touching the matter, it having become moot and academic.

Of course, the Court has in exceptional cases passed upon issues that ordinarily would have been regarded as moot. But the present cases do not present sufficient basis for the exercise of the power of judicial review. The proclamation of martial law and the suspension of the privilege of the writ of habeas corpus in this case, unlike similar Presidential acts in the late 60s and early 70s, appear more like saber-rattling than an actual deployment and arbitrary use of political power.

WHEREFORE, the Court DISMISSES the consolidated petitions on the ground that the same have become moot and academic.

SO ORDERED.

Leonardo-De Castro, Brion, Peralta, Bersamin, Villarama, Jr., and Mendoza, JJ., concur.

Corona, C.J., I join the dissent of Mr. J. Velasco.

Carpio, and Velasco, Jr., JJ., see dissenting opinion.

Del Castillo, J., on leave.

Perez, J., please see separate opinion.

Sereno, Reyes, and Perlas-Bernabe, JJ., joins the dissent of J. Carpio.

[1] G.R. Nos. 192935 & 193036, December 7, 2010, 637 SCRA 78, 147-148.

[2] See *Funa v. Ermita*, G.R. No. 184740, February 11, 2010, 612 SCRA 308, 319.

[3] 149 Phil. 547 (1971).

[4] 158-A Phil. 1 (1974).

[5] *Sec. Guingona, Jr. v. Court of Appeals*, 354 Phil. 415, 426 (1998).

[6] 97 Phil. 806, 811 (1955), citing *Rice v. Sioux City*, U.S. Sup. Ct. Adv. Rep., May 23, 1955, Law Ed., Vol. 99, p. 511.

[7] *Board of Optometry v. Colet*, 328 Phil. 1187, 1207 (1996), citing *Drilon v. Lim*, G.R. No. 112497, August 4, 1994, 235 SCRA 135, 140.

DISSENTING OPINION**CARPIO, J.:**

I dissent.

The Cases

These are consolidated petitions for the writs of certiorari and prohibition challenging the constitutionality of Presidential Proclamation No. 1959, which declared a state of martial law and suspended the privilege of the writ of habeas corpus in the Province of Maguindanao, except for identified areas of the Moro Islamic Liberation Front.

The Antecedents

In the morning of 23 November 2009, fifty-seven (57) innocent civilians met their tragic and untimely death in a gruesome massacre unequaled in recent history,[1] considered to be the Philippines' worst case of election-related violence. Brutally killed were female family members of then Buluan Vice Mayor Esmael "Toto" Mangudadatu (Mangudadatu), including his wife and sisters, and members of the press who were part of a convoy on the way to Shariff Aguak in Maguindanao. Mangudadatu's wife was bringing with her Mangudadatu's certificate of candidacy for Governor of Maguindanao for filing with the Provincial Office of the Commission on Elections in Shariff Aguak. Five of the victims were not part of the convoy but happened to be traveling on the same highway.[2]

In its Consolidated Comment dated 14 December 2009, the Office of the Solicitor General (OSG), representing public respondents, narrated the harrowing events which unfolded on that fateful day of 23 November 2009, to

wit:

x x x x

3. Vice Mayor Mangudadatu confirmed having received reports that his political rivals (Ampatuans) were planning to kill him upon his filing of a certificate of candidacy (COC) for the gubernatorial seat in Maguindanao. Believing that the presence of women and media personalities would deter any violent assault, he asked his wife and female relatives to file his COC and invited several media reporters to cover the event.

4. At around 10 a.m., the convoy stopped at a designated PNP checkpoint along the highway of Ampatuan, Maguindanao manned by the Maguindanao 1508th Provincial Mobile Group, particularly, Eshmail Canapia and Takpan Dilon. While at a stop, they were approached by about one hundred (100) armed men. The armed men pointed their weapons at the members of the 1508th Provincial Mobile Group manning the check point, and threatened them to refrain from interfering. The members of the convoy were then ordered to alight from their vehicles and to lie face down on the ground, as the armed men forcibly took their personal belongings. Subsequently, all members of the convoy were ordered to board their vehicles. They were eventually brought by the armed men to the hills in Barangay Masalay, Ampatuan, about 2.5 kilometers from the checkpoint.

5. At about the same time, Vice Mayor Mangudadatu received a call from his wife Genelyn who, in a trembling voice, told him that a group of more or less 100 armed men stopped their convoy, and that Datu Unsay Mayor Andal Ampatuan, Jr. was walking towards her, and was about to slap her face. After those last words were uttered, the phone line went dead and her cellphone could not be contacted any longer. Alarmed that his wife and relatives, as well as the media personalities were in grave danger, Vice Mayor Mangudadatu immediately reported the incident to the Armed Forces of the Philippines.

6. In the afternoon of the same day, soldiers – aboard two army trucks led by Lt. Col. Rolando Nerona, Head of the Philippine Army's 64th Infantry Battalion – went to the town of Ampatuan to confirm the report. At around 3 p.m., they passed by the checkpoint along the highway in Ampatuan manned by the 1508th Provincial Mobile Group and asked whether they were aware of the reported abduction. Members of the 1508th Provincial Mobile Group denied having knowledge of what they have witnessed at around 10 in the morning purportedly out of fear of retaliation from the powerful Ampatuan clan. Nevertheless, P/CI Sukarno Adil Dicapay, the head of the Mobile Group, instructed P/INSP Diongon to accompany the military on foot patrol as they conduct their operation relative to the reported abduction.

7. Upon reaching Barangay Masalay, Ampatuan, the soldiers on foot patrol found dead bodies, bloodied and scattered on the ground and inside the four (4) vehicles used by the convoy. Three (3) newly covered graves and a back hoe belonging to the Maguindanao Provincial Government parked nearby with its engine still running were found at the site. When the graves were dug up by the soldiers, twenty four (24) dead bodies were found in the first grave; six (6) dead bodies with three (3) vehicles, particularly a Toyota Vios with the seal of the Tacurong City Government, a Tamaraw FX and an L300 owned by the media outfit UNTV were found in the second grave; and five (5) more dead bodies were recovered from the third grave, yielding 35 buried dead bodies and, together with other cadavers, resulted in a total of fifty seven (57) fatalities.

8. x x x

9. Examination of the bodies revealed that most, if not all, of the female victims' pants were found unzipped, and their sexual organs mutilated and mangled. Five (5) of them were tested positive for traces of semen, indicative of sexual abuse while some of the victims were shot in the genital area. The genitalia of Genelyn Mangudadatu was lacerated four (4) times, and blown off by a gun fire, and her body horrifyingly mutilated. Two of the women killed were pregnant, while another two were lawyers. Twenty-nine (29) of the casualties were media personnel. Almost all gun shot injuries were on the heads of the victims, rendering them unrecognizable albeit two (2) bodies remain unidentified. Those found in the graves were coarsely lumped like trash, and some of the victims were found hogtied. All the dead bodies bear marks of despicable torture,

contempt and outrageous torment.[3]

A day after the carnage, on 24 November 2009, former President Gloria Macapagal-Arroyo (President Arroyo) issued Proclamation No. 1946, declaring a state of emergency in the provinces of Maguindanao and Sultan Kudarat, and in the City of Cotabato, “to prevent and suppress the occurrence of similar other incidents of lawless violence in Central Mindanao.” The full text of Proclamation No. 1946 reads:

DECLARING A STATE OF EMERGENCY IN CENTRAL MINDANAO

WHEREAS, on November 23, 2009, several persons, including women and members of media were killed in a violent incident which took place in Central Mindanao;

WHEREAS, there is an urgent need to prevent and suppress the occurrence of similar other incidents of lawless violence in Central Mindanao;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution and by law, do hereby proclaim, as follows:

SECTION 1. The Provinces of Maguindanao and Sultan Kudarat and the City of Cotabato are hereby placed under a state of emergency for the purpose of preventing and suppressing lawless violence in the aforesaid jurisdiction.

SECTION 2. The Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP) are hereby ordered to undertake such measures as may be allowed by the Constitution and by law to prevent and suppress all incidents of lawless violence in the said jurisdiction.

SECTION 3. The state of emergency covering the Provinces of Maguindanao and Sultan Kudarat and the City of Cotabato shall remain in force and effect until lifted or withdrawn by the President.[4]

On 4 December 2009, President Arroyo issued Proclamation No. 1959, declaring martial law and suspending the privilege of the writ of habeas corpus (writ) in the Province of Maguindanao, except for the identified areas of the Moro Islamic Liberation Front (MILF). The full text of Proclamation No. 1959, signed by President Arroyo and attested by Executive Secretary Eduardo Ermita, reads:

PROCLAMATION NO. 1959

PROCLAIMING A STATE OF MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS IN THE PROVINCE OF MAGUINDANAO, EXCEPT FOR CERTAIN AREAS

WHEREAS, Proclamation No. 1946 was issued on 24 November 2009 declaring a state of emergency in the provinces of Maguindanao, Sultan Kudarat and the City of Cotabato for the purpose of preventing and suppressing lawless violence in the aforesaid areas;

WHEREAS, Section 18, Art.VII of the Constitution provides that “x x x In case of invasion or rebellion, when the public safety requires it, (the President) may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. x x x”

WHEREAS, R.A. No. 6986[5] provides that the crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of x x x depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.”

WHEREAS, heavily armed groups in the province of Maguindanao have established positions to resist government troops, thereby depriving the Executive of its powers and prerogatives to enforce the laws of the land and to maintain public order and safety;

WHEREAS, the condition of peace and order in the province of Maguindanao has deteriorated to the extent that the local judicial system and other government mechanisms in the province are not functioning, thus endangering public safety;

WHEREAS, the Implementing Operational Guidelines of the GRP-MILF Agreement on the General Cessation of Hostilities dated 14 November 1997 provides that the following is considered a prohibited hostile act: “x x x establishment of checkpoints except those necessary for the GRP’s enforcement and maintenance of peace and order; and, for the defense and security of the MILF in their identified areas, as jointly determined by the GRP and MILF. x x x”

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution and by law, do hereby proclaim, as follows:

SECTION 1. There is hereby declared a state of martial law in the province of Maguindanao, except for the identified areas of the Moro Islamic Liberation Front as referred to in the Implementing Operational Guidelines of the GRP-MILF Agreement on the General Cessation of Hostilities.

SECTION 2. The privilege of the writ of habeas corpus shall likewise be suspended in the aforesaid area for the duration of the state of martial law.[6]

On 6 December 2009, President Arroyo submitted her Report to Congress in accordance with the provision in Section 18, Article VII of the 1987 Constitution, which states that “within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress.” In her Report, President Arroyo presented the following justifications for imposing martial law and suspending the writ in Maguindanao, to wit:

Pursuant to the provision of Section 18, Article VII of the 1987 Constitution, the President of the Republic of the Philippines is submitting the hereunder Report relative to Proclamation No. 1959 “Proclaiming a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Province of Maguindanao, except for Certain Areas,” which she issued on 04 December 2009, as required by public safety, after finding that lawless elements have taken up arms and committed public uprising against the duly constituted government and against the people of Maguindanao, for the purpose of removing from the allegiance to the Government or its laws, the Province of Maguindanao, and likewise depriving the Chief Executive of her powers and prerogatives to enforce the laws of the land and to maintain public order and safety, to the great damage, prejudice and detriment of the people in Maguindanao and the nation as a whole.

x x x

The capture of identified leader Mayor Andal Ampatuan, Jr. would have resulted in the expeditious apprehension and prosecution of all others involved in the gruesome massacre, but the situation proved the contrary. The Ampatuan group backed by formidable group of armed followers, have since used their strength and political position to deprive the Chief Executive of her power to enforce the law and to maintain public order and safety. More importantly, a separatist group based in Maguindanao has joined forces with the Ampatuans for this purpose. These are the facts:

1. Local government offices in the province of Maguindanao were closed and ranking local government officials refused to discharge their functions, which hindered the investigation and prosecution team from performing their tasks;
2. The Local Civil Registrar of Maguindanao refused to accept the registration of the death certificates of the victims purportedly upon the orders of Andal Ampatuan Sr.;
3. The local judicial system has been crippled by the absence or non-appearance of judges of local courts, thereby depriving the government of legal remedies in their prosecutorial responsibilities (i.e. issuance of

warrants of searches, seizure and arrest). While the Supreme Court has designated an Acting Presiding Judge from another province, the normal judicial proceedings could not be carried out in view of threats to their lives or safety, prompting government to seek a change of venue of the criminal cases after informations have been filed.

Duly verified information disclosed that the Ampatuan group is behind the closing down of government offices, the refusal of local officials to discharge their functions and the simultaneous absence or non-appearance of judges in local courts.

Detailed accounts pertaining to the rebel armed groups and their active movements in Maguindanao have been confirmed:

I. As of November 29, 2009, it is estimated that there are about 2,413 armed combatants coming from the municipalities of Shariff Aguak, Datu Unsay, Datu Salibo, Mamasapano, Datu Saudi Ampatuan (Dikalungan), Sultan Sa Barongis, Datu Piang, Guindulungan, and Talayan, who are in possession of around 2,000 firearms/armaments.

II. The Ampatuan group has consolidated a group of rebels consisting of 2,413 heavily armed men, with 1,160 of them having been strategically deployed in Maguindanao. Validated information on the deployment of rebels are as follows:

I. Around five hundred (500) armed rebels with 2 “Sanguko” armored vehicles are in offensive position in the vicinity of Kakal, Ampatuan, Dimampao, Mamasapano and Sampao Ampatuan.

II. A group with more or less 200 armed rebels has moved from Old Maganoy into an offensive position.

III. More or less 80 fully armed rebels remain in Tuka, Mamasapano.

IV. More or less 50 fully armed rebels led by a former MNLF Commander are in offensive position in Barangay Baital, Rajah Buayan.

V. More or less 70 fully armed rebels with two (2) M60 LMG remain in offensive position in the vicinity of Barangay Kagwaran, Barangay Iginampong, Datu Unsay (right side of Salvo-General Santos City national highway).

VI. More or less 60 fully armed rebels with four (4) M60 LMG remain in offensive position in the vicinity of Kinugitan, the upper portion of Barangay Maitumaig, Datu Unsay.

VII. Kagui Akmad Ampatuan was sighted in Sultan Sa Barongis with 400 armed rebels. Locals heard him uttered “PATAYAN NA KUNG PATAYAN.”

VIII. More or less 100 armed rebels led by one of the identified leaders in the massacre have been sighted at the quarry of Barangay Lagpan, boundary of Rajah Buayan and Sultan Sa Barongis. The group is armed with one (1) 90RR, one (1) cal 50 LMG, two (2) cal 30 LMG, two (2) 60 mm mortar and assorted rifles.

The strength of the rebels is itself estimated to be around 800 with about 2,000 firearms (Fas). These forces are concentrated in the following areas in Maguindanao which are apparently also their political stronghold:

x x x

The existence of this armed rebellion is further highlighted by the recent recovery of high powered firearms and ammunitions from the 400 security escorts of Datu Andal Ampatuan Sr.

x x x

Indeed, the nature, quantity and quality of their weaponry, the movement of heavily armed rebels in strategic

positions, the closure of the Maguindanao Provincial Capitol, Ampatuan Municipal Hall, Datu Unsay Municipal Hall, and fourteen other municipal halls, and the use of armored vehicles, tanks and patrol cars with unauthorized “PNP/Police” markings, all together confirm the existence of armed public uprising for the political purpose of:

1. removing allegiance from the national government of the Province of Maguindanao; and,
2. depriving the Chief Executive of her powers and prerogatives to enforce the laws of the land and to maintain public order and safety.

While the government is at present conducting legitimate operations to address the on-going rebellion, public safety still requires the continued implementation of martial law and the suspension of the privilege of the writ of habeas corpus in the Province of Maguindanao until the time that such rebellion is completely quelled.[7] (Emphasis supplied)

In the meantime, the present petitions were filed impugning the constitutionality of Proclamation No. 1959.

1. G.R. No. 190293 is a petition “for the issuance of a temporary restraining order and writs of prohibition and preliminary prohibitory injunction (1) to declare Proclamation No. 1959 or any act, directive or order arising from or connected to it as unconstitutional, and (2) to enjoin public respondents from further enforcing the same.”
2. G.R. No. 190294 is a petition for certiorari assailing the constitutionality of Proclamation No. 1959 “for gross insufficiency of the factual basis in proclaiming a state of martial law and suspending the [writ] in the Province of Maguindanao.” It prayed for the issuance of a writ of prohibition under Section 2 of Rule 65 to enjoin and prohibit respondents from enforcing Proclamation No. 1959.
3. G.R. No. 190301 is a petition seeking “the nullification of Proclamation No. 1959, proclaiming a state of martial law and suspending the [writ] in the province of Maguindanao, except for certain areas, as it is patently illegal and unconstitutional for lack of any factual basis.”
4. G.R. No. 190302 is a petition for certiorari to declare Proclamation No. 1959 as null and void for being unconstitutional, and for prohibition to enjoin respondents from further actions or proceedings in enforcing or implementing Proclamation No. 1959.
5. G.R. No. 190307 is a petition for certiorari, prohibition, and mandamus with a prayer for a preliminary prohibitory injunction and/or a temporary restraining order, and/or a petition for review pursuant to Article VII, Section 18, paragraph 3 of the 1987 Constitution, asking the Court to declare that then Executive Secretary Eduardo Ermita committed grave abuse of discretion amounting to lack or excess of jurisdiction when he signed, in the name of President Arroyo, Proclamation No. 1959. The petition also prayed for the issuance of a Temporary Restraining Order and/or preliminary prohibitory injunction, prohibiting respondents, and anyone acting under their authority, stead, or behalf, from implementing Proclamation No. 1959 during the pendency of the case.
6. G.R. No. 190356 is a petition for prohibition, with an application for the issuance of a temporary restraining order and/or a writ of preliminary injunction, assailing the constitutionality and the sufficiency of the factual basis of Proclamation No. 1959, declaring a state of martial law in the province of Maguindanao (except for identified areas of the MILF) and suspending the writ in the same area.
7. G.R. No. 190380 is a petition for certiorari assailing the validity of Proclamation No. 1959, declaring a state of martial law in the province of Maguindanao, except for the identified areas of the MILF, and suspending the writ in the same area.

On 9 December 2009, Congress convened in joint session pursuant to Section 18, Article VII of the 1987 Constitution, which provides, “The Congress, if not in session, shall, within twenty-four hours following such proclamation [of martial law] or suspension [of the writ], convene in accordance with its rules without need of a call.”

Meanwhile, eight days after the declaration of martial law, on 12 December 2009, President Arroyo issued Proclamation No. 1963 lifting martial law and restoring the writ in Maguindanao. The full text of Proclamation No. 1963, signed by President Arroyo and attested by Executive Secretary Eduardo Ermita, reads:

PROCLAMATION NO. 1963

PROCLAIMING THE TERMINATION OF THE STATE OF MARTIAL LAW AND THE RESTORATION OF THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS IN THE PROVINCE OF MAGUINDANAO

WHEREAS, Proclamation No. 1946 was issued on 24 November 2009 declaring a state of emergency in the provinces of Maguindanao, Sultan Kudarat and the City of Cotabato for the purpose of preventing and suppressing lawless violence in the aforesaid areas;

WHEREAS, by virtue of the powers granted under Section 18, Article VII of the Constitution, the President of the Philippines promulgated Proclamation No. 1959 on December 4, 2009, proclaiming a state of martial law and suspending the privilege of the writ of Habeas Corpus in the province of Maguindanao, except for certain areas;

WHEREAS, the Armed Forces of the Philippines and the Philippine National Police have reported that over six hundred (600) persons who allegedly rose publicly and took up arms against the Government have surrendered or have been arrested or detained;

WHEREAS, the Armed Forces of the Philippines and the Philippine National Police have reported that the areas where heavily armed groups in the province of Maguindanao established positions to resist government troops have been cleared;

WHEREAS, the court and prosecutors’ offices of Cotabato City have resumed normal working hours, paving the way for the criminal justice system in Maguindanao to be restored to normalcy;

WHEREAS, the Vice-Governor of the Autonomous Region of Muslim Mindanao has assumed as Acting Governor, paving the way for the restoration of the functioning of government mechanisms in the province of Maguindanao;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution and by law, do hereby revoke Proclamation No. 1959 and proclaim the termination of the state of martial law and the restoration of the privilege of the writ of habeas corpus in the province of Maguindanao; provided that Proclamation No. 1946 shall continue to be in force and effect.[8]

In the Resolutions dated 8 and 15 December 2009,⁹ the Court consolidated the petitions and required the Office of the Solicitor General and the respondents to comment on the petitions.

In a Resolution dated 12 January 2010, the Court resolved “to appoint as amici curiae Justice Vicente Mendoza, Senator Joker Arroyo, and Father Joaquin Bernas, [S.J.] and request them to submit their respective Amicus Brief on the questions to be addressed by the parties.”¹⁰

Meanwhile, on 9 December 2009, an Information for rebellion was filed before the Regional Trial Court, Branch 15, Cotabato City (RTC-Cotabato), against Ampatuan, et al.¹¹ The information reads:

That on or about 27[th] day of November, 2009, and continuously thereafter, until the present time, in Maguindanao Province and within the jurisdiction of this Honorable Court, accused Datu Andal Ampatuan, Sr., Datu Zaldy Uy Ampatuan, Datu Akmad Tato Ampatuan, Datu Anwar Ampatuan and Datu Sajid Islam Uy Ampatuan as heads of the rebellion, conspiring, confederating and cooperating with each other, as well as with the other accused as participants or executing the commands of others in the rebellion and also with other John Does whose whereabouts and identities are still unknown, the said accused, who are heads of the rebellion, did then and there willfully, unlawfully and feloniously help, support, promote, maintain, cause, direct and/or command their co-accused who are their followers to rise publicly and take arms against the Republic of the Philippines, or otherwise participate in such armed public uprising, for the purpose of removing allegiance to the government or its laws, the territory of the Republic of the Philippines or any part thereof or depriving the Chief Executive of any of her powers or prerogatives as in fact they have been massing up armed men and organizing assemblies, as a necessary means to commit the crime of rebellion, and in furtherance thereof, have then and there committed acts preventing public prosecutors from being available to conduct inquest and preliminary investigations. There were massive formations of numerous armed civilians supported by armored vehicles and under the command of the Ampatuans who have formed a private army to resist government troops; that the local provincial government of Maguindanao could not function with their employees going on mass leave and their respective offices were closed and not functioning. The Regional Trial Courts of the area are not functioning, refused to accept the application for search warrants for violation of PD 1866 to authorize the search of the properties of the heads of the rebellion; and that there was undue delay in the issuance of court processes despite the exigency of the situation.

CONTRARY TO LAW.[12]

On the next day, 10 December 2009, accused Ampatuan, et al. filed an Urgent Omnibus Motion, which included a motion for judicial determination of probable cause for the offense charged. On the same day, the Acting Presiding Judge of RTC-Cotabato issued an Order, stating that “the Court needs time to go over the resolution finding probable cause against the accused Datu Andal Ampatuan, Sr., [et al.]”

On 1 February 2010, the Regional Trial Court of Quezon City received the records of the case, pursuant to the Supreme Court’s En Banc Resolution, dated 12 January 2010, which ordered the transfer of venue of the rebellion case to Quezon City. The case, docketed as Criminal Case No. Q-10-162667 and entitled People of the Philippines v. Datu Andal Ampatuan, Sr., et al., was raffled to Branch 77 of the Regional Trial Court of Quezon City (RTC-Quezon City) on 2 February 2010.

On 3 February 2010, the accused filed an Urgent Motion praying for the issuance of an order suspending the transfer of custody of all the accused pending the resolution of their motion for judicial determination of probable cause.

On 26 March 2010, the RTC-Quezon City dismissed the charge of rebellion for lack of probable cause, to wit:

After a careful and judicious scrutiny of the evidence forming part of the records and those adduced by the prosecution during the hearing on the motion for judicial determination of probable cause, the Court is convinced that there exist[s] no probable cause to hold under detention and to indict the accused for rebellion.

x x x x

Rebellion under Article 134 of the Revised Penal Code is committed –

[B]y rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, or any body of land, naval, or other armed forces or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.

The elements of the offense are:

1. That there be a (a) public uprising and (b) taking arms against the Government; and
2. That the purpose of the uprising or movement is either –
 - (a) to remove from the allegiance to said Government or its laws:
 - (1) the territory of the Philippines or any part thereof; or
 - (2) any body of land, naval, or other armed forces; or
 - (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives.

x x x x

The essential element of public armed uprising against the government is lacking. There were no masses or multitudes involving crowd action done in furtherance of a political end. So, even assuming that there was uprising, there is no showing that the purpose of the uprising is political, that is, to overthrow the duly constituted government in order to establish another form of government. In other words, the second element is also absent.

x x x x

x x x It is quite interesting that the prosecution failed to present any particular instance where the accused had directly or indirectly prevented government prosecutors from performing their job relative to the prosecution of the suspects in the infamous Maguindanao massacre.

On the contrary, documentary evidence on record shows that the alleged principal suspect in the mass killings, Datu Andal Ampatuan, Jr., was made to undergo inquest proceedings at General Santos City, immediately after he was taken into custody by law enforcement authorities. This alone belies the prosecution's theory that the prosecutors were not available to conduct inquest and preliminary investigations relative to the mass killings in the Municipality of Ampatuan, Province of Maguindanao.

x x x x

x x x [T]he intelligence reports presented by the military and police are unfounded. The reports do not suggest that the alleged armed groups loyal to the accused are initiating violent and hostile actions, whether directly or indirectly, against government security forces. Even the discovery and confiscation of large cache of firearm and ammunitions, allegedly belonging to the Ampatuans, cannot be considered as an act of rebellion. In fact, the firearms and ammunitions were subsequently unearthed, recovered and confiscated from different places. The government security forces should have been able to engage and neutralize the reported armed groups on the basis of its intelligence reports confirming their size, strength and whereabouts.

x x x x

The statements of prosecution witnesses Mangacop and Dingcong are general allegations. Their statements do not show that the accused were responsible for the mass leave of officials and employees of the local government units. There is no evidence to show that the accused actually prevented the local officials and employees from reporting to their offices.

The evidence will show that the Department of Interior and Local Government and the Philippine National Police closed down these offices, without any justifiable reasons. In fact, there were news footages which showed that many employees were caught by surprise on the unexpected closure of their offices.

x x x x

It is alleged in the Information that the courts were no longer functioning in Cotabato City and in Maguindanao

province, which have jurisdiction over the place of the commission of the massacre. The factual circumstances, however, belie said allegation. This Court takes judicial notice of the fact that no less than the Supreme Court of the Republic of the Philippines had denied the allegation that civilian courts were or are no longer functioning in Maguindanao.

x x x x

WHEREFORE, premises considered, the Court finds that there exists no probable cause to indict and hold under detention the accused for rebellion. Accordingly, the instant case is hereby dismissed and the accused-movants are hereby ordered released from further detention, unless they are held by a court of law for other lawful cause/s.

Let this Order be served personally upon the accused-movants, through the responsible officers of the law having custody over them, who are hereby directed to release the accused from detention immediately upon receipt hereof.

SO ORDERED.[13]

In an Order dated 28 May 2010, the RTC-Quezon City denied the prosecution's motion for reconsideration of the Order dated 26 March 2010.

The DOJ filed a petition for certiorari¹⁴ before the Court of Appeals assailing the dismissal of the rebellion charges against accused Ampatuan, et al.

In a Decision promulgated on 15 December 2011,¹⁵ the Court of Appeals denied the petition for certiorari. Quoting the findings of the RTC-Quezon City, the Court of Appeals held that there is no probable cause as there is no showing that all the elements of the crime of rebellion are present. The Court of Appeals stated that "a review of its own narration of events only lends to the belief that the rebellion existed only in the minds of the complainants." The Court of Appeals ruled that there was no armed public uprising, finding "no proof that armed groups were massing up and were planning to instigate civil disobedience and to challenge the government authorities for political ends."

The Issues

The crux of the present controversy is the constitutionality of Proclamation No. 1959, declaring martial law and suspending the writ in Maguindanao. The threshold issue before this Court is whether there is sufficient factual basis for the issuance of Proclamation No. 1959 based on the stringent requirements set forth in Section 18, Article VII of the 1987 Constitution.

In its 15 December 2009 Resolution, the Court additionally posed the following questions for resolution:

1. Whether the issuance of Proclamation No. 1963, lifting martial law and restoring the writ in Maguindanao, rendered the issues raised in the present petitions moot and academic;
2. Whether the term "rebellion" in Section 18, Article VII of the 1987 Constitution has the same meaning as the term "rebellion" that is defined in Article 134 of the Revised Penal Code;
3. Whether the declaration of martial law or the suspension of the writ authorizes warrantless arrests, searches and seizures;
4. Whether the declaration of martial law or the suspension of the writ is a joint and sequential function of the President and Congress such that, without Congressional action on the proclamation either affirming or revoking it, the President having in the meantime lifted the declaration and restored the writ, this Court has nothing to review;

5. If the constitutional power of this Court to review the factual basis of the declaration of martial law or suspension of the writ can be exercised simultaneously with the constitutional power of Congress to revoke the declaration or suspension, and the decision of this Court conflicts with the decision of Congress, which decision shall prevail; and

6. Whether this Court's determination of the sufficiency of the factual basis of the declaration of martial law or suspension of the writ, which in the meantime has been lifted and restored, respectively, would be essential to the resolution of issues concerning the validity of related acts that the government committed during the time martial law was in force.

In its Comment Re: Resolution dated 15 December 2009, the OSG raised the issue of whether petitioners possess legal standing to challenge the constitutionality of Proclamation No. 1959.

Discussion

I dissent from the majority's dismissal of the petitions as moot. I find Proclamation No. 1959 unconstitutional for lack of factual basis as required in Section 18, Article VII of the 1987 Constitution for the declaration of martial law and suspension of the writ. The majority in effect refuses to exercise this Court's constitutional power in Section 18 of Article VII, to "review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof."

Before proceeding to the substantive issues, I shall first discuss the issue on locus standi.

In its Comment Re: Resolution dated 15 December 2009, the OSG questioned the legal standing of petitioners in challenging the constitutionality of Proclamation No. 1959. The OSG argued that the phrase "any citizen" in Section 18, Article VII of the 1987 Constitution must be read in conjunction with the phrase "appropriate proceeding." Since petitioners deemed the original actions for certiorari and prohibition as the appropriate proceeding referred to in Section 18, Article VII of the Constitution, petitioners must satisfy the requirements under Rule 65 of the Rules of Court, one of which is the institution of the action by the aggrieved party. The OSG pointed out that none of the petitioners qualify as an aggrieved party.

This is error.

"Legal standing" or locus standi has been defined as a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged.¹⁶ In case of a suit questioning the sufficiency of the factual basis of the proclamation of martial law or suspension of the writ, such as here, Section 18, Article VII of the Constitution expressly provides:

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus or the extension thereof, and must promulgate its decision thereon within thirty days from its filing. (Emphasis supplied)

It is clear that the Constitution explicitly clothes "any citizen" with the legal standing to challenge the constitutionality of the declaration of martial law or suspension of the writ. The Constitution does not make any distinction as to who can bring such an action. As discussed in the deliberations of the Constitutional Commission, the "citizen" who can challenge the declaration of martial law or suspension of the writ need not even be a taxpayer.^[17] This was deliberately designed to arrest, without further delay, the grave effects of an illegal declaration of martial law or suspension of the writ, and to provide immediate relief to those aggrieved by the same. Accordingly, petitioners, being Filipino citizens, possess legal standing to file the present petitions

assailing the sufficiency of the factual basis of Proclamation No. 1959.

Moreover, given the transcendental importance of the issues raised in the present petitions, the Court may relax the standing requirement and allow a suit to prosper even where there is no direct injury to the party claiming the right of judicial review.¹⁸ The Court has held:

Notwithstanding, in view of the paramount importance and the constitutional significance of the issues raised in the petitions, this Court, in the exercise of its sound discretion, brushes aside the procedural barrier and takes cognizance of the petitions, as we have done in the early Emergency Powers Cases, where we had occasion to rule:

‘x x x ordinary citizens and taxpayers were allowed to question the constitutionality of several executive orders issued by President Quirino although they [involved] only an indirect and general interest shared in common with the public. The Court dismissed the objection that they were not proper parties and ruled that ‘transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must, technicalities of procedure.’ We have since then applied the exception in many other cases.¹⁹ (Emphasis supplied)

I.

Whether the issuance of Proclamation No. 1963,

lifting martial law and restoring the writ in the province of Maguindanao,

rendered the issues raised in the petitions moot and academic.

The majority dismisses the petitions on mootness, agreeing with respondents' contention that the issuance of Proclamation No. 1963, lifting martial law and restoring the writ in the province of Maguindanao, rendered the issues raised in the present petitions moot and academic. Respondents maintain that the petitions have ceased to present an “actual case or controversy” with the lifting of martial law and the restoration of the writ, the sufficiency of the factual basis of which is the subject of these petitions. Proclamation No. 1963 is allegedly a “supervening event” that rendered of no practical use or value the consolidated petitions.

As a rule, courts may exercise their review power only when there is an actual case or controversy, which involves a conflict of legal claims susceptible of judicial resolution. Such a case must be “definite and concrete, touching the legal relations of parties having conflicting legal interests;” a real, as opposed to an imagined, controversy calling for a specific relief.²⁰

Corollarily, courts generally decline jurisdiction over a moot and academic case or outrightly dismiss it on the ground of mootness. A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that assuming jurisdiction over the same, and eventually deciding it, would be of no practical use or value.²¹

In *David v. Arroyo*,^[22] this Court held that the “moot and academic” principle is not a magical formula that automatically dissuades courts in resolving a case. Courts are not prevented from deciding cases, otherwise moot and academic, if (1) there is a grave violation of the Constitution;^[23] (2) the situation is of exceptional character and of paramount public interest;^[24] (3) the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public;^[25] and (4) the case is capable of repetition yet evading review.^[26]

In *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*,^[27] the Court ruled that once a suit is filed, the Court cannot automatically be deprived of its jurisdiction over a case by the mere expedient of the doer voluntarily ceasing to perform the challenged conduct. Otherwise, the doer would be dictating when this Court should relinquish its jurisdiction over a case. Further, a

case is not mooted when the plaintiff seeks damages or prays for injunctive relief against the possible recurrence of the violation.[28]

Contrary to the majority opinion, the present petitions fall squarely under these exceptions, justifying this Court's exercise of its review power.

First, whether Proclamation No. 1959 complied with the requirements under Section 18, Article VII of the Constitution is without doubt an extremely serious constitutional question. In order to forestall any form of abuse in the exercise of the President's extraordinary emergency powers, as what happened during the Martial Law regime under former President Ferdinand Marcos (President Marcos), the 1987 Constitution has carefully put in place specific safeguards, which the President must strictly observe. Any declaration of martial law or suspension of the writ falling short of the constitutional requirements must be stricken down as a matter of constitutional duty by this Court.

Second, whether the President exercised her Commander-in-Chief powers in accordance with the Constitution indisputably presents a transcendental issue fully imbued with public interest. I agree with amicus curiae Father Joaquin Bernas' opinion: "The practice of martial rule can have a profoundly disturbing effect on the life, liberty and fortunes of people. Likewise, the actions taken by the police and military during the period when martial law is in effect can have serious consequences on fundamental rights." [29]

Third, the issue on the constitutionality of Proclamation No. 1959 unquestionably requires formulation of controlling principles to guide the Executive, Legislature, and the public.

The President's issuance of Proclamation No. 1959 generated strong reactions from various sectors of society. This, of course, is an expected response from a nation whose painful memory of the dark past remains fresh. The nation remembers that martial law was the vehicle of President Marcos to seize unlimited State power, which resulted in gross and wanton violations of fundamental human rights of the people. That era saw the collapse of the rule of law and what reigned supreme was a one man-rule for the dictator's own personal benefit.

The present controversy, being the first case under the 1987 Constitution involving the President's exercise of the power to declare martial law and suspend the writ, provides this Court with a rare opportunity,[30] which it must forthwith seize, to formulate controlling principles for the guidance of all sectors concerned, most specially the Executive which is in charge of enforcing the emergency measures. Dismissing the petitions on the ground of mootness will most certainly deprive the entire nation of instructive and valuable principles on this extremely crucial national issue.

Fourth, the present case is capable of repetition yet evading review. I agree with Father Bernas' view: "[H]istory clearly attests that the events that can lead to martial law, as well as the imposition of martial law itself, and the suspension of the privilege together with actions taken by military and police during a period of martial law are capable of repetition and are too important to allow to escape review through the simple expedient of the President lifting a challenged proclamation." [31]

Fifth, the respondent's or doer's voluntary cessation of the questioned act does not by itself deprive the Court of its jurisdiction once the suit is filed. In this case, President Arroyo, after eight days from the issuance of Proclamation No. 1959, issued Proclamation No. 1963 revoking Proclamation No. 1959. President Arroyo's lifting of martial law and restoration of the writ translate to a voluntary cessation of the very acts complained of in the present petitions. However, the present petitions were filed with this Court while Proclamation No. 1959 was still in effect and before Proclamation No. 1963 was issued, thus foreclosing any legal strategy to divest this Court of its jurisdiction by the mere cessation or withdrawal of the challenged act.

Moreover, the fact that every declaration of martial law or suspension of the writ will involve its own set of circumstances peculiar to the necessity of time, events or participants should not preclude this Court from reviewing the President's use of such emergency powers. Whatever are the circumstances surrounding each declaration of martial law or suspension of the writ, the declaration or suspension will always be governed by the same safeguards and limitations prescribed in the same provisions of the Constitution. Failing to determine the constitutionality of Proclamation No. 1959 by dismissing the cases on the ground of mootness sets a very dangerous precedent to the leaders of this country that they could easily impose martial law or suspend the writ without any factual or legal basis at all, and before this Court could review such declaration, they would simply lift the same and escape possible judicial rebuke.

II.

Whether the term "rebellion" in Section 18, Article VII of the 1987 Constitution has the same meaning as the term "rebellion" that is defined in Article 134 of the Revised Penal Code.

Article 134 of the Revised Penal Code, as amended by Republic Act No. 6968,³² defines the crime of rebellion, thus:

Art. 134. Rebellion or insurrection; How committed. — The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval or other armed forces, depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.

The Constitution, however, does not provide any definition of the term "rebellion." Portions of the first paragraph of Section 18, Article VII of the Constitution, where the term "rebellion" appears, read:

Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law.

Respondents submit that the term "rebellion" must, "for constitutional law purposes, be applied in such manner as to be amply responsive to the call of the times." Respondents point out that the deliberations of the 1986 Constitutional Commission reveal that the concept of the term "rebellion" depends much on its magnitude and scope, as determined by the President based on prevailing circumstances.^[33]

I disagree. The term "rebellion" in Section 18, Article VII of the 1987 Constitution must be understood as having the same meaning as the crime of "rebellion" that is defined in Article 134 of the Revised Penal Code, as amended.

First, this is the clear import of the last two paragraphs of Section 18, Article VII of the Constitution, which explicitly state:

The suspension of the privilege of the writ of habeas corpus shall apply only to persons judicially charged for rebellion or offenses inherent in, or directly connected with, invasion.

During the suspension of the privilege of the writ of habeas corpus, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released. (Emphasis supplied)

For a person to be judicially charged for rebellion, there must necessarily be a statute defining rebellion. There is

no statute defining rebellion other than the Revised Penal Code. Hence, “one can be ‘judicially charged’ with rebellion only if one is suspected of having committed acts defined as rebellion in Article 134 of the Revised Penal Code.”[34]

Second, the Revised Penal Code definition of rebellion is the only legal definition of rebellion known and understood by the Filipino people when they ratified the 1987 Constitution. Indisputably, the Filipino people recognize and are familiar with only one meaning of rebellion, that is, the definition provided in Article 134 of the Revised Penal Code. To depart from such meaning is to betray the Filipino people’s understanding of the term “rebellion” when they ratified the Constitution. There can be no question that “the Constitution does not derive its force from the convention which framed it, but from the people who ratified it.”³⁵

Third, one of the Whereas clauses of Proclamation No. 1959 expressly cites the Revised Penal Code definition of rebellion, belying the government’s claim that the Revised Penal Code definition of rebellion merely guided the President in issuing Proclamation No. 1959.

In *SANLAKAS v. Executive Secretary*,^[36] where the Court regarded President Arroyo’s declaration of a state of rebellion in Proclamation No. 427 a superfluity,^[37] the term “rebellion” in said proclamation referred to the crime of rebellion as defined in Article 134 of the Revised Penal Code. Proclamation No. 427 pertinently reads:

DECLARING A STATE OF REBELLION

WHEREAS, certain elements of the Armed Forces of the Philippines, armed with high-powered firearms and explosives, acting upon the instigation and command and direction of known and unknown leaders, have seized a building in Makati City, put bombs in the area, publicly declared withdrawal of support for, and took arms against the duly constituted Government, and continue to rise publicly and show open hostility, for the purpose of removing allegiance to the Government certain bodies of the Armed Forces of the Philippines and the Philippine National Police, and depriving the President of the Republic of the Philippines, wholly or partially, of her powers and prerogatives which constitute the crime of rebellion punishable under Article 134 of the Revised Penal Code, as amended; x x x (Emphasis supplied)

In issuing Proclamation No. 427, President Arroyo relied on the Revised Penal Code definition of rebellion in declaring a state of rebellion. In other words, President Arroyo understood that, for purposes of declaring a state of rebellion, the term “rebellion” found in the Constitution refers to the crime of rebellion defined in Article 134 of the Revised Penal Code.

In exercising the Commander-in-Chief powers under the Constitution, every President must insure the existence of the elements of the crime of rebellion, which are: (1) there is a (a) public uprising and (b) taking arms against the Government; and (2) the purpose of the uprising or movement is either (a) to remove from the allegiance to the Government or its laws: (1) the territory of the Philippines or any part thereof; or (2) any body of land, naval, or other armed forces; or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives.^[38]

To repeat, the term “rebellion” in Section 18, Article VII of the Constitution must be understood to have the same meaning as the crime of rebellion defined in Article 134 of the Revised Penal Code. Ascribing another meaning to the term “rebellion” for constitutional law purposes, more specifically in imposing martial law and suspending the writ, different from the definition in Article 134 of the Revised Penal Code, overstretches its definition without any standards, invites unnecessary confusion, and undeniably defeats the intention of the Constitution to restrain the extraordinary Commander-in-Chief powers of the President.

Since the term “rebellion” in Section 18, Article VII of the Constitution pertains to the crime of rebellion as defined in Article 134 of the Revised Penal Code, the next question turns on the kind of proof required for a valid

declaration of martial law and suspension of the writ.

While the Constitution expressly provides strict safeguards against any potential abuse of the President's emergency powers, the Constitution does not compel the President to produce such amount of proof as to unduly burden and effectively incapacitate her from exercising such powers.

Definitely, the President need not gather proof beyond reasonable doubt, which is the standard of proof required for convicting an accused charged with a criminal offense. Section 2, Rule 133 of the Rules of Court defines proof beyond reasonable doubt as follows:

Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

Proof beyond reasonable doubt is the highest quantum of evidence, and to require the President to establish the existence of rebellion or invasion with such amount of proof before declaring martial law or suspending the writ amounts to an excessive restriction on "the President's power to act as to practically tie her hands and disable her from effectively protecting the nation against threats to public safety." [39]

Neither clear and convincing evidence, which is employed in either criminal or civil cases, is indispensable for a lawful declaration of martial law or suspension of the writ. This amount of proof likewise unduly restrains the President in exercising her emergency powers, as it requires proof greater than preponderance of evidence although not beyond reasonable doubt. [40]

Not even preponderance of evidence, [41] which is the degree of proof necessary in civil cases, is demanded for a lawful declaration of martial law.

By preponderance of evidence is meant that the evidence as a whole adduced by one side is superior to that of the other. It refers to the weight, credit and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence". It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. [42]

Weighing the superiority of the evidence on hand, from at least two opposing sides, before she can act and impose martial law or suspend the writ unreasonably curtails the President's emergency powers.

Similarly, substantial evidence constitutes an unnecessary restriction on the President's use of her emergency powers. Substantial evidence is the amount of proof required in administrative or quasi-judicial cases, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. [43]

I am of the view that probable cause of the existence of either invasion or rebellion suffices and satisfies the standard of proof for a valid declaration of martial law and suspension of the writ.

Probable cause is the same amount of proof required for the filing of a criminal information by the prosecutor and for the issuance of an arrest warrant by a judge. Probable cause has been defined as a "set of facts and circumstances as would lead a reasonably discreet and prudent man to believe that the offense charged in the Information or any offense included therein has been committed by the person sought to be arrested." [44]

In determining probable cause, the average man weighs the facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than suspicion; it requires less than evidence that would justify conviction. ⁴⁵ (Emphasis supplied)

Probable cause, basically premised on common sense, is the most reasonable, most practical, and most expedient standard by which the President can fully ascertain the existence or non-existence of rebellion, necessary for a declaration of martial law or suspension of the writ. Therefore, lacking probable cause of the existence of rebellion, a declaration of martial law or suspension of the writ is without any basis and thus, unconstitutional.

The requirement of probable cause for the declaration of martial law or suspension of the writ is consistent with Section 18, Article VII of the Constitution. It is only upon the existence of probable cause that a person can be “judicially charged” under the last two paragraphs of Section 18, Article VII, to wit:

The suspension of the privilege of the writ of habeas corpus shall apply only to persons judicially charged for rebellion or offenses inherent in, or directly connected with, invasion.

During the suspension of the privilege of the writ of habeas corpus, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released. (Emphasis supplied)

III.

Whether the declaration of martial law or the suspension of the writ authorizes warrantless arrests, searches and seizures.

Section 18, Article VII of the Constitution partially states:

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ of habeas corpus.

The suspension of the privilege of the writ of habeas corpus shall apply only to persons judicially charged for rebellion or offenses inherent in, or directly connected with, invasion.

The 1935 and 1973 Constitutions did not contain a similar provision. Obviously, this new provision in the 1987 Constitution was envisioned by the framers of the Constitution to serve as an essential safeguard against potential abuses in the exercise of the President’s emergency powers.

The Constitution now expressly declares, “A state of martial law does not suspend the operation of the Constitution.” Neither does a state of martial law supplant the functioning of the civil courts or legislative assemblies. Nor does it authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, or automatically suspend the writ. There is therefore no dispute that the constitutional guarantees under the Bill of Rights remain fully operative and continue to accord the people its mantle of protection during a state of martial law. In case the writ is also suspended, the suspension applies only to those judicially charged for rebellion or offenses directly connected with invasion.

Considering the non-suspension of the operation of the Constitution during a state of martial law, a declaration of martial law does not authorize warrantless arrests, searches and seizures, in derogation of Section 2, Article III of the Constitution, which provides:

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Warrantless arrests, search and seizure are valid only in instances where such acts are justified, i.e., those enumerated in Section 5, Rule 113 of the Rules of Court.[46]

In *Pequet v. Tangonan*,^[47] decided during the Martial Law regime under former President Marcos, the Court stressed that military personnel, in effecting arrests, must strictly observe the applicable Rules of Court and settled jurisprudence, thus:

Martial law has precisely been provided in both the 1935 Charter and the present Constitution to assure that the State is not powerless to cope with invasion, insurrection or rebellion or any imminent danger of its occurrence. When resort to it is therefore justified, it is precisely in accordance with and not in defiance of the fundamental law. There is all the more reason then for the rule of law to be followed. For as was so eloquently proclaimed in *Ex parte Milligan*: “The Constitution is a “law for rulers and for people equally in war and in peace and covers with the shield of its protection all classes of men at all times and under all circumstances.” It is true, of course, as admitted by Willoughby, who would limit the scope of martial law power, that the military personnel are called upon to assist in the maintenance of peace and order and the enforcement of legal norms. They can therefore act like ordinary peace officers. In effecting arrests, however, they are not free to ignore, but are precisely bound by, the applicable Rules of Court and doctrinal pronouncements. (Emphasis supplied)

In *Aberca v. Ver*,^[48] the Court emphasized that the suspension of the writ does not give imprimatur to warrantless arrests in violation of the Constitution. In that case, which involved the issue of whether the suspension of the writ bars a civil action for damages for illegal searches and for other human rights violations committed by the military, the Court held:

At the heart of petitioners’ complaint is Article 32 of the Civil Code which provides:

x x x x

It is obvious that the purpose of the above codal provision is to provide a sanction to the deeply cherished rights and freedoms enshrined in the Constitution. Its message is clear; no man may seek to violate those sacred rights with impunity. In times of great upheaval or of social and political stress, when the temptation is strongest to yield — borrowing the words of Chief Justice Claudio Teehankee — to the law of force rather than the force of law, it is necessary to remind ourselves that certain basic rights and liberties are immutable and cannot be sacrificed to the transient needs or imperious demands of the ruling power. The rule of law must prevail, or else liberty will perish. x x x

x x x x

It may be that the respondents, as members of the Armed Forces of the Philippines, were merely responding to their duty, as they claim, “to prevent or suppress lawless violence, insurrection, rebellion and subversion” in accordance with Proclamation No. 2054 of President Marcos, despite the lifting of martial law on January 27, 1981, and in pursuance of such objective, to launch pre-emptive strikes against alleged communist terrorist underground houses. But this cannot be construed as a blanket license or a roving commission untrammelled by any constitutional restraint, to disregard or transgress upon the rights and liberties of the individual citizen enshrined in and protected by the Constitution. The Constitution remains the supreme law of the land to which all officials, high or low, civilian or military, owe obedience and allegiance at all times.

x x x x

This is not to say that military authorities are restrained from pursuing their assigned task or carrying out their mission with vigor. We have no quarrel with their duty to protect the Republic from its enemies, whether of the left or of the right, or from within or without, seeking to destroy or subvert our democratic institutions and imperil their very existence. What we are merely trying to say is that in carrying out this task and mission, constitutional and legal safeguards must be observed, otherwise, the very fabric of our faith will start to unravel. x x x

We do not agree. We find merit in petitioners' contention that the suspension of the privilege of the writ of habeas corpus does not destroy petitioners' right and cause of action for damages for illegal arrest and detention and other violations of their constitutional rights. The suspension does not render valid an otherwise illegal arrest or detention. What is suspended is merely the right of the individual to seek release from detention through the writ of habeas corpus as a speedy means of obtaining his liberty.[49](Emphasis supplied)

IV.

Whether the declaration of martial law or suspension of the writ is a joint and sequential function of the President and Congress such that, without Congressional action on the proclamation or suspension either affirming or revoking it, the President having in the meantime lifted the same, this Court has nothing to review.

Section 18, Article VII of the 1987 Constitution provides:

Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

The Constitution vests exclusively in the President, as Commander-in-Chief, the emergency powers to declare martial law or suspend the writ in cases of rebellion or invasion, when the public safety requires it. The imposition of martial law or suspension of the writ takes effect the moment it is declared by the President. No other act is needed for the perfection of the declaration of martial law or the suspension of the writ. As amicus curiae retired Justice Mendoza states:

A declaration of martial law by the President alone is complete by itself and does not require for its validity the approval or concurrence of Congress. It is a power placed solely in the keeping of the President to enable him to secure the people from harm and restore the public order so that they can enjoy their freedoms. Because it is liable to abuse, it is made subject to check by Congress and/or the [Supreme Court].

The power of Congress is to revoke – not to confirm or ratify, much less to approve, – the President's action declaring martial law or suspending the privilege of the writ of habeas corpus. It is a veto power, just as the power of the judiciary to review the President's action is a veto power on the Executive's action.

It is clear, therefore, that the President's power to declare martial law or suspend the writ is independent, separate, and distinct from any constitutionally mandated act to be performed by either the Legislature or the Judiciary. It is

neither joint nor sequential with Congress' power to revoke the declaration or suspension or to extend it upon the initiative of the President. Accordingly, even if Congress has not acted upon the President's declaration or suspension, the Court may review the declaration or suspension in an appropriate proceeding filed by any citizen. Otherwise stated, Congress' inaction on the declaration or suspension is not determinative of the Court's exercise of its review power under Section 18, Article VII of the Constitution.

To hold that the power of this Court to review the President's declaration of martial law or suspension of the writ is sequential, or joint, with the review power of Congress is to make it impossible for this Court to decide a case challenging the declaration or suspension "within thirty days from its filing," as mandated by the Constitution. Congress has no deadline when to revoke the President's declaration or suspension. Congress may not even do anything with the President's declaration or suspension and merely allow it to lapse after 60 days. On the other hand, the Constitution mandates that this Court "must promulgate its decision thereon within thirty days from [the] filing" of the case. Clearly, the Court's review power is neither sequential nor joint with the review power of Congress.

Moreover, the President's lifting of the declaration or suspension before this Court could decide the case within the 30-day period does not operate to divest this Court of its jurisdiction over the case. A party cannot simply oust the Court's jurisdiction, already acquired, by a party's own unilateral act. The President's lifting of the declaration or suspension merely means that this Court does not have to decide the case within the 30-day period, as the urgency of deciding has ceased. Certainly, the Court is not divested of its jurisdiction simply because the urgency of deciding a case has ceased.

V.

If the constitutional power of this Court to review the factual basis of the declaration of martial law or suspension of the writ can be exercised simultaneously with the constitutional power of Congress to revoke the declaration or suspension, and the decision of this Court conflicts with the decision of Congress, which decision shall prevail.

The President has the sole and exclusive power to declare martial law or suspend the writ. This power of the President is subject to review separately by Congress and the Supreme Court. Justice Mendoza stresses, "Thus, Congress and this Court have separate spheres of competence. They do not act 'jointly and sequentially' but independently of each other." [50] Father Bernas points out, "Since the powers of Congress and the Court are independent of each other, there is nothing to prevent Congress and the Court from simultaneously exercising their separate powers." [51]

In the exercise by the Court and Congress of their separate "review powers" under Section 18, Article VII of the Constitution, three possible scenarios may arise.

First, the President's martial law declaration or suspension of the writ is questioned in the Supreme Court without Congress acting on the same. Such a situation generates no conflict between the Supreme Court and Congress. There is no question that the Supreme Court can annul such declaration or suspension if it lacks factual basis. Congress, whose only power under Section 18, Article VII of the Constitution is to revoke the declaration or suspension on any ground, is left with nothing to revoke if the Court has already annulled the declaration or suspension.

Second, Congress decides first to revoke the martial law declaration or suspension of the writ. Since the Constitution does not limit the grounds for congressional revocation, Congress can revoke the declaration or suspension for policy reasons, or plainly for being insignificant, as for instance it involves only one barangay rebelling, or if it finds no actual rebellion. In this case, the Supreme Court is left with nothing to act on as the

revocation by Congress takes effect immediately. The Supreme Court must respect the revocation by Congress even if the Court believes a rebellion exists because Congress has the unlimited power to revoke the declaration or suspension.

Third, the Supreme Court decides first and rules that there is factual basis for the declaration of martial law or suspension of the writ. In such a situation, Congress can still revoke the declaration or suspension as its power under the Constitution is broader insofar as the declaration or suspension is concerned. "Congress cannot be prevented by the Court from revoking the President's decision because it is not for the Court to determine what to do with an existing factual situation. x x x Congress has been given unlimited power to revoke the President's decision."⁵² In short, even if there is an actual rebellion, whether affirmed or not by the Supreme Court, Congress has the power to revoke the President's declaration or suspension.

In the present controversy, Congress failed to act on Proclamation No. 1959 when it commenced its Joint Session on 9 December 2009 until the lifting of the martial law declaration and restoration of the writ on 12 December 2009. Congress' non-revocation of Proclamation No. 1959 categorizes the present case under the first scenario. In such a situation, where no conflict ensues, Congress' inaction on Proclamation No. 1959 does not preclude this Court from ruling on the sufficiency of the factual basis of the declaration of martial law and suspension of the writ.

VI.

Whether this Court's determination of the sufficiency of the factual basis of the declaration of martial law and suspension of the writ, which in the meantime have been lifted, would be essential to the resolution of issues concerning the validity of related acts that the government committed during the time that martial law and the suspension of the writ were in force.

Indisputably, unlawful acts may be committed during martial law or suspension of the writ, not only by the rebels, but also by government forces who are duty bound to enforce the declaration or suspension and immediately put an end to the root cause of the emergency. Various acts carried out by government forces during martial law or suspension of the writ in the guise of protecting public safety may in reality amount to serious abuses of power and authority. Whatever the Court's decision will be on the sufficiency of the factual basis of the President's declaration or suspension does not preclude those aggrieved by such illegal acts from pursuing any course of legal action available to them. Therefore, the determination by this Court of the sufficiency of the factual basis of the declaration or suspension is not essential to the resolution of issues concerning the validity of related acts that government forces may have committed during the emergency.

VII.

Whether Proclamation No. 1959 has sufficient factual basis.

The full text of Section 18, Article VII of the 1987 Constitution reads:

Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special

session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ of habeas corpus.

The suspension of the privilege of the writ of habeas corpus shall apply only to persons judicially charged for rebellion or offenses inherent in, or directly connected with, invasion.

During the suspension of the privilege of the writ of habeas corpus, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

The Commander-in-Chief provisions of the 1935 and 1973 Constitutions, on the other hand, respectively state:

Section 10(2), Article VII of the 1935 Constitution

2. The President shall be commander-in-chief of all armed forces of the Philippines, and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of invasion, insurrection, or rebellion or imminent danger thereof, when the public safety requires it, he may suspend the privilege of the writ of habeas corpus, or place the Philippines or any part thereof under Martial Law.

Section 12, Article IX of the 1973 Constitution

SEC. 12. The Prime Minister shall be commander-in-chief of all armed forces of the Philippines, and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion or imminent danger thereof, when the public safety requires it, he may suspend the privilege of the writ of habeas corpus, or place the Philippines or any part thereof under Martial Law.

Notably, the 1935 and 1973 Constitutions only specify the instances when martial law may be declared or when the writ may be suspended.

The 1987 Constitution, on the other hand, not only explicitly includes the specific grounds for the activation of such emergency powers, but also imposes express limitations on the exercise of such powers. Upon the President's declaration of martial law or suspension of the writ, the following safeguards are automatically set into motion: (1) the duration of martial law or suspension of the writ is limited to a period not exceeding sixty days; (2) the President is mandated to submit a report to Congress within forty-eight hours from the declaration or suspension; and (3) the declaration or suspension is subject to review by Congress, which may revoke such declaration or suspension. If Congress is not in session, it shall convene within 24 hours without need for call.[53] In addition, the sufficiency of the factual basis of the declaration, suspension, or their extension is subject to review by the Supreme Court in an appropriate proceeding.

The mechanism and limitations laid down in Section 18, Article VII of the Constitution in declaring martial law or suspending the writ were introduced precisely to preclude a repetition of the kind of martial law imposed by President Marcos, which ushered in a permanent authoritarian regime. As Father Bernas wrote in his book:

The Commander-in-Chief provisions of the 1935 Constitution had enabled President Ferdinand Marcos to impose authoritarian rule on the Philippines from 1972 to 1986. Supreme Court decisions during that period upholding the actions taken by Mr. Marcos made authoritarian rule part of Philippine constitutional jurisprudence. The members of the Constitutional Commission, very much aware of these facts, went about reformulating the Commander-in-Chief powers with a view to dismantling what had been constructed during the authoritarian years. The new formula included revised grounds for the activation of emergency powers, the manner of activating them, the scope of the powers, and review of presidential action.[54]

Consistent with the framers' intent to reformulate the Commander-in-Chief powers of the President, the 1987 Constitution requires the concurrence of two conditions in declaring martial law or suspending the writ, namely, (1) an actual invasion or rebellion, and (2) public safety requires the exercise of such power.[55] The Constitution no longer allows imminent danger of rebellion or invasion as a ground for the declaration or suspension, which the 1935 and 1973 Constitutions expressly permitted.

In the present case, President Arroyo grounded the declaration of martial law and suspension of the writ on the existence of rebellion in Maguindanao. In her Report submitted to Congress, President Arroyo cited the following instances as constitutive of rebellion:

1. Local government offices in the province of Maguindanao were closed and ranking local government officials refused to discharge their functions, which hindered the investigation and prosecution team from performing their tasks;
2. The Local Civil Registrar of Maguindanao refused to accept the registration of the death certificates of the victims purportedly upon the orders of Andal Ampatuan Sr.;
3. The local judicial system has been crippled by the absence or non-appearance of judges of local courts, thereby depriving the government of legal remedies in their prosecutorial responsibilities (i.e. issuance of warrants of searches, seizure and arrest). While the Supreme Court has designated an Acting Presiding Judge from another province, the normal judicial proceedings could not be carried out in view of threats to their lives or safety, prompting government to seek a change of venue of the criminal cases after informations have been filed.

x x x x

Indeed, the nature, quantity and quality of their weaponry, the movement of heavily armed rebels in strategic positions, the closure of the Maguindanao Provincial Capitol, Ampatuan Municipal Hall, Datu Unsay Municipal Hall, and fourteen other municipal halls, and the use of armored vehicles, tanks and patrol cars with unauthorized "PNP/Police" markings, all together confirm the existence of armed public uprising for the political purpose of:

- (1) removing allegiance from the national government of the Province of Maguindanao; and,
- (2) depriving the Chief Executive of her powers and prerogatives to enforce the laws of the land and to maintain public order and safety.

While the government is at present conducting legitimate operations to address the on-going rebellion, public safety still requires the continued implementation of martial law and the suspension of the privilege of the writ of habeas corpus in the Province of Maguindanao until the time that such rebellion is completely quelled.[56] (Emphasis supplied)

The question now is whether there was probable cause, which is the required quantum of proof, to declare the existence of rebellion justifying the President's declaration of martial law and suspension of the writ.

The answer is in the negative.

The contemporaneous public statements made by the President's alter egos explaining the grounds for the issuance of Proclamation No. 1959 negate rather than establish the existence of an actual rebellion in Maguindanao.

During the interpellations in the Joint Session of Congress, convened pursuant to the provisions of Section 18, Article VII of the Constitution, then Executive Secretary Eduardo Ermita admitted the absence of an actual rebellion in Maguindanao, to wit:

REP. LAGMAN. Mr. Speaker, Mr. President, a perusal of the text of Proclamation No. 1959 would show the absence of a clear and categorical finding or determination that actual rebellion is occurring in Maguindanao. Would that be an accurate observation of a reading of the text of Proclamation No. 1959?

MR. ERMITA. Your Honor, you may be correct that there was no actual rebellion going on. However, all the indicators that rebellion is, indeed, being committed and happening on the ground is because of the presence of the armed groups that prevent authorities from being able to do its duty of even effecting the arrest of those who should be arrested in spite of the testimonies of witnesses.

REP. LAGMAN. Well, we are happy to note that there is an admission that there was no actual rebellion in Maguindanao. But the presence of armed groups would be indicative of lawless violence which is not synonymous to rebellion. As a matter of fact, the Maguindanao situationer which was made by Police Director Andres Caro was premised on a statement that this was the worst election-related violence – an act of gross lawlessness but definitely not related to rebellion.

x x x x[57] (Emphasis supplied)

Also, during the Joint Session, then Senator (now President) Benigno S. Aquino III pointed out the public statements made by former Department of Interior and Local Government Secretary Ronaldo V. Puno, then Armed Forces of the Philippines spokesperson Lt. Col. Romeo Brawner, and former Defense Secretary Norberto Gonzales admitting there was no need for martial law:

THE SENATE PRESIDENT. With the indulgence of the Chamber and the Speaker, may we request now to allow the distinguished Gentleman from Tarlac, Senator Benigno "Noynoy" Aquino III the floor.

SEN. AQUINO. Thank you, Mr. President. May I direct my first question to Secretary Puno. And this is to lay the proper predicate for our first question. The newspaper has been quoting Secretary Puno as not having recommended the imposition of martial law prior to its imposition in Maguindanao. May we know if this was a correct attribution to the Honorable Secretary.

MR. PUNO. Until, Your Honor, Mr. Speaker, Mr. Senate President, until the situation developed where police officers went absent on leave and joined the rebel forces, and a significant segment of the civilian armed volunteers of the local governments constituted themselves into a rebel group, until that time I did not believe that it was necessary that martial law be declared. But upon receipt of a report from the Armed Forces of the Philippines and the briefing conducted with the National Security Council, where it was made clear that a separate rebel armed group had already been organized, we concurred, Your Honor, with the recommendation on martial law.

SEN. AQUINO. For the record, Mr. Senate President and Mr. Speaker, the AFP, we understand, through the spokesperson, Lt. Col. Romeo Brawner, declared on 13 November 2009 that there is no need for the declaration of martial law in Maguindanao or elsewhere in the country because the AFP and PNP are on top of

the situation. He was quoted as saying, and we quote: “We now have a level of normalcy in the Province of Maguindanao, primarily because of the occupation by our government forces and our law enforcement agencies of the seats of government.” Secretary Norberto Gonzales, who unfortunately is not present, declared on December 1, 2009 that the government’s effort to contain the tension in the province is holding ground. We also have now the admission by the honorable Secretary Puno that prior to the undated national security briefing, he was also of the opinion that martial law was not necessary in Maguindanao. x x x[58]

Even before the interpellations in Congress, then Executive Secretary Ermita publicly confirmed the inadequacies of Proclamation No. 1959:

We’ll have to get the report from the field from the AFP and PNP that the conditions that prompted the President to issue the proclamation, have improved, and therefore, the threat of further lawlessness and probability of rebellion is already down.[59] (Emphasis supplied)

Significantly, at a press conference, then Secretary of Justice Agnes Devanadera declared, “We noticed and observed there was a rebellion in the offing.” In another press briefing, Devanadera stated that “rebellion which does not necessarily involve a physical takeover by armed elements as argued by some critics of the President’s order, was “looming in Maguindanao.”[60] In short, the Department of Justice Secretary, who is the principal legal officer of the Arroyo administration, publicly admitted that there was only a “looming” rebellion, a “rebellion in the offing,” in Maguindanao.

Likewise, in a press conference, “the AFP Chief of Staff claimed that armed groups, numbering between 40 to 400 men and spread out in the province, planned to prevent the arrest of members of the Ampatuan family, the prime suspects in the Maguindanao massacre. He stated, “Based on the reports we received, there were a lot of groupings of armed groups in different places. We also received reports that they have plans to undertake hostile action if ever government officials, the Ampatuans particularly, were taken in custody. We felt this was very imminent threat, that’s why we recommended this proclamation.”[61]

Then Defense Secretary Norberto Gonzales was quoted as stating that the “recommendation to declare martial law in Maguindanao is a sensitive matter that needs to be studied.”[62] In an interview, Gonzales said, “titingnan natin (we will see) how the situation develops there.”[63] He further stated, “As of now, I think whatever the government is doing so far is really effective. We will wait for the results of the work of Secretary Devanadera of Justice and also Secretary Puno of DILG. So, so far maganda naman yun takbo ng ating operation doon.”[64] Gonzales added, “Yung tungkol sa martial law, alam mo sensitive na bagay yan kaya pag-aaralan natin.”[65]

The admissions and public statements made by members of the Cabinet, who are the President’s alter egos, as well as the public assessments made by the highest ranking military officials, clearly demonstrate that instead of being anchored on the existence of an actual rebellion, Proclamation No. 1959 was based on a mere threat, or at best an imminent threat of rebellion, or a rebellion “in the offing.”[66] This undeniably runs counter to the letter and intent of the Constitution. A looming rebellion is analogous to imminent danger of rebellion, which was deliberately eliminated by the framers of the 1987 Constitution as a ground for the declaration of martial law precisely to avoid a repetition of the misguided and oppressive martial law imposed by former President Marcos.

There is absolutely nothing which shows that the Ampatuans and their armed followers, at any point in time, intended to overthrow the government. On the contrary, the Ampatuans were publicly known as very close political allies of President Arroyo. There is not a single instance where the Ampatuans denounced, expressly or impliedly, the government, or attempted to remove allegiance to the government or its laws or to deprive the President or Congress of any of their powers. Based on the records, what the government clearly established, among others, were (1) the existence of the Ampatuans’ private army; and (2) the Ampatuans’ vast collection of high powered firearms and ammunitions.

These shocking discoveries, however, do not amount to rebellion as defined in Article 134 of the Revised Penal Code. Based on the statements made by ranking government and military officials, and as clearly found by the RTC-Quezon City in Criminal Case No. Q-10-162667 and affirmed by the Court of Appeals, there was no public uprising and taking arms against the government for the purpose of removing from the allegiance to the government or its laws the territory of the Philippines or any part thereof, or depriving the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives. The Ampatuans' amassing of weaponry, including their collection of armored cars, tanks and patrol cars, merely highlights this political clan's unbelievably excessive power and influence under the Arroyo administration.

To repeat, only in case of actual invasion or rebellion, when public safety requires it, may the President declare martial law or suspend the writ. In declaring martial law and suspending the writ in Maguindanao in the absence of an actual rebellion, President Arroyo indisputably violated the explicit provisions of Section 18, Article VII of the Constitution.

Conclusion

Thirty-seven years after President Marcos' Proclamation No. 1081, President Arroyo issued Proclamation No. 1959 declaring martial law and suspending the privilege of the writ of habeas corpus in the province of Maguindanao, except in MILF identified areas. President Marcos' martial law, justified to counteract the Communist insurgency in the country,[67] turned out to be a vehicle to establish a one-man authoritarian rule in the country. Expectedly, President Arroyo's Proclamation No. 1959 refreshed the nation's bitter memories of the tyranny during the Martial Law regime of President Marcos, and sparked the public's vigilance to prevent a possible recurrence of that horrible past.

In issuing Proclamation No. 1959, President Arroyo exercised the most awesome and powerful among her graduated Commander-in-Chief powers to suppress a supposed rebellion in Maguindanao, following the massacre of 57 civilians in the worst election-related violence in the country's history. Since then, the government branded the Ampatuans, the alleged masterminds of the massacre, as rebels orchestrating the overthrow of the Arroyo administration. However, the events before, during, and after the massacre negate the existence of an armed uprising aimed at bringing down the government, but rather point to a surfeit of impunity and abuse of power of a political clan closely allied with the Arroyo administration. In short, Proclamation No. 1959 was issued without an actual rebellion justifying the same.

Apparently, President Arroyo resorted to martial law and suspension of the writ, not to quell a purported rebellion because there was absolutely none, but to show her indignation over the gruesome massacre and her swift response in addressing the difficult situation involving her close political allies. She was reported to be "under pressure to deliver, amid rising public outrage and international condemnation of the massacre." [68] However, mounting pressure to bring the murderers to justice, without any invasion or rebellion in Maguindanao, does not warrant the imposition of martial law or suspension of the writ. Rather, what the nation expects, and what the victims and their families truly deserve, is the speedy and credible investigation and prosecution, and eventually the conviction, of the merciless killers.

In sum, Proclamation No. 1959 was anchored on a non-existent rebellion. Based on the events before, during and after the Maguindanao massacre, there was obviously no rebellion justifying the declaration of martial law and suspension of the writ. The discovery of the Ampatuans' private army and massive weaponry does not establish an armed public uprising aimed at overthrowing the government. Neither do the closure of government offices and the reluctance of the local government officials and employees to report for work indicate a rebellion.

The Constitution is clear. Only in case of actual invasion or rebellion, when public safety requires it, can a state of

martial law be declared or the privilege of the writ of habeas corpus be suspended. Proclamation No. 1959 cannot be justified on the basis of a threatened, imminent, or looming rebellion, which ground was intentionally deleted by the framers of the 1987 Constitution. Considering the non-existence of an actual rebellion in Maguindanao, Proclamation No. 1959 is unconstitutional for lack of factual basis as required under Section 18, Article VII of the Constitution for the declaration of martial law and suspension of the privilege of the writ of habeas corpus.

Accordingly, I vote to GRANT the petitions and DECLARE Proclamation No. 1959 UNCONSTITUTIONAL for failure to comply with Section 18, Article VII of the Constitution.

[1] Presidential Adviser for Mindanao Jesus Dureza's statement reported in Philippine Daily Inquirer on 23 November 2009 (<http://newsinfo.inquirer.net/breakingnews/nation/view/20091123-237934/Wife-of-gubernatorial-bet-35-killed-in-Maguindanao> [accessed on 4 November 2011], Wife of gubernatorial bet, 35 killed in Maguindanao Palace adviser calls for state of emergency) and in Philippine Star on 24 November 2009 (<http://www.philstar.com/article.aspx?articleid=526314> [accessed on 4 November 2011]; Maguindanao massacre).

The mass murder of the journalists was tagged "as the darkest point of democracy and free press in this recent time." (Statement of NUJP Cebu Chapter President Rico Lucena reported in philstar.com with title Maguindanao death toll now 46: Emergency rule in two provinces (<http://www.philstar.com/article.aspx?articleid=526616> [accessed on 4 November 2011]).

The massacre was considered "one of the deadliest single events for the press in memory" and the Philippines the world's worst place to be a journalist, according to international press freedom watchdog Committee to Protect Journalists (CPJ). (<http://www.gmanews.tv/story/177821/the-ampatuan-massacre-a-map-and-timeline> [accessed on 4 November 2011])

[2] Fifty-five of the casualties were identified as follows:

1.

Bai Genelyn T. Mangudadatu

Wife of Mangudadatu

2.

Bai Eden Mangudadatu

Sister/Vice Mayor, Mangudadatu, Maguindanao

3.

Pinky Balaiman

Cousin of Mangudadatu

4.

Mamotavia Mangudadatu

Aunt

5.

Bai Farida Mangudadatu

Youngest sister

6.

Rowena Ante Mangudadatu

Relative

7.

Faridah Sabdula

Sister

8.

Soraida Vernan

Cousin

9.

Raida Sapalon Abdul

Cousin

10.

Rahima Puto Palawan

Relative

11.

Lailan “Ella” Balayman

Relative

12.

Walida Ali Kalim

Relative

13.

Atty. Concepcion Brizuela

Lawyer

14.

Atty. Cynthia Oquendo Ogano

Lawyer

15.

Cataleno Oquendo

Father of Atty. Cynthia Oquendo

16.

Marife Montano

Saksi News, Gensan

17.

Alejandro Bong Reblando

Manila Bulletin, Gensan

18.

Mc Delbert “Mac Mac” Areola

UNTV Gensan

19.

Rey Marisco

Periodico Ini, Koronadal City

20.

Bienvenido Jun Lagarta

Prontierra News, Koronadal City

21.

Napoleon Salaysay

Mindanao Gazette

22.

Eugene Depillano

UNTV Gen San

23.

Rosell Morales

News Focus

24.

Arturo Betia

Periodico Ini, Gen San

25.

Noel Decena

Periodico Ini

26.

John Caniba

Periodico Ini

27.

Junpee Gatchalian

DXGO, Davao City

28.

Victor Nunez

UNTV Gen San

29.

Andres Teodoro

Central Mindanao Inquirer

30.

Romeo Capelo

Midland Review, Tacurong City

31.

Joy Duhay

Gold Star Daily

32.

Ronnie Perante

Gold Star Daily, Koronadal City

33.

Benjie Adolfo

Gold Star Daily, Koronadal City

34.

Ian Subang

Socsargen Today, Gen San

35.

Joel Parcon

Prontiera News, Koronadal City

36.

Robello Bataluna

Gold Star Daily, Koronadal City

37.

Lindo Lipugan Mindanao

Daily Gazette, Davao City

38.

Ernesto Maravilla

Bombo Radyo, Koronadal City

39.

Henry Araneta

Radio DZRH, Gen San

40.

Fernando Razon

Periodico Ini, Gen San

41.

Hannibal Cachuela

Punto News, Koronadal City

42.

Lea Dalmacio

Socsargen News, Gensan

43.

Marites Cablitas

News Focus, Gensan

44.

Gina Dela Cruz

Saksi News, Gensan

45.

Anthony Ridao

Government employee

46.

Mariam Calimbol

Civilian

47.

Norton “Sidic” Edza

Driver

48.

Jephon C. Cadagdaggon

Civilian

49.

Abdillah Ayada

Driver

50.

Joselito Evardo

Civilian

51.

Cecille Lechonsito

Civilian

52.

Wilhelm Palabrica

Government Employee

53.

Mercy Palabrica

Government Employee

54.

Daryll Vincent Delos Reyes

Government Employee

55.

Eduardo “Nonie” Lechonsito

Government Employee

[3] Rollo (G.R. No. 190293), pp. 105-109.

[4] Id. at 185.

[5] Should be Republic Act No. 6968, which is “An Act Punishing the Crime of Coup D’état by Amending

Articles 134, 135 and 136 of Chapter One, Title Three of Act Numbered Thirty-Eight Hundred and Fifteen, Otherwise Known as the Revised Penal Code, and for Other Purposes.” Republic Act No. 6986 is titled “An Act Establishing a High School in Barangay Dulop, Municipality of Dumingag, Province of Zamboanga Del Sur, to be Known as the Dulop High School, and Appropriating Funds Therefor.”

[6] Rollo (G.R. No. 190293), pp. 186-187.

[7] Id. at 163-164, 173-177, 182.

[8] Rollo (G.R. No. 190293), pp. 190-191.

[9] Rollo (G..R. No. 190293), pp. 83-84; rollo (G.R. No. 190356), p. 55.

[10] Rollo (G.R. No. 190293), p. 407.

[11] The accused are: Datu Andal Ampatuan, Sr., Datu Zaldy Uy Ampatuan, Datu Akmad Tato Ampatuan, Datu Anwar Ampatuan, and Datu Sajid Islam Uy Ampatuan, as persons who allegedly promoted, maintained or headed the rebellion; and Kusain Akmad Sakilan, Jovel Vista Lopez, Rommy Gimba Mamay, Sammy Duyo Villanueva, Ibrahim Tukya Abdulkadir, Samil Manalo Mindo, Goldo B. Ampatuan, Amaikugao Obab Dalgan, Billy Cabaya Gabriel, Jr., Abdulla Kaliangat Ampatuan, Moneb Smair Ibrahim, Umpa Ugka Yarka, Manding Abdulkadir, Dekay Idra Ulama, Kapid Gabriel Cabay, Koka Batong Managilid, Sammy Ganda Macabuat, Duca Lendungan Amban, Akmad Abdullah Ulilisen and several John Does, as participants or the persons executing the commands of others in a rebellion or insurrection. (RTC-Quezon City Order dated 26 March 2010, pp. 3-4).

[12] RTC-Quezon City Order dated 26 March 2010, p. 4.

[13] RTC-Quezon City Order dated 26 March 2010, pp. 10-13, 15-16, 18. Penned by Presiding Judge Vivencio S. Baclig.

[14] Under Rule 65 of the 1997 Rules of Procedure. Docketed as CA-G.R. SP No. 115168.

[15] Penned by Associate Justice Elihu A. Ybañez, and concurred in by Associate Justices Fernanda Lampas Peralta and Francisco P. Acosta.

[16] *SANLAKAS v. Executive Secretary Reyes*, 466 Phil. 482, 507 (2004), citing *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618 (2000).

[17] *Bernas*, The Intent of the 1986 Constitution Writers, 1995 Edition, p. 474.

[18] *David v. Arroyo*, 522 Phil. 705, 757-759 (2006). See *Chavez v. Public Estates Authority*, 433 Phil. 506 (2002), *Bagong Alyansang Makabayan v. Zamora*, 396 Phil. 623 (2000).

[19] *Lim v. Executive Secretary*, 430 Phil. 555, 570-571 (2002) citing *Bagong Alyansang Makabayan v. Zamora*, *supra*.

[20] *David v. Arroyo*, *supra* note 18 at 753.

[21] Id. at 753.

[22] Id. at 754.

[23] Id., citing *Province of Batangas v. Romulo*, 473 Phil. 806 (2004).

[24] Id., citing *Lacson v. Perez*, 410 Phil. 78 (2001).

[25] *Id.*, citing *Province of Batangas v. Romulo*, *supra*.

[26] *Id.*, citing *Albaña v. Commission on Elections*, 478 Phil. 941 (2004); *Acop v. Guingona, Jr.*, 433 Phil. 62 (2002); *SANLAKAS v. Executive Secretary Reyes*, *supra* note 16.

[27] G.R. Nos. 183591, 183752, 183893, 183951, 183962, 14 October 2008, 568 SCRA 402.

[28] *Id.*

[29] *Rollo* (G.R. No. 190293), p. 508; Brief of Amicus Curiae Father Joaquin Bernas, S.J.

[30] Retired Chief Justice Panganiban called this a historic moment and reminded the Court of its duty to uphold the Constitution. He writes:

The Court faces a historic moment. It cannot cower or cop-out or hide behind legalisms. Worse, in a false sense of gratitude, it should not invent legal excuses to justify or cover plainly unconstitutional acts. Rare is the opportunity for greatness. Let the Court not squander the moment. Let it perform its duty forthrightly and uphold the Constitution.

(<http://opinion.inquirer.net/inquireropinion/columns/view/20091220-243027/Uphold-the-Constitution> [accessed on 4 November 2011], *With Due Respect: Uphold the Constitution*)

[31] *Rollo* (G.R. No. 190293), p. 509; Brief of Amicus Curiae Father Joaquin Bernas, S.J.

[32] An Act Punishing the Crime of Coup D'état by Amending Articles 134, 135 And 136 of Chapter One, Title Three of Act Numbered Thirty-Eight Hundred and Fifteen, Otherwise Known as The Revised Penal Code, and for Other Purposes.

[33] *Rollo* (G.R. No. 190293), p. 138.

[34] *Id.* at 493, Amicus Memorandum of Justice Vicente V. Mendoza.

[35] See retired Chief Justice Puno's separate concurring opinion in *United Pepsi-Cola Supervisory Union v. Judge Laguesma*, 351 Phil. 244, 292 (1998), citing Cooley, *Treatise on Constitutional Limitations*, Vol. 1, pp. 142-143 [1927]; also cited in Willoughby, *The Constitutional Law of the United States*, Sec. 32, pp. 54-55, Vol. 1 [1929].

[36] *Supra* note 16.

[37] *Id.* at 520. The Court stated that "[a] declaration of a state of rebellion is an utter superfluity. At most, it only gives notice to the nation that such a state exists and that the armed forces may be called to prevent or suppress it."

[38] See *Ladlad v. Velasco*, G.R. Nos. 172070-72, 1 June 2007, 523 SCRA 318, 336.

[39] *Rollo* (G.R. No. 190293), p. 512, Brief of Amicus Curiae Father Joaquin Bernas, S.J.

[40] *Manalo v. Roldan-Confesor*, G.R. No. 102358, 19 November 1992, 215 SCRA 808, 819. The Court held therein:

Clear and convincing proof is "x x x more than mere preponderance, but not to extent of such certainty as is required beyond reasonable doubt as in criminal cases x x x" while substantial evidence "x x x consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance x x x" Consequently, in the hierarchy of evidentiary values, We find proof beyond reasonable doubt at the highest level, followed by clear and convincing evidence, preponderance of evidence, and substantial evidence, in that order. (Citations omitted)

[41] Section 1, Rule 133 of the Rules of Court provides:

SECTION 1. Preponderance of evidence, how determined. – In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

[42] *Raymundo v. Lunaria*, G.R. No. 171036, 17 October 2008, 569 SCRA 526.

[43] Section 5, Rule 133 of the Rules of Court provides:

SECTION 5. Substantial evidence. - In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

[44] *Santos v. Orda, Jr.*, G.R. No. 189402, 6 May 2010, 620 SCRA 375, 384.

[45] *Viudez II v. Court of Appeals*, G.R. No. 152889, 5 June 2009, 588 SCRA 345, 357.

[46] Sec. 5. Arrest without warrant; when lawful. – A peace officer or a private person may, without a warrant, arrest a person:

- (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
- (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112.

In addition, jurisprudence tells us that in the following instances, a warrantless search and seizure is valid.

- (1) search incidental to a lawful arrest,
- (2) search of moving vehicles,
- (3) seizure in plain view,
- (4) customs search, and
- (5) waiver by the accused themselves of their right against unreasonable search and seizure.

See *Manalili v. Court of Appeals*, 345 Phil. 632, 645-646 (1997), citing *People v. Lacerna*, 344 Phil. 100 (1997).

Stop-and-frisk is also another exception to the general rule against a search without a warrant (*Posadas v. Court of Appeals*, G.R. No. 89139, 2 August 1990, 188 SCRA 288, 292-293, cited in *Manalili*).

[47] 160 Phil. 906, 909 (1975); citations omitted.

[48] 243 Phil. 735 (1988).

[49] Id. at 743-745, 748-749.

[50] Id. at 497, Brief of Amicus Curiae Retired Associate Justice Vicente V. Mendoza.

[51] Id. at 523, Brief of Amicus Curiae Father Joaquin Bernas, S.J.

[52] Id. at 524, Brief of Amicus Curiae Father Joaquin Bernas, S.J.

[53] See Senate P.S. Resolution No. 1522.

[54] Bernas, *The Intent of the 1986 Constitution Writers*, 1995 Edition, p. 456.

[55] *SANLAKAS v. Executive Secretary*, supra note 16. See Section 15, Article III of the 1987 Constitution. In *Velasco v. Court of Appeals*, 315 Phil. 757 (1995), the Court declared that the privilege of the writ of habeas corpus cannot be suspended except in cases of invasion or rebellion when the public safety requires it.

[56] *Rollo* (G.R. No. 190293), pp. 163-164, 173-177, 182.

[57] Transcript of Plenary Proceedings, Joint Session of the Congress of the Republic of the Philippines, 9 December 2009. See also “Ermita: ML proclaimed without actual rebellion,” *The Philippine Star*, 11 December 2009 (<http://www.philstar.com/Article.aspx?articleId=531416&publicationSubCategoryId=63> [accessed on 4 November 2011], where the following report appeared:

Executive Secretary Eduardo Ermita admitted Wednesday night that President Arroyo proclaimed martial law in Maguindanao without an “actual” rebellion taking place in the province as required by the Constitution.

But in response to questions raised by Albay Rep. Edcel Lagman, Ermita pointed to the presence of armed groups supporting the Ampatuan family that were preventing the authorities from enforcing the law, which, he added, was frustrating the ends of justice.

Ermita said the government considered the “presence” or “massing” of the Ampatuans’ armed followers as “rebellion,” one of only two grounds under the Constitution, aside from invasion, for the imposition of martial law.

Ermita though conceded there was no actual rebellion taking place, in the sense of people taking up arms to withdraw allegiance from the central government or prevent it from enforcing the law.

Lagman said that Ermita’s answers to his questions and Justice Secretary Agnes Devanadera’s statement that there was rebellion in Maguindanao was only “looming” prove that Mrs. Arroyo received “bad legal advice” in imposing martial rule in the province.

“The President has enough powers under the commander-in-chief provision of the Constitution to quell a ‘looming’ rebellion or neutralize the ‘presence’ or ‘massing’ of armed loyalists of the Ampatuans. She is authorized to call on the Armed Forces to accomplish that objective,” Lagman said.

Lagman pointed out the absence of rebellion in Maguindanao as defined under the Revised Penal Code.

“What happened there was lawlessness. It was just a partisan conflict that did not require the imposition of martial law,” he said.

[58] Transcript of Plenary Proceedings, Joint Session of the Congress of the Republic of the Philippines, 9 December 2009.

[59] Quoted in the Petition in G.R. No. 190307, p. 15, citing <http://www.abs-cbnnews.com/nation/12/04/09/arroyo-orders-martial-law-maguindanao> [accessed on 10 November 2011], Arroyo proclaims martial law in Maguindanao.

[60] <http://www.philstar.com/Article.aspx?articleid=529869> [accessed on 4 November 2011], DOJ: Rebellion was looming.

[61] Mantawil Petition (G.R. No. 190356), pp. 8-9.

[62] <http://www.mb.com.ph/node/231907/martial-law-idea-need> [accessed on 4 November 2011], Martial law idea needs study — Gonzales.

[63] Id.

[64] Id.

[65] Id.

[66] <http://newsinfo.inquirer.net/breakingnews/nation/view/20091205-240273/A-rebellion-was-in-the-offingjustice-chief> [accessed on 4 November 2011], ‘A rebellion was in the offing’—justice chief.

[67] Proclamation No. 1081 (PROCLAIMING A STATE OF MARTIAL LAW IN THE PHILIPPINES), 21 September 1972.

[68] <http://www.time.com/time/world/article/0,8599,1943191,00.html> [accessed on 4 November 2011], Behind the Philippines’ Maguindanao Massacre, by Alastair McIndoe.

DISSENTING OPINION

VELASCO, JR., J.:

The martial law era has left the country with harrowing memories of a dark past, thus invoking passionate sentiments from the people and bringing forth remarkable vigilance as a lesson learned, and only rightfully so. Nonetheless, legal discourse must be made within bounds, as must always be the case in a civilized society governed by the rule of law and not of men. It is on the basis of the foregoing precept that I am constrained to register my dissent in the instant case.

As can be gathered from the ponencia, the controversy in the instant case revolves around the issuance by then President Gloria Macapagal-Arroyo (President Arroyo) of Proclamation No. 1959,[1] which declared a state of martial law and suspended the privilege of the writ of habeas corpus in the province of Maguindanao, except for certain identified areas of the Moro Islamic Liberation Front.

To recall, the issuance of Proclamation No. 1959 was precipitated by the chilling and loathsome killing, on November 23, 2009, of 57 innocent civilians, including the wife of then Buluan Vice-Mayor Esmail “Toto” Mangudadatu (Mangudadatu), who was supposed to file the latter’s certificate of candidacy for Governor of Maguindanao with the Provincial Office of the Commission on Elections in Shariff Aguak, accompanied by Mangudadatu’s relatives, lawyers and members of the press, among others. The victims included five others who only happened to be travelling on the same highway traversed by the Mangudadatu convoy.

As a consequence of the detestable killings tagged by media as the “Maguindanao massacre,” President Arroyo

immediately issued Proclamation No. 1946[2] on the following day, November 24, 2009, by which a state of emergency was declared in the provinces of Maguindanao and Sultan Kudarat, and in the City of Cotabato, “to prevent and suppress the occurrence of similar other incidents of lawless violence in Central Mindanao.” This was followed with the issuance of the assailed Proclamation No. 1959 on December 4, 2009.

Subsequently, on December 6, 2009, President Arroyo submitted her Report[3] to Congress in compliance with Section 18, Article VII of the 1987 Constitution.

Meanwhile, the instant petitions were filed challenging the constitutionality of Proclamation No. 1959.

Also consonant with Sec. 18, Art. VII of the 1987 Constitution, Congress convened in joint session on December 9, 2009.

Eventually, on December 12, 2009, President Arroyo lifted martial law and restored the privilege of the writ of habeas corpus in Maguindanao with the issuance of Proclamation No. 1963.[4]

Justiciability of the instant petitions

In the majority opinion, the Court declined to rule on the constitutionality of Proclamation No. 1959, rationating that “given the prompt lifting of the proclamation before Congress could review it and before any serious question affecting the rights and liberties of Maguindanao’s inhabitants could arise, the Court deems any review of its constitutionality the equivalent of beating a dead horse.”

It is my view that, despite the lifting of the martial law and restoration of the privilege of the writ, the Court must take the bull by the horn to guide, explain and elucidate to the executive branch, the legislative branch, the bar, and more importantly the public on the parameters of a declaration of martial law.

Indeed, it is a well-settled rule that this Court may only adjudicate actual and current controversies.[5] This is because the Court is “not empowered to decide moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the result as to the thing in issue in the case before it.”[6] Nonetheless, this “moot and academic” rule admits of exceptions. As We wrote in *David v. Arroyo*:

The “moot and academic” principle is not a magical formula that can automatically dissuade the courts in resolving a case. Courts will decide cases, otherwise moot and academic, if: first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount public interest is involved; third, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and fourth, the case is capable of repetition yet evading review.[7] (Emphasis supplied.)

All the aforementioned exceptions are present in this case. First, in the instant petitions, it was alleged that the issuance of Proclamation No. 1959 is violative of the Constitution. Second, it is indubitable that the issues raised affect the public’s interest as they may have an unsettling effect on the fundamental rights of the people. Third, the Court has the duty to formulate controlling principles concerning issues which involve the declaration of martial law and suspension of the privilege of the writ of habeas corpus to guide the bench, the bar, and the public. And fourth, the assailed proclamation is capable of repetition yet evading review. Considerably, the instant petitions are subject to judicial review.

While I disagree with the majority, I wish, however, to take exception to certain suppositions and discourse made in the dissent of Justice Carpio. In particular, I refer to his discussion on hypothetical situations concerning the simultaneous exercise of the power to review by this Court and by the Congress, as well as to the proposition that “[i]n declaring martial law and suspending the writ in Maguindanao in the absence of an actual rebellion,

President Arroyo indisputably violated the explicit provisions of Section 18, Article VII of the Constitution.”

Simultaneous exercise by the Court and the Congress
of their constitutional power to review

One of the matters traversed by the dissent of Justice Carpio is “[i]f the constitutional power of this Court to review the factual basis of the declaration of martial law or suspension of the writ can be exercised simultaneously with the constitutional power of the Congress to revoke the declaration of martial law or suspension of the writ, and if the decision of this Court conflicts with the decision of Congress, which decision shall prevail[?]”[8]

In addressing this issue, Justice Carpio, in his dissent, considered three scenarios, to wit:

First, the President’s martial law declaration or suspension of the writ is questioned in the Supreme Court without Congress acting on the same. Such a situation generates no conflict between the Supreme Court and Congress. There is no question that the Supreme Court can annul such declaration or suspension if it lacks factual basis. Congress, whose only power under Section 18, Article VII of the Constitution is to revoke the initial declaration or suspension on any ground, is left with nothing to revoke if the Court has already annulled the declaration.

Second, Congress decides first to revoke the martial law declaration or suspension of the writ. Since the Constitution does not limit the grounds for congressional revocation, Congress can revoke the declaration or suspension for policy reasons, or plainly for being insignificant, as for instance it involves only one barangay rebelling, or if it finds no actual rebellion. In this case, the Supreme Court is left with nothing to act on as the revocation by Congress takes effect immediately. The Supreme Court must respect the revocation by Congress even if the Court believes a rebellion exists because Congress has the unlimited power to revoke the declaration or suspension.

Third, the Supreme Court decides first and rules that there is factual basis for the declaration of martial law or suspension of the writ. In such a situation, Congress can still revoke the declaration or suspension as its power under the Constitution is broader insofar as the declaration or suspension is concerned. “Congress cannot be prevented by the Court from revoking the President’s decision because it is not for the Court to determine what to do with an existing factual situation. x x x Congress has been given unlimited power to revoke the President’s decision.” In short, even if there is an actual rebellion, whether affirmed or not by the Supreme Court, Congress has the power to revoke the President’s declaration or suspension. (Italics in the original; citations omitted.)

With the exception of the first, the two other possible scenarios adverted to that may arise from the action or inaction of the two co-equal branches of the government upon the declaration by the President of martial law or suspension of the writ cannot be resolved in the present case. Otherwise, this Court would, in effect, be making a ruling on a hypothetical state of facts which the Court is proscribed from doing.

As We have mentioned in *Albay Electric Cooperative, Inc. v. Santelices*, “[i]t is a rule almost unanimously observed that courts of justice will take cognizance only of justiciable controversies wherein actual and not merely hypothetical issues are involved.”[9] The reason behind this requisite is “to prevent the courts through avoidance of premature adjudication from entangling themselves in abstract disagreements, and for us to be satisfied that the case does not present a hypothetical injury or a claim contingent upon some event that has not and indeed may never transpire.”[10]

Further, the discussions made in Justice Carpio’s dissent, and curiously, even in the majority opinion itself, fail to take into consideration the powers of review by this Court under its expanded jurisdiction as conferred by Sec. 1, Art. VIII of the Constitution, “which includes the authority to determine whether grave abuse of discretion amounting to excess or lack of jurisdiction has been committed by any branch or instrumentality of the

government.”[11]

In his dissent, Justice Carpio explicitly declares that “Congress has the unlimited power to revoke the declaration or suspension.” Similarly, the majority, in justifying the Court’s refusal to exercise its judicial power of review, states that “[o]nly when Congress defaults in its express duty to defend the Constitution through such review should the Supreme Court step in as its final rampart.” Irresistibly implied in these statements is that once Congress acts and reviews the declaration of martial law and suspension of the privilege of the writ, this Court becomes powerless to make further inquiry on the sufficiency of the factual basis of the proclamation in an appropriate proceeding filed by any citizen as mandated under Sec. 18, Art. VII of the Constitution.

The categorical statements made in both the majority opinion and in Justice Carpio’s dissent minimize, if not totally disregard, the power of this Court to pass upon the constitutionality of acts of Congress under its expanded jurisdiction under the Constitution. The significance of this Court’s power to review under its “expanded certiorari jurisdiction” was extensively discussed in *Francisco, Jr. v. Nagmamalasakit na mga Manananggol ng mga Manggagawang Pilipino, Inc.*:

As indicated in *Angara v. Electoral Commission*, judicial review is indeed an integral component of the delicate system of checks and balances which, together with the corollary principle of separation of powers, forms the bedrock of our republican form of government x x x.

The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government. x x x And the judiciary in turn, with the Supreme Court as the final arbiter, effectively checks the other departments in the exercise of its power to determine the law, and hence to declare executive and legislative acts void if violative of the Constitution.

In the scholarly estimation of former Supreme Court Justice Florentino Feliciano, “x x x judicial review is essential for the maintenance and enforcement of the separation of powers and the balancing of powers among the three great departments of government through the definition and maintenance of the boundaries of authority and control between them.” To him, “[j]udicial review is the chief, indeed the only, medium of participation – or instrument of intervention – of the judiciary in that balancing operation.”

To ensure the potency of the power of judicial review to curb grave abuse of discretion by “any branch or instrumentalities of government,” the afore-quoted Section 1, Article VIII of the Constitution engraves, for the first time into its history, into block letter law the so-called “expanded certiorari jurisdiction” of this Court x x x.

x x x x

There is indeed a plethora of cases in which this Court exercised the power of judicial review over congressional action. Thus, in *Santiago v. Guingona, Jr.*, this Court ruled that it is well within the power and jurisdiction of the Court to inquire whether the Senate or its officials committed a violation of the Constitution or grave abuse of discretion in the exercise of their functions and prerogatives. In *Tanada v. Angara*, in seeking to nullify an act of the Philippine Senate on the ground that it contravened the Constitution, it held that the petition raises a justiciable controversy and that when an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. In *Bondoc v. Pineda*, this Court declared null and void a resolution of the House of Representatives withdrawing the nomination, and rescinding the election, of a congressman as a member of the House Electoral

Tribunal for being violative of Section 17, Article VI of the Constitution. In *Coseteng v. Mitra*, it held that the resolution of whether the House representation in the Commission on Appointments was based on proportional representation of the political parties as provided in Section 18, Article VI of the Constitution is subject to judicial review. In *Daza v. Singson*, it held that the act of the House of Representatives in removing the petitioner from the Commission on Appointments is subject to judicial review. In *Tanada v. Cuenco*, it held that although under the Constitution, the legislative power is vested exclusively in Congress, this does not detract from the power of the courts to pass upon the constitutionality of acts of Congress. In *Angara v. Electoral Commission*, it ruled that confirmation by the National Assembly of the election of any member, irrespective of whether his election is contested, is not essential before such member-elect may discharge the duties and enjoy the privileges of a member of the National Assembly.

Finally, there exists no constitutional basis for the contention that the exercise of judicial review over impeachment proceedings would upset the system of checks and balances. Verily, the Constitution is to be interpreted as a whole and “one section is not to be allowed to defeat another.” Both are integral components of the calibrated system of independence and interdependence that insures that no branch of government act beyond the powers assigned to it by the Constitution.[12] (Emphasis in the original; citations omitted.)

Indeed, the Court does not have the authority to pass upon the wisdom behind the acts of the Congress. Nonetheless, the Court is not powerless to review the legality of the manner by which such acts have been arrived at in order to determine whether Congress has transgressed the reasonable bounds of its power.[13] This is an obligation which the Court cannot, and should not, abdicate.

Moreover, by indicating that Congress, if it so decides to act, has an unlimited power to revoke the declaration of a state of martial law or suspension of the privilege of the writ unfettered by this Court’s power to review, We are treading on treacherous grounds by handing over such an unbridled discretion to Congress. Such statement, to me, partakes of an obiter without precedential value, being unnecessary to resolve the issues and arrive at a proper decision in the present case. This matter should instead be addressed at the proper case and at the proper time.

President Arroyo’s alleged indisputable violation
of the explicit provisions of the Constitution

With due respect to Justice Carpio, I cannot join him in his contention that “President Arroyo indisputably violated the explicit provisions of Section 18, Article VII of the Constitution” for declaring martial law and suspending the writ in Maguindanao in the absence of an actual rebellion. The magnification is uncalled for.

When We speak of “violation” in reference to a law, it pertains to an act of breaking or dishonoring the law.[14] The use of said word, coupled with the ascription of the term “indisputable,” somehow implies that an act was done intentionally or wilfully. At worst, its use can even be suggestive of bad faith on the part of the doer.

In the case at bar, there is neither any allegation nor proof that President Arroyo acted in bad faith when she declared martial law and suspended the writ of habeas corpus in Maguindanao. There was also no showing that there was a deliberate or intentional attempt on the part of President Arroyo to break or dishonor the Constitution by issuing the assailed proclamation. On the contrary, what is extant from the records is that President Arroyo made such declaration and suspension on the basis of intelligence reports that lawless elements have taken up arms and committed public uprising against the government and the people of Maguindanao for the purpose of depriving the Chief Executive of her powers and prerogatives to enforce the laws of the land and to maintain public order and safety, to the great damage, prejudice and detriment of the people in Maguindanao and the nation as a whole.

President Arroyo cannot be blamed for relying upon the information given to her by the Armed Forces of the Philippines and the Philippine National Police, considering that the matter of the supposed armed uprising was

within their realm of competence, and that a state of emergency has also been declared in Central Mindanao to prevent lawless violence similar to the “Maguindanao massacre,” which may be an indication that there is a threat to the public safety warranting a declaration of martial law or suspension of the writ.

Certainly, the President cannot be expected to risk being too late before declaring martial law or suspending the writ of habeas corpus. The Constitution, as couched, does not require precision in establishing the fact of rebellion. The President is called to act as public safety requires.

The following excerpts from the Brief of Amicus Curiae of Fr. Joaquin Bernas, S.J. is illuminating:

From all these it is submitted that the focus on public safety adds a nuance to the meaning of rebellion in the Constitution which is not found in the meaning of the same word in Article 134 of the Penal Code. The concern of the Penal Code, after all, is to punish acts of the past. But the concern of the Constitution is to counter threat to public safety both in the present and in the future arising from present and past acts. Such nuance, it is submitted, gives to the President a degree of flexibility for determining whether rebellion constitutionally exists as basis for martial law even if facts cannot obviously satisfy the requirements of the Penal Code whose concern is about past acts. To require that the President must first convince herself that there can be proof beyond reasonable doubt of the existence of rebellion as defined in the Penal Code and jurisprudence can severely restrict the President’s capacity to safeguard public safety for the present and the future and can defeat the purpose of the Constitution.

What all these point to are that the twin requirements of “actual rebellion or invasion” and the demand of public safety are inseparably entwined. But whether there exists a need to take action in favour of public safety is a factual issue different in nature from trying to determine whether rebellion exists. The need of public safety is an issue whose existence, unlike the existence of rebellion, is not verifiable through the visual or tactile sense. Its existence can only be determined through the application of prudential estimation of what the consequences might be of existing armed movements. Thus, in deciding whether the President acted rightly or wrongly in finding that public safety called for the imposition of martial law, the Court cannot avoid asking whether the President acted wisely and prudently and not in grave abuse of discretion amounting to lack or excess of jurisdiction. Such decision involves the verification of factors not as easily measurable as the demands of Article 134 of the Penal Code and can lead to a prudential judgment in favour of the necessity of imposing martial law to ensure public safety even in the face of uncertainty whether the Penal Code has been violated. This is the reason why courts in earlier jurisprudence were reluctant to override the executive’s judgment.

In sum, since the President should not be bound to search for proof beyond reasonable doubt of the existence of rebellion and since deciding whether public safety demands action is a prudential matter, the function of the President is far from different from the function of a judge trying to decide whether to convict a person for rebellion or not. Put differently, looking for rebellion under the Penal Code is different from looking for rebellion under the Constitution.[15]

Significantly, the President has the discretion to make a declaration of martial law or suspension of the writ of habeas corpus based on information or facts available or gathered by the President’s office. It would be preposterous to impose upon the President to be physically present at the place where a threat to public safety is alleged to exist as a condition to make such declaration or suspension.

In the present case, it should not escape the attention of the Court that President Arroyo complied with the reportorial requirement in Sec. 18, Art. VII of the Constitution, which states that “within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress.” Further, it appearing thereafter that when President Arroyo subsequently received intelligence reports on the advisability of lifting martial law or restoring the writ of

habeas corpus in Maguindanao, she immediately issued the corresponding proclamation.

To a certain extent, I conform to Justice Carpio's dissent as to the unconstitutionality of Proclamation No. 1959. To my mind, however, it is one thing to declare a decree issued by the President as unconstitutional, and it is another to pronounce that she indisputably violated the Constitution. Notably, the power to issue the subject decree is expressly granted the President. There is also compliance with the report required after the issuance of said decree. However, the issuance of the subject decree may not be sustained after due consideration of the circumstances which may or may not support such decree.

This dissent fears that overbearing declarations may later create an unwarranted limitation on the power of a President to respond to exigencies and requirements of public safety. We must recognize that as society progresses, then so may the manner and means of endangering the very existence of our society develop. This Court is fortunate for having the benefit of hindsight. This benefit may not be equally shared by the President, who is tasked to act with a sense of urgency based on best judgment as facts develop and events unfold. We may only be judges of the past. But history will be harsh on a President who is not up to the challenge and declines, or worse, fails to act when so required.

I, therefore, vote to declare Proclamation No. 1959 unconstitutional, but as heretofore qualified.

[1] Rollo (G.R. No. 190293), pp. 186-187.

[2] Id. at 185.

[3] Id. at 163-182.

[4] Id. at 190-191.

[5] *Pormento v. Estrada*, G.R. No. 191988, August 31, 2010, 629 SCRA 530, 533; citing *Honig v. Doe*, 484 U.S. 305 (1988).

[6] Id.

[7] G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 & 171424, May 3, 2006, 489 SCRA 160.

[8] Rollo (G.R. No. 190293), pp. 192-194. Resolution dated December 15, 2009.

[9] G.R. No. 132540, April 16, 2009, 585 SCRA 103, 118-119; citing *Jaafar v. Commission on Elections*, 364 Phil 322, 327-328 (1999); emphasis supplied.

[10] Separate Opinion of Justice Nachura in *De Castro v. Judicial and Bar Council*, G.R. Nos. 191002, 191032, 191057, A.M. No. 10-2-5-SC, G.R. Nos. 191149, 191342 & 191420, March 17, 2010, 615 SCRA 666, 780; citing *Office of the Governor v. Select Committee of Inquiry*, 271 Conn. 540, 570, 858 A. 2d 709 (2004).

[11] *Coseteng v. Mitra*, G.R. No. 86649, July 12, 1990, 187 SCRA 377, 383.

[12] G.R. No. 160261, November 10, 2003, 415 SCRA 44, 123-124, 132-133.

[13] See *Coseteng v. Mitra*, *supra* note 11.

[14] BLACK'S LAW DICTIONARY (9th ed., 2010).

[15] Rollo (G.R. No. 190293), pp. 516-518.

SEPARATE OPINION

PEREZ, J.,

I concur in the resulting dismissal of these petitions, more than by reason of their mootness but because I find our action overdue, it being my well-thought-out position that the constitutional authority of the Supreme Court to review the sufficiency of the factual basis of Proclamation No. 1959 has expired and is no more.

Proclamation No. 1959 declaring martial law and suspending the privilege of the writ of habeas corpus in the Province of Maguindanao was issued by then President Gloria Macapagal Arroyo on 4 December 2009. In compliance with the mandate of Section 18, Article VII of the present Constitution, she submitted her Report to Congress on 6 December 2009 or “within forty-eight hours from the proclamation.”

Seven petitions, now before the Court, were filed disputing the constitutionality of the Proclamation. In the Resolutions of 8 and 15 December 2009, the Court consolidated the petitions and required the Office of the Solicitor General to comment on the petitions. By that time, 15 December 2009, President Arroyo has, on 12 December 2009, already issued Proclamation No. 1963 lifting martial law and restoring the privilege of the writ of habeas corpus in Maguindanao.[1]

The authority of this Court to act on the petitions is embodied in the third paragraph of Section 18, Article VII of the 1987 Constitution which states:

The Supreme Court may review in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

Clearly, the mandate is both grant and limitation of authority. For while the Court, upon a proceeding filed by any citizen, may review the sufficiency of the factual basis of the proclamation of martial law by the President, or even its extension by Congress, it can only do so within thirty days from filing of the proceeding, the period within which it **MUST PROMULGATE** its decision.

Over two (2) years have passed since the seven petitions at bar were filed. Today, unquestionably, the Constitutional authority granted to the Court to decide the petitions had lapsed.

It must be made clear that I do not rely, for my position, on the act of the doer[2] “voluntarily ceasing to perform the challenged conduct” or, precisely, on the lifting of martial law by Proclamation No. 1963. Indeed, from the time of lifting on 12 December 2009 up to the thirtieth day following the filing of the instant petitions, Proclamation No. 1959 may be reviewed for all the reasons mentioned in the ponencia against which I do not now dissent. The Court did not say during the permitted time of pronouncement what the majority now deems needed saying. Thereafter, and today, no opinion as judgment is constitutionally permissible.

Neither can I join the submission that the question of constitutionality of Proclamation No. 1959 requires formulation of controlling principles to guide the Executive, Legislative and the public.

Respectfully, I submit that each and every exercise by the President of his commander-in-chiefship[3] must, if review by this Court be asked and called for, be examined under the current events and the present affairs that determine the presence of the necessity of such exercise.

All the decisions of the actors covered by Section 18 of Article VII must be done within the tight and narrow time frames in the provision. These framed periods, I submit, emphasize the imperative for currency of the decision that each must make, as indeed, the presidential proclamation, aside from having been subjected to constitutional checks, has been given limited life.

The present limitations of the power to declare martial law, including the consequent circumscription of the legislative and judicial participation in the exercise of the power, themselves limit the occasion and need for “formulation of controlling principles to guide the Executive, Legislative and the public.” The way and manner by which the Constitution provided for the commander-in-chief clause

require decisions for the present, not guidelines for the future. I respectfully submit that the Court cannot now define for the future the “sufficiency of the factual basis” of the possibly coming proclamations of martial law. I cannot see how such a pre-determination can prevent an unconstitutional imposition of martial law better than the requirement, already constitutionalized, that the President must within forty-eight hours, submit a report in person or in writing to Congress which can, by a majority of all its members revoke, the imposition.

WHEREFORE, the cases are declared closed and terminated by constitutional rescript.

[1] This and the immediately preceding paragraph were taken from the ponencia of Justice Antonio T. Carpio.

[2] *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, 568 SCRA 402, cited by Justice Antonio T. Carpio, p. 27 of ponencia.

[3] Term used by Bernas, SJ., *The 1987 Constitution of the Philippines and Commentary*, 2003 Ed., p. 865.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.