

**REPRESENTATIVES EDCCEL C. LAGMAN, TOMASITO S. VILLARIN,
TEDDY BRAWNER BAGUILAT, JR., EDGAR R. ERICE, GARY C.
ALEJANO, JOSE CHRISTOPHER Y. BELMONTE AND ARLENE
“KAKA” J. BAG-AO, PE...**

G.R. No. 243522. February 19, 2019

Ponente: CARANDANG, J.

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CARANDANG, J.:

These are consolidated petitions[1] filed under Section 18,[2] Article VII of the Constitution, assailing the constitutionality of the third extension from January 1, 2019 to December 31, 2019, of the declaration of martial law and suspension of the privilege of the writ of habeas corpus in the entire Mindanao.

Petitioners further pray for the issuance of a Temporary Restraining Order (TRO) or a Writ of Preliminary Injunction (WPI) to enjoin the respondents from implementing the one-year extension.

The Antecedents

On May 23, 2017, President Rodrigo Roa Duterte issued Proclamation No. 216, declaring a state of martial law and suspending the privilege of the writ of habeas corpus in the whole of Mindanao to address the rebellion mounted by members of the Maute Group and Abu Sayyaf Group (ASG), for a period not exceeding sixty (60) days.[3]

Proclamation No. 216 cited the following justifications for the declaration of martial law and suspension of the privilege of the writ of habeas corpus:

x x x x

WHEREAS, today 23 May 2017, the same Maute terrorist group has taken over a hospital in Marawi City, Lanao del Sur, established several checkpoints within the City, burned down certain government and private facilities and inflicted casualties on the part of Government forces, and started [the] flying [of] the flag of the Islamic State of Iraq and Syria (ISIS) in several areas, thereby openly attempting to remove from the allegiance to the Philippine Government this part of Mindanao and deprive the Chief Executive of his powers and prerogatives to enforce the laws of the land and to maintain public order and safety in Mindanao, constituting the crime of rebellion; and

WHEREAS, this recent attack shows the capability of the Maute group and other rebel groups to sow terror, and cause death and damage to property not only in Lanao del Sur but also in other parts of Mindanao.

x x x x.[4]

On May 25, 2017, within the 48-hour period set in Section 18, Article VII of the 1987 Constitution, the President submitted to the Senate and the House of Representatives his written Report, citing the factual events and reasons that impelled him to issue the said Proclamation. Both Houses expressed their full support to the Proclamation,

under the Senate P.S. Resolution No. 388 and House Resolution No. 1050, finding no cause to revoke the same.[5]

Subsequently, three (3) consolidated petitions assailing the sufficiency of the factual basis of Proclamation No. 216 were filed before this Court.

In a Decision dated July 4, 2017, the Court in Representative Edcel C. Lagman, et al. v. Hon. Salvador C. Medialdea, et al.,[6] found sufficient factual bases for the issuance of Proclamation No. 216 and declared it constitutional.

On July 18, 2017, the President requested Congress to extend the effectivity of Proclamation No. 216. In a Special Joint Session on July 22, 2017, the Congress adopted Resolution of Both Houses No. 2, which extended Proclamation No. 216 until December 31, 2017.[7]

Acting on the recommendations of the Department of National Defense (DND) Secretary Delfin N. Lorenzana (Secretary Lorenzana) and the then Armed Forces of the Philippines (AFP) Chief of Staff General Rey Leonardo Guerrero (General Guerrero) in a letter dated December 8, 2017, the President again asked both the Senate and the House of Representatives to extend the Proclamation of martial law and the suspension of the privilege of the writ of habeas corpus in the entire Mindanao for one year, from January 1, 2018 to December 31, 2018.[8]

Thereafter, four (4) consolidated petitions were filed before this Court assailing the constitutionality of the second extension of Proclamation No. 216.

In a Decision dated February 6, 2018, this Court in Representative Edcel C. Lagman, et al. v. Senate President Aquilino Pimentel III, et al.,[9] found sufficient factual bases for the second extension of the Proclamation from January 1 to December 31, 2018, and declared it constitutional.

Before the expiration of the second extension of Proclamation No. 216 or on December 4, 2018, Secretary Lorenzana in a letter[10] to the President, recommended the third extension of martial law and the suspension of the privilege of the writ of habeas corpus in the entire Mindanao for one year from January 1, 2019 up to December 31, 2019.[11] Secretary Lorenzana wrote the recommendation to the President primarily to put an end to the continuing rebellion in Mindanao waged by the DAESH-inspired groups and its local and foreign allies, particularly the Daulah Islamiyah (DI), and the threat posed by the Communist Party of the Philippines-New People's Army Terrorists (CNTs).[12]

Likewise, the AFP Chief of Staff General Carolito G. Galvez, Jr. (General Galvez) and Chief of the Philippine National Police (PNP) Director-General Oscar D. Albayalde (Director-General Albayalde) recommended the further extension of martial law and the suspension of the privilege of the writ of habeas corpus in the entire Mindanao for one year beginning January 1, 2019 up to December 31, 2019, based on current security assessment for the total eradication of the Local Terrorist Groups (LTG), ASG, Bangsamoro Islamic Freedom Fighters (BIFF), DI, and other lawless armed groups and the CNTs, their foreign and local allies, supporters, financiers, in order to fully contain the continuing rebellion in Mindanao and to prevent it from escalating to other parts of the country, and to ensure complete rehabilitation and reconstruction of the most affected areas, as well as to attain lasting peace and order, and to preserve the socio-economic growth and development of the entire Mindanao.[13]

Acting on these recommendations, the President, in a letter[14] dated December 6, 2018 to the Senate and the House of Representatives, requested for the third extension of Proclamation No. 216 from January 1, 2019 to December 31, 2019.[15] The President stated in his letter that, although there has been significant progress in putting rebellion under control and ushering in substantial economic gains in Mindanao, the joint security assessment submitted by General Galvez of the AFP and Director-General Albayalde of the PNP highlighted

essential facts indicating that rebellion still persists in Mindanao and that public safety requires the continuation of martial law in the whole of Mindanao.[16] Private sectors, Regional and Provincial Peace and Order Councils, and local government units in Mindanao were also clamoring for a further extension of the proclamation.[17] The President cited the following essential facts to extend the proclamation:

The Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, Daulah Islamiyah (DI), and other terrorist groups (collectively labeled as LTG) which seek to promote global rebellion, continue to defy the government by perpetrating hostile activities during the extended period of Martial Law. At least four (4) bombings/Improvised Explosive Device (IED) explosions had been cited in the AFP report. The Lamitan City bombing on 31 July 2018 that killed eleven (11) individuals and wounded ten (10) others, the Isulan, Sultan Kudarat IED explosion on 28 August and 02 September 2018 that killed five (5) individuals and wounded forty-five (45) others, and the Barangay Apopong IED explosion that left eight (8) individuals wounded.

The DI forces continue to pursue their rebellion against the government by furthering the conduct of their radicalization activities, and continuing to recruit new members, especially in vulnerable Muslim communities.

While the government was preoccupied in addressing the challenges posed by said groups, the CTG, which has publicly declared its intention to seize political power through violent means and supplant the country's democratic form of government with Communist rule, took advantage and likewise posed serious security concerns. Records disclosed that at least three hundred forty-two (342) violent incidents, ranging from harassments against government installations, liquidation operations, and arson attacks as part of extortion schemes, which occurred mostly in Eastern Mindanao, had been perpetrated from 01 January 2018 to 30 November 2018. About twenty-three (23) arson incidents had been recorded and it had been estimated that the amount of the properties destroyed in Mindanao alone has reached One Hundred Fifty-Six (156) Million Pesos. On the part of the military, the atrocities resulted in the killing of eighty-seven (87) military personnel and wounding of four hundred eight (408) others.

Apart from these, major Abu Sayyaf Group factions in Sulu continue to pursue kidnap for ransom activities to finance their operations. As of counting, there are a total of eight (8) kidnappings that have occurred involving a Dutch, a Vietnamese, two (2) Indonesians, and four (4) Filipinos.

The foregoing merely illustrates in general terms the continuing rebellion in Mindanao. I will be submitting a more detailed report on the subsisting rebellion in the next few days.

A further extension of the implementation of Martial Law and suspension of the privilege of the writ of habeas corpus in Mindanao will enable the AFP, the PNP, and all other law enforcement agencies to finally put an end to the on-going rebellion in Mindanao and continue to prevent the same from escalating in other parts of the country. We cannot afford to give the rebels any further breathing room to regroup and strengthen their forces. Public safety indubitably requires such further extension in order to avoid the further loss of lives and physical harm, not only to our soldiers and the police, but also to our civilians. Such extension will also enable the government and the people of Mindanao to sustain the gains we have achieved thus far, ensure the complete rehabilitation of the most affected areas therein, and preserve the socio-economic growth and development now happening in Mindanao.[18]

On December 12, 2018, the Senate and the House of Representatives, in a joint session, adopted Resolution No. 6, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao for another period of one (1) year from January 1, 2019 to December 31, 2019." [19] Joint Resolution No. 6, partly states:

x x x x

WHEREAS, on December 10, 2018, the House of Representatives received a communication dated December 6, 2018 from President Rodrigo Roa Duterte, informing the Senate and the House of Representatives, that on

December 5, 2018, he received a letter from Secretary of National Defense Delfin N. Lorenzana, as Martial Law Administrator, requesting for further extension of Martial Law and the suspension of the privilege of the writ of habeas corpus in Mindanao up to December 31, 2019;

WHEREAS, in the same letter, the President cited the joint security report of the Armed Forces of the Philippines (AFP) Chief of Staff, General Carlito G. Galvez, Jr., and the Philippine National Police (PNP) Director- General, Oscar D. Albayalde, which highlighted the accomplishment owing to the implementation of Martial Law in Mindanao, particularly the reduction of the capabilities of different terrorist groups, the neutralization of six hundred eighty-five (685) members of the local terrorist groups (LTGs) and one thousand seventy-three (1,073) members of the communist terrorist' group (CTG); dismantling of seven (7) guerilla fronts and weakening of nineteen (19) others; surrender of unprecedented number of loose firearms; nineteen percent (19%) reduction of atrocities committed by CTG in 2018 compared to those inflicted in 2017; twenty-nine percent (29%) reduction of terrorist acts committed by LTGs in 2018 compared to 2017; and substantial decrease in crime incidence;

WHEREAS, the President nevertheless pointed out that notwithstanding these gains, there are certain essential facts proving that rebellion still persists in the whole of Mindanao and that public safety requires the continuation of Martial Law, among others: (a) the Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, Daulah Islamiyah (DI), and other terrorist groups, collectively labeled as LTGs which seek to promote global rebellion, continue to defy the government by perpetrating hostile activities during the extended period of Martial Law that at least four (4) bombing incidents had been cited in the AFP report: (1) the Lamitan City bombing on July 31, 2018 that killed eleven (11) individuals and wounded ten (10) others; (2) the Isulan, Sultan Kudarat improvised explosive device (IED) explosion on August 28 and September 2, 2018 that killed five (5) individuals and wounded forty-five (45) others; and (3) the Barangay Apopong IED explosion that left eight (8) individuals wounded; (b) the DI forces also continue to pursue their rebellion against the government by furthering the conduct of their radical ization activities and continuing to recruit new members especially in vulnerable Muslim communities; and (c) the CTG, which publicly declared its intention to seize political power through violent means and supplant the country's democratic form of government with communist rule which posed serious security concerns;

WHEREAS, the President also reported that at least three hundred forty-two (342) violent incidents, ranging from harassments against government installations, liquidation operations and arson attacks occurred in Mindanao, killing eighty-seven (87) military personnel and wounding four hundred eight (408) others causing One Hundred fifty-six million pesos (P156,000,000.00) worth of property damages;

WHEREAS, the Senate and the House of Representatives are one in the belief that the security assessment submitted by the AFP and the PNP to the President indubitably confirms the continuing rebellion in Mindanao which compels further extension of the implementation of Martial Law and the suspension of the privilege of the writ of habeas corpus for a period of one (1) year, from January 1, 2019 to December 31, 2019, to enable the AFP, the PNP, and all other law enforcement agencies, to finally put an end to the ongoing rebellion and to continue to prevent the same from escalating in other parts of the country;

WHEREAS, Section 18, Article VII of the 1987 Philippine Constitution authorizes the Congress of the Philippines to extend, at the initiative of the President, the proclamation or suspension of the privilege of the writ of habeas corpus for a period to be determined by the Congress of the Philippines, if the invasion or rebellion shall persist and public safety requires it;

WHEREAS, after thorough discussion and extensive debate, the Congress of the Philippines in a Joint Session, by two hundred thirty-five (235) affirmative votes comprising the majority of all its Members, has determined that rebellion and lawless violence still persist in Mindanao and public safety indubitably requires further extension of the Proclamation of Martial Law and the suspension of the privilege of the writ of habeas corpus in the whole of Mindanao: Now, therefore, be it Resolved by the Senate and the House of Representatives in a

Joint Session assembled, To further extend Proclamation No. 216, series of 2017, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao" for another period of one (1) year from January 1, 2019 to December 31, 2019.[20]

The Parties' Arguments

A. Petitioners' Case

Based on their respective petitions and memoranda[21] and their oral arguments before this Court on January 29, 2019, petitioners' arguments are summarized as follows:

- a) The Court is mandated to independently determine the sufficiency of factual bases of the extension of martial law and it must not limit its review on the basis of the declaration presented by the Executive and Legislative branches of the government.[22] Given the Court's critical role in the system of checks and balances, it must be proactive and in keeping with the Constitutional mandate that the Supreme Court is the ultimate guardian of the Constitution, particularly of the allocation of powers, the guarantee of individual liberties and the assurance of the people's sovereignty.[23]
- b) The present factual situation of Mindanao no longer calls for a third extension of martial law and the suspension of the privilege of the writ of habeas corpus because no actual rebellion persists in Mindanao.[24] The acts of lawlessness and terrorism by the remnants of terrorist groups and by the communist insurgents enumerated in the letter of the President were not established to be related or connected to the crime of rebellion, and can all be subdued and suppressed under the calling out power of the President.[25]
- c) The absence of the requirement of public safety is underscored by the very absence of an actual rebellion consisting of an armed uprising against the government for the purpose of removing Mindanao or a portion thereof from the allegiance to the Republic. More so, the alleged rebellion in Mindanao does not endanger public safety.[26] The threat to public safety contemplated under the Constitution is one where the government cannot sufficiently or effectively govern, as when the courts or government offices cannot operate or perform their functions.[27]
- d) Proclamation No. 216 has become *functus officio* and the extension is no longer necessary, considering the deaths of the leaders of the ASG and the Maute brothers, and the cessation of combat operations and the liberation of Marawi City.[28]
- e) Congress committed grave abuse of discretion in approving the third extension hastily despite the absence of sufficient factual basis.[29]
- f) The third extension violates the constitutional proscription against a long duration of martial law or the suspension of the privilege of the writ of habeas corpus.[30] The constitutional limitations on the period of martial law must be for a short or limited duration, which must not exceed sixty (60) days, and should the third extension be granted, the martial law regime would have lasted 951 days.[31]
- g) The "justifications" proffered by the President in his letter merely illustrates in general terms, lacking in specifics to support the claim that rebellion persists in Mindanao, and the President undertook to submit to the Congress a more detailed report which he failed to do.[32]
- h) The resolutions and recommendations for martial law extension by the Regional and Provincial Peace and Order Councils were due only to their desire for peace and order, economic development, and not because rebellion persists in Mindanao.[33]
- i) The third extension of martial law will lead to further violation of citizens' political, civil, and human rights.[34]

B. Respondents' Case

Respondents, through the Office of the Solicitor General (OSG), argue that:

- a) The Court's power of judicial review under Section 18, Article VII is limited to the determination of the sufficiency of the factual basis of the extension of martial law and suspension of the privilege of the writ of habeas corpus.[35]
- b) There is sufficient factual basis to extend the effectivity of Proclamation No. 216 as rebellion persists in Mindanao, and public safety requires it.[36] The President and both Houses of Congress found that there is probable cause or evidence to show that rebellion persists in Mindanao.[37]
- c) The events happening in Mindanao strongly indicate that the continued implementation of martial law is necessary to protect and insure public safety.[38]
- d) The deaths of the leaders of the ASG, the Maute brothers and the cessation of the Marawi siege did not render functus officio the declaration of martial law under Proclamation No. 216.[39] Although the Marawi siege ended, the factual circumstances which became the basis for the second extension still exists and continuously threaten the peace and order situation in Mindanao.[40]
- e) Congress has the sole prerogative to extend martial law and the suspension of the privilege of the writ of habeas corpus since the 1987 Constitution does not limit the period of extension and suspension, nor prohibit further extensions or suspensions.[41]
- f) Congress has the absolute discretion in determining the rules of procedure with regard to the conduct and manner by which Congress deliberates on the President's request for extension of martial law, and therefore is not subject to judicial review.[42]
- g) The alleged human rights violations do not warrant the nullification of martial law and the suspension of the privilege of the writ of habeas corpus. There are sufficient legal safeguards to address human rights abuses.[43]
- h) Petitioners failed to prove that they are entitled of injunctive relief.[44]

The Issues

The following are the issues to be resolved as identified by the Court:[45]

- A. Whether there exists sufficient factual basis for the extension of martial law in Mindanao.
 - Whether rebellion exists and persists in Mindanao.
 - Whether public safety requires the extension of martial law in Mindanao.
 - Whether the further extension of martial law has not been necessary to meet the situation in Mindanao.
- B. Whether the Constitution limits the number of extensions and the duration for which Congress can extend the proclamation of martial law and the suspension of the privilege of the writ of habeas corpus.
- C. Whether Proclamation No. 216 has become functus officio with the cessation of Marawi siege that it may no longer be extended.
- D. Whether the manner by which Congress approved the extension of martial law is a political question and is not reviewable by the Court [E]n [B]anc.
 - Whether Congress has the power to determine its own rules of proceedings in conducting the joint session under Section 18, Article VII of the Constitution.

- Whether Congress has the discretion as to how it will respond to the President's request for the extension of martial law in Mindanao - including the length of the period of deliberation and interpellation of the executive branch's resource persons.

E. Whether the declaration of martial law and the suspension of the privilege of the writ of habeas corpus or extension thereof may be reversed by a finding of grave abuse of discretion on the part of Congress. If so, whether the extension of martial law was attended by grave abuse of discretion.

F. Whether the allegations of human rights violations in the implementation of martial law in Mindanao is sufficient to warrant nullification of its extension.

x x x x

Ruling of the Court

The requirements of rebellion and public safety are present to uphold the extension of martial law in Mindanao from January 1, 2019 to December 31, 2019.

Since the Court must determine the sufficiency of the factual basis for the declaration as well as the extension of martial law and suspension of the writ of habeas corpus, the standard of review under Section 18, Article VII is not grave abuse of discretion.

The sufficiency of the factual basis for the extension of martial law in Mindanao must be determined from the facts and information contained in the President's request, supported by reports submitted by his alter egos to Congress. These are the bases upon which Congress granted the extension. The Court cannot expect exactitude and preciseness of the facts and information stated in these reports, as the Court's review is confined to the sufficiency and reasonableness thereof. While there may be inadequacies in some of the facts, i.e., facts which are not fully explained in the reports, these are not reasons enough for the Court to invalidate the extension as long as there are other related and relevant circumstances that support the finding that rebellion persists and public safety requires it.

Contrary to Monsod, et al., the Court need not make an independent determination of the factual basis for the proclamation or extension of martial law and the suspension of the privilege of the writ of habeas corpus. The Court is not a fact-finding body required to make a determination of the correctness of the factual basis for the declaration or extension of martial law and suspension of the writ of habeas corpus. It would be impossible for the Court to go on the ground to conduct an independent investigation or factual inquiry, since it is not equipped with resources comparable to that of the Commander-in-Chief to ably and properly assess the ground conditions.

Thus, in determining the sufficiency of the factual basis for the extension of martial law, the Court needs only to assess and evaluate the written reports of the government agencies tasked in enforcing and implementing martial law in Mindanao.

Indeed, in *Montenegro v. Castañeda*,^[46] the Court pronounced that:

[W]hereas the Executive branch of the Government is enabled thru its civil and military branches to obtain information about peace and order from every quarter and corner of the nation, the judicial department, with its very limited machinery cannot be in better position to ascertain or evaluate the conditions prevailing in the Archipelago.

But even supposing the President's appraisal of the situation is merely *prima facie*, we see that petitioner in this litigation has failed to overcome the presumption of correctness which the judiciary accords to acts of the Executive and Legislative Departments of our Government.

The quantum of proof applied by the President in his determination of the existence of rebellion is probable cause. The Court in *Lagman v. Medialdea*[47] held that "in determining the existence of rebellion, the President only needs to convince himself that there is probable cause or evidence showing that more likely than not a rebellion was committed or is being committed. To require him to satisfy a higher standard of proof would restrict the exercise of his emergency powers."

The Court need not delve into the accuracy of the reports upon which the President's decision is based, or the correctness of his decision to declare martial law or suspend the writ, for this is an executive function. The threshold or level (degree) of sufficiency is, after all, an executive call. The President, who is running the government and to whom the executive power is vested, is the one tasked or mandated to assess and make the judgment call which was not exercised arbitrarily.

The Court in the case of *David v. Macapagal-Arroyo*[48] held that:

As to how the Court may inquire into the President's exercise of power, the Court through the case of *Lansang v. Garcia*], adopted the test that "judicial inquiry can go no further than to satisfy the Court not that the President's decision is correct," but that "the President did not act arbitrarily." Thus, the standard laid down is not correctness, but arbitrariness. In the case of *Integrated Bar of the Philippines v. Zamora*], this Court added that "it is incumbent upon the petitioner to show that the President's decision is totally bereft of factual basis" and that if he fails, by way of proof, to support his assertion, then "this Court cannot undertake an independent investigation beyond the pleadings." (Citations omitted)

In finding sufficiency of the factual basis for the third extension, the Court has to give due regard to the military and police reports which are not palpably false, contrived and untrue; consider the full complement or totality of the reports submitted, and not make a piecemeal or individual appreciation of the facts and the incidents reported. The President's decision to extend the declaration and the suspension of the Writ, when it goes through the review of the Legislative branch, must be accorded a weightier and more consequential basis. Under these circumstances, the President's decision or judgment call is affirmed by the representatives of the People.

The December 6, 2018 letter of the President to the Congress is not a mere repetition of his previous letters requesting for extensions as petitioners would like Us to believe. Although couched in general terms, specific updates on the current state of violence and what the government has done to eradicate the current threats waged by different rebel groups were reported. These updates are periodically reviewed by the martial law implementers and are presented to the President in order to ensure the responsiveness and suitability of measures undertaken by the government.

While the primary justification for the President's request for extension is the on-going rebellion in Mindanao, the situation remains the same despite the death of the leaders, and the addition of rebel groups whose activities were intensified and pronounced after the first and second extensions.

The factual basis for the extension of martial law is the continuing rebellion being waged in Mindanao by Local Terrorist Rebel Groups (LTRG) - identified as the ASG, BIFF, DI, and other groups that have established affiliation with ISIS/DAESH, and by the Communist Terrorist Rebel Groups (CTRG) - the components of which are the Communist Party of the Philippines (CPP), New People's Army (NPA), and the National Democratic Front (NDF).

The Department of National Defense's (DND's) "Reference Material, Joint Session on the Extension of Martial Law in Mindanao," which was presented during the Joint Session of Congress, and offered in evidence as Slides during this Court's Oral Arguments on January 29, 2019, shows the following violent incidents from January 1 to November 30, 2018 as part of the continuing rebellion being waged by the LTRGs:[49]

Type of Incident

Number of Incidents

Ambuscade

6

Arson

2

Firefighting/Attack

4

Grenade Throwing

4

Harassment

54

IED/Landmining Explosion

31

Attempted Kidnapping

1

Kidnapping

19

Liquidation

9

Murder

4

Shooting

3

Total

137

In the same Reference Material, the DND reported the following violent incidents for the period of January 1 to November 30, 2018 relative to the continuing rebellion being conducted by the CTRGs:[50]

Type of Incident

Number of Incidents

Ambush

15	
Raid	
14	
Nuisance Harassment	
41	
Harassment	
29	
Disarming	
5	
Landmining	
8	
SPARU Operations	
18	
Liquidation	
23	
Kidnapping	
5	
Robbery/Hold-up	
1	
Bombing	
1	
Arson	
27	
Total	
177	

From the slides presented by respondents during the Oral Arguments on January 29, 2019, and as summarized by respondents in their Memorandum, the following events transpired in Mindanao:[51]

- a) No less than 181 persons in the martial law Arrest Orders have remained at large.
- b) Despite the dwindling strength and capabilities of the local terrorist rebel groups, the recent bombings that transpired in Mindanao that collectively killed 16 people and injured 63 others in less than 2 months is a testament on how lethal and ingenious terrorist attacks have become.
- c) On October 5, 2018, agents from the Philippine Drug Enforcement Agency (PDEA) who conducted an anti-drug symposium in Tagoloan II, Lanao Del Sur, were brutally ambushed, in which five (5) were killed and

two (2) were wounded.

d) The DI vulnerable Muslim continues to conduct radicalization activities in communities and recruitment of new members, targeting relatives and orphans of killed DI members. Its presence in these areas immensely disrupted the government's delivery of basic services and clearly needs military intervention.

e) Major ASG factions in Sulu and Basilan have fully embraced the DAESH ideology and continue their express kidnappings. As of December 6, 2018, there are still seven (7) remaining kidnap victims under captivity.

f) Despite the downward trend of insurgency parameters, Mindanao remains to be the hotbed of communist rebel insurgency in the country. Eight (8) out of the 14 active provinces in terms of communist rebel insurgency are in Mindanao.

g) The Communist Terrorist Rebel Group in Mindanao continues its hostile activities while conducting its organization, consolidation and recruitment. In fact, from January to November 2018, the number of Ideological, Political and Organization (IPO) efforts of this group amounted to 1,420, which indicates their continuing recruitment of new members. Moreover, it is in Mindanao where the most violent incidents initiated by this group transpire. Particularly, government forces and business establishment are being subjected to harassment, arson and liquidations when they defy their extortion demands.

h) The CTRG's exploitation of indigenous people is so rampant that Lumad schools are being used as recruiting and training grounds for their armed rebellion and anti-government propaganda. On November 28, 2018, Satur Ocampo and 18 others were intercepted by the Talaingod PNP checkpoint in Davao del Norte for unlawfully taking into custody 14 minors who are students of a learning school in Sitio Dulyan, Palma Gil in Talaingod town. Cases were filed against Ocampo's camp for violations of Republic Act (R.A.) No. 10364, in relation to R.A. No. 7610, as well as violation of Article 270 of the Revised Penal Code (RPC), due to the Philippine National Police's (PNP) reasonable belief that the school is being used to manipulate the minds of the students' rebellious ideas against the government.

The cited events demonstrate the spate of violence of rebel groups in Mindanao in pursuit of the singular objective to seize power over parts of Mindanao or deprive the President or Congress of their power and prerogatives over these areas. The absence of motives indicated in several reports does not mean that these violent acts and hostile activities committed are not related to rebellion which absorbs other common crimes.

In addition, these violent incidents should not be viewed as isolated events but in their totality, showing a consistent pattern of rebellion in Mindanao. As explained by the AFP Office of Deputy Chief of Staff for Intelligence (OJ2) in its letter to the OSG, the violent incidents cannot be viewed in isolation:

[T]he events in the lists were not selected but rather constitute the complete record of all violent incidents that occurred in 2018 that are attributed to a specific threat group or any of its members. The argument advanced is that these incidents should be viewed in their totality and not as unrelated, isolated events. These violent incidents, when combined with the recorded armed encounters or clashes between government troops and rebel groups, and taking into account the substantial casualties resulting from these combined events, show a consistent pattern of armed uprising or rebellion in Mindanao.[52] (Emphasis Ours)

The test of sufficiency is not accuracy nor preciseness but reasonableness of the factual basis adopted by the Executive in ascertaining the existence of rebellion and the necessity to quell it.

REBELLION EXISTS AND PERSISTS IN MINDANAO

Essential to the declaration of martial law and suspension of the privilege of the writ of habeas corpus is rebellion defined under Article 134 of the Revised Penal Code, as applied in the cases of *Lagman v. Medialdea* and *Lagman v. Pimentel III*:

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.

Thus, for rebellion to exist, the following elements must be present, to wit: "(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: (i) the territory of the Philippines or any part thereof; or (ii) 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." [53]

And it was emphasized in *Lagman v. Medialdea* [54] that:

It has been said that the "gravamen of the crime of rebellion is an armed public uprising against the government;" and that by nature, "rebellion is x x x a crime of masses or multitudes, involving crowd action, that cannot be confined a priori, within predetermined bounds." We understand this to mean that the precise extent or range of the rebellion could not be measured by exact metes and bounds. (Citations omitted)

Rebellion, within the context of the situation in Mindanao, encompasses no definite time nor particular locality of actual war and continues even when actual fighting has ceased. Therefore, it is not restricted as to the time and locality of actual war nor does it end when actual fighting has ended. The state of rebellion results from the commission of a series or combination of acts and events, past, present and future, primarily motivated by ethnic, religious, political or class divisions which incites violence, disturbs peace and order, and poses serious threat to the security of the nation. The ultimate objective of the malefactors is to seize power from the government, and specifically "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." [55]

The visible and invisible facets of rebellion is accurately depicted in *Lagman v. Medialdea*: [56]

In fine, it is difficult, if not impossible, to fix the territorial scope of martial law in direct proportion to the "range" of actual rebellion and public safety simply because rebellion and public safety have no fixed physical dimensions. Their transitory and abstract nature defies precise measurements; hence, the determination of the territorial scope of martial law could only be drawn from arbitrary, not fixed, variables. The Constitution must have considered these limitations when it granted the President wide leeway and flexibility in determining the territorial scope of martial law. [57] (Emphasis ours)

The nuance added to the concept of rebellion under the 1987 Constitution was amplified in Justice Presbiterio Velasco, Jr.'s Dissenting Opinion in *Fortun v. Macapagal-Arroyo*, [58] citing the excerpts from the Brief of Amicus Curiae of Fr. Joaquin Bernas, S.J. where it was stated:

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. *x x x*.^[59] (Italics in the original)

In the Matter of the Petition for Habeas Corpus of Benigno S. Aquino v. Enrile,^[60] which was decided in 1974 under the 1973 Constitution, the Court has already acknowledged that:

The state of rebellion continues up to the present. The argument that while armed hostilities go on in several provinces in Mindanao there are none in other regions except in isolated pockets in Luzon, and that therefore there is no need to maintain martial law all over the country, ignores the sophisticated nature and ramifications of rebellion in a modern setting. It does not consist simply of armed clashes between organized and identifiable groups on fields of their own choosing. It includes subversion of the most subtle kind, necessarily clandestine and operating precisely where there is no actual fighting. Underground propaganda, through printed news sheets or rumors disseminated in whispers; recruitment of armed and ideological adherents, raising of funds, procurement of arms and material, fifth-column activities including sabotage and intelligence — all these are part of the rebellion which by their nature are usually conducted far from the battle fronts. They cannot be counteracted effectively unless recognized and dealt with in that context.^[61]

Equally relevant is the very early pronouncement by this Court in *Montenegro v. Castañeda*^[62] in relation to the suspension of the privilege of the writ of habeas corpus under Proclamation No. 210, s. 1950, describing the nature of rebellious acts:

To the petitioner's unpracticed eye the repeated encounters between dissident elements and military troops may seem sporadic, isolated, or casual. But the officers charged with the Nation's security, analyzed the extent and pattern of such violent clashes and arrived at the conclusion that they are warp and woof of a general scheme to overthrow his government *vi et armis*, by force and arms.^[63]

Recognizing the political realities in the country, the geography of Mindanao, the increasing number of local and foreign sympathizers who provide financial support, and the advances in technology that have emboldened and reinforced the terrorists' and extremists' capabilities to disturb peace and order, the declaration of martial law cannot be restricted only to areas where actual fighting continue to occur. As a result, rebels have become more cunning and instigating rebellion from a distance is now more attainable, perpetrating acts of violence clandestinely in several areas of Mindanao.

PUBLIC SAFETY REQUIRES THE EXTENSION OF MARTIAL LAW IN MINDANAO

The Resolutions coming from the Regional Peace and Order Council (RPOC) of Region XI (Davao City)^[63] and Region XIII (Caraga);^[64] the Provincial Peace and Order Council (PPOC) of the Province of Agusan del Norte,^[65] Agusan del Sur,^[66] and Dinagat Islands;^[67] and the Office of the Governor, Province of Saranggani,^[68] expressing support for the President's declaration of martial law and its extension, reflect the public sentiment for the restoration of peace and order in Mindanao. These resolutions are initiated by the people of Mindanao, the very same people who live through the harrows of war, things and experiences that we can only read about. Importance must be given to these resolutions as they are in the best position to determine their needs.

Citing the Brief of Amicus Curiae of Fr. Joaquin Bernas, S.J. in Justice Velasco, Jr.'s Dissenting Opinion in *Fortun v. Macapagal-Arroyo*,^[69] the demands of public safety is determined through the application of prudential estimation, thus:

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 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.

Ultimately, it is the Commander-in-Chief, aided by the police and military, who is the guardian and keeper of public safety.

The Congress has the prerogative to extend the martial law and the suspension of the privilege of the writ of habeas corpus as the Constitution does not limit the period for which it can extend the same.

This Court in the case of *Lagman v. Medialdea*^[71] explained the only limitations to the exercise of congressional authority to extend such proclamation or suspension: a) the extension should be upon the President's initiative; b) it should be grounded on the persistence of the invasion or rebellion and the demands of public safety; and c) it is subject to the Court's review of the sufficiency of its factual basis upon the petition of any citizen.

Why Section 18 of Article VII of the Constitution did not fix the period of the extension of martial law and the suspension of the privilege of the writ of habeas corpus and granted Congress the authority to decide its duration is fully explained in the deliberations of the Constitutional Commission on the matter, viz:

MR. SUAREZ.

Thank you, Madam President. I concur with the proposal of Commissioner Azcuna but may I suggest that we fix a period for the duration of the extension, because it could very well happen that the initial period may be shorter than the extended period and it could extend indefinitely. So if Commissioner Azcuna could put a certain limit to the extended period, I would certainly appreciate that, Madam President. x x x x x x x x

MR. SUAREZ.

Thank you Madam President. May we suggest that on line 7, between the words "same" and "if," we insert the phrase FOR A PERIOD OF NOT MORE THAN SIXTY DAYS, which would equal the initial period for the first declaration just so it will keep going.

THE PRESIDENT.

What does the Committee say?

MR. REGALADO.

May we request a clarification from Commissioner Suarez on this proposed amendment? This extension is already a joint act upon the initiative of the President and with the concurrence of the Congress. It is assumed that they have already agreed not only on the fact of extension but on the period of extension. If we put it at 60 days only, then thereafter they have to meet again to agree jointly on a further extension.

MR. SUAREZ.

That is precisely intended to safeguard the interests and protect the lives of citizens.

MR. REGALADO.

In the first situation where the President declares martial law, there had to be a prescribed period because there was no initial concurrence requirement. And if there was no concurrence, the martial law period ends at 60 days. Thereafter, if they intend to extend the same suspension of the privilege of the writ or the proclamation of martial law, it is upon the initiative of the President this time, and with the prior concurrence of Congress. So, the period of extension has already been taken into account by both the Executive and the Legislative, unlike the first situation where the President acted alone without prior concurrence. The reason for the limitation in the first does not apply to the extension.

MR. SUAREZ.

We are afraid of a situation that may develop where the extended period would be even longer than the initial period, Madam President. It is only reasonable to suggest that we have to put a restriction on the matter of the exercise of this right within a reasonable period.

MR. REGALADO.

Madam President, following that is the clause "extend the same if the invasion or rebellion shall persist and public safety requires it." That by itself suggests a period within which the suspension shall be extended, if the invasion is still going on. But there is already the cut-off 60-day period. Do they have to meet all over again and agree to extend the same?

MR. SUAREZ.

That is correct. I think the two of them must have to agree on the period; but it is theoretically possible that when the President writes a note to the Congress, because it would be at the instance of the President that the extension would have to be granted by Congress, it is possible that the period for the extension may be there. It is also possible that it may not be there. That is the reason why we want to make it clear that there must be a reasonable period for the extension. So, if my suggestion is not acceptable to the Committee, may I request that a voting be held on it Madam President.

FR. BERNAS.

Madam President, may I just propose something because I see the problem. Suppose we were to say: "or extend the same FOR A PERIOD TO BE DETERMINED BY CONGRESS" — that gives Congress a little flexibility on just how long the extension should be. x x x x x x x x

THE PRESIDENT.

Is that accepted by Commissioner Suarez?

MR. SUAREZ.

Yes, Madam President.

MR. OPLE.

May I just pose a question to the Committee in connection with the Suarez amendment? Earlier Commissioner Regalado said that that point was going to be a collective judgment between the President and the Congress. Are we departing from that now in favor, of giving Congress the plenipotentiary power to determine the period?

FR. BERNAS.

Not really, Madam President, because Congress would be doing this in consultation with the President, and the President would be outvoted by 300 Members.

MR. OPLE.

Yes, but still the idea is to preserve the principle of collective judgment of that point upon the expiration of the 60 days when, upon his own initiative, the President seeks for an extension of the proclamation of martial law or the suspension of the privilege of the writ.

FR. BERNAS.

Yes, the participation of the President, is that when we put all of these encumbrances on the President and Commander-in-Chief during an actual invasion and rebellion, given an intractable Congress that may be dominated by opposition parties, we may be actually impelling the President to use the sword of Alexander to cut the Gordian knot by just declaring a revolutionary government that sets him free to deal with the invasion or the insurrection. That is the reason I am in favor of the present formulation. However, if Commissioner Suarez insists on his amendment, I do not think I will stand in the way.

Thank you, Madam President.

MR. SUAREZ.

We will accept the committee suggestion, subject to style later on. x x x x x x x x.[72]

The records of the Constitutional Commission show that Commissioner Suarez's proposal to add a similar 60-day limitation to the extension of an initial proclamation of martial law was not adopted by a majority of the members of the Commission. The framers evidently gave enough flexibility on Congress to determine the duration of the extension.

The Constitutional limits/checks set by the Constitution to guard against the whimsical or arbitrary use of the extra ordinary powers of the Chief Executive under Section 18, Article VII are well in place and are working. At the initial declaration of the martial law, the President observed the 60-day limit and the requirement to report to Congress. In this initial declaration as well as in the extensions, the President's decision was based on the reports prepared by the different specialized agencies of the Executive branch charged with external and internal security of the whole country. These were the same reports submitted to Congress which were deliberated on, no matter

how brief the time allotment was for each of the law makers' interpellations. Yet the evidence or basis to support the extension of martial law passed through the scrutiny of the Chief Executive and through several more of the House of Representatives and the Senate. The Court must remember that We are called upon to rule on whether the President, and this time with the concurrence of the two Houses of Congress, acted with sufficient basis in approving anew the extension of martial law. We must not fall into or be tempted to substitute Our own judgment to that of the People's President and the People's representatives. We must not forget that the Constitution has given us separate and quite distinct roles to fill up in our respective branches of government.

Proclamation No. 216 has not become *functus officio* with the cessation of the Marawi siege.

While Proclamation No. 216 specifically cited the attack of the Maute group in Marawi City as basis for the declaration of martial law, rebellion was not necessarily ended by the cessation of the Marawi siege. Rebellion in Mindanao still continues, as shown by the violent incidents stated in reports to the President, and was made basis by the Congress in approving the third extension of martial law. These violent incidents continuously pose a serious threat to security and the peace and order situation in Mindanao.

Martial law in Mindanao should not be confined to the Marawi siege. Despite the death of Hapilon and the Maute brothers, the remnants of their groups have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion. Clashes between rebels and government forces continue to take place in other parts of Mindanao. Kidnapping, arson, robbery, bombings, murder - crimes which are absorbed in rebellion - continue to take place therein. These crimes are part and parcel of the continuing rebellion in Mindanao.

The report of the military shows that the reported IED incidents, ambushade, murder, kidnapping, shooting and harassment in 2018 were initiated by ASG members and the BIFF.[72]

Be it noted that rebellion is a continuing crime.[73] It does not necessarily follow that with the liberation of Marawi, rebellion no longer exists. It will be a tenuous proposition to confine rebellion simply to a resounding clash of arms with government forces.[74] It was held in *Lagman v. Pimentel*[75] that:

We recognized that "rebellion is not confined within predetermined bounds," and "for the crime of rebellion to be consummated, it is not required that all armed participants should congregate in one place x x x and publicly rise in arms against the government for the attainment of their culpable purpose." We held that the grounds on which the armed public uprising actually took place should not be the measure of the extent, scope or range of the actual rebellion when there are other rebels positioned elsewhere, whose participation did not necessarily involve the publicity aspect of rebellion, as they may also be considered as engaged in the crime of rebellion.

In a similar vein, the termination of armed combat in Marawi does not conclusively indicate that the rebellion has ceased to exist. It will be a tenuous proposition to confine rebellion simply to a resounding clash of arms with government forces. As noted in *Aquino, Jr. v. Enrile*, modern day rebellion has other facets than just the taking up of arms, including financing, recruitment and propaganda, that may not necessarily be found or occurring in the place of the armed conflict.[76] (Citations omitted)

In sum, Proclamation No. 216 did not become *functus officio* with the cessation of the Marawi siege. Considering that rebellion persists and that the public safety requires it, there is sufficient factual basis to extend martial law in Mindanao for the third time.

The manner by which Congress approved the extension of martial law and the suspension of the privilege of the writ of habeas corpus is a political question that is not reviewable by the Court.

We cannot say anything more than what has been expounded and find no reason to deviate from the ruling on this

matter in the case of *Lagman v. Pimentel III*:^[77]

No less than the Constitution, under Section 16 of Article VI, grants the Congress the right to promulgate its own rules to govern its proceedings, to wit:

Section 16. (3) Each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds of all its Members, suspend or expel a Member. A penalty of suspension, when imposed, shall not exceed sixty days. (Emphasis ours)

In *Pimentel, Jr., et al. v. Senate Committee of the Whole*, this constitutionally-vested authority is recognized as a grant of foil discretionary authority to each House of Congress in the formulation, adoption and promulgation of its own rules. As such, the exercise of this power is generally exempt from judicial supervision and interference, except on a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process.

This freedom from judicial interference was explained in the 1997 case of *Arroyo v. De Venecia*, wherein the Court declared that:

But the cases, both here and abroad, in varying forms of expression, all deny to the courts the power to inquire into allegations that, in enacting a law, a House of Congress failed to comply with its own rules, in the absence of showing that there was a violation of a constitutional provision or the rights of private individuals.

In other words, the Court cannot review the rules promulgated by Congress in the absence of any constitutional violation. Petitioners have not shown that the above-quoted rules of the Joint Session violated any provision or right under the Constitution.

Construing the full discretionary power granted to the Congress in promulgating its rules, the Court, in the case of *Spouses Dela Paz (Ret.) v. Senate Committee on Foreign Relations, et al.* explained that the limitation of this unrestricted power deals only with the imperatives of quorum, voting and publication. It should be added that there must be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained.^[79] (Citations omitted)

The allegations of human rights violations in the implementation of martial law in Mindanao is not sufficient to warrant a nullification of its extension.

All forms of human rights violations and abuses during the implementation of martial law and suspension of powers should not go unpunished. Nonetheless, consistent with the previous rulings of the Court in *Lagman v. Medialdea* and *Lagman v. Pimentel III*, the alleged violations and abuses should be resolved in a separate proceeding. Therefore, the purported human rights abuses mentioned in the petitions, particularly in the *Bayan Muna* and *Valle* Petitions, fail to persuade that these are sufficient to warrant a nullification of the extension.

A declaration of martial law does not suspend fundamental civil rights of individuals as the Bill of Rights enshrined in the Constitution remain effective. Civil courts and legislative bodies remain open. While it is recognized that, in the declaration of martial law and the suspension of the privilege of the writ of habeas corpus, the powers given to officials tasked with its implementation are susceptible to abuses, these instances have already been taken into consideration when the pertinent provisions on martial law were drafted. Safeguards within the 1987 Constitution and existing laws are available to protect the people from these abuses. In *Lagman v. Medialdea*,^[80] the Court emphasized that:

It was the collective sentiment of the framers of the 1987 Constitution that sufficient safeguards against possible misuse and abuse by the Commander-in-Chief of his extraordinary powers are already in place and that no further emasculatation of the presidential powers is called for in the guise of additional safeguards.

In *Lagman v. Pimentel III*,^[81] the Court discussed these safeguards to wit:

Nevertheless, cognizant of such possibility of abuse, the framers of the 1987 Constitution endeavored to institute a system of checks and balances to limit the President's exercise of the martial law and suspension powers, and to establish safeguards to protect civil liberties. Thus, pursuant to Section 18, Article VII of the 1987 Constitution:

(a) The President may declare martial law or suspend of the privilege of the writ of the privilege of habeas corpus only when there is an invasion or rebellion and public safety requires such declaration or suspension.

(b) The President's proclamation or suspension shall be for a period not exceeding 60 days.

(c) Within 48 hours from the proclamation or suspension, the President must submit a Report in person or in writing to Congress.

(d) The Congress, voting jointly and by a vote of at least a majority of all its Members, can revoke the proclamation or suspension.

(e) The President cannot set aside the Congress' revocation of his proclamation or suspension.

(f) The President cannot, by himself, extend his proclamation or suspension. He should ask the Congress' approval.

(g) Upon such initiative or request from the President, the Congress, voting jointly and by a vote of at least a majority of all its Members, can extend the proclamation or suspension for such period as it may determine.

(h) The extension of the proclamation or suspension shall only be approved when the invasion or rebellion persists and public safety requires it.

(i) The Supreme Court may review the sufficiency of the factual basis of the proclamation or suspension or the extension thereof, in an appropriate proceeding filed by any citizen.

(j) The Supreme Court must promulgate its decision within 30 days from the filing of the appropriate proceeding.

(k) Martial law does not suspend the operation of the Constitution.

Accordingly, the Bill of Rights remains effective under a state of martial law. Its implementers must adhere to the principle that civilian authority is supreme over the military and the armed forces is the protector of the people. They must also abide by the State's policy to value the dignity of every human person and guarantee full respect for human rights.

(l) Martial law does not 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.

(m) The suspension of the privilege of the writ applies only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.

(n) Finally, during the suspension of the privilege of the writ, any person thus arrested or detained should be judicially charged within three days, otherwise he should be released.^[82]

In addition to the safeguards provided by the Constitution, adequate remedies in the ordinary course of law against abuses and violations of human rights committed by erring public officers are available including the following:

1. R.A. No. 7438 (An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as Well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing

Penalties for Violations Thereof);

2. R.A. No. 9372 or the Human Security Act of 2007;

3. R.A. No. 9745 or the Anti-Torture Act of 2009; and

4. Writs of Amparo (A.M. No. 07-9-12-SC) and Habeas Data (A.M. No. 08-1-16-SC); and

5. Universal Declaration of Human Rights (UDHR).

In relation to the international human rights principles established under the Universal Declaration of Human Rights (UDHR), the law enforcement officials are also guided by the principles and safeguards declared in the International Covenant on Civil and Political Rights. Soft law instruments of particular relevance to law enforcement include United Nations' (UN) Basic Principles [o]n the Use of Force and Firearms by Law Enforcement Officials (BPUFF),^[83] Code of Conduct for Law Enforcement Officials (CCLEO),^[84] Standard Minimum Rules for the Treatment of Prisoners (SMR),^[85] Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles),^[85] and Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Victims Declaration).^[86] These instruments uphold the principles of legality, proportionality, necessity, and accountability in situations involving the use of force by law enforcers.

A Final Word

While the Maute uprising was the immediate concern at that time, We must not forget that the country was confronted with not just one or two rebel bands but several rebel groups or anti-government entities. The country faced rebellion from several fronts. The extensions of Proclamation No. 216 are the Chief Executive's decisive response to several existing rebellions throughout Mindanao. Each of these persisting challenges to the authority of the legitimate government is certainly a basis sufficient to warrant the declaration of martial law. Surely, the President does not want a repeat of the Maute experience and wait until a city is overrun before declaring martial law. The Constitutional safeguards found in Section 18, Article VII does not demand that a city be first taken over or people get killed and billions of properties go up in smoke before the President may be justified to use his options under Section 18. What the Constitution asks is only that there be actual rebellion, an existing rebellion in the territory where Martial rule is to be imposed. The declaration should not be arbitrary or whimsical, but its basis should not also be so accurate that there is no room for changes or correction. Considering the volatility of conflict, situations may change at the blink of an eye. And the Executive is burdened with such responsibility to act decisively.

WHEREFORE, the Court FINDS sufficient factual bases for the issuance of Resolution of Both Houses No. 6 and DECLARES it as CONSTITUTIONAL. Accordingly, the consolidated petitions are hereby DISMISSED.

SO ORDERED.

Bersamin, C. J., and Del Castillo, JJ., concur.

Carpio, J., See Dissenting Opinion.

Peralta, J., See Separate Concurring Opinion.

Perlas-Bernabe, J., See Separate Concurring Opinion.

Leonen, J., I dissent. See Separate Opinion.

Jardeleza, J., I dissent. See Separate Opinion.

Caguioa, J., I dissent. See Separate Opinion.

A. Reyes, Jr., J., See My Concurring Opinion.

Gesmundo, J., See Separate Concurring Opinion.
J. Reyes, Jr., J., See Separate Concurring Opinion.
Hernando, J., See Separate Concurring Opinion.

[1] Rollo (G.R. No. 243522), pp. 3-48; rollo (G.R. No. 243677), pp. 3-38; rollo (G.R. No. 243745), pp. 3-30; rollo (G.R. No. 243797), pp. 7-18.

[2] Section 18. x x x

x x x x

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.

[3] Rollo (G.R. No. 243522), p. 152; see also Resolution of Both Houses No. 6, id. at 56-58.

[4] The fifth and sixth Whereas Clauses, Proclamation No. 216.

[5] Rollo (G.R. No. 243522), pp. 152-153.

[6] G.R. Nos. 231658, 231771 and 231774, July 4, 2017.

[7] Rollo (G.R. No. 243522), p. 153.

[8] Id. at 108-112 and 153-155.

[9] G.R. Nos. 235935, 236061, 236145 and 236155, February 6, 2018.

[10] Rollo (G.R. No. 243522), pp. 201-202.

[11] Id. at 201.

[12] Id. at 202.

[13] Id. at 208-213.

[14] Id. at 51-55.

[15] Id. at 52.

[16] Id. at 52-53.

[17] Id. at 113-123.

[18] Id. at 53-54.

[19] Id. at 56-58.

[20] Id. at 57-58.

[21] Rollo (G.R. No. 243522), pp. 753-787; rollo (G.R. No. 243677), pp. 258-294; rollo (G.R. No. 243745), pp. 276-318; rollo (G.R. No. 243797), pp. 295-313.

[22] Rollo (G.R. No. 243745), p. 23.

[23] Id. at 26-27.

[24] Rollo (G.R. No. 243522), pp. 7-8.

[25] *Id.* at 21.

[26] *Id.* at 10, 37-38.

[27] Rollo (G.R. No. 243677), p. 22.

[28] Rollo (G.R. No. 243522), pp. 10, 38-41.

[29] Rollo (G.R. No. 243745), p. 312.

[30] Rollo (G.R. No. 243522), p. 7.

[31] *Id.* at 41-42.

[32] *Id.* at 9.

[33] *Id.* at 33-34.

[34] *Id.* at 8, 11, 45-46.

[35] *Id.* at 802, 806-809.

[36] *Id.* at 159.

[37] *Id.* at 162-163.

[38] *Id.* at 159, 170-173.

[39] *Id.* at 173-176.

[40] *Id.* at 174-175.

[41] *Id.* at 159, 178-187.

[42] *Id.* at 159, 187-189.

[43] *Id.* at 160, 190-192.

[44] *Id.* at 160, 192-196.

[45] Amended Advisory, *id.* at 731-734.

[46] 91 Phil. 882, 890 (1952).

[47] G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1, 147.

[48] 522 Phil 705, 854 (2006).

[49] Respondents' Memorandum, citing Slides No. 8 and 9, Reference Material, Joint Session on the Extension of Martial Law in Mindanao, rollo (G.R. No. 243522), p. 826.

[50] Respondents' Memorandum, citing Slide No. 26, Reference Material, Joint Session on the Extension of Martial Law in Mindanao, *id.* at 826-827.

[51] *Id.* at 832-833.

[52] *Id.* at 838.

- [53] G.R. Nos. 235935, 236061, 236145 and 236155, February 6, 2018.
- [54] G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1, 205-206.
- [55] Revised Penal Code, Art. 134.
- [56] G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1.
- [57] *Id.* at 208-209.
- [58] G.R. Nos. 190293, 190294, 190301, 190302, 190307, 190356, 190380, March 20, 2012.
- [59] *Id.*
- [60] G.R. No. L-35538, September 17, 1974, 59 SCRA 183.
- [61] *Id.* at 240-241.
- [62] 91 Phil. 882, 890 (1952).
- [63] *Id.*
- [63] Resolution No. 06, Series of 2018 dated October 24, 2018, rollo (G.R. No. 243522), pp. 113- 114.
- [64] Resolution No. 01, Series of 2018 dated November 15, 2018, *id.* at 115.
- [65] Resolution No. 2018-09 dated November 15, 2018, *id.* at 117-118.
- [66] Resolution No. 10, Series of 2018 dated November 20, 2018, *id.* at 119-120.
- [67] Resolution No. 03, Series of 2018 dated November 16, 2018, *id.* at 121-122.
- [68] *Id.* at 123.
- [69] G.R. Nos. 190293, 190294, 190301, 190302, 190307, 190356, 190380, March 20, 2012.
- [71] G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1.
- [72] II Record of the Constitutional Commission (1986), pp. 508-509.
- [72] Rollo (G.R. No. 243522), pp. 861-881.
- [73] Representative Edcel C. Lagman, et al. v. Senate President Aquilino Pimentel III, et al., *supra* note 9.
- [74] *Id.*
- [75] G.R. Nos. 235935, 236061, 236145 and 236155, February 6, 2018.
- [76] *Id.*
- [77] G.R. Nos. 235935, 236061, 236145 and 236155, February 6, 2018.
- [79] *Id.*
- [80] G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1, 205.
- [81] G.R. Nos. 235935, 236061, 236145 and 236155, February 6, 2018.
- [82] *Id.*
- [83] Adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Havana, Cuba, August 27 to September 7, 1990.
<<https://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>> (visited February 15, 2019)

[84] Adopted by General Assembly Resolution 34/69 of 17 December 1979.
<<https://www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx>> (visited February 15, 2019)

[85] Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.
<https://www.unodc.org/pdf/criminal_justice/UN_Standard__Minimum_Rules_for_the_Treatment_of_Prisoners.pdf> (visited February 15, 2019)

[85] Adopted by General Assembly resolution 43/173 of 9 December 1988.
<<https://www.ohchr.org/en/professionalinterest/pages/detentionorimprisonment.aspx>> (visited February 15, 2019)

[86] Adopted by General Assembly resolution 40/34 on 29 November 1985.
<http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/40/34> (visited February 15, 2019)

DISSENTING OPINION

CARPIO, J.:

The Case

These consolidated petitions are filed under this Court's power to review the sufficiency of the factual basis of the extension of the proclamation of martial law and the suspension of the privilege of the writ of habeas corpus (writ) under paragraph 3, Section 18, Article VII of the 1987 Constitution. These petitions challenge the constitutionality of Joint Resolution No. 6 dated 12 December 2018 issued by the Senate and the House of Representatives which extended the proclamation of martial law and suspension of the privilege of the writ in the whole of Mindanao for another period of one (1) year from 1 January 2019 until 31 December 2019.

The Antecedent Facts

On 12 December 2018, the Senate and the House of Representatives, voting jointly, adopted Joint Resolution No. 6 which extended the period of martial law and the suspension of the privilege of the writ in the whole of Mindanao (under Proclamation No. 216) from 1 January 2019 to 31 December 2019. Joint Resolution No. 6 states:

x x x x

WHEREAS, on May 23, 2017, President Rodrigo Roa Duterte issued Proclamation No. 216, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao", to address the rebellion launched by the Maute Group and elements of Abu Sayyaf Group in Marawi City, and to restore peace and order in Mindanao;

WHEREAS, on July 22, 2017, the Senate and the House of Representatives in a Special Joint Session adopted Resolution of Both Houses No. 2, extending the Proclamation of Martial Law and the suspension of the privilege of the writ of habeas corpus in the whole Mindanao until December 31, 2017;

WHEREAS, on December 13, 2017, upon the request of President Rodrigo Roa Duterte, the Senate and the House of Representatives in a Joint Session adopted Resolution of Both Houses No. 4, further extending the

Proclamation of Martial Law and the suspension of the privilege of the writ of habeas corpus in Mindanao until December 31, 2018;

WHEREAS, on December 10, 2018, the House of Representatives received a communication dated December 6, 2018 from President Rodrigo Roa Duterte, informing the Senate and the House of Representatives, that on December 5, 2018, he received a letter from Secretary of National Defense Delfin N. Lorenzana, as Martial Law Administrator, requesting for further extension of Martial Law and the suspension of the privilege of the writ of habeas corpus in Mindanao up to December 31, 2019;

WHEREAS, in the same letter, the President cited the joint security report of the Armed Forces of the Philippines (AFP) Chief of Staff, General Carlito G. Galvez, Jr., and the Philippine National Police (PNP) Director-General, Oscar D. Albayalde, which highlighted the accomplishment owing to the implementation of Martial Law in Mindanao, particularly the reduction of the capabilities of different terrorist groups, the neutralization of six hundred eighty-five (685) members of the local terrorist groups (LTGs) and one thousand seventy-three (1,073) members of the communist terrorist group (CTG); dismantling of seven (7) guerilla fronts and weakening of nineteen (19) others; surrender of unprecedented number of loose firearms; nineteen percent (19%) reduction of atrocities committed by CTG in 2018 compared to those inflicted in 2017; twenty-nine percent (29%) reduction of terrorist acts committed by LTGs in 2018 compared to 2017; and substantial decrease in crime incidence;

WHEREAS, the President nevertheless pointed out that notwithstanding these gains, there are certain essential facts proving that rebellion still persists in the whole of Mindanao and that public safety requires the continuation of Martial Law, among others: (a) the Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, Daulah Islamiyah (DI), and other terrorist groups, collectively labeled as LTGs which seek to promote global rebellion, continue to defy the government by perpetrating hostile activities during the extended period of Martial Law that at least four (4) bombing incidents had been cited in the AFP report: (1) the Lamitan City bombing on July 31, 2018 that killed eleven (11) individuals and wounded ten (10) others; (2) the Isulan, Sultan Kudarat improvised explosive device (IED) explosion on August 28 and September 2, 2018 that killed five (5) individuals and wounded forty-five (45) others; and (3) the Barangay Apopong IED explosion that left eight (8) individuals wounded; (b) the DI forces also continue to pursue their rebellion against the government by furthering the conduct of their radicalization activities and continuing to recruit new members especially in vulnerable Muslim communities; and (c) the CTG, which publicly declared its intention to seize political power through violent means and supplant the country's democratic form of government with communist rule which posed serious security concerns;

WHEREAS, the President also reported that at least three hundred forty-two (342) violent incidents, ranging from harassments against government installations, liquidation operations and arson attacks occurred in Mindanao, killing eighty-seven (87) military personnel and wounding four hundred eight (408) others and causing One hundred fifty-six million pesos (P156,000,000.00) worth of property damages;

WHEREAS, the Senate and the House of Representatives are one in the belief that the security assessment submitted by the AFP and the PNP to the President indubitably confirms the continuing rebellion in Mindanao which compels further extension of the implementation of Martial Law and the suspension of the privilege of the writ of habeas corpus for a period of one (1) year, from January 1, 2019 to December 31, 2019, to enable the AFP, the PNP, and all other law enforcement agencies, to finally put an end to the ongoing rebellion and to continue to prevent the same from escalating in other parts of the country;

WHEREAS, Section 18, Article VII of the 1987 Constitution authorizes the Congress of the Philippines to extend, at the initiative of the President, the proclamation or suspension of the privilege of the writ of habeas corpus for a period to be determined by the Congress of the Philippines, if the invasion or rebellion shall persist and public safety requires it;

WHEREAS, after thorough discussion and extensive debate, the Congress of the Philippines in a Joint Session,

by two hundred thirty-five (235) affirmative votes comprising the majority of all its Members, has determined that rebellion and lawless violence still persist in Mindanao and public safety indubitably requires further extension of the Proclamation of Martial Law and the suspension of the privilege of the writ of habeas corpus in the whole of Mindanao: Now, therefore, be it

Resolved by the Senate and the House of Representatives in a Joint Session assembled, To further extend Proclamation No. 216, series of 2017, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao" for another period of one (1) year from January 1, 2019 to December 31, 2019.[1]

These consolidated petitions impugn the constitutionality of Joint Resolution No. 6.

Discussion

I vote to grant the petition on the ground that the extension of martial law and the suspension of the privilege of the writ under Joint Resolution No. 6 is unconstitutional.

First, martial law under Proclamation No. 216 can no longer be extended with the end of the Maute rebellion. The very basis for the proclamation of martial law and the suspension of the privilege of the writ under Proclamation No. 216 was the Maute rebellion. Since the actual rebellion of the Maute group in Marawi City has been admittedly quelled, the extension of Proclamation No. 216 is now clearly unconstitutional. Second, the government failed to discharge the burden of proof under paragraph 3, Section 18, Article VII of the 1987 Constitution that actual rebellion by the Maute group exists in the whole Mindanao group of islands.

I reiterate that the declaration of martial law on the ground of rebellion under paragraph 3, Section 18, Article VII of the 1987 Constitution requires the existence of an actual rebellion, not an imminent danger of rebellion or threat of rebellion.

In exercising his Commander-in-Chief power to declare martial law or suspend the privilege of the writ, the President is required by the 1987 Constitution to establish the following: (1) the existence of rebellion or invasion; and (2) public safety requires the declaration of martial law or suspension of the privilege of the writ to suppress the rebellion or invasion. Needless to say, the absence of either element will not authorize the President, who is sworn to defend the Constitution, to exercise his Commander-in-Chief power to declare martial law or suspend the privilege of the writ.

Imminent danger or threat of rebellion is not sufficient. The 1987 Constitution requires the existence of actual rebellion. "Imminent danger" as a ground to declare martial law or suspend the privilege of the writ, which ground was present in both the 1935 and 1973 Constitutions, was intentionally removed in the 1987 Constitution. By the intentional deletion of the words "imminent danger" in the 1987 Constitution,[2] actual rebellion is now required and the President can no longer use imminent danger of rebellion as a ground to declare martial law or suspend the privilege of the writ. Thus, the President cannot proclaim martial law or suspend the privilege of the writ absent an actual rebellion. This is the clear, indisputable letter and intent of the 1987 Constitution.

This Court in *Lagman v. Medialdea*[3] held that the term "rebellion" in Section 18, Article VII of the 1987 Constitution refers to the crime of rebellion as defined by the Revised Penal Code, to wit:

x x x. Since the Constitution did not define the term "rebellion," it must be understood to have the same meaning as the crime of "rebellion" in the Revised Penal Code (RPC).

During the July 29, 1986 deliberation of the Constitutional Commission of 1986, then Commissioner Florenz D. Regalado alluded to actual rebellion as one defined under Article 134 of the RPC:

MR. DE LOS REYES. As I see it now, the Committee envisions actual rebellion and no longer imminent

rebellion. Does the Committee mean that there should be actual shooting or actual attack on the legislature or Malacanang, for example? Let us take for example a contemporary event - this Manila Hotel incident, everybody knows what happened. Would the Committee consider that an actual act of rebellion?

MR. REGALADO. If we consider the definition of rebellion under Articles 134 and 135 of the Revised Penal Code, that presupposes an actual assemblage of men in an armed public uprising for the purposes mentioned in Article 134 and by the means employed under Article 135. x x x.

Thus, rebellion as mentioned in the Constitution could only refer to rebellion as defined under Article 134 of the RPC. To give it a different definition would not only create confusion but would also give the President wide latitude of discretion, which may be abused - a situation that the Constitution seeks to prevent. (Emphasis supplied)

In fact, when the President declared martial law and suspended the privilege of the writ, he expressly cited the definition of rebellion under the Revised Penal Code. Proclamation No. 216 states:

WHEREAS, Article 134 of the Revised Penal Code, as amended by R.A. No. 6968, provides that "the crime of rebellion or insurrection is committed by rising 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, of 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.(Emphasis supplied)

Based on its statutory definition in the Revised Penal Code, the crime of rebellion has the following elements: (1) there is a (a) public uprising and (b) taking arms against the Government; and (2) the purpose of the uprising 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.[4]

By definition, Article 134 of the Revised Penal Code requires an actual rebellion for the crime of rebellion to exist. Since there is no longer an actual rebellion by the Maute group in Marawi City and there is no showing of an actual Maute rebellion in other parts of Mindanao, Joint Resolution No. 6, extending martial law and the suspension of the privilege of the writ, is therefore unconstitutional.

Proclamation No. 216 can no longer be extended with the liberation of Marawi City and the end of the Maute rebellion in Marawi City.

As I have stated in my previous dissenting opinions, the authority of Congress to extend the proclamation of martial law and the suspension of the privilege of the writ must be strictly confined to the actual rebellion cited by President Rodrigo Roa Duterte (President Duterte) in Proclamation No. 216. The said proclamation clearly identifies the "Maute group" as the only rebel group subject of the proclamation, which specifically mentions the Maute group as rebelling by "rising (publicly) and taking arms against the [g]overnment for the purpose of removing from the allegiance to said [g]overnment" Marawi City. The pertinent paragraphs of Proclamation No. 216 state:

x x x x

WHEREAS, Section 18 Article VII of the Constitution provides that "x x x [i]n case of invasion or rebellion, when the public safety requires it, he (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, Article 134 of the Revised Penal Code, as amended by R.A. No. 6968, provides that "the crime of rebellion or insurrection is committed by rising 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, of 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;

WHEREAS, part of the reasons for the issuance of Proclamation No. 55 was the series of violent acts committed by the Maute terrorist group such as the attack on the military outpost in Butig, Lanao del Sur in February 2016, killing and wounding several soldiers, and the mass jailbreak in Marawi City in August 2016, freeing their arrested comrades and other detainees;

WHEREAS, today, 23 May 2017, the same Maute terrorist group has taken over a hospital in Marawi City, Lanao del Sur, established several checkpoints within the City, burned down certain government and private facilities and inflicted casualties on the part of Government forces, and started flying the flag of the Islamic State of Iraq and Syria (ISIS) in several areas, thereby openly attempting to remove from the allegiance to the Philippine Government this part of Mindanao and deprive the Chief Executive of his powers and prerogatives to enforce the laws of the land and to maintain public order and safety in Mindanao, constituting the crime of rebellion; and

WHEREAS, this recent attack shows the capability of the Maute group and other rebel groups to sow terror, and cause death and damage to property not only in Lanao del Sur but also in other parts of Mindanao.[5] (Emphasis supplied)

The identity of the rebel group used by Congress to extend martial law and suspend the privilege of the writ must be limited to the same rebel group contained in the initial proclamation of the President. This is in consonance with Section 18, Article VII of the 1987 Constitution which states:

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.

x x x x (Emphasis supplied)

The Constitution is clear that upon the initiative of the President and the joint voting of both chambers of Congress, the proclamation of martial law and the suspension of the privilege of the writ may be extended "if the x x x rebellion shall persist" or, in simpler terms, if the rebellion led by the rebel group cited in the initial proclamation shall continue. In this case, the rebellion of the Maute group had undoubtedly been terminated upon the death of their leader, Isnilon Hapilon, and the liberation of Marawi City. In fact, in a statement dated 17 October 2017, President Duterte publicly declared "Marawi's liberation and beginning of (Marawi City's) rehabilitation." [6] On October 2017, National Defense Secretary Delfin Lorenzana also affirmed the "termination of all combat operations in Marawi City." [7] Furthermore, in the year 2018, the President and representatives of the Armed Forces of the Philippines have been consistent in their public statements that the actual rebellion in Marawi City had finally ended:

(1) Seven months after President Duterte's declaration of Marawi's liberation, Brig. Gen. Edgardo Arevalo, spokesperson for the AFP, said in a statement that "Marawi has been liberated. If we have to look back to it, let's

do so to learn from it and move on."[8]

(2) Before the year 2018 ended, President Duterte again affirmed that the rebellion in Marawi had already "finished." He said, "Then Marawi, there was massive destruction. I got a general (Eduardo del Rosario) who was assigned in my city. Sabi ko (I said), 'You fix it within 6 months.' And he did. Kaya natapos (That's why it was finished)."[9]

During the oral arguments on 29 January 2019, Major General Lorenzo of the Armed Forces of the Philippines also admitted that there is no longer any armed rebellion in Marawi City, to wit:

SENIOR ASSOCIATE JUSTICE CARPIO:

Is there an on-going armed rebellion in Marawi City?

MAJOR GENERAL LORENZO:

Not in Marawi City, Your Honor.[10] (Emphasis supplied)

Hence, the end of the armed Maute rebellion bars the extension of Proclamation No. 216 which was issued because of the Maute rebellion. Any extension pursuant to Proclamation No. 216 under Joint Resolution No. 6 is unconstitutional. To uphold the extension of martial law and the suspension of the privilege of the writ under Joint Resolution No. 6 in the absence of an actual rebellion would sanction a clear violation of Section 18, Article VII of the 1987 Constitution.

The Government failed to discharge the burden of proof that there is an on-going rebellion of the Maute group in the whole Mindanao group of islands.

The burden of proof to show the sufficiency of the factual basis of the declaration of martial law and the suspension of the privilege of the writ is on the Government. The sui generis proceeding under paragraph 3, Section 18, Article VII of the 1987 Constitution is intended as a checking mechanism against the abusive imposition of martial law or suspension of the privilege of the writ. The Government bears the burden of justifying the resort to extraordinary powers that are subject to the extraordinary review mechanisms of this Court under the Constitution. This is only logical because it is the Government that is in possession of facts and intelligence reports justifying the declaration of martial law or suspension of the privilege of the writ. Indeed, the majority of the members of this Court in *Lagman v. Medialdea*[11] conceded that this burden rests on the Government, to wit:

x x x. The President's conclusion, that there was an armed public uprising, the culpable purpose of which was the removal from the allegiance of the Philippine Government a portion of its territory and the deprivation of the President from performing his powers and prerogatives, was reached after a tactical consideration of the facts. In fine, the President satisfactorily discharged his burden of proof.

After all, what the President needs to satisfy is only the standard of probable cause for a valid declaration of martial law and suspension of the privilege of the writ of habeas corpus. As Justice Carpio decreed in his Dissent in *Fortun*:

x x x [T]he 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. x x x

x x x x

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.'

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.

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

x x x x

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.

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.'

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.

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. x x x. (Emphasis supplied)

During my interpellation of the Solicitor General in the oral arguments last 29 January 2019, the Government could not confirm that the elements of the Maute group are engaged in actual rebellion in Davao City. The record states:

SENIOR ASSOCIATE JUSTICE CARPIO:

Mr. Sol-Gen, is there an ongoing armed rebellion today in Davao City?

SOLICITOR GENERAL CALIDA:

In certain parts, Your Honor, there is.

SENIOR ASSOCIATE JUSTICE CARPIO:

Committed by whom?

SOLICITOR GENERAL CALIDA:

I understand the communist groups, Your Honor.

SENIOR ASSOCIATE JUSTICE CARPIO:

So the NPA?

SOLICITOR GENERAL CALIDA:

NPA.

SENIOR ASSOCIATE JUSTICE CARPIO:

Certainly not the MILF? Peace agreement.

SOLICITOR GENERAL CALIDA:

I have not been to Davao for quite some time, Your Honor, so I don't exactly know.

SENIOR ASSOCIATE JUSTICE CARPIO:

But you are aware that we have a peace agreement now with the MILF. I don't think.... (interrupted)

SOLICITOR GENERAL CALIDA:

MILF, yes, Your Honor.

SENIOR ASSOCIATE JUSTICE CARPIO:

So the rebellion in Davao, parts of Davao, as you say, is being committed by the NPA, correct?

SOLICITOR GENERAL CALIDA:

Well, if I'm not mistaken, yes, Your Honor.

SENIOR ASSOCIATE JUSTICE CARPIO:

But not by the MILF, correct?

SOLICITOR GENERAL CALIDA:

Not by the... or MI...?

SENIOR ASSOCIATE JUSTICE CARPIO:

The MILF.

SOLICITOR GENERAL CALIDA:

Not to my knowledge, Your Honor.

SENIOR ASSOCIATE JUSTICE CARPIO:

Well, we have a peace agreement. I don't think they have broken that. x x x the [Maute/ISIS] group, they are not in Davao?

SOLICITOR GENERAL CALIDA:

I'm not sure of that, Your Honor.

SENIOR ASSOCIATE JUSTICE CARPIO:

But do you know x x x [if] they have armed rebels there operating in Davao City?

SOLICITOR GENERAL CALIDA:

That is a possibility because Davao City is a huge city and in fact... (interrupted)

SENIOR ASSOCIATE JUSTICE CARPIO:

Do you have any... (interrupted)

SOLICITOR GENERAL CALIDA:

...there was... (interrupted)

SENIOR ASSOCIATE JUSTICE CARPIO:

...information that they are operating in Davao City?

SOLICITOR GENERAL CALIDA:

I have no... (interrupted)

SENIOR ASSOCIATE JUSTICE CARPIO:

Have they engaged in any skirmish with the military or police in Davao City?

SOLICITOR GENERAL CALIDA:

I have no personal knowledge at this time but I can research, Your Honor.

SENIOR ASSOCIATE JUSTICE CARPIO:

Okay, you include that in your memo. How about the BIFF, are they committing rebellion in Davao City?

SOLICITOR GENERAL CALIDA:

I'm not sure, Your Honor.

SENIOR ASSOCIATE JUSTICE CARPIO:

So you are only sure of the NPA?

SOLICITOR GENERAL CALIDA:

For now, Yes, Your Honor, but I will ask the military, Your Honor, and the police to update me if there are incidents like what you've mentioned, Your Honor.

SENIOR ASSOCIATE JUSTICE CARPIO:

So okay, but you are defending martial law throughout Mindanao but you are not sure if the Maute and the ISIS groups are operating in Davao City?

SOLICITOR GENERAL CALIDA:

Well, at this time I don't have the knowledge but I will try to get feedback, Your Honor.[12] (Emphasis supplied)

The Government could not even affirm the existence of an on-going armed rebellion by the Maute group in Davao City. In fact, the Government has not named any province, city or municipality in the entire Mindanao where an actual rebellion by the Maute group is on-going. Consequently, under the Constitution, there is no sufficient factual basis to extend the declaration of martial law under Proclamation No. 216 in the whole of Mindanao for another period of one (1) year.

ACCORDINGLY, I vote to GRANT the petitions in G.R. Nos. 243522, 243677, 243745, and 243797 and DECLARE Joint Resolution No. 6 dated 12 December 2018 of the Senate and the House of Representatives UNCONSTITUTIONAL for failure to comply with Section 18, Article VII of the 1987 Constitution.

[1] Annex "B" of Lagman Petition, Rollo, G.R. No. 243522 (Vol. 1), pp. 56-58.

[2] During the deliberations of the Constitutional Commission, Fr. Bernas clarified:

FR. BERNAS. Let me just say that when the Committee decided to remove that, it was for the reason that the phrase "OR IMMINENT DANGER THEREOF" could cover a multitude of sins and could be a tremendous amount of irresistible temptation. And so, to better protect the liberties of the people, we preferred to eliminate that. x x x (I RECORDS, CONSTITUTIONAL COMMISSION 773 (18 July 1986).

[3] G.R. No. 231658, 4 July 2017, 829 SCRA 1, 182-183.

[4] *Ladlad v. Velasco*, 551 Phil. 313, 329 (2007).

[5] Bayan Mima Petition, Rollo, G.R. No. 243677, p. 8.

[6] Eimor P. Santos, Duterte declares liberation of Marawi <<http://cnnphilippines.com/news/2017/10/17/Marawi-liberation-Duterte.html>> (last accessed 1 February 2019). See also Claire Jiao and Lara Tan, Fighting in Marawi City is over <<http://cnnphilippines.com/news/2017/10/23/Marawi-crisis.html>> (last accessed 1 February 2019); Trisha Macas and Raffy Tima, Duterte declares Marawi City is free <<http://www.gmanetwork.com/news/news/nation/629820/duterte-declares-marawi-city-is-free/story/>> (last accessed 1 February 2019); Allan Nawal, Jeffrey Maitem, Richel Umel and Divina Suson, Marawi 'liberated' from terrorists but battle drags on <<http://newsinfo.inquirer.net/938592/president-duterte-marawi-city-liberated-terrorists>> (last accessed 1 February 2019); AFP, AP and Francis Wakefield, Battle of Marawi ends <<https://news.mb.com.ph/2017/10/24/battle-of-marawi-ends/>> (last accessed 1 February 2019); Catherine S. Valente, Marawi free <<http://www.manilatimes.net/marawi-free/357155/>> (last accessed 1 February 2019); Rosette Adel, Duterte declares Marawi freed from terrorists <<http://www.philstar.com/headlines/2017/10/17/1749752/duterte-declares-marawi-freed-terrorists>> (last accessed 1 February 2019); PTV News, President Duterte declares liberation of Marawi City

<<https://ptvnews.ph/president-duterte-declares-liberation-marawi-city/>> (last accessed 1 February 2019).

[7] Claire Jiao and Lara Tan, Fighting in Marawi City is over <<http://cnnphilippines.com/news/2017/10/23/Marawi-crisis.html>> (last accessed 2 February 2019). See also AFP, AP and Francis Wakefield, Battle of Marawi ends <<https://news.mb.com.ph/2017/10/24/battle-of-marawi-ends/>> (last accessed 2 February 2019).

[8] Christine O. Avendaño, Duterte to mark Marawi liberation in October <<https://newsinfo.inquirer.net/993817/duterte-to-mark-marawi-liberation-in-october#ixzz5cdrFD6B5>> (last accessed 31 January 2019).

[9] Pia Ranada, President in Fatigues: In 2018, Duterte turns to military for (almost) everything <<https://www.rappler.com/newsbreak/in-depth/218680-duterte-turns-to-philippine-military-year-end-2018>> (last accessed 1 February 2019).

[10] TSN, p. 42.

[11] Supra note 3, at 192-194, citing *Fortun v. President Macapagal-Arroyo*, 684 Phil. 595-598 (2012).

[12] TSN, pp. 93-95.

SEPARATE CONCURRING OPINION

PERALTA, J.:

Once again, the Court is confronted with the issue of the constitutionality of the further extension of martial law and suspension of the privilege of the writ of habeas corpus in Mindanao by the Congress with the adoption of Resolution of Both Houses No. 6, which approved the extension of Proclamation No. 216 from January 1, 2019 until December 31, 2019.

FACTUAL ANTECEDENTS

On May 23, 2017, President Rodrigo R. Duterte issued Proclamation No. 216, declaring a state of martial law and suspending the privilege of the writ of habeas corpus in the whole of Mindanao for a period not exceeding sixty (60) days, to quell the rebellion launched by the Maute Group and the Abu Sayyaf Group (ASG). The Senate and the House of Representatives supported the proclamation in separate resolutions.[1] Petitions were filed before this Court, assailing the factual basis of Proclamation No. 216. In *Lagman v. Medialdea*, [2] the Court held that Proclamation No. 216 was constitutional as there were sufficient factual bases for the proclamation.

On July 22, 2017, the Congress passed Resolution of Both Houses No. 2, extending the imposition of martial law and suspension of the privilege of the writ of habeas corpus in Mindanao up to December 31, 2017. A second extension was granted from January 1, 2018 to December 31, 2018, and the Court upheld the extension in *Lagman, et al. v. Pimentel III, et al.* [3]

On December 6, 2018, President Duterte wrote a letter to the Senate and the House of Representatives to initiate the further extension of martial law and the suspension of the privilege of the writ of habeas corpus in Mindanao from January 1, 2019 to December 31, 2019. President Duterte said that although there were gains during the period of extension of martial law in 2018, the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP) highlighted certain essential facts indicating that rebellion still exists in Mindanao and public safety requires the continuation of martial law in the whole of Mindanao. The ASG, the Bangsamoro Islamic Freedom

Fighters (BIFF), Daulah Islamiyah (DI) and other terrorist groups (collectively labeled as "LTG)," which seek to promote global rebellion, continue to defy the government by perpetrating hostile activities; and the DI forces continue their radicalization activities and recruitment of new members. President Duterte cited four bombing incidents by terrorist groups in Lamitan, Basilan City on July 31, 2018; Isulan, Sultan Kudarat on August 28, 2018 and September 2, 2018; and General Santos City on September 16, 2018, which resulted in the death of 16 persons and wounding of 63 persons. He also cited the kidnap for ransom activities of the ASG in Sulu to finance their operations. He stated that there were a total of eight (8) kidnappings involving a Dutch, a Vietnamese, two (2) Indonesians, and four (4) Filipinos. He also stated that at least 342 violent incidents were perpetrated by the Communist Terrorist Groups (CTG) in furtherance of their public declaration to seize political power and supplant the nation's democratic form of government with communism. These incidents include harassment, attacks against government installations, liquidation operations, and various arson attacks as part of extortion schemes which took place mostly in Eastern Mindanao from January 1, 2018 to November 30, 2018.

President Duterte averred that a further extension of the implementation of martial law and the suspension of the privilege of the writ of habeas corpus in Mindanao will enable the AFP, the PNP, and all other law enforcement agencies to finally put an end to the ongoing rebellion in Mindanao and continue to prevent the same from escalating in other parts of the country. Public safety requires the extension to avoid further loss of lives and physical harm to the civilians, our soldiers and the police.

On December 12, 2018, the Senate and the House of Representatives adopted Joint Resolution No. 6, which extended for the third time the period of martial law and the suspension of the privilege of the writ of habeas corpus in Mindanao from January 1, 2019 to December 31, 2019.

Petitioners filed their respective petitions under Section 18, Article VII of the 1987 Constitution, questioning the sufficiency of the factual basis of the third extension of martial law and the suspension of the privilege of the writ of habeas corpus in Mindanao, and contending that rebellion does not persist in Mindanao and public safety does not require it.

Petitioners Lagman, et al., among others, contend that what were alleged in President Duterte's letter were mere acts of lawlessness and terrorism by so-called remnants of terrorist groups and by the communist insurgents which can all be subdued and suppressed under the calling out power of the President. Petitioners Bayan Muna Partylist Representative Carlos Isagani Zarate, et al. also contend that the President's letter does not allege that the situation has deteriorated and the civilian government no longer functions effectively, requiring the exercise of the powers of martial rule to ensure public safety, but instead shows the significant progress of government to quell the rebellion in Mindanao, and the government no longer qualifies or categorizes such rebellion as being "actual." They further contend that the enumerated incidents of violence by the different rebel groups lumped together by the government and the damage they inflicted were not serious threats to public safety.

MAIN ISSUE

The main issue raised is whether or not there exists sufficient factual basis for the extension of martial law in Mindanao: (1) whether rebellion exists and persists in Mindanao; and (2) whether public safety requires the extension of martial law in Mindanao.

The consolidated petitions essentially assail the Congress' act of approving President Duterte's letter-request dated December 6, 2018 and extending the implementation of martial law in Mindanao from January 1 to December 31, 2019.

Article VII, Section 18[4] of the 1987 Constitution grants the power to extend the proclamation of martial law or

suspension of the privilege of the writ of habeas corpus to the Congress, upon the initiative of the President, for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

Rebellion exists and persists in Mindanao

Rebellion, as applied to the exercise of the President's martial law and suspension powers, is defined under Article 134 of the Revised Penal Code:[5]

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 elements of rebellion are:

- That there be (a) public uprising and (b) taking up arms against the Government; and
- That the purpose of the uprising or movement is either: (a) to remove from the allegiance to said Government or its laws the territory of the Philippines or any part thereof, or any body of land, naval or other armed forces; or (b) to deprive the Chief Executive or the Congress, wholly or partially, of any of their powers or prerogatives.[6]

Section 18, Article VII of the 1987 Constitution requires two factual bases for the extension of the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus: (a) the invasion or rebellion persists; and (b) public safety requires the extension.[7]

The word "persist" means "to continue to exist," "to go on resolutely or stubbornly in spite of opposition, importunity or warning," or to "carry on." [8] It is the opposite of the words "cease," "discontinue," "end," "expire," "finish," "quit," "stop" and "terminate." [9]

It should be noted that in the second extension of martial law and suspension of the privilege of the writ of habeas corpus, the Court, in *Lagman v. Pimentel III*, [10] held that the second extension was constitutional because aside from finding that public safety required the extension, the Court also found that the rebellion that spawned the Marawi crisis persists, and that the remaining members have regrouped, substantially increased in number, and are no less determined to turn Mindanao into a DAESH/ISIS territory based on the AFP report, thus:

The Dawlah Islamiyah is the Daesh-affiliate organization in the Philippines responsible for the Marawi Siege. It is comprised of several local terrorist groups that pledged allegiance to Daesh leader Abu Bakr Al-Baghdadi.

x x x x

After the successful Marawi Operation, the Basilan-based ASG is left with 74 members; the Maute Group with 30 members; the Maguid Group has 11; and the Turaifie Group has 22 members with a total of 166 firearms.

However, manpower increased by more or less 400, with almost the same strength that initially stormed Marawi City, through clandestine and decentralized recruitment of the Daesh-inspired groups at their respective areas of concentration.

ASG Basilan-based recruited more or less 43 new members in Basilan; more or less 250 by the Maute Group in the Lanao provinces; 37 by the Maguid Group in Sarangani and Sultan Kudarat, and more or less 70 by the Turaifie Group in Maguindanao. These newly recruited personalities were motivated by clannish culture as they are relatives of terrorist personalities; revenge for their killed relatives/parents during the Marawi operations; financial gain as new recruits were given an amount ranging from PhP15,000.00 to 50,000.00; and, as radicalized converts.

These newly recruited members are undergoing trainings in tactics, marksmanship and bombing operations at the different areas of Mount Cararao Complex, Butig, and Piagapo all of Lanao Del Sur. Recruits with high potentials [sic] were given instruction on IED-making and urban operations.

Furthermore, the situation has become complicated with the influx of Foreign Terrorist Fighters (FTFs), capitalizing on the porous maritime boundaries in Southern Philippines, in the guise as tourists and business men. As of this period, 48 FTFs were monitored joining the Daesh-inspired groups, particularly the Maute Group in Lanao and Turaifie Group in Central Mindanao. The closeness of these two groups is predominant with @ Abu DAR who has historically established link with Turaifie.

On Dawlah Islamiyah-initiated violent incidents, these have increased to 100% for the 2nd Semester. x x x

The AFP's data also showed that Foreign Terrorist Fighters (FTFs) are now acting as instructors to the new members of the Dawlah Islamiyah.[11] (Citations omitted.)

The Court further stated that:

Petitioners in G.R. Nos. 236061 and 236155 have asserted that the rebellion no longer persists as the President himself had announced the liberation of Marawi City, and armed combat has ceased therein. Petitioners in G.R. No. 236061 added that Col. Romeo Brawner, Deputy Commander of the Joint Task Force Ranao, was also quoted as saying that the Maute-ISIS problem was about to be over. The statements, however, were admittedly made on October 17, 2017, nearly two months before the President's request for extension in December 2017. Such declaration does not preclude the occurrence of supervening events as the AFP discovered through their monitoring efforts. It is not inconceivable that remnants of the Dawlah Islamiyah would indeed regroup, recruit new members and build up its arsenal during the intervening period. The termination of a rebellion is a matter of fact. Rebellion does not cease to exist by estoppel on account of the President's or the AFP's previous pronouncements. Furthermore, it is settled that rebellion is in the nature of a continuing crime. Thus, members of the Dawlah Islamiyah who evaded capture did not cease to be rebels.

So also, it does not necessarily follow that with the liberation of Marawi, the DAESH/ISIS-inspired rebellion no longer exists. Secretary Lorenzana, during the Congress' Joint Session on December 13, 2017, explained that while the situation in Marawi has substantially changed, the rebellion has not ceased but simply moved to other places in Mindanao x x x.

x x x x

In *Lagman*, We recognized that "rebellion is not confined within predetermined bounds," and "for the crime of rebellion to be consummated, it is not required that all armed participants should congregate in one place x x x and publicly rise in arms against the government for the attainment of their culpable purpose." We held that the grounds on which the armed public uprising actually took place should not be the measure of the extent, scope or range of the actual rebellion when there are other rebels positioned elsewhere, whose participation did not necessarily involve the publicity aspect of rebellion, as they may also be considered as engaged in the crime of rebellion.

In a similar vein, the termination of armed combat in Marawi does not conclusively indicate that the rebellion has ceased to exist. It will be a tenuous proposition to confine rebellion simply to a resounding clash of arms with government forces. As noted in *Aquino, Jr. v. Enrile*, modern day rebellion has other facets than just the taking up of arms, including financing, recruitment and propaganda, that may not necessarily be found or occurring in the place of the armed conflict[.][12] (Citations omitted; emphasis supplied.)

In the belief that the rebellion that spawned the Marawi crisis continues to persist until the present, the third extension for the implementation of martial law and the suspension of the privilege of the writ of habeas corpus was initiated by the President and approved by the Congress.

To reiterate, in his letter dated December 6, 2018 to the Congress, President Duterte manifested that the security assessment submitted by the AFP and the PNP highlights certain essential facts which show that rebellion still persists in Mindanao and that public safety requires the continuation of martial law in the whole of Mindanao, to wit:

The Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, Daulah Islamiyah (DI), and other terrorist groups (collectively labeled as i TG) which seek to promote global rebellion, continue to defy the government by perpetrating hostile activities during the extended period of Martial Law. At least four (4) bombings/Improvised Explosive Device (IED) explosions had been cited in the AFP report. The Lamitan City bombing on 31 July 2018 that killed eleven (11) individuals and wounded ten (10) others, the Isulan. Sultan Kudarat IED explosion on 28 August and 02 September 2018 that killed five (5) individuals and wounded forty-five (45) others, and the Barangay Apopong IED explosion that left eight (8) individuals wounded.

The DI forces continue to pursue their rebellion against the government by furthering the conduct of their radicalization activities, and continuing to recruit new members, especially in vulnerable Muslim communities.

While the government was preoccupied in addressing the challenges posed by said groups, the CTG, which has publicly declared its intention to seize political power through violent means and supplant the country's democratic form of government with Communist rule, took advantage and likewise posed serious security concerns. Records disclosed that at least three hundred forty-two (342) violent incidents, ranging from harassments against government installations, liquidation operations, and arson attacks as part of extortion schemes, which occurred mostly in Eastern Mindanao, had been perpetrated from 01 January 2018 to 30 November 2018. About twenty-three (23) arson incidents had been recorded and it had been estimated that the amount of the properties destroyed in Mindanao alone has reached One Hundred Fifty-Six (156) Million Pesos. On the part of the military, the atrocities resulted in the killing of eighty-seven (87) military personnel and wounding of four hundred eight (408) others.

Apart from these, major Abu Sayyaf Group factions in Sulu continue to pursue kidnap for ransom activities to finance their operations. As of counting, there are a total of eight (8) kidnappings that have occurred involving a Dutch, a Vietnamese, two (2) Indonesians, and four (4) Filipinos.[13]

During the Oral Argument, the AFP Deputy Chief of Staff for Intelligence, Major General Pablo Lorenzo, made a presentation in behalf of the respondents to inform the Court about the security situation in Mindanao, to establish that rebellion still exists and that public safety requires the extension of martial law in Mindanao. He stated:

[A]s a backgrounder, the violent take-over of Marawi City by local terrorist groups and embedded foreign terrorist fighters affiliated with the Islamic State led the President to declare martial law in Mindanao on May 23, 2017 by virtue of Presidential Proclamation No. 216. This bloody attempt to create a separate province or wilayat under the purported Islamic State caliphate necessitated a strong, swift and decisive action by the government. On July 22, 2017, martial law was extended for five more months until the end of 2017 in order to sustain the operational momentum against the Daulah Islamiyah hold-up in Marawi and prevent the spillover of rebellion in other areas in Mindanao, as a result, Marawi City was liberated from terrorists on October 23, 2017. On December 13, 2017, the Philippine Congress approved anew another extension of martial law up to the end of 2018 to effectively quell the remnants of this rebel groups that continue to take up arms against the government. On February 6, 2018, the Supreme Court upheld the constitutionality of the martial law extension. On December 12, 2018, the Philippine Congress approved the request of the President to extend Martial law for one more year up to the end of 2019. The constitutionality of which, however, is again being questioned in this august body. This presentation will therefore show that after almost 20 months since martial law was first declared in Mindanao, rebellion still exists and that the safety of the public is imperiled by the rebellion notwithstanding the gains achieved during its period of implementation. The factual basis for the extension of martial law is anchored on the continuing rebellion being waged by the communist terrorist group and the local communist terrorist groups along with their foreign terrorist allies. The following slides provide the current

status and activities of these groups.

(Slides being flashed on the screen.)

For the local terrorist groups and the foreign terrorist fighters, there are two major terrorist groups waging rebellion in the country. First, the Daulah Islamiyah which is the local franchise of the Islamic State and the Bangsamoro Islamic Freedom Fighters or BIFF, a faction that broke away from the MILF when the latter agreed to settle for enhanced autonomy instead of an independent Islamic State. The Daulah Islamiyah or "DI" is a collective term of all local terrorist groups that have pledged allegiance to Islamic State leader Abu Bakar al Baghdadi. It used to be headed by the late Isnilon Hapilon. After its failed attempt in Marawi, the DI continued its rebellion. In its official newsletter from the (inaudible) Roll dated 22 September 2018, the Islamic State provided the rationale for the continuing war that is being waged by its affiliates around the world and I quote: "To defend the lands of Islam and to make the word of Allah the highest". Moreover, the Islamic State, through the same newsletter, as well as its mock news agency [continues] to claim credit for the accomplishments of the soldiers of the kilafa or caliphate including those in East Asia wilayat indeed as the Islamic State Central in Iraq and Syria [continues] to lose territories, the burden of continuing its fight and projecting its global presence has now fallen into the hands of its affiliates including the East Asia wilayat to which the DI belongs. At present, the Daulah Islamiyah is comprised of the post Marawi remnants of the local Islamic State affiliated groups namely: the Lanao based Maute group led by Owayda M. Abdulmajid alias Abu Dar, the Maguindanao based Turaife group still headed by former BIFF Vice-Chairman for Internal Affairs Esmail Abdulmalik a.k.a. Abu Turaife, the Sarangani based Maguid group whose de facto leader is now Jeffrey Nilong a.k.a. Moymoy and the Basilan and Sulu based Abu Sayyaf groups led by Puruji Indama and Iajan Sawadjaan, respectively. The Daulah Islamiyah's total manpower is placed at 574 equipped with 564 firearms, its presence and influence can be felt in 154 barangays in Western, Southern, and Central Mindanao. Foreign Terrorists Fighters or FTF's are also embedded with these DI affiliated groups which further complicate the government's effort to effectively address this LTGs. Aside from their high level of motivation brought about by their deep ideological foundations, they usually bring with them combat experience, contacts in international terrorist networks and functional knowledge in urban warfare tactics, IED fabrication and employment, anti-armor operations, cyber communications and financial operations, among others. As such, the FTF's continued presence facilitates the transmission of ideology, knowledge and competencies to local terrorist groups. They have also become primary instigators of more daring and deadly attacks. For instance, on July 31, 2018, foreign terrorist fighter Abu Kathir Al-Maghribi became the first suicide bomber recorded in the Philippines since the rise of the Islamic State. As of the latest count, there are four validated foreign terrorist fighters in the country while another 60 are on the watch list. For 2018, this DI affiliated groups figured in 72 encounters or clashes with government security forces resulting in 84 killed and 168 wounded on the pail of the enemy, government security forces and civilians. In one instance, specifically last 16 November 2018, the ASG was able to kill five soldiers and injured 23 others. One of the soldiers who was killed, Corporal Renhart T. Macad was even beheaded. An FTF was likewise seen together with the engaged Abu Sayyaf group. From January to December 2018, the DI carried out 76 composed of ten other DI affiliated groups and 66 Abu Sayyaf group atrocities or violent activities, the most significant of which are the bombings and kidnappings. With regards to bombings, the most significant are the bombing in Lamitan City, Basilan by the ASG, two bombings in Isulan, Sultan Kudarat and the recent bombing in Cotabato City by the DI Turaife group and one bombing in General Santos City by the DI-Maguid group. Collectively, this resulted in one, 17, rather, killed and 100 injured mostly civilians. On kidnappings, which has been the primary source of funds by the Abu Sayyaf group, a total of 18 incidents victimizing 39 individuals were recorded for 2018. This allowed the group to accumulate approximately 41.9 million pesos in ransom payments. Thus far, a total of eight kidnapped victims composed of five foreigners and three locals are still being held captive by the Abu Sayyaf group. The DI affiliated groups have been monitored actively conducting radical ization activities in vulnerable Muslim communities and recruiting new members specifically targeting aggrieved relatives and orphans of killed Daulah Islamiyah members during the Marawi crisis. Opportunity to exact revenge and monetary incentive have become common inducements for potential recruits. The DI was also monitored conducting

specialized military trainings on several occasions this year, a total of 36 recruitment and eight training activities were conducted by the DI last year. Significant of this were the IED training conducted by the DI-Maute group in Balindong, Lanao del Sur in March, the sniping training conducted by the DI-Maguid group in Palembang, Sultan Kudarat in May 2018, and the combat training of Abu Sayyaf group members under Basilan based sub-leader Puruji Indama, [along] with one Moroccan national in Sumisip, Basilan in August 2018. As mentioned earlier, the Bangsamoro Islamic Freedom Fighters broke away from the MILF when the latter decided to seriously [engage] in peace negotiations with the government. The BIFF has adopted the original objective of the MILF which is to establish an independent Bangsamoro state. As such, the group is strongly opposed to the MILF sponsored Bangsamoro Organic Law which is threatening the groups relevance and purpose of existence. Because of this, the BIFF is exploring all means to derail its implementation while continuing its violent push for the creation of an independent Bangsamoro homeland. At present, the BIFF is composed of the Karialan and Bungos factions. Their combined manpower and firearms are placed at 264 and 254, respectively. The BIFF [continues] to exert considerable influence in 50 barangays in the Municipality of Shariff Aguak, Datu Saudi-Ampatuan, Datu Unsay, Datu Hoffer Ampatuan, Datu Salibo and Datu Piang, all in Maguindanao. It also operates in some parts of North Cotabato, particularly in Pikit, Midsayap and Aleosan. For 2018, the BIFF figured in 55 encounters or clashes with government security forces that resulted in 14 killed and 36 injured in the enemy/government security forces and civilians alike. Furthermore, the BIFF managed to undertake 76 atrocities or violent activities; the most significant are the 21 IED attacks and 40 harassments of military installations. All these incidents resulted in the killing of 7 government forces, 8 civilians and the wounding of 23 government forces and 5 civilians. Significantly, the BIFF was able to conduct 2 IED trainings, one in South Uti and another one in Shariff Aguak, Maguindanao in February and December last year with around 50 participants who were tasked to conduct test missions in key urban areas in Central Mindanao after these trainings.[14]

In respondents' Memorandum, the Office of the Solicitor General mentioned the Department of National Defense's reference material presented during the Joint Session of Congress on the extension of martial law, which showed a total of 137 violent incidents committed by the local terrorist rebel groups (ASG, BIFF, DI, and other groups that have established affiliation with ISIS/DAESH) from January 1 to November 30, 2018, as follows:

Type of Incident

Number of Incidents

Ambuscade

6

Arson

2

Firefighting/Attack

4

Grenade Throwing

4

Harassment

54

IED/Landmining Explosion

31

Attempted Kidnapping

1

Kidnapping

19

Liquidation

9

Murder

4

Shooting

3

TOTAL

137[15]

In the same reference material, the Department of National Defense reported the incidents for the period January 1 to November 30, 2018 relative to the continuing rebellion being conducted by the CTG, as follows:

Type of Incident

Number of Incidents

Ambush

15

Raid

4

Nuisance Harassment

41

Harassment

29

Disarming

5

Landmining

8

SPARU Operations

18

Liquidation

23

Kidnapping

5

Robbery/Hold-Up

1

Bombing

1

Arson

27

TOTAL

177[16]

The violent incidents of harassment, kidnapping and arson were explained by Major General Pablo Lorenzo, thus:

The word "harassment" is a military term for a type of armed attack where the perpetrators fire at stationary military personnel, auxiliaries, or installations for a relatively short period of time (as opposed to a full armed attack) for the purpose of inflicting casualties, as a diversionary effort to deflect attention from another tactical undertaking, or to project presence in the area, x x x. Harassments are undertaken not in isolation but as part of a bigger military strategy. This is a common tactic employed by the Communist Terrorist Group, the ASG, DI, and BIFF. On the other hand, kidnapping is undertaken particularly by the ASG to finance its operational and administrative expenses in waging rebellion. As shown in the presentation during the oral arguments, the ASG has amassed an estimated PhP41.9 million in ransom proceeds for 2018 alone. With regard to arson, the tactic is commonly used by the same rebel groups for various purposes such as intimidating people who are supportive of the government, as punitive action for those who refuse to give in to extortion demands, or simply to terrorize the populace into submission. All these activities are undoubtedly undertaken in furtherance of rebellion.[17]

Undeniably, the AFP reports show that rebellion persists in Mindanao, and the violent activities, including bombing, kidnapping, harassment, and encounters with the military committed by the LTG rebel groups are in furtherance of rebellion with the goal to create a separate province or wilayat under the purported Islamic State caliphate (DI) and to establish an independent Bangsamoro state (BIFF) and deprive the President and the Congress of their powers or prerogatives. On the other hand, the CTG aims to overthrow the duly constituted government and establish communist rule.

It must be reiterated that the gravamen of the crime of rebellion is an armed public uprising against the government. By its very nature, rebellion is essentially a crime of masses or multitudes involving crowd action, which cannot be confined a priori within predetermined bounds. One aspect noteworthy in the commission of rebellion is that other acts committed in its pursuance are, by law, absorbed in the crime itself because they acquire a political character.[18] This peculiarity was underscored in the case of *People v. Hernandez, et al.*, [19] thus:

In short, political crimes are those directly aimed against the political order, as well as such common crimes as may be committed to achieve a political purpose. The decisive factor is the intent or motive. If a crime usually regarded as common, like homicide, is perpetrated for the purpose of removing from the allegiance "to the Government the territory of the [Philippine] Islands or any part thereof," then said offense becomes stripped of its "common" complexion, inasmuch as, being part and parcel of the crime of rebellion, the former acquires the political character of the latter.[20] (Emphasis in the original.)

The bombings and all other attacks, kidnapping, killings, harassment, recruitment of new members, and propaganda activities conducted by the rebel and terrorist groups show that rebellion continues because these atrocities and propaganda activities are perpetrated by the same rebel groups. The concerted destabilizing activities and actions of the rebel groups are all committed in furtherance of rebellion.

Thus, the Court, in appreciating the evidence, would have to consider the fact that the entire picture could only be arrived at after piecing together what may appear initially as fragments which hardly mean anything. But such pieces could only present a better image when they are seen as parts of a whole. Such pieces are just like those of a jigsaw puzzle, or individual elements of a mosaic. When seen individually, they do not seem to make sense, but when arranged in the proper manner and seen from a distance, they present an entirely different picture.

In the same way, the Court should see the individual pieces of evidence which initially may look disparate and unrelated incidents. When these are seen in proper perspective, however, they would readily show that they are all part of the rebellion that justifies the exercise of martial law powers. Some acts of violence in some other parts of Mindanao, no matter how apparently far removed, in place and time, from the Marawi incident, could be another aspect of the continuing rebellion. The acts need not be confined to where it all started as they may have to be done elsewhere. Government success in quelling the uprising in one part could force the rebels to move elsewhere and continue with their operations there.

Public safety requires the extension of martial law in Mindanao

To recapitulate, the following events and circumstances strongly indicated that the continued implementation of martial law in Mindanao is necessary to protect public safety.

- 181 persons in the martial law arrest orders have remained at large;
- Despite the dwindling strength and capabilities of the terrorist groups, the recent bombings that transpired in Mindanao collectively killed 16 people and injured 63 others in less than 2 months;
- On October 5, 2018, agents from the Philippine Drug Enforcement Agency who conducted an anti-drug symposium in Lanao del Sur were brutally ambushed, in which 5 were killed and 2 were wounded;
- The DI continues to conduct radicalization activities in vulnerable Muslim communities and recruitment of new members, targeting relatives and orphans of killed DI members;
- As of December 6, 2018, there are still 7 remaining kidnap victims under captivity;
- Mindanao remains to be the hotbed of communist rebel insurgency in the country. 8 out of the 14 active provinces in terms of communist rebel insurgency are in Mindanao;
- From January to November 2018, the number of Ideological Political and Organizational efforts of the communist group amounted to 1420 which indicated their continuing recruitment of new members;
- The CTG exploitation of indigenous people is so rampant that Lumad schools are being used as recruiting and training grounds. On November 28, 2018, Satur Ocampo and 18 others were intercepted in a PNP checkpoint in Davao del Norte for unlawfully taking into custody 14 minors.

Considering the above-cited incidents, while it may be true that the Maute group had been eliminated in Marawi, this should not be seen as the end of the rebellion. Other individuals or groups acting in concert with or animated by the same aim as that of the Maute group, including the New People's Army (NPA), still operate in other parts of Mindanao, all with the purpose of wresting power and authority from the legitimate government. If the purpose of declaring martial law in the first place is to be achieved, then all other acts of rebellion, whether done by the original group that started in Marawi or by some other related or similar groups, should be appreciated as

parts intrinsically linked to the rebellion that called forth the proclamation of martial law.

The seemingly disconnected acts of violence and terrorism are interrelated parts of an ongoing rebellion that did not stop just because the government succeeded in quelling the uprising in Marawi. As shown by other incidents elsewhere, and until recently, it is apparent that the government still has some way to go to really achieve its purpose of ensuring the safety and security of the people.

Moreover, public safety, which is another component element for the declaration of martial law, "involves the prevention of and protection from events that could endanger the safety of the general public from significant danger, injury/harm, or damage, such as crimes or disasters." Public safety is an abstract term; it does not take any physical form. Plainly, its range, extent or scope could not be physically measured by metes and bounds.[21]

Thus, we cannot limit the declaration of martial law only where the attacks or hostilities are happening. This has been settled in *Lagman v. Medialdea*: [22]

Perhaps another reason why the territorial scope of martial law should not necessarily be limited to the particular vicinity where the armed public uprising actually transpired, is because of the unique characteristic of rebellion as a crime. "The crime of rebellion consists of many acts. It is a vast movement of men and a complex net of intrigues and plots. Acts committed in furtherance of rebellion[,] though crimes in themselves[,] are deemed absorbed in one single crime of rebellion." Rebellion absorbs "other acts committed in its pursuance". Direct assault, murder, homicide, arson, robbery, and kidnapping, just to name a few, are absorbed in the crime of rebellion if committed in furtherance of rebellion; [i]t cannot be made a basis of a separate charge. Jurisprudence also teaches that not only common crimes may be absorbed in rebellion but also "offenses under special laws [such as Presidential Decree No. 1829] which are perpetrated in furtherance of the political offense." "All crimes, whether punishable under a special law or general law, which are mere components or ingredients, or committed in furtherance thereof, become absorbed in the crime of rebellion and cannot be isolated and charged as separate crimes in themselves."

x x x x

In fine, it is difficult, if not impossible, to fix the territorial scope of martial law in direct proportion to the "range" of actual rebellion and public safety simply because rebellion and public safety have no fixed physical dimensions. Their transitory and abstract nature defies precise measurements; hence, the determination of the territorial scope of martial law could only be drawn from arbitrary, not fixed, variables. The Constitution must have considered these limitations when it granted the President wide leeway and flexibility in determining the territorial scope of martial law.

Moreover, the President's duty to maintain peace and public safety is not limited only to the place where there is actual rebellion; it extends to other areas where the present hostilities are in danger of spilling over. It is not intended merely to prevent the escape of lawless elements from Marawi City, but also to avoid enemy reinforcements and to cut their supply lines coming from different parts of Mindanao. Thus, limiting the proclamation and/or suspension to the place where there is actual rebellion would not only defeat the purpose of declaring martial law, it will make the exercise thereof ineffective and useless.

x x x. Clearly, the power to determine the scope of territorial application belongs to the President. "The Court cannot indulge in judicial legislation without violating the principle of separation of powers, and, hence, undermining the foundation of our republican system." [23] (Citations omitted.)

It is also to be underscored that with modern means of communication and transportation, it is no longer that difficult for affiliated groups of rebels to communicate and move from place to place. Putting out the rebellion in Marawi does not necessarily mean the end of the rebellion as members of said movement, or their affiliated groups, could easily get in touch with each other and coordinate acts of violence, terrorism and rebellion. Or, they

could easily be in one place at one time and in another a short time later.

The Court is likewise in no different position now as it was during the initial declaration of martial law and its second extension. The Court can only act within the confines of its powers in determining the sufficiency of the factual basis for declaring or extending martial law.

Based on the AFP's end of first semester data, the ASG has a total of 424 members with 473 firearms. The BIFF has 264 members with 254 firearms and affecting 50 barangays. The DI has a reach of 16 barangays and is composed of 59 members of the Maute Group with 61 firearms, 6 members of the Maguid Group with 10 firearms, and 85 members of the Toraife Group with 20 firearms. The total barangays affected are 204. There is also a consistent influx of foreign terrorists in the country who are primarily responsible for the conduct of trainings to local terrorist fighters. There are 4 identified foreign terrorist fighters, while 60 others are among those in the AFP's watchlist.

AFP General Carlito G. Galvez, Jr. and PNP Chief Oscar D. Albayalde emphasized the need to end the ongoing rebellion because the Daesh-inspired groups and its local and foreign allies, and also the Communist Party of the Philippines-NPA forces in Mindanao, have shifted their strategy from establishing a wilayat to global insurgency or rebellion. Thus, they continue their recruitment and radicalization activities by teaching their new members how to launch deadlier attacks and to sow chaos and instability that will extremely endanger the public.

If the President can rely on the AFP and PNP intelligence reports and classified documents, this Court should also do so. To reiterate, the Court is not equipped with the competence and logistical machinery to determine the strategical value of other places in the military's efforts to quell the rebellion and restore peace. It would be engaging in an act of adventurism if it dares to embark on a mission of deciphering the territorial metes and bounds of martial law. The Court has no military background and technical expertise to predict that. In the same manner, the Court lacks the technical capability to determine which part of Mindanao would best serve as forward operating base of the military in their present endeavor in Mindanao. It is on this score that the Court should give the President sufficient leeway to address the peace and order problem in Mindanao.[24]

Again, as explained in *Lagman v. Medialdea*,^[25] the Court's reliance on the fact-finding capabilities of the Executive Department should not be

considered as a constitutional lapse as this is in line with the function of the Court in determining the sufficiency of factual basis of the further extension of martial law, it must be limited only to the facts and information mentioned in the AFP Report. We cannot "undertake an independent investigation beyond the pleadings."

Deadline for Decision-Rendition

The Constitution mandates that this Court "must promulgate its decision" in regard to petitions questioning the proclamation or extension of martial law within thirty (30) days from filing.^[26] The language is couched in the imperative. However, this may not always be achievable, especially if the Court has to do its job of properly and meticulously evaluating the sufficiency of the factual basis. There are certain factors that would not make it feasible for the Court to render judgment within the period mandated by the Constitution. One is the fact that since it involves fact-finding, the Court could not just decide on mere allegations and counter-allegations in pleadings. It has to schedule oral arguments, which may take days.

Another factor is the possibility that there may be several petitions filed questioning the proclamation or the extension, such as in this instant proceeding, as well as in the past ones. The Court could not just limit itself to the issues raised in the initial petition and ignore the rest.

Also, the need for the Court to deliberate could result in various opinions, especially when it comes to contentious cases, such as this case. There may be changing majority depending on how the members of the Court would appreciate the facts and circumstances. Coming up with the final majority opinion may mean a slight delay.

Further, given the fact that when it comes to the extension of martial law, the Congress also has a definitive say, not only that of the President, the Court may have to need additional time to carefully evaluate the factual basis to determine its sufficiency in accordance with the constitutional intent. Since it is no longer merely the decision of the President that is being considered but also that of the Congress itself, the Court may have to tread more carefully in undertaking its determination of factual sufficiency. It would be unbecoming of the Court to come up with a half-baked decision simply because of time pressure, especially when it comes to very important matters, such as the proclamation of martial law or suspension of the privilege of the writ of habeas corpus.

Given all the foregoing considerations, as well as others that may arise, the Court may not be able to promulgate the decision within the time frame as envisioned by the Fundamental Law. Some delay may be occasioned, but the Court must still act with all deliberate dispatch in keeping with the letter and spirit of the constitutional provision. In *Fortun, et al. v. President Macapagal-Arroyo, et al.*,^[27] the Court also stated: "But what if the 30 days given it by the Constitution proves inadequate? Justice Antonio T. 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."^[28]

Meaning of rebellion must be appreciated in the context of modern technology

Rebellion, as a justification for the proclamation of martial law, has been directly identified with the crime as defined in the Revised Penal Code. It might be time for the Court to revisit this aspect and give it a meaning that is attuned to the digital world. Martial law as a means for the State to defend itself should not be limited to the technical meaning as set out in the penal laws requiring the use of arms. In these modern times where the use of computers presents the possibility of rebels crippling government operations, rebellion under the concept of martial law may be given a meaning that takes into account other forms by which people seeking to topple or overthrow the government can accomplish it. In the cyber age, rebellion may not simply be waged by arms but also by some other means which could achieve the same purpose - arms should not be confined to traditional meaning of firearms and ammunition but also digital weapons.

Determination by both Political Departments

While the Court is mandated by the Constitution to determine the sufficiency of the factual basis for the declaration of martial law, or its extension, some consideration must still be given to the factual determination by the President and the Congress. We must not lose sight of the fact that we are not armchair generals second guessing those who are in the field of battle. We may have better perspective from a distance and in hindsight, but then we cannot really see the other details that have to be carefully evaluated and calibrated by the President and the Congress when they act together to extend the duration of martial law. Some leeway, therefore, must be accorded the political departments when it comes to the Court's exercise of its duty to determine sufficiency of the factual basis for the extension of martial law. Nitpicking when it comes to the evidence presented by the government would be inappropriate.

This is not to say that the Court should just lean backward and put its imprimatur on whatever the President and the Congress would have done. If the Court were to do that, it would constitute an abdication of its constitutional power. The Court must do its job, but it must be done in a manner that recognizes the initial primary responsibility of the political branches to evaluate facts and circumstances in deciding whether or not to extend the duration of martial law. Therefore, some pieces of evidence considered by the President and the Congress should not just be

dismissed because it does not conform to the Court's idea of acceptable and credible evidence that would support a judicial determination in ordinary litigation. The evidence available may at best be justified by a consideration of interrelated pieces which are inherently difficult to gather given the fact that rebellion, including terrorism, is an act that would have to employ stealth and secrecy to succeed. Rebellion may have to rely on surprise brought about by the government's failure to appreciate the small and apparently disparate acts or activities all leading to the open outbreak or manifestation of acts to overthrow the government.

Rebellion may be like cancer gnawing at the vital organs of society. It may only be noticed when already in its advanced stage, at which time there would be need to take radical remedial measures, such as the proclamation of martial law. Eradicating the cancer at the point where it was first detected does not necessarily mean that it has been contained. There is still the possibility that it has also spread undetected to some other parts, for which continuing measures would have to be undertaken. The same way with rebellion. There is a need to root out the problem, which is not as simple as defeating the rebels who tried to take over a particular locality. Otherwise, the government may win the battle, but would eventually lose the war because it stopped at merely defeating its enemies where it first found them.

ACCORDINGLY, based on the foregoing, I vote to DISMISS the petitions and DECLARE Resolution of Both Houses No. 6 as CONSTITUTIONAL.

[1] P.S. Resolution No. 388 (Senate); House Resolution No. 1050 (House of Representatives).

[2] G.R. No. 231658, G.R. No. 231771 and G.R. No. 231774, July 4, 2017, 829 SCRA 1.

[3] G.R. No. 235935, G.R. No. 236061, G.R. No. 236145 and G.R. No. 236155, February 6, 2018.

[4] 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. (Emphasis supplied.)

[5] Lagman, et al. v. Pimentel III, et al., supra note 3.

[6] Lagman v. Medialdea, supra note 2, at 214.

[7] Lagman, et al. v. Pimentel III, et al., supra note 3.

[8] Id.

[9] Id.

[10] Id.

[11] Id.

[12] Id.

[13] President Rodrigo R. Duterte's Letter, dated December 6, 2018, addressed to the Congress; rollo, G.R. No. 243522 (Vol. 1), pp. 53-54.

[14] TSN, Oral Argument, G.R. Nos. 243522, 243677, 243745 and 243797, January 29, 2019, pp. 11-14.

[15] Memorandum of Respondents; rollo, G.R. No. 243522 (Vol. 2), p. 826.

[16] Id. at 826-827.

[17] Id. at 853-854.

[18] *People v. Lovedioro*, 320 Phil. 481, 488 (1995).

[19] 99 Phil. 515 (1956).

[20] Id. at 535-536.

[21] *Lagman, et al. v. Pimentel III, et al.*, supra note 3.

[22] Supra note 2.

[23] Id. at 207-209.

[24] *Lagman v. Medialdea*, supra note 2, at 209-210.

[25] Id. at 154-155.

[26] "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." (Art. VII, Sec. 18, Par. 3, CONSTITUTION.)

[27] 684 Phil. 526 (2012).

[28] Id. at 561.

SEPARATE CONCURRING OPINION

PERLAS-BERNABE, J.:

I concur in the result.

Again, before the Court are consolidated petitions^[1] assailing the sufficiency of the factual basis of Resolution of Both Houses No. 6^[2] dated December 12, 2018,^[3] which grants a third extension to the effectivity of Proclamation No. 216,^[4] entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao," for another year, or from January 1, 2019 to December 31, 2019. The pertinent portions of this Resolution read:

WHEREAS, the President nevertheless pointed out that notwithstanding these gains, there are certain essential facts proving that rebellion still persists in the whole of Mindanao and that public safety requires the continuation of Martial Law, among others: (a) the Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, Daulah Islamiyah (DI), and other terrorist groups collectively labeled as LTGs which seek to promote global rebellion, continue to defy the government by perpetrating hostile activities during the extended period of

Martial Law that at least four (4) bombing incidents had been cited in the AFP report: (1) the Lamitan City bombing on July 31, 2018 that killed eleven (11) individuals and wounded ten (10) others; (2) the Isulan, Sultan Kudarat improvised explosive device (IED) explosion on August 28 and September 2, 2018 that killed five (5) individuals and wounded forty-five (45) others; and (3) the Barangay Apopong IED explosion that left eight (8) individuals wounded; (b) the DI forces also continue to pursue their rebellion against the government by furthering the conduct of their radicalization activities and continuing to recruit new members especially in vulnerable Muslim communities; and (c) the CTG, which publicly declared its intention to seize political power through violent means and supplant the country's democratic form of government with communist rule which posed serious security concerns;

WHEREAS, the President also reported that at least three hundred forty-two (342) violent incidents, ranging from harassments against government installations, liquidation operations and arson attacks occurred in Mindanao, killing eighty-seven (87) military personnel and wounding four hundred eight (408) others and causing One hundred fifty-six million pesos (P156,000,000.00) worth of property damages;

WHEREAS, the Senate and the House of Representatives are one in the belief that the security assessment submitted by the AFP and the PNP to the President indubitably confirms the continuing rebellion in Mindanao which compels further extension of the implementation of Martial Law and the suspension of the privilege of the writ of habeas corpus for a period of one (1) year, from January 1, 2019 to December 31, 2019, to enable the AFP, the PNP, and all other law enforcement agencies, to finally put an end to the ongoing rebellion and to continue to prevent the same from escalating in other parts of the country;

x x x x

Resolved by the Senate and the House of Representatives in a Joint Session assembled, To further extend Proclamation No. 216, series of 2017, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao" for another period of one (1) year from January 1, 2019 to December 31, 2019.

As I have discussed in my Separate Concurring Opinion in *Representatives Edcel C. Lagman, et al. v. Senate President Aquilino Pimentel III, et al.*, G.R. Nos. 235935, 236061, 236145, and 236155 (*Lagman v. Pimentel III*),^[5] in cases involving the examination of a martial law extension, the Court's task is to determine whether or not there is sufficient factual basis to show that: (a) the invasion or rebellion still persists; and (b) public safety requires the extension.^[6] Pursuant to Section 18, Article VII of the 1987 Constitution,^[7] these two (2) requirements ought to be satisfied by Congress before it may properly decree another martial law extension.

The first point of analysis is on the persistence of rebellion. As I have also explained in my previous Opinions,^[8] "a rebellion, because of its peculiar conceptual features, survives in legal existence up until the rebellious movement stops, such as when the rebels have already surrendered or that they are caught by government operatives. As it may, however, be impractical, if not impossible, to accurately ascertain if all the members of a rebel movement have surrendered or have been killed or captured at a certain point in time, then a satisfactory showing of the rebel movement's substantial inactivity or loss of capability to mount a public uprising would reasonably suffice."^[9]

Based on the evidence presented by respondents in these cases, there is no sufficient indication that the rebellion spearheaded by the Maute-Hapilon group - who was primarily responsible for the infamous Marawi siege - has been substantially inactive or has lost the capability to mount a public uprising. Although the President's most recent letter-request^[10] to Congress highlighted the threats of the so-called "local terrorist groups" (LTG) and "communist terrorist groups" (CTG), it remains that the remnants of the Maute-Hapilon group are still actively resisting the military as evidenced by the armed encounter in Sultan Dumalongdong, Lanao del Norte last September 7, 2018.^[11]

Moreover, as respondents have noted, the other DAESH/ISIS-linked rebel groups, which include the Abu Sayyaf Group (ASG) and the Bangsamoro Islamic Freedom Fighters (BIFF), are still continuously conducting their radicalization and recruitment activities in Mindanao.[12] These rebel groups are still actively contending with the military and the police through the numerous violent incidents indicated in their reports,[13] and the bombing incidents throughout Mindanao,[14] most notably, the twin blasts on a church in Jolo, Sulu.[15] To note, despite the lack of specification, the President did mention the activities of "other rebel groups" as a moving consideration for Proclamation No. 216. As such, it can be reasonably inferred that the identification of the Maute-Hapilon group was not intended to be exclusive.[16]

As I previously ratiocinated, a grant of an extension of martial law may be justified by "supervening events [which] not only pertain to the regrouping efforts of the x x x rebel 'remnants' but also the inclusion of other rebel groups, x x x, whose rebellious activities during the supervening period may have amplified - if not, complicated - the situation. As the Constitution reads, the persistence of an invasion or rebellion (together with the public safety requirement) is sufficient for an extension to be decreed. Nowhere has it been required that the extension should solely relate to the supervening activities of the same rebel group covered by the initial proclamation." [17]

Notably, it has been argued[18] that the "violent incidents" of these rebel groups have not been substantiated enough by respondents owing to the incomplete entries, non-identification of perpetrators, unstated motives, and inclusion of incidents that are unrelated to rebellion, in the reports. However, to my mind, the existence of minor inconsistencies or the hiatus of information on certain attending details is not entirely fatal to respondents' cause. As the latter advanced, these reports are a "complete record of all violent incidents x x x attributed to a specific threat group or any of its members." [19] These constitute a compilation of several "spot reports" made on the ground by the AFP units which are prepared under exigent — and oftentimes, time-sensitive - constraints. In my view, absent any palpable indication of any falsity, ill motive, or unreasonableness on the part of the government, due deference should be accorded to the institutional capabilities of our military, which have gained enough experience on the ground to make critical decisions regarding the safety of our country. Verily, one should be cognizant that the military is, after all, a human institution which is not expected to be completely infallible; thus, the recommending officers may altogether make strategic calculations based on "imperfect" disclosures. As the old adage goes, "incomplete information is better than one that is complete but too late to be used." [20]

In the same light, the fact that respondents have not specifically identified the perpetrators or have unstated motives for a limited number of incidents should not detract from the overall veracity of the above-said reports. Requiring the military to adduce more detailed information with regard to these incidents may be tantamount to demanding more than "adequate proof of compliance with the constitutional requisites." [21] More so, respondents cannot be completely faulted for failing to clearly establish the motive of these groups corresponding to each of these incidents. Motive, as a state of mind, is difficult to prove with exactitude, much more on an isolated basis. One must have a holistic appreciation of the circumstances relevant to the said action to ascertain such a motive. In this regard and keeping in mind the sui generis nature of this proceeding,[22] respondents should not be expected to be able to prove motive in the same way that one would prove motive in a criminal proceeding. It should suffice that based on the circumstances observed on the ground, there exists reasonable factual basis that the armed encounters are driven by motives anchored on rebellion. At the risk of belaboring the point, respondents' assertion that these incidents are committed in furtherance of a rebellion was borne from the military's "years of experience on the ground, their expertise in military strategy, and their capacity to make split-second decisions." [23] Accordingly, based on the evidence presented, and absent any compelling reason to hold otherwise, I am inclined to conclude that there exists adequate proof on the persistence of the rebellion contemplated under Proclamation No. 216, which means that the same has not been rendered functus officio. [24]

As to the requirement of public safety, the following circumstances demonstrate the exigencies which support the third extension of martial law over Mindanao:

- a. No less than 181 persons in the martial law Arrest Orders have remained at large;
- b. Despite the dwindling strength and capabilities of the local terrorist rebel groups, the recent bombings that transpired in Mindanao that collectively killed 16 people and injured 63 others in less than 2 months is a testament on how lethal and ingenious terrorist attacks have become.

x x x x

d. The DI continues to conduct radicalization activities in vulnerable Muslim communities and recruitment of new members, targeting relatives and orphans of killed DI members. Its presence in these areas immensely disrupted the government's delivery of basic services and clearly needs military intervention.

e. Major ASG factions in Sulu and Basilan have fully embraced the DAESH ideology and continue their express kidnappings. As of December 6, 2018, there are still seven (7) remaining kidnap victims under captivity.

f. Despite the downward trend of insurgency parameters, Mindanao remains to be the hotbed of communist rebel insurgency in the country. Eight (8) out of the 14 active provinces in terms of communist rebel insurgency are in Mindanao.

g. The Communist Terrorist Rebel Group in Mindanao continues its hostile activities while conducting its organization, consolidation and recruitment. In fact, from January to November 2018, the number of Ideological Political and Organizational (IPO) efforts of this group amounted to 1,420, which indicates their continuing recruitment of new members. Moreover, it is in Mindanao where the most violent incidents initiated by this group transpire. Particularly, government security forces and business establishments are being subjected to harassment, arson and liquidations when they defy their extortion demands.

h. The [Communist Terrorist Rebel Group's] exploitation of indigenous people is so rampant that Lumad schools are being used as recruiting and training grounds for their armed rebellion and anti-government propaganda. On November 28, 2018, Satur Ocampo and 18 others were intercepted by the Talaingod PNP checkpoint in Davao del Norte for unlawfully taking into custody 14 minors who are students of a learning school in Sitio Dulyan, Palma Gil in Talaingod town. Cases were filed against Ocampo's camp for violations of Republic Act (R.A.) No. 10364, in relation to R.A. No. 7610, as well as violation of Article 270 of the Revised Penal Code (RPC), due to the [PNP's] reasonable belief that the school is being used to manipulate the minds of the students' rebellious ideas against the government.[25]

Petitioners failed to disprove the occurrence of the foregoing circumstances and events. On the other hand, the intelligence reports clearly demonstrate the continuing threat to public safety. There also appears to be no patent unreasonableness in the amount of time requested for the extension to meet the public safety concerns wrought by the rebellion. As I mentioned in my opinion in *Lagman v. Pimentel III*, "if the President's estimation does not appear to be implausible or farfetched, then this Court should defer to his plan of action, especially so since Congress has further given its assent." [26]

Thus, considering that there exists sufficient factual basis to show that the rebellion still persists and that public safety requires the extension of martial law under the terms stated in Resolution of Both Houses No. 6 dated December 12, 2018, I vote to DISMISS the consolidated petitions.

[1] There are four (4) petitions filed assailing the martial law extension. The Petition in G.R. No. 243522 was filed on January 4, 2019 (an Amended Petition was filed on January 17, 2019), while the Petition in G.R. No.

243677 was filed on January 16, 2019. The Petition in G.R. No. 243745 was filed on January 18, 2019, while the Petition in G.R. No. 243797 was filed on January 23, 2019.

[2] Entitled "RESOLUTION OF BOTH HOUSES FURTHER EXTENDING PROCLAMATION NO. 216, SERIES OF 2017, ENTITLED 'DECLARING A STATE OF MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS IN THE WHOLE OF MINDANAO' FOR ANOTHER PERIOD OF ONE (1) YEAR FROM JANUARY 1, 2019 TO DECEMBER 31, 2019."

[3] See Annex "B" of Petition in Lagman; rollo (G.R. No. 243522), Vol. I, pp. 56-58.

[4] Issued on May 23, 2017.

[5] See Decision in Lagman v. Pimentel III, G.R. Nos. 235935, 236061, 236145, and 236155, February 6, 2018. The motion for reconsideration is still pending consideration by the Court.

[6] See my Separate Concurring Opinion in Lagman v. Pimentel III, *id.*

[7] Section 18. x x x.

x x x x

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.

x x x x (Emphases and underscoring supplied)

[8] See my Separate Opinion in Lagman, v. Medialdea, G.R. Nos. 231658, 231771, and 231774, July 4, 2017, 829 SCRA 1; and my Separate Concurring Opinion in Lagman v. Pimentel III, *supra* note 5.

[9] Lagman v. Pimentel III, *id.*; emphases supplied. See also Lagman v. Medialdea, *id.* at 470-471.

[10] See letter dated December 6, 2018; Annex A of the Petition of Lagman; rollo (G.R. No. 243522), Vol. I, p. 51-55.

[11] See Implementation of Martial Law in Mindanao Monthly Reports 2018 for the period from September 1 to 30, 2018.

[12] See Respondent's Memorandum dated February 4, 2019; rollo (G.R. No. 243522), Vol. II, p. 833.

[13] See Implementation of Martial Law in Mindanao Monthly Reports 2018.

[14] See Letter of the Armed Forces of the Philippines to the President attached to the cover letter of the Department of National Defense, dated December 4, 2018; Annex "1" of the Comment to the Petitions; rollo (G.R. No. 243522), Vol. I, pp. 201-202.

[15] Oral Arguments, TSN, January 22, 2019, p. 16.

[16] See my Separate Concurring Opinion in Lagman v. Pimentel III, *supra* note 5.

[17] See *id.*; emphasis supplied.

[18] See Opinion of Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa).

[19] See Respondents' Memorandum dated February 4, 2019; rollo (G.R. No. 243522), Vol. II, p. 838.

[20] *Id.* at 838-839.

[21] See my Separate Concurring Opinion in *Lagman v. Pimentel III*, supra note 5.

[22] See my Separate Opinion *Lagman v. Medialdea*, supra note 8, at 455.

[23] See my Separate Concurring Opinion in *Lagman v. Pimentel III*, supra note 5.

[24] See Opinion of Justice Caguioa.

[25] See Respondent's Memorandum dated February 4, 2019; rollo (G.R. No. 243522), Vol. II, pp. 832-833.

[26] See my Separate Concurring Opinion in *Lagman v. Pimentel III*, supra note 5.

DISSENTING OPINION

Sapere aude.[1]

-Kant

LEONEN, J.:

I dissent.

I continue to reiterate the points that I have already raised in my dissents in *Padilla et al. v. Congress*,^[2] *Lagman, et al. v. Medialdea, et al.*,^[3] and *Lagman, et al. v. Pimentel III, et al.*^[4] This is the third one-year extension of the proclamation of martial law and the suspension of the privilege of the writ of habeas corpus over the entire Mindanao.

I cannot join the majority's increasing judicial appeasement of the President's unconstitutional exercise of his commander-in-chief powers. Allowing this new extension amounts to an abdication of this Court's duty enshrined in the Constitution. With this fourth accommodation, we have become an enfeebled Supreme Court, far from what our fundamental law requires of us when the President exercises his commander-in-chief powers. What the majority has done disappoints a better reading of history. It all but removes the constitutional protections against the rise of another authoritarian.

The declaration of martial law and the suspension of the privilege of the writ of habeas corpus are not simple law enforcement measures. They are intended to be used only under the most exigent circumstances where the State's existence already drifts between life and death. The imminence of such a possibility must be clear, and should be the product of reasonable inferences from facts which are clear, proven, consistent, and not contradictory. They are not to be exercised for any kind of rebellion except that which is close to or at the verge of success. Anything less should be constitutionally addressed with law enforcement or by the President's power to call out the armed forces.

The declaration of martial law and the suspension of the privilege of the writ of habeas corpus are not intended to be psychological measures to impose fear on our citizens. They are no substitute for effective, efficient, and professional police action.

These powers of the commander-in-chief are constitutional options of last resort as they undermine the balance of democratic deliberation and pragmatic action embedded in our fundamental law. They are meant as temporary measures which will expire with clear achievable goals. Their necessity must be demonstrable. The kinds of powers to be exercised should be transparent and legible.

I do not see Proclamation No. 216 and all of its extensions as having passed the stringent requirements in our

fundamental law.

I

On May 23, 2017, spurred by the Maute Group's attack on Marawi City, President Rodrigo R. Duterte (President Duterte) issued Proclamation No. 216 (the Proclamation), which declared a state of martial law and suspended the privilege of the writ of habeas corpus in Mindanao for 60 days. On May 25, 2017, the President submitted a Report to Congress detailing the factual basis of the Proclamation. Representatives from the Executive Department, military, and police also conducted briefings before the Senate and the House of Representatives.[5] Shortly after, the Senate issued P.S. Resolution No. 388[6] supporting the Proclamation. For its part, the House of Representatives issued House Resolution No. 1050.[7]

Three (3) separate Petitions were filed against the Proclamation, questioning the imposition of martial law and the suspension of the privilege of the writ of habeas corpus, which this Court dismissed in *Lagman, et al. v. Medialdea, et al.*[8]

The majority in *Lagman, et al. v. Medialdea, et al.* stressed that in reviewing the sufficiency of factual basis of the martial law declaration or suspension of the privilege of the writ of habeas corpus, this Court could not intrude upon the President's judgment, over which he should avail of his calibrated powers in a given situation. The majority declared that there was sufficient factual basis for the Proclamation's issuance, stating that it should view the totality of the factual basis as presented to the President, without expecting him to verify the "absolute correctness, accuracy, or precision of the facts because to do so would unduly tie the hands of the President in responding to an urgent situation." [9] It emphasized that in determining the existence of rebellion, the President only needed probable cause "that more likely than not[,] a rebellion was committed or is being committed." [10]

In my dissent in *Lagman, et al. v. Medialdea, et al.*, I insisted that, with our nation's history with martial law, this Court must be more stringent, more precise, and more vigilant in performing its constitutional duty to review the sufficiency of the factual basis for the martial law declaration.

At the outset, the government's designation of the Maute Group as rebels is erroneous. The group neither had the numbers nor the sophistication necessary to hold ground in Marawi. It did not seek to control the centers of governance. Its ideology, inspired by the extremist views of Salafi Jihadism, could not sway the local community to take up arms and overwhelm the local and national government. During the Marawi siege, local terrorist groups acted not to control seats of governance, but to slow down the advance of government forces and facilitate their members' escapes. They committed atrocities to establish their terrorist credentials and sow fear.[11]

Terrorists and terrorism cannot be neutralized through the declaration of martial law. Counteracting violent extremism calls for thoughtful action, along with "patience, community participation, precision, and a sophisticated strategy that respects rights, and at the same time uses force decisively at the right time and in the right way." [12]

As for the sufficiency of the factual bases surrounding the issuance of the Proclamation, I pointed out that the government's presentation of facts was utterly wanting. The factual bases cited were primarily allegations, with the government deliberately failing to present their information's sources and their vetting process. Furthermore, some of the factual bases cited in the Proclamation would not lead to a conclusion that rebels were impelled by political motives like overthrowing the government or wresting government control over a portion of Mindanao. Thus, the facts cited as bases for the Proclamation show acts of terrorism, not necessarily rebellion.

In his dissent in *Lagman, et al. v. Medialdea, et al.*, Associate Justice Antonio T. Carpio (Associate Justice Carpio) stated that the sufficiency of the factual basis for the Proclamation must be determined at the time it was

proclaimed, with immediately preceding or contemporaneous events tending to show probable cause that factual basis existed for the declaration of martial law or suspension of the privilege of the writ of habeas corpus. Subsequent events that immediately take place would then serve as confirmation on the existence of probable cause.[13]

Associate Justice Carpio opined that while there was probable cause for President Duterte to believe that there was a need to impose martial law in Marawi City, there was no similar probable cause to include the entirety of Mindanao within the Proclamation's coverage. He pointed out that the hostilities were confined in Marawi City, and the Presidents' Report had no evidence to show that there was actual rebellion outside of it. Moreover, the Maute Group's spokesperson announced that the group intended to implement Shariah Law in the city, but mentioned no other place in Mindanao. Associate Justice Carpio asserted that the Maute Group's capability to sow terror, without an actual rebellion or invasion, was not a ground to declare martial law or suspend the privilege of the writ of habeas corpus.[14]

Associate Justice Alfredo Benjamin S. Caguioa (Associate Justice Caguioa), concurring with then Chief Justice Maria Lourdes Sereno and Associate Justice Carpio, stated that there was probable cause for the President to believe that actual rebellion and public safety required the declaration of martial law and suspension of the privilege of the writ of habeas corpus. Nonetheless, there was a dearth of evidence to show that actual rebellion existed outside of Marawi City. He stressed that, on the chance that Maute Group members may flee to other parts of Mindanao, this does not merit including the whole Mindanao in the Proclamation. Instead, "[t]hey can be pursued by the State under the concept of rebellion being a continuing crime, even without martial law." [15]

On July 18, 2017,[16] President Duterte again requested Congress to extend the Proclamation's effectivity to December 31, 2017, as it was set to expire on July 22, 2017. He claimed that after reading the reports and recommendations of the Department of National Defense Secretary, Chief of Staff of the Armed Forces of the Philippines (Armed Forces), and the Chief of the Philippine National Police, he believed that the rebellion in Mindanao would not be quelled by July 22, 2017. His letter to Congress reported that 379 of some 600 Da'watul Islamiyah Waliyatul Masriq rebels had been neutralized, and 329 firearms recovered. Further, operations against other rebel groups[17] were successful and the checkpoints led to the arrest of 66 individuals associated with it. Nonetheless, he stated that despite the armed forces' achievements, rebellion persisted not only from the Maute Group, but from the other rebel groups as well:

The DIWM DAESH-inspired group continues to offer armed resistance in Marawi City and other parts of Western and Central Mindanao. Parts of Marawi City, comprising around four (4) barangays, are still under the control of the rebels. The city's commercial districts, where about 800 structures are located, are found within these areas. The rebels have likewise holed up in mosques, madrasahs, and hospitals, thereby restricting the government troops' offensive movements, as they have to consider the safety of civilian hostages and trapped residents nearby.

The DIWM DAESH-inspired group's leadership largely remains intact despite the considerable decline in the number of rebels fighting in the main battle area. Moreover, terrorist groups from various parts of Mindanao espousing or sympathizing with the same ideology remain active and are ready to reinforce Isnilon Hapilon's group or launch diversionary attacks and similar uprisings elsewhere. Key leaders of the rebellion, namely, Hapilon, the Maute brothers Abdullah, Omarkhayam, and Abdulasiz alias Madie, and foreign terrorist Mahmud bin Ahmad remain at large. Despite the arrest of key personalities like Ominta Maute, support structures have been continuously sustained, with the emergence of such new replacements as Adel Sarip Maute alias Monai, who was recently apprehended in Taguig City, Metro Manila.

Of the two hundred seventy-nine (279) personalities identified and ordered to be arrested by the Martial Law Administrator under Arrest Order Nos. 1 and 2 dated 29 May 2017 and 05 June 2017, respectively, only twelve

(12) have been either neutralized or arrested. The AFP is further set to recommend the issuance of another arrest order for some two hundred (200) other individuals. There are also indications that the DIWM rebels are vigorously recruiting from other lawless armed groups, terrorist elements, and their families and supporters, to add to their ranks and replace those who have been killed or arrested.

The rebels have been found to possess high-powered and military-grade weapons such as rocket-propelled grenades and a large supply of ammunition. There have been reported entries of reinforcements, weapons, ammunitions, and other logistical supplies from outside Marawi City through clandestine routes. Private armed groups and supporters of some sympathetic local politicians are likely to continue extending their assistance.

Other Islamic State-inclined armed groups (i.e., ASG, AKP, and BIFF), which are capable of perpetrating atrocities and violent attacks against vulnerable targets, remain scattered in various areas in Mindanao. Several reports consistently indicate that these local terrorist groups are pursuing offensive actions and conspiring to attain their overall objective of establishing a wilayat or caliphate in Mindanao. Significantly, videos recovered from a safehouse previously occupied by DIWM rebels validate their intention to establish a wilayat in Marawi City and other areas of Mindanao through simultaneous armed public uprisings against the duly constituted authorities therein.[18] (Emphasis in the original, citation omitted)

On July 22, 2017, in a special joint session, the Senate and the House of Representatives adopted Resolution of Both Houses No. 2[19] extending the Proclamation to December 31, 2017.

On October 16, 2017, Isnilon Hapilon and Omar Maute, leaders of the Maute Group, were killed in a military assault.[20]

On October 17, 2017, the President announced Marawi's liberation from rebel forces. He also announced the creation of a task force for Marawi's rehabilitation with an initial budget of P20 billion.[21]

On December 8, 2017, President Duterte requested a second extension[22] from Congress. He reported that while the government forces made remarkable progress in controlling the rebellion, the adversary group's remaining members continued to recruit and train new members to fight back. He also reported additional threats from other rebel groups such as the Turaifie Group, Bangsamoro Islamic Freedom Fighters, Abu Sayyaf Group, and the New People's Army.

President Duterte wrote that National Defense Secretary Delfin N. Lorenzana (Secretary Lorenzana), as Martial Law Administrator, recommended the extension of martial law for another year "to ensure total eradication of DAESH-inspired Da'awatul Islamiyah Waliyatul Masriq (DIWM), other like-minded Local/Foreign Terrorist Groups (L/FTGs) and Armed Lawless Groups (ALGs), and the communist terrorists (CTs) and their coddlers, supporters, and financiers." [23]

During the joint session on December 13, 2017, members of Congress were only provided with the three (3) letters written by the President, General Guerrero, and Secretary Lorenzana. Each member was only allowed to interpellate resource persons for a maximum of three (3) minutes.[24] That same day, the Congress adopted Resolution of Both Houses No. 4,[25] which further extends the Proclamation from January 1, 2018 to December 31, 2018.

Four (4) consolidated Petitions were filed before this Court questioning the constitutionality of the second extension.

On February 6, 2018, Lagman, et al. v. Pimentel III, et al.[26] declared the sufficiency of factual basis for the President's second extension of martial law over Mindanao. It held that rebellion persisted and there was a continuing effort to rebuild the group, as reflected in the intelligence reports submitted to the President.

Lagman, et al v. Pimentel III, et al. also stated that while the factual basis for the second extension referred to other lawless groups not in the Proclamation, the President already alluded to other lawless armed groups as participants in the Marawi siege and the Maute Group's extensive linkage with other local and foreign armed groups, which were also predisposed to wrest government control over Marawi City.

Likewise, Lagman, et al, v. Pimentel III, et al. explained that including the New People's Army in the factual basis for the second extension would not render it void, since the latter's aims of establishing communist rule and overthrowing the existing government are well-known.

My dissent in Lagman, et al. v. Pimentel III, et al. called for a stricter mode of review when evaluating the sufficiency of factual basis for the extension of martial law. The "proposal for a type of deferential factual review, is nothing but a reincarnation of the political question doctrine similar to that in Aquino v. Enrile and Morales v. Enrile during the darker days of martial law declared by Ferdinand E. Marcos." [27] I sought to persuade this Court to exercise its independence and conduct a "sober and conscientious review amid the hysteria of the moment." [28]

Further, I have already warned that the blind acceptance of the Armed Forces and the President's factual allegations would only result in a token review, which would surrender our constitutional duty:

To establish that the factual basis for the extension of martial law is sufficient, the government has to show evidence for its factual allegations as well as the context for its inference. An enumeration of violent incidents containing nothing but the area of the incident, the type of violent incident, and the date of the incident, without its sources and the basis for its inference, does not meet the sufficiency of the factual basis to show persisting rebellion and the level of threat to public safety that will support a declaration of martial law or the suspension of the writ of habeas corpus.

There are two (2) *facta probanda*, or ultimate facts, necessary to establish that martial law was properly extended, namely: (1) the persistence of an actual rebellion; and (2) that public safety requires the extension of martial law.

Of course, no single piece of evidence can establish these ultimate facts. There must be an attempt to establish them through evidentiary facts, which must, in turn, be proved by evidence—not bare allegations, not suspicion, not conjecture.

Letters stating that rebellion persists and that public safety requires the extension of martial law do not prove the *facta probanda*. The letters only prove that the writers thereof wrote that rebellion persists and public safety requires the extension of martial law. Lists of violent incidents do not prove the *facta probanda*; they only tend to prove the *factum probans* that there were, in fact, violent incidents that occurred. But, assuming the evidence is credible to prove the *factum probans* that violent incidents have occurred, this *factum probans*, without context, is insufficient to show that rebellion persists.

We do not conflate the *factum probandum* with the *factum probans*. Muddling the two undermines the review required by the Constitution. It will lead this Court to simply accept the allegations of the government without any modicum of review. [29] (Emphasis in the original)

Congress' approval of the second extension was not proven to have been based on sufficient factual basis, as its members were not provided with the same intelligence information to which the President had access. More importantly, its members were not informed of the context of the provided raw data from which they could logically assess if an extension was indeed warranted. They were also not apprised of how the Armed Forces vetted the information they received.

I further highlighted that the government had already achieved the supposed target of the Proclamation, after

neutralizing the Maute Group leaders and at least 920 DAESH-inspired fighters, along with the liberation of Marawi City. Even if recruitment efforts were being done to build up the decimated ranks of the Maute Group, the 537 "rebels" were no match for the hundreds and thousands of men and women in the Armed Forces and the Philippine National Police. The numbers presented and accepted by the majority was, to me, "hardly ... a decent figure that will support an extended declaration of martial law and a suspension of the writ of habeas corpus throughout the entire Mindanao region, and for a period of one year." [30]

I also raised how the majority, in their eagerness to label the law enforcement problems in Mindanao as rebellion and provide the President carte blanche authority to declare martial law, abdicated their constitutional duty to the Filipino people. I warned that their actuations and reverence of the President were not new, and were reminiscent of this Court's actions during one of the darkest episodes in Philippine history:

In the 1970s, there was a Court which painfully morphed into a willing accomplice to the demise of fundamental rights through tortured readings of their clear constitutional mandate in order to accommodate a strongman. What followed was one of the darkest episodes in our history. Slowly but surely, soldiers lost their professionalism. Thousands lost their freedoms. Families suffered from involuntary disappearances, torture, and summary killings. Among them are some of the petitioners in this case.

Regardless of the motives of the justices then, it was a Court that was complicit to the suffering [of] our people. It was a Court that degenerated into a willing pawn diminished by its fear of the impatience of a dictator.

The majority's decision in this case aligns us towards the same dangerous path. It erodes this Court's role as our society's legal conscience. It misleads our people that the solution to the problems of Mindanao can be solved principally with the determined use of force. It is a path to disempowerment.

Contrary to the text and spirit of the Constitution, the decision in this case provides the environment that enables the rise of an emboldened authoritarian. [31]

In his dissent in *Lagman, et al. v. Pimentel III, et al.*, Associate Justice Francis H. Jardeleza (Associate Justice Jardeleza) stated that the government failed to prove that public safety still required martial law in Mindanao. He referred to two (2) "minimum indicators of scale" [32] that would meet the public safety requirements for a declaration of martial law and suspension of the writ of habeas corpus. These are:

... (1) the presence of hostile groups engaged in actual and sustained armed hostilities with government forces; and (2) these groups have actually taken over, and are holding, territory... [33] (Emphasis in the original)

Associate Justice Jardeleza emphasized that despite the barrage of data presented by the government to substantiate its second extension, the evidence neither reached the "minimum reasonable indicators" [34] nor rose to the same level of scale in Marawi City when the Proclamation was issued.

Likewise, Associate Justice Carpio stated that with the liberation of Marawi City and the end of the Maute Group's rebellion, the Proclamation can no longer be extended. He maintained that the capability of the rebel group's remnants to sow terror or damage property is not the actual rebellion contemplated by the Constitution:

Respondents cannot rely on the capability of the remnants of the defeated rebels to deprive duly constituted authorities of their powers as a justification for the extension of the state of martial law or suspension of the privilege of the writ. To emphasize, capability to rebel, absent an actual rebellion or invasion, is not a ground to extend the declaration of martial law or suspension of the privilege of the writ. To allow martial law on the basis of an imminent danger or threat would unlawfully reinstate the ground of "imminent danger" of rebellion or invasion, a ground that was intentionally removed from the 1987 Constitution. [35] (Emphasis in the original)

On December 4, 2018,[36] Secretary Lorenzana, emboldened by this Court's deferential but unconstitutional manner of review in the earlier cases, recommended a third extension of martial law and suspension of the privilege of the writ of habeas corpus until December 31, 2019. It was endorsed by the Department of National Defense and Chief of Staff of the Armed Forces.[37] He also included various resolutions and requests for the martial law extension from the Provincial and Municipal Councils, Peace and Order Councils, and Chambers of Commerce and Industry from Mindanao.

Secretary Lorenzana wrote that the operations of the Armed Forces ended the DAESH-inspired and Communist Party of the Philippines' rebellion, leading to the following gains:

- The neutralization of 688 members of the Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, and other DL-affiliated groups, and the seizure of 448 firearms;
- The neutralization of 1,049 CNTs, and the seizure of 307 firearms;
- The conduct of 5,020 activities by the AFP with the assistance of CAFGU Active Auxiliary units (CAA) in coordination with other agencies to insulate and secure unaffected areas, critical infrastructure, and vital installations against operations of the rebel groups;
- The AFP supported anti-illegal drug operations of the Philippine Drug Enforcement Agency (PDEA) resulting in the neutralization of 239 drug personalities, and the seizure of 87 firearms and 814 sachets of illegal drugs[.][38]

Despite the gains made, Secretary Lorenzana revealed that various rebel groups in Mindanao continued their operations against both civilians and government forces. The supposed rebel operations included the four (4) bombing incidents that killed 16 people and injured 63 within two (2) months.[39]

Secretary Lorenzana wrote that with the extension of martial law up to December 31, 2019, the Department of National Defense hoped to:

- Put an end to the continuing rebellion of the DAESH-inspired groups and the threat posed by the CNT through a whole-of-government approach;
- Prevent the influx of foreign fighters, disrupt the local and international financial conduits, and neutralize the leadership of the rebel groups operating in Mindanao;
- Secure the conduct of the 2019 mid-term elections and the Bangsamoro Plebiscite and the possible implementation of the Bangsamoro Organic Law[.][40]

On December 6, 2018,[41] President Duterte wrote both houses of Congress for a further extension of martial law and suspension of the privilege of the writ of habeas corpus in Mindanao. He referred to Secretary Lorenzana's letter to substantiate his request, and reported the following gains in quelling rebellion:

I am pleased to inform the Congress that during the Martial Law period, as extended, in Mindanao, we have achieved significant progress in putting the rebellion under control, ushering in substantial economic gains in Mindanao. In a joint security assessment report, General Carlito G. Galvez Jr., the Armed Forces of the Philippines (AFP) Chief of Staff and Martial Law Implementor, and Director-General Oscar D. Albayalde, Chief of the Philippine National Police (PNP), highlighted the following accomplishments, among others, owing to the implementation of Martial Law in Mindanao: reduction of the capabilities of different terrorist groups, particularly the neutralization of 685 members of the local terrorist groups (LTG) and 1,073 members of the communist terrorist groups (CTG); dismantling of seven (7) guerilla fronts and weakening of nineteen (19) others; surrender of unprecedented number of loose firearms (more than eight thousand from January to November 2018); 19% reduction of atrocities committed by CTG in 2018 compared to those inflicted in 2017;

29% reduction of terrorist acts committed by LTG in 2018 compared to 2017; and substantial decrease in crime incidence (Cotabato City - 51% reduction and Maguindanao - 38% reduction). All of these gains in security and peace and order have resulted in remarkable economic gains in Mindanao. In fact, private sectors, local and regional peace and order councils, and local government units in Mindanao are now also clamoring for a further extension of the subject proclamation and suspension.[42]

However, President Duterte wrote that despite the government's exceptional gains against rebellion in Mindanao, intelligence reports confirmed that rebellion persisted and public safety still needed the continued imposition of martial law:

The Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, Daulah Islamiyah (DI), and other terrorist groups (collectively labeled as LTG) which seek to proto global rebellion, continue to defy the government by perpetrating hostile activities during the extended period of Martial Law. At least four (4) bombings/ Improvised Explosive Device (IED) explosions had been cited in the AFP report. The Lamitan City bombing on 31 July 2018 that killed eleven (11) individuals and wounded ten (10) others, the Isulan, Sultan Kudarat IED explosion on 28 August and 02 September 2018 that killed five (5) individuals and wounded forty-five (45) others, and the Barangay Apopong IED explosion that left eight (8) individuals wounded.

The DI forces continue to pursue their rebellion against the government by furthering the conduct of their radicalization activities, and continuing to recruit new members, especially in vulnerable Muslim communities.

While the government was preoccupied in addressing the challenges posed by said groups, the CTG, which has publicly declared its intention to seize political power through violent means and supplant the country's democratic form of government with Communist rule, took advantage and likewise posed serious security concerns. Records disclosed that at least three hundred forty-two (342) violent incidents, ranging from harassments against government installations, liquidation operations, and arson attacks as part of extortion schemes, which occurred mostly in Eastern Mindanao, had been perpetrated from 01 January 2018 to 30 November 2018. About twenty-three (23) arson incidents had been recorded and it had been estimated that the amount of the properties destroyed in Mindanao alone has reached One Hundred Fifty-Six (156) Million Pesos. On the part of the military, the atrocities resulted in the killing of eighty-seven (87) military personnel and wounding of four hundred eight (408) others.

Apart from these, major Abu Sayyaf Group factions in Sulu continue to pursue kidnap for ransom activities to finance their operations. As of counting, there are a total of eight (8) kidnappings that have occurred involving a Dutch, a Vietnamese, two (2) Indonesians, and four (4) Filipinos.

The foregoing merely illustrates in general terms the continuing rebellion in Mindanao. I will be submitting a more detailed report on the subsisting rebellion in the next few days.[43]

On December 12, 2018, the Congress, in a joint session, adopted Resolution of Both Houses No. 6,[44] again extending the Proclamation from January 1, 2019 to December 31, 2019.

Four (4) consolidated Petitions[45] were filed before this Court questioning the constitutionality of the third martial law extension. Among them, Rius Valle, et al.'s Petition detailed the environment of continued impunity created by the wholesale extension of martial law and suspension of the privilege of the writ of habeas corpus. It alleged how the military forces were blatantly targeting, intimidating, harassing, and "red tagging" teachers and students of lumad schools, as well as their families.[46]

II

As I stated in my dissents in *Lagman, et al. v. Medialdea, et al.* and *Lagman, et al. v. Pimentel III, et al.*, the Constitution does not allow a vague declaration and extension of martial law without clear pronouncement of the

scope and parameters of its application.

The martial law declaration has been vague from the beginning, and continues to be with each extension. The Proclamation did not provide the scope and parameters of its application. It merely declared a state of martial law in Mindanao for 60 days and suspended the privilege of the writ of habeas corpus for the same period.

The scope of the martial law proclamation of martial law expanded with every new issuance from its administrators. On May 30, 2017, the President issued General Order No. 1[47] (or the General Order) to implement Proclamation No. 216, which expanded the coverage of martial law to suppress all acts of rebellion and lawless violence in Mindanao, regardless of whether the lawless violence was related to the original hostilities in Marawi City. It also granted the Armed Forces full authority to arrest "persons and/or groups who have committed, are committing, or attempting to commit" rebellion and any other kind of lawless violence.[48]

In my dissent in *Lagman, et al. v. Medialdea, et al.*, I pointed out that the Armed Forces had insufficient guidelines to follow in implementing martial law. This is seen in its overly broad interpretation of its responsibilities under martial law, which it construed to include the dismantling of the New People's Army, illegal drug syndicates, peace spoilers, other terror-linked private armed groups, and other lawless armed groups.[49] Yet, illegal drug syndicates and "peace spoilers"[50] are not covered by the concept of rebellion. The Proclamation's vagueness made their inclusion in the Operational Directive possible.

Under the Proclamation and General Order No. 1, the overly broad and undefined power accorded to the President and the Armed Forces translates to unrestricted authority, which may go against constitutional rights and guarantees.

General Order No. 1 is effectively a directive for law enforcement officers to arrest persons committing unspecified acts. It is, likewise, an implied gag order on the media, as evidenced by a directive for it "to provide full support and cooperation to attain the objectives of [the General Order]"[51] and "exercise prudence in the performance of their duties so as not to compromise the security and safety of the Armed Forces and law enforcement personnel, and enable them to effectively discharge their duties and functions under [the General Order]."[52]

In addition, the Proclamation's vagueness, along with the subsequent issuances, allowed it to evade both legislative and judicial review of the sufficiency of the factual basis surrounding it.

The lack of parameters, standards, or criteria continue to hound the third extension of martial law. The intelligence reports, which became the basis for the third extension of martial law, cite a gamut of criminal acts committed in Mindanao from January 1, 2018 to November 30, 2018. These include ambushes, arson, firefighting/attack, grenade throwing, harassment, improvised explosive device or landmine explosion, kidnapping, attempted kidnapping, liquidation, murder, and robbery/ hold-up, among others.[53]

The government maintained that the criminal acts were committed "relative to the continuing rebellion being waged by the [local terrorist and rebel groups]";[54] however, its conclusion was not supported by its own intelligence reports. Perpetrators were not identified or, if identified, no motive was attributed behind their criminal acts.[55]

The calculated vagueness behind the Proclamation leads to its broad and indiscriminate application, empowering law enforcement officers with unbridled discretion to carry out its operations against unspecified enemies.

Indeed, the Proclamation has created dubious and imaginary monsters, and enforcers of the law will not hesitate to slay them with the great and limitless power bestowed upon them.

III

Even the measurable targets of martial law's implementation have been unclear since its initial proclamation in 2017. Worse, the government has been reluctant to set forth any targets, and pronouncements on its targets have been inconsistent.

Just as the vagueness of what powers to exercise leads to unduly broad powers, the absence of any clear target leads to the probability of indefinite and repeated extensions. This is based on illegal activities still occurring in places in Mindanao despite the subsistence of martial law.

In my dissent in *Lagman, et al. v. Pimentel III, et al.*, I explained why the government must define its targets for the martial law extension. Without this articulation, this Court cannot review the sufficiency of the factual basis for the extension.

I noted that according to the Chief of Staffs Operational Directive submitted in *Lagman, et al. v. Medialdea, et al.*, the operation's purpose was to ensure that normalcy be restored, and safety and security be assured throughout Mindanao within 60 days. Although the operation's key tasks included destroying local terrorist groups and dismantling the New People's Army, it did not state what would constitute doing so.

In the second, longer extension, the government still failed to define its targets. During the oral arguments, General Rey Leonardo Guerrero only named quelling the rebellion as the objective of the then one (1)-year extension of martial law. Yet, he could not explain what it meant to "quell the rebellion"[56] or how much degradation of forces would be enough to consider the rebellion quelled.

As of the beginning of the oral arguments for the latest martial law extension, there were still no mention of any targets or projected timelines, or any measure to determine whether the rebellion had been successfully quelled:

ASSOCIATE JUSTICE CAGUIOA:

... Okay, my last question is this, is there a projected or estimated timeline when government forces will be able to put an end to the, what you say is a persisting rebellion in Mindanao, is there a timeline?

MAJOR GENERAL LORENZO:

We have targets in our campaign, targeting the different groups, Your Honor, so what I can say at this point is, it is dependent on the accomplishment or attainment of the target goals set in the different campaigns that we are implementing, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

Okay, at which point in time from your perspective can you say that rebellion would have been quelled? At which point in time when the last rebel is dead? At which point in time do we say rebellion is done, is no longer persisting? Just for me to understand from your point of view.

MAJOR GENERAL LORENZO:

Sir, given that question, what I could say is, it's not the killing of every single rebel out there when we can call, when we can say that rebellion no longer exist. Rather, it is the attainment of a level of security whereby the different threat groups can no longer impose their will or impose their will (sic) on the people or they are no longer effective as far as attaining their political objectives are concerned. So, we...

ASSOCIATE JUSTICE CAGUIOA:

So, until such...

MAJOR GENERAL LORENZO:

... we set certain parameters for this, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

So, until such time that that level of security is not attained, it is your position that rebellion continues, is that it?

MAJOR GENERAL LORENZO:

Yes, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

So, until such time that rebellion continues, martial law will continue?

MAJOR GENERAL LORENZO:

Not necessarily, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

But that is the, that was the endorsement of the Military to the President, correct?

MAJOR GENERAL LORENZO:

Yes, Your Honor.[57]

Later on, Associate Justice Jardeleza coaxed from the Solicitor General a semblance of a target, and for the first time, a basis to determine whether the rebellion had been addressed enough so that public safety no longer requires a martial law extension:

JUSTICE JARDELEZA:

... The question I have, Mr. SolGen and the reason if you can, I can give you a time to confer with them. I would like you to look at the testimony of Secretary Lorenzana to the Congress, and I quote: "Kapag po nai-reduced iyan nang about 30% ng kanilang capability and they become law enforcement problems, then the police forces can take over without the military." Do you see it, Mr. SolGen? So I would like to give you time to show it to General Albayalde and Usec Yano. And when General Mendoza and Secretary Año are back, I'm sorry, Madrigal are back, you can show it also to them and then I have a question which you can answer after you confer with them. Is it the position of the government that when the capability of the local and the communist terrorist groups are degraded by 30%, then you can already recommend to the President that martial law is over? You can confer with your clients, Mr. Solgen.

CHIEF JUSTICE BERSAMIN:

Undersecretary Yano?... There is an instruction or request for you to confer with the Solicitor General on the subject of that interpellation. You may join the Solicitor General.

Secretary Año, you are I think needed to confer with the Solicitor General.

Note:

After several minutes.

SOLICITOR GENERAL CALIDA:

Your Honor, we have talked with our clients and I will ask one of them to answer your question, Your Honor.

JUSTICE JARDELEZA:

Yes, thank you, Mr. SolGen.

GENERAL MADRIGAL:

Your Honor, I'm General Benjamin Madrigal, Jr., the Chief of Staff of the Armed Forces of the Philippines. Regarding the statement of the Secretary, that basically, Your Honor, is the military definition of destruction of the enemy. When you attain 30% not only in terms of number of the regular forces but rather the 30%, you have reduced the enemy by 30% in terms of strength, firearms, the support system, for example the Barangay affectations as well as resources, Your Honor.

JUSTICE JARDELEZA:

So I think that's very interesting, General, in effect that is what I am asking, what is the science behind the 30% and I think, correct me, if I am correct, if I'm right, the capability of the enemies of the State is measured and I see it that's how you present it to Congress in terms of (1) manpower; that's why you have number of people; (2) firearms; (3) I think controlled barangays...

GENERAL MADRIGAL:

Yes, Your Honor.

JUSTICE JARDELEZA:

And no. (4) violent incidents?

GENERAL MADRIGAL:

Yes, Your Honor.

JUSTICE JARDELEZA:

So those four, which are in your data and as presented today and as presented to the Congress. The sum total is what you call capability?

GENERAL MADRIGAL:

Yes, Your Honor.

JUSTICE JARDELEZA:

And when you degrade the capability by 30% then...?

GENERAL MADRIGAL:

By 70%, meaning, the remaining part is 30%, Your Honor.

JUSTICE JARDELEZA:

If you degrade their capability by 70% and their strength is only 30%, what is the term? You have defeated them or what?

GENERAL MADRIGAL:

We call it that, that is, that it has been brought down to level of law enforcement, Your Honor.

JUSTICE JARDELEZA:

Which means General Albayalde...

GENERAL MADRIGAL:

Can take over...

JUSTICE JARDELEZA:

...and the DILG will take over?

GENERAL MADRIGAL:

They can take the lead, Your Honor.

JUSTICE JARDELEZA:

Now, but do you have an opinion on whether then martial law should be lifted because you don't need the military anymore?

GENERAL MADRIGAL:

We will gladly recommend the lifting of martial law if we attain that, Your Honor.

JUSTICE JARDELEZA:

Thank you.

Can I have a second question to the SolGen? Again, may I ask the able staff of the SolGen to show to the SolGen Annex 1 of your, OSG Comment? I am referring to the undated letter of General Carlito G. Galvez, Jr. to the President... There is a portion there, Mr. SolGen where General Galvez says, and the beginning of the sentence is "The LTGs manpower and firepower have been reduced by..."

SOLICITOR GENERAL CALIDA:

What number, Your Honor?

JUSTICE JARDELEZA:

I think ASG Rex can point it to you.

SOLICITOR GENERAL CALIDA:

This is no. 1, Your Honor, page 3.

JUSTICE JARDELEZA:

Yes, the sentence begins, Mr. SolGen "the LTGs manpower and firepower have been reduced by..." do you see that?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE JARDELEZA:

Can I complete now the sentence? It says, "the LTGs manpower, meaning the local terrorists groups, the LTGs manpower and firepower have been reduced by 62% and 45%, respectively." And the letter of General Galvez continues and, I quote: "On the other hand, the CTGs, meaning the communist terrorist groups, the NPAs, manpower and firepower have been reduced by 31% and 38%, respectively." Do you see that, Mr. SolGen?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE JARDELEZA:

So given that the science is supposed to be from the military point of view, degrading it by 70% in the case of the manpower of the LTGs, the degradation was 62%.

SOLICITOR GENERAL CALIDA:

Your Honor, I'd like to clarify when we were speaking about the 30%, Your Honor, statement of Secretary Lorenzana, I asked them, what is the baseline and what did 30%, when will you impose this? And they said, this year, Your Honor. If in this year they can reduce the capability to 30% this year, then they will recommend as you heard from the General, Your Honor.

JUSTICE JARDELEZA:

So, Mr. SolGen, the position we would like to know from the government and please cover it in the memo. If we can agree now, we are looking, the Court will be looking to you what is the baseline? We have to agree. If the baseline is January 1, 2019...?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE JARDELEZA:

If the baseline is January 1, 2019, that is the meaning of what the officers have testified today.

SOLICITOR GENERAL CALIDA:

That's correct, Your Honor.

JUSTICE JARDELEZA:

So, I do not know how the Court will decide. If the Court decides not to grant an extension, then that's the end of it. If the Court decides to grant an extension, we have agreed today that you will give us what is the baseline in terms of manpower, in terms of firearms, controlled barangays...

SOLICITOR GENERAL CALIDA:

Capability.

JUSTICE JARDELEZA:

...and violent incidents so that by the end of the year we will know how much progress has been made?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE JARDELEZA:

We have a deal, Mr. SolGen?

SOLICITOR GENERAL CALIDA:

Can we add capability, Your Honor, because that is what...?

JUSTICE JARDELEZA:

Well, what capability?

SOLICITOR GENERAL CALIDA:

...what Lorenzana said, Your Honor, capability.

....

JUSTICE JARDELEZA:

Well, because if you add, as what I'm saying now, as of today in your submission to the Congress and your slide today, you don't have a column called capability because as the resource person said and I thought as a layman, the military men testifying, capability is again the sum total of "gaano kadami ba 'yong kalaban, gaano 'yong firearms."

SOLICITOR GENERAL CALIDA:

And the support of the...

JUSTICE JARDELEZA:

How many barangays they control or...

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE JARDELEZA:

...they influenced...

SOLICITOR GENERAL CALIDA:

Correct.

JUSTICE JARDELEZA:

The sum total of which is the capability to have violent incidents. So to me the four are already, or if you add the four equals capability.

SOLICITOR GENERAL CALIDA:

Okay, Your Honor. I agree.

JUSTICE JARDELEZA:

So we have a deal. That's the...

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE JARDELEZA:

...the definition of terms. Now, Mr. SolGen, I would like to congratulate you because earlier we had a session where you were there and the petitioners' counsels were there and I believed you were able to prevail on your clients to declassify or make public your report to the Congress and I really, I'm very happy that the SolGen is able to convince his clients. So again as I said I don't know whether the Court will extend the martial law.

SOLICITOR GENERAL CALIDA:

I hope it will, Your Honor.

JUSTICE JARDELEZA:

Well, when I mean for this case, but in the event that the Court does, I will urge again the government through you, through the SolGen, to keep following the practice of submitting reports to the Congress. Because now we have a baseline. I have my own views about capability but granting everything that the government has said, and I think what we have established today is a baseline. You give us the figures, January 1, 2019, manpower plus firearms plus controlled barangays plus violent incident equals capability. And I think you have done a great service to the country by saying the report of the military to the Congress is not classified so that the people will know on a month to month basis how much progress the military and the PNP are doing. And I really hope and pray that before December 2019, that the military and the police degrade by more than 70% so that the members of the Court do not have to meet again and have another petition. Thank you very much, Mr. SolGen.[58]

However, upon further interpellation, the Solicitor General admitted that this 30% target discussed with Associate Justice Jardeleza had only been developed that day. He further admitted that he could not "predict the future"[59] when it came to the President's own targets for martial law:

ASSOCIATE JUSTICE LEONEN:

I asked for the Solicitor General because I know that you are the most knowledgeable in your, with your side.

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

Okay. When did government arrive at the 30% target that you discussed with Justice Jardeleza?

SOLICITOR GENERAL CALIDA:

Actually, I just read it this afternoon, Your Honor.

ASSOCIATE JUSTICE LEONEN:

So, you just arrived at the goal of martial law 30% degrading only this afternoon?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

And you are now binding the Commander-in-Chief? In other words, you just discussed it here in caucus?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

And now you committed to Court a degradation of 70% as the goal of martial law?

SOLICITOR GENERAL CALIDA:

For this year, Your Honor.

ASSOCIATE JUSTICE LEONEN:

For this year?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

And this is the position of government, correct?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

Are you binding President Rodrigo Duterte, the Commander-in-Chief? Because I do not see him here and if you arrived at the target only now that means you are binding the President?

SOLICITOR GENERAL CALIDA:

I will explain to him what happened here and I will report to you, Your Honor.

ASSOCIATE JUSTICE LEONEN:

But I think you know the President more than I do, he has his own mind, is that not correct?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

He has his own goals, is that not correct?

SOLICITOR GENERAL CALIDA:

That's correct, Your Honor.

ASSOCIATE JUSTICE LEONEN:

And as far as all of you are concerned you are all alter egos, advisers to the President, is that not correct?

SOLICITOR GENERAL CALIDA:

That's correct, Your Honor.

ASSOCIATE JUSTICE LEONEN:

And therefore, you cannot commit to this Court 30%, correct?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor, because it came from the military group, Your Honor.

ASSOCIATE JUSTICE LEONEN:

More importantly, this 30% was it discussed with Congress?

SOLICITOR GENERAL CALIDA:

I was not present there, Your Honor, so I have no idea.

ASSOCIATE JUSTICE LEONEN:

In other words, it was not, it was in one of the statements of Lorenzana, the Secretary. But Congress did not push and ask the resource speakers what was the goal of one year, is that not correct?

SOLICITOR GENERAL CALIDA:

That's correct, Your Honor.

ASSOCIATE JUSTICE LEONEN:

Yes. So it's possible to have an extension for 2020, is that not correct? Still possible?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

Perhaps even 2021, correct?

SOLICITOR GENERAL CALIDA:

That's possible, Your Honor.

ASSOCIATE JUSTICE LEONEN:

Perhaps 2022, correct?

SOLICITOR GENERAL CALIDA:

Hopefully, yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

So this is the new normal? That for the whole term of this President there will be martial law in Mindanao, is that not possible? Considering that the Communist Party has been resilient for 50 years. I was only six years old when they started, now I'm 56. Considering that violent extremism will exist in Mindanao in the next three years, considering that there will still be kidnapping, considering that there will still be rido and those are all in your reports. Therefore, are you now telling the Supreme Court that it is possible that the extensions will be not only three, will be four, five or six extensions?

SOLICITOR GENERAL CALIDA:

Well, it depends, Your Honor, if the policy of 30% degradation which will start this year, if we can attain it, why not, Your Honor.

ASSOCIATE JUSTICE LEONEN:

Yes, but it is not the goal of the Commander-in-Chief, correct? Not yet?

SOLICITOR GENERAL CALIDA:

Well, I cannot predict the future, Your Honor.[60]

Although the Solicitor General had initially appeared to be willing to commit to a 30% degradation target and to explain the situation to the President, he ultimately admitted that he could not predict how the President would think in the future.

Moreover, the targets identified during the January 29, 2019 oral arguments are inconsistent with the pronouncements made by Secretary Lorenzana barely a week later, on February 4, 2019, in his speech on the National Security Outlook for the Philippines in 2019. In his speech, he-said:

The Anti-Terrorism Act which, when enacted, would no longer necessitate the proclamation of martial law and suspension of habeas corpus; this is the main argument that we presented to the Senate when we were there to defend martial law because we told them that the people now have no teeth... I told them, if they can pass it within half of this year, then I can recommend the cessation of martial law in Mindanao by July first.[61]

Additionally, the Office of the Solicitor General admitted that the targets set during the oral arguments were essentially lip service. In its Memorandum, it said that it could not bind the President to its definition of when the rebellion would be quelled:

83. A plain reading of Section 18, Article VII of the Constitution shows that the President's power to determine

the necessity for an extension of martial law is not subject to any condition except the requirements of actual invasion or rebellion and public safety. It would also be contrary to common sense if the decision of the President is to depend on the calculations of his alter ego. The President is not bound by the actions of his subalterns; the former is only bound by what the Constitution dictates. Ergo, an extension of martial law would still be valid even if the DND Secretary declares that the rebels' capabilities had been degraded by more than seventy percent.[62] (Citation omitted)

Curiously, figures on anti-illegal drug operations have repeatedly been cited in the government's letters and reports on martial law, as if the figures were targets in the proclamation and implementation of martial law. In his December 4, 2018 Letter to President Duterte, the Solicitor General said:

The operations conducted by the AFP in support of the implementation of martial law have resulted in gains in ending the DAES inspired and CNT rebellion in the country, including:

....

4. The AFP supported anti-illegal drug operations of the Philippine Drug Enforcement Agency (PDEA) resulting in the neutralization of 239 drug personalities, and the seizure of 87 firearms and 814 sachets of illegal drugs[.][63]

Similarly, in his letter to President Duterte, General Carlito G. Galvez, Jr. cited the Armed Forces' support of anti-illegal drug operations as one of the outcomes of the martial law implementation in Mindanao. Likewise, all of the Armed Forces' monthly reports included figures that pertained to the dismantling of "illegal drug syndicates and other lawless armed groups,"[64] reporting: (1) the volume of illegal drugs confiscated; and (2) the number of personalities who surrendered, were killed, or were captured.

Notably, the existence of illegal drug syndicates was not, and cannot be, the basis of the martial law declaration.

These conflicting assertions on the targets of martial law raise doubts on whether any target exists at all, or if the government has been implementing martial law to sincerely quell a supposed rebellion and restore civil rule in Mindanao. They reveal a lack of foresight, preparation, or strategy in the implementation of martial law, which should put this Court on guard in this exercise.

IV

It is this Court's constitutional duty to review, in an appropriate proceeding, the sufficiency of the factual basis for the extension of martial law and suspension of the privilege of the writ of habeas corpus.[65] Thus, this Court is bound to reassess and independently determine the sufficiency of the factual basis presented by the government. We cannot accept the President's conclusion pro forma and adopt it as our own.

Settled is the rule that the burden is on the government to show this Court that it has sufficient factual basis for the extension of martial law and suspension of the privilege of the writ of habeas corpus.[66] The government is duty bound to adequately prove that the facts and information it alleged can support the extension. This may be done by presenting evidence supporting its factual allegations, and the context for its interference.

Standards must be set to guide this Court as it treads the multitudinous reports given to determine the sufficiency of the factual bases invoked by the President.

In my dissent in *Lagman, et al. v. Medialdea, et al.*, I asserted that the facts alleged and relied upon by the President must be: (1) credible; (2) complete or sufficient to establish a conclusion;[67] (3) consistent with each other; and (4) able to establish a sensible connection between the incidents reported and the existence of rebellion, and the consequent need for martial law's proclamation or extension.

The government's presentation of facts justifying the extension has not met these standards.

V

The government failed to show the credibility of its intelligence reports to justify the third extension of martial law. It has failed to show that the kind of rebellion, if any, suffices to justify the necessity and public safety requirement to declare martial law or suspend the privilege of the writ of habeas corpus.

Due to the multifarious responsibilities demanding the president's attention, he or she is constrained to heavily rely on the intelligence reports submitted by those under his or her command.[68] The President banks on his or her alter egos' reports to determine the proclamation or extension of martial law. These reports constituting the factual bases of the President's judgment must go through a strict validation process. To serve as sufficient bases, they must be subjected to a scrupulous process of analysis and validation.[69] This process must be airtight in nature to avoid, or at least minimize, dubious data. Finally, to ensure that the source of information is credible, the information collected must be transparent.

Facts are deemed judicially sufficient when it is shown that they came from credible sources, these being the foundation of the President's exercise of its commander-in-chief powers under Article VII, Section 18 of the Constitution.

The credibility of the information rests upon the degree of validation used to confirm its authenticity. The function of validating information is vital to the resulting judgment of the President.

In my dissenting opinion in *Lagman, et al. v. Madialdea, et al.* I enumerated five (5) disciplines in gathering information, namely: (1) signals intelligence; (2) human intelligence; (3) open-source intelligence; (4) geospatial intelligence; and (5) measurement and signatures intelligence.[70]

Signals Intelligence (SIGINT) refers to the interception of communications between individuals and "electronic transmissions that can be collected by ships, planes, ground sites, or satellites."

Human Intelligence (HUMINT) refers to information collected from human sources either through witness interviews or clandestine operations.

By the term itself, Open-Source Intelligence (OSINT) refers to readily-accessible information within the public domain. Open-Source Intelligence sources include "traditional media, Internet forums and media, government publications, and professional or academic papers."

Newspapers and radio and television broadcasts are more specific examples of Open-Source Intelligence sources from which intelligence analysts may collect data.

Geospatial Intelligence (GEOINT) pertains to imagery of activities on earth. An example of geospatial intelligence is a "satellite photo of a foreign military base with topography[.]"

Lastly, Measures and Signatures Intelligence (MASINT) refers to "scientific and highly technical intelligence obtained by identifying and analyzing environmental byproducts of developments of interests, such as weapons tests." Measures and Signatures Intelligence has been helpful in "identify[ing] chemical weapons and pinpoint[ing] the specific features of unknown weapons systems." [71] (Citations omitted)

Respondents submitted numerous reports[72] as basis for the third extension of martial law. These reports, according to respondents, are the consolidation of various intelligences and accounts of different field units and multiple sources within the government.[73]

Since the reports were the foundation of the President's judgment, this Court probed into how they were validated

and authenticated. Regrettably, respondents failed to illuminate on this matter:

ASSOCIATE JUSTICE CAGUIOA:

Alright. Let me begin my small questions. I noticed, that in the Annexes that you submitted at the lower right hand portion there is a stamp that says "authenticated by" and there is a signature over the name, if I can read the name, SMS Dionisio B. Medilo PAF, NCOIC, ATD, 0.12. Can you tell us who this person is?

MAJOR GENERAL LORENZO:

Yes, Your Honor. He is the enlisted personnel assigned to our office.

ASSOCIATE JUSTICE CAGUIOA:

And can you tell us what his functions are?

MAJOR GENERAL LORENZO:

He is assigned with the Anti-Terrorist Division of the OJ2. He receives reports, assists in the research and intelligence reports relative to the counter-terrorism efforts of the Armed Forces of the Philippines, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

He is based in Mindanao?

MAJOR GENERAL LORENZO?

He is based in Manila.

....

ASSOCIATE JUSTICE CAGUIOA:

Thank you. Now, going back to the person who authenticated these reports, can you tell us the process? What is the process that OJ2 follows in authenticating reports, in vetting intel? Can you tell us how that process goes?

MAJOR GENERAL LORENZO:

May I be clarified on the question, Your Honor?

ASSOCIATE JUSTICE CAGUIOA:

In the preparation of these Tables, I'm sure there is a vetting process, there is an authentication process as explained by the phrase "authenticated by." I just want to know what is the process involved in the process of authentication.

MAJOR GENERAL LORENZO:

Normally, Sir, as we received reports, for intelligence processing, Sir, there is the so-called intelligence cycle. So as we received reports, that is the submission of reports to us, that is already, shall I say, collected information goes through different stages of processing We collate, integrate and bring in other information that are related to it. We also evaluate the source of the report whether in terms of reliability, the accuracy of the information until we come out with more refined or more accurate intelligence that is for the intelligence cycle... (interrupted)

....

ASSOCIATE JUSTICE CAGUIOA:

Let me cut you. When Medilo says "he authenticates these Tables," what exactly is he saying?

MAJOR GENERAL LORENZO:

Your Honor, if you are referring to authentication of documents as to authenticity of what we are receiving, he will just look at the original file and a reproduction of what would be authenticated by usually officers under us. We have admin officers to authenticate documents... (interrupted)

....

ASSOCIATE JUSTICE CAGUIOA:

So just to be clear there are more raw information coming in, they all come together. You do a screening, check the sources, and then, you make your conclusions and all of that is in a report and Mr. Medilo simply collates and compiles these reports. Is that correct?

MAJOR GENERAL LORENZO:

Yes, Your Honor.[74]

....

ASSOCIATE JUSTICE GESMUNDO:

So, just to be clarified, when you mentioned authenticated by SMS Medillo, what do you mean by that? Does he verified it, each incident report from an index or what?

GEN. LORENZO:

Yes, Your Honor, because it's a faithful reproduction of what's already on file.

ASSOCIATE JUSTICE GESMUNDO:

Because you want the Court to rely on this report as the factual basis for the prayer for the extension of martial law, we want to be assured that this is authenticated, you may have the presumption of regularity but we want to know the authenticity and veracity of these incident reports.

GEN. LORENZO:

Sorry, Your Honor, those reports came from the chain of command, Your Honor, the... (interrupted)

ASSOCIATE JUSTICE GESMUNDO:

Can you put that in your memorandum also, how this report was processed?

GEN. LORENZO:

We will do that, Your Honor.

ASSOCIATE JUSTICE GESMUNDO:

Thank you very much.[75]

Despite the opportunity to expound in their Memorandum the authentication process the reports had gone through, respondents repeatedly failed to provide a satisfactory explanation. They merely stated that the information in the

reports came from various Armed Forces units obtained through formal channels[76] and informants who are members of the threat groups.[77]

Respondents only indicated that they have been "[d]uly validated in accordance with military procedure,"[78] and are similar to entries in official records which enjoy the presumption of being the prima facie evidence of the facts.[79]

More, they hinge on petitioner's failure to advance any basis for this Court to cast doubt on these reports.[80]

However, it must be emphasized that due to the intelligence reports' confidentiality, any opportunity for petitioners to challenge their authenticity is negated. Petitioners have no duty to uncover the errors and inaccuracies of these reports; rather, it is the government's obligation to prove that the reports it relied on are authentic.

The rights curtailed by martial law demand that the government ensure the information it gathered had come from credible sources. Respondents' failure to indicate the analytical process their reports have gone through raises serious doubts on their authenticity and reliability.

With the government forcing upon this Court the premise that the facts it alleged warrant a martial law extension, without properly citing any standard to validate them, this Court will be constrained to accept the alleged facts as absolute truth. This cannot be the case. The Constitution explicitly grants this Court the power to review the sufficiency of the factual basis for the martial law extension. Anything less will render this Court's judicial power of review inutile.

VI

Although many criminal incidents were alleged to support the claim that there is an ongoing rebellion in Mindanao, many of the reports were glaringly incomplete, and lacked a crucial detail: who the perpetrators were.

Members of this Court rigorously scrutinized the submissions made by respondents and found glaring inadequacy in their reports. A number of the violent incidents reported to be associated to an ongoing rebellion do not indicate their perpetrators. Likewise, the motives behind these attacks were not indicated. To name a few:

- On March 5, 2018 a report was made that a certain Mutim Abdos of So Hawani, Barangay Latin, Patikul, Sulu was fired upon by an "undetermined number of unidentified armed men"[81] believed to be Abu Sayyaf Group members.[82]
- On March 7, 2018, a certain Sitti Dornis Mustapa Hamsirani was abducted by three (3) unidentified armed men while she was on her way to Jolo town. After investigation, it was discovered that she has been failing to pay her debt to an unknown man. Further inquiry was made to determine the identity and real motive of the abduction.[83]
- On April 11, 2018, unidentified persons placed an unidentified improvised explosive device beneath a payloador at Barangay Geras, Isabela City, Basilan.[84]
- On April 16, 2018, an unidentified person threw a hand grenade at the warehouse of Engineer Soler Undug, District Engineer of Basilan-Autonomous Region of Muslim Mindanao, in Barangay Aguada, Isabela City, Basilan.[85]
- On April 28, 2018, a certain Nijam AWSAL @ NGAIN was killed by an unidentified assailant believed to be an Abu Sayyaf Group member.[86]

- On May 28, 2018, SSg Alam Intel NCO of Bcoy, 18IB was ambushed by unidentified armed men in Sitio Bekew, Barangay Baguindan, Tipo-Tipo, Basilan while he was traversing their CP Base in Sitio Kapayagan, Baguindan, Tipo-Tipo, Basilan.[87]
- On November 23, 2018, a red/black Suzuki Raider was reported to have been forcibly taken by 10 armed Abu Sayaff Group members.[88]
- On November 30, 2018, the house of a certain Abul Hair Oddok was burned down by 11 armed Abu Sayaff Group members. No information was given regarding the purpose of the attack.[89]
- On December 12, 2018, an engineer of HHH Developer and Construction Company in Barangay Cabunbata, Isabela City, Basilan, was shot to death by a riding-in-tandem duo of the Abu Sayaff Group.[90]

During the oral arguments, these omissions were pointed out to respondents, who were then directed by this Court to include in their Memorandum updates on the perpetrators' identities. However, they failed to conclusively ascertain that these attacks were executed by insurgents to further the rebellion.[91]

In his December 6, 2018 letter[92] to the Senate and the House of Representatives, President Duterte stated that during the extended period of martial law, the Abu Sayyaf Group, Bangsamoro Islamic Federation Fighters, Daulah Islamiyah, and other terrorist groups continue to defy the government by perpetuating hostile activities. This, he said, required further extension of martial law.

By ascribing to these terrorist groups the authorship of the hostile activities, the President has unduly jumped to a conclusion insufficiently supported by evidence. The intelligence report, which formed part of the President's determination to declare martial law, did not categorically state that it was the members of these groups who executed the hostile acts, which allegedly warranted the extension of martial law.

Likewise, the motive of these unidentified men in committing the hostile acts were never identified in the intelligence report. The link to ascertain the malefactors' identities and their motives in committing the hostile acts vis-a-vis the actual perpetrators and their implied affiliation with these terrorist groups were never alleged.

This failure cannot be allowed. A considerable void exists within the intelligence report, which cannot be substituted by any amount of implication or guesswork.

VII

Assuming that these violent incidents were authored by terrorist groups, respondents failed to show that they were committed to further the rebellion. No definite connection was presented to show that these incidents were carried out to advance the objectives of the rebellion. They failed to demonstrate how these events support the government's conclusion of persisting rebellion in Mindanao. They also failed to show that these were the kinds of rebellion which met the requirement of necessity and public safety in the Constitution.

Among the incidents was the ambush of a certain Muksin Kaidin and Mukim on February 1, 2018, by an undetermined number of unidentified men while onboard their vehicle. The victims sustained multiple gunshot wounds and died due to the vehicle's explosion. Initial investigation revealed that the attack was caused by a longstanding family feud between the victims and the suspects.[93]

On February 28, 2018, members of Barangay Peacekeeping Action Team and Local Government Unit conducting road construction projects in the barangay hall of Barangay Dugaa, Tuburan, Basilan, were fired upon by Abu Sayaff Group affiliates led by Abu Sayyaf Group Subleader Abdullah Jovel Indanan @ Guro, who reportedly feuds with the incumbent barangay chair of Dugaa.[94]

On March 30, 2018, a firefight ensued at Barangay Latih Detachment in Patikul, Sulu, initiated by Abu Sayaff Group members to avenge the death of its member, Roger Samlaon.[95]

On June 17, 2018, Abu Sayyaf Group Subleader Alden Bagade @ SAYNING was killed by his brother, Muslim Bagade, who mistook him for an intruder.[96]

On July 24, 2018, the house of a certain Kagui Norodin Lasam was burned down by unidentified armed men, believed to be members of the Bangsamoro Islamic Freedom Fighters, for not giving the mandatory zakat.[97]

During the oral arguments, members of this Court pressed respondents to make a connection between the following incidents and the alleged continuing rebellion in Mindanao. Despite their categorical commitment, respondents failed to do so.

ASSOCIATE JUSTICE LEONEN:

Okay. All intelligence reports and conclusions are validated, is that not correct?

SOLICITOR GENERAL CALIDA:

According to the military, Yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

When presented to the Commander-in-Chief, it is validated especially, is that not correct? Because he's the Commander-in-Chief he has to act with very specific validated information, is that not correct?

SOLICITOR GENERAL CALIDA:

Well, I have no personal knowledge on that, Your Honor, but I trust our military, Your Honor.

ASSOCIATE JUSTICE LEONEN:

Yes, and when it is presented to Congress on a matter as significant as martial law, it is likewise validated, is that not correct?

SOLICITOR GENERAL CALIDA:

It should be validated, Your Honor.

ASSOCIATE JUSTICE LEONEN:

Yes. Now, how do you explain the inconsistencies, the incomplete statements, the inclusion of rido and kidnapping in the report that was just submitted to the highest court of the land to support the extension of martial law?

SOLICITOR GENERAL CALIDA:

I think, Your Honor, that was corrected by them, maybe there were some clerical errors.

ASSOCIATE JUSTICE LEONEN:

It was not clerical errors.

SOLICITOR GENERAL CALIDA:

To err is human, Your Honor.[98]

Contrary to respondents' justification, including kidnapping incidents and family feuds in the intelligence reports are not clerical errors. Their insertion means that these acts were committed to further the objectives of rebellion. By doing so, the government is duty bound to give details as to why they were included.

Respondents failed to overcome the burden of proving the connection between these instances. That the attacks were perpetrated by members of the terrorist groups that the President mentioned does not mean that they were committed in furtherance of rebellion. At best, they were politically motivated or based only on grudges involving private matters.

A mere invocation of random firefights or encounters involving armed men cannot engender a belief that they were undertaken in furtherance of rebellion.

VIII

The intelligence reports are replete with inconsistencies.

The headings of the intelligence reports containing the violent incidents state, "ASG-INITIATED VIOLENT INCIDENTS,"[99] "BIFF-INITIATED VIOLENT INCIDENTS"[100] and "DI-INITIATED VIOLENT INCIDENTS." [101] However, a reading of these intelligence reports would show that the individuals involved in some of the incidents in them were not identified. That these unidentified men were involved in the violent incidents renders the whole intelligence report inconsistent, because the headings attribute these acts to specific terrorist groups.

Respondents, in no equivocal terms, stated that unidentified men were involved in some of the incidents in its intelligence reports. The intent to deceive in the crafting of the intelligence report is more real than not.

Moreover, the monthly reports of martial law's implementation in Mindandao submitted by the Armed Forces to Congress were methodically prepared to give an impression of continued rebellion in Mindanao. The facts were presented to depict a situation justifying the martial law's further extension. However, a scrutiny of these reports shows that they are brimming with irregularities. One might conclude that the reports have been tweaked to cater the need of the policy maker.

In its February 23, 2018 report[102] for the period of January 2018, the Armed Forces reported a total of 31 neutralized terrorist group members and 36 recovered firearms, as follows:

Objective

Measure of Performance

TOTAL

Terrorist Groups destroyed

Nr of neutralized terrorist group members

31

- Killed

19

- Captured/Apprehended

1

- Surrendered

11

Nr of firearms recovered

36

- High-powered

19

- Low-powered

17

In February 2018, the Armed Forces reported[103] additional 42 neutralized terrorist group members and 31 firearms recovered:

Objective

Measure of Performance

TOTAL

(01-28 Feb 18)

TOTAL

(01 Jan-to date)

Terrorist Groups destroyed

Nr of neutralized terrorist group members

42

73

Killed

20

39

Captured/Apprehended

6

7

Surrendered

16

27

Nr of firearms recovered

31

67

High-powered

18

37

Low-powered

13

30

In March 2018, 95 terrorist group members were reported[104] to have been neutralized and 32 firearms recovered. This would have amounted to 168 neutralized terrorist group members and 99 seized firearms, but reported as follows:

Objective

Measure of Performance

Inclusive Date

(Mar 1-31, '18)

TOTAL

(Jan 1 -Mar 31, '18)

Terrorist Groups destroyed

Nr of neutralized terrorist group members

95

187

Killed

58

98

Captured/Apprehended

6

25

Surrendered

31

64

Nr of firearms recovered

32

97

High-powered

28

95

Low-powered

4

2

Respondents failed to submit to this Court a copy of the report for April.

In May 2018, additional 93 terrorist group members were neutralized and 83 firearms seized:[105]

Objective

Measure of Performance

Inclusive Date

(May 1-31, '18)

TOTAL

(Jan 1-May 31, '18)

Terrorist Groups destroyed

Nr of neutralized terrorist group members

93

312

Killed

11

117

Captured/Apprehended

41

66

Surrendered

41

129

Nr of firearms recovered

High-powered

69

208

Low-powered

14

33

For the month of June 2018, they reported[106] additional neutralized 66 terrorists and 36 seized firearms which should have resulted to 378 neutralized terrorist group members and 277 firearms recovered. However, the number as reported was lower than what it should have been without furnishing any explanation.

Objective

Measure of Performance

Inclusive Date

(June 1-30, '18)

TOTAL

(Jan 1-June 30, '18)

Terrorist Groups destroyed

Nr of neutralized terrorist group members

66

301

Killed

34

128

Captured/Apprehended

11

28

Surrendered

21

145

Nr of firearms recovered

36

235

High-powered

30

206

Low-powered

6

29

Similar irregularities are scattered among the different monthly reports submitted by the Armed Forces. They belie any assertion that the monthly reports are consistent with the data they represent—the *raison d'être* of martial law in Mindanao.

The inconsistencies in both the intelligence reports and monthly reports of the Armed Forces are fatal flaws in the President's plan to continue imposing martial law in Mindanao.

To determine the sufficiency of the factual basis for the extension of martial law, all relevant information must be exhaustively determined. Each piece of evidence submitted must be rigorously examined. This Court cannot blindly acknowledge the perception of the President as correct. It is our burden to uphold and safeguard our democratic processes.

I am not convinced that there is sufficient factual basis for the extension of Martial Law.

Moreover, the intelligence reports failed to present themselves credible enough to narrate the information justifying the martial law extension. There is a lack of transparency on the information sources gathered by the Armed Forces. This renders the collected information dubious, as there is a risk that the information the President used to determine the martial law extension may have been tampered or maliciously leaked to support unscrupulous ends.

Respondents failed to illuminate this Court on the analytical standard or procedure used by the government to determine the legitimacy of the information contained in the intelligence reports. By simply alleging the information without bothering to explain how it was authenticated, this Court is left in the dark and is forced to accept any and all data or information included in the intelligence reports.

The hostile acts in the intelligence reports lack effective links to ascribe the hostilities to the Abu Sayaff Group, Bangsamoro Islamic Freedom Fighters, or Daulah Islamiyah. Respondents failed to determine the perpetrators' identities and motives in committing the hostile acts. By failing to make a concrete link between the terrorist groups and the unidentified men, the intelligence reports unduly assume that the terrorist groups were indeed the entities behind the hostilities.

This assumption cannot pass legal muster. This Court is mandated by the Constitution to make a determination as to the sufficiency of the factual basis for the martial law extension. By engaging in assumptions and guesswork, the completeness of the intelligence reports comes under scrutiny, their findings become dubious, and the conclusions they present are put in question.

Assuming that the information in the intelligence reports is credible and complete, the intelligence reports still suffer from an infirmity. During the oral arguments, this Court pressed respondents to draw a connection between the violent incidents in the intelligence reports and the existence of rebellion in Mindanao. Respondents, however, failed to sufficiently draw the nexus. This lack of a reasonable connection proves fatal in justifying the extension of martial law.

Moreover, a scrutiny of the intelligence reports and monthly reports brings about numerous inconsistencies in the documents' narration and determination of data.

The intelligence reports all contained headings to the effect that the violent incidents contained within were initiated by the Abu Sayaff Group, Bangsamoro Islamic Freedom Fighters, and Daulah Islamiyah. However, upon closer look, the perpetrators of some of the incidents in them were unidentified.

In other words, despite their headings explicitly stating that the terrorist groups spearheaded the violent incidents, the intelligence reports still acknowledged that the perpetrators of some of the violent incidents were never

identified.

The monthly reports also suffer from the same inconsistencies. They show that the data did not tally correctly. The numbers representing the measure of performance for each month did not match upon final determination. Such inconsistencies would lead a reasonable mind to no other conclusion except that the monthly reports were made in a rush.

IX

The Communist Party of the Philippines-New Peoples' Army-National Democratic Front (CPP-NPA-NDF) was not properly included as basis for the initial proclamation of martial law. The CPP-NPA-NDF, as it subsists and has subsisted for the past few decades, is not a rebellion that requires the declaration of martial law.

In my dissent in *Lagman, et al v. Pimentel III, et al.*,^[107] I pointed out that President Duterte, in his letter requesting for the longer extension of martial law, introduced the CPP-NPA as new basis for the claim that rebellion persists, not present in the Proclamation. Thus, the government, in extending martial law, inserted incidents relating to the diminishing insurrection of the CPP-NPA-NDF as an afterthought to bolster its claims of a rebellion requiring the martial law declaration.

In my dissent, I pointed out that there was no explanation why: (1) they should be included in justifying the need to extend martial law; (2) the martial law is only in Mindanao, despite incidents of violence outside of it attributed to the CPP-NPA; and (3) the martial law would only be for a year. It was also not explained what could be accomplished in that period, considering that the CPP-NPA has been operating for more than 50 years. I further pointed out that the army's numbers have only been decreasing—while it had around 26,000 soldiers in the 1980s, its ranks now only total 1,748 in Mindanao, according to the Armed Forces data.

Despite this, respondents insist, and the majority accepts, that the claim that the CPP-NPA's operations require a martial law declaration. In his December 6, 2018 letter, President Duterte asserted:

While the government was preoccupied in addressing the challenges posed by said groups, the CTG which has publicly declared its intention to seize political power through violent means and supplant the country's democratic form of government with Communist rule, took advantage and likewise posed serious security concerns.^[108]

However, in his letter-report on the martial law implementation, Armed Forces Chief of Staff Benjamin R. Madrigal, Jr. stated that the Armed Forces had claimed a total of 1,620 CPP-NPA members had been neutralized. Specifically, 62 had been killed, 189 had been captured, and 1,369 surrendered.^[109]

During the oral arguments, I restated my position that the government has not sufficiently justified including the CPP-NPA as a reason for extending martial law. Save for its diminishing numbers, the CPP-NPA is a nationwide movement that can move outside the area under martial law.^[110]

Respondents' failure to address these points make it clear that including the CPP-NPA to justify extending martial law is just a means of inflating the numbers of criminal or violent incidents, and thus, making their assertion that public safety requires military rule more credible.

X

As early as in *Lagman, et al. v. Medialdea, et al.*, I insisted and reiterate that martial law is product of necessity. It is only called when the civil government is incapable of maintaining peace and order.^[111] It should not be indefinite, but a mere temporary condition.^[112]

Article VII, Section 18 of the 1987 Constitution[113] provides that as commander-in-chief, the President shall have the power to call out the Armed Forces to suppress rebellion. Martial law should be declared only when the calling-out powers of the President becomes inadequate to quell rebellion:

JUSTICE LEONEN:

Would you agree with me that in Section 18 of Article VII, the requirement for a declaration of martial law or the suspension of a writ of habeas corpus is not only that rebellion exists but there is a certain degree of rebellion that requires the exigency of martial law, is that not correct?

ATTY. DIOKNO:

Yes, Your Honor, and that rebellion is ongoing.

JUSTICE LEONEN:

Yes, prior to the declaration of martial law, if it is only lawless violence that happens or aggrupation of lawless violence that the military is not prohibited from calling out the Armed Forces, is that not correct?

ATTY. DIOKNO:

That is true, Your Honor.

JUSTICE LEONEN:

And would you agree with me that the degree of judicial review or the scrutiny that is involved when the President, as Commander-in-Chief, calls out the Armed Forces is less than when he declares martial law?

ATTY. DIOKNO:

Yes, Your Honor.

JUSTICE LEONEN:

Okay, battle of hearts and minds, I heard it so often. Do you recall where it came from?

ATTY. DIOKNO:

I don't see, I think that it came from.... (interrupted)

JUSTICE LEONEN:

In Vietnam by a certain Colonel Lansdale when he inaugurated the concept of anti-insurgency and tested it using an occupying force because they were losing the war against the Vietcong, am I not correct?

ATTY. DIOKNO:

Yes, Your Honor.

JUSTICE LEONEN:

Now, this requires that winning hearts and minds is not only done by the military, that was the mistake in Vietnam, correct?

ATTY. DIOKNO:

Yes.

JUSTICE LEONEN:

That it requires the cooperation of the military and the civilian authority, is that not correct?

ATTY. DIOKNO:

That's true.

JUSTICE LEONEN:

Yes, as a matter of fact, several military plans, I think this was under AFP General Ano, AFP General Bautista, among others, created the concept of Balikatan or "Whole-of-nation" approach where it was recognized that winning the war will not only take the military but will also take civilian authority, is that not correct?

ATTY. DIOKNO:

I think it's obvious that military action alone will not be sufficient, Your Honor.

JUSTICE LEONEN:

Yes, by a protracted declaration of martial law which means the military rules regardless of whether or not it is benign, there is an implicit message that local governments cannot do it, is that not correct?

ATTY. DIOKNO:

That is the case, yes.

JUSTICE LEONEN:

And the danger there is recognized by our Constitution because, therefore, it said that martial law is only exigent and contingent, is that not correct?

ATTY. DIOKNO:

I think it's clear, Your Honor, that the martial law is really intended to be a temporary to address an emergency.

JUSTICE LEONEN:

And to win against one thousand six hundred (1600) communists and five hundred seventy-five (575), I will not even say Muslim, I will say Salafis, I will say violent extremists, will take not only the might of the military no matter how professional they are, but good governance, is that not correct?

ATTY. DIOKNO:

That is so true, Your Honor, no.... (interrupted)

JUSTICE LEONEN:

And martial law is antithetical to good governance, is that not correct?

ATTY. DIOKNO:

That is the case, Your Honor.

JUSTICE LEONEN:

Because we do not give an opportunity to civilian authorities to catch up, is that not correct?

ATTY. DIOKNO:

Yes, Your Honor.

JUSTICE LEONEN:

Okay, may I ask you, can checkpoints be set up without martial law?

ATTY. DIOKNO:

Yes, Your Honor.

JUSTICE LEONEN:

Can busses be searched without martial law?

ATTY. DIOKNO:

Yes, Your Honor.

JUSTICE LEONEN:

Saluday vs. People under the ponentia of Justice Carpio, unanimous Court said it can, very recently, 2018 only.
Can the attendance of LGUs be checked without martial law?

ATTY. DIOKNO:

Of course, yes, Your Honor.

JUSTICE LEONEN:

In fact, will they, will the local governments in the ARMM be more fearful and attend to their duties if it is ordered by the President himself rather than simply the military?

ATTY. DIOKNO:

Yes, I believe so.

JUSTICE LEONEN:

Who is more feared, the president or the military?

ATTY. DIOKNO:

(Chuckles) I'm not sure, Your Honor.

JUSTICE LEONEN:

Well, I guess people will say the Commander-in-Chief is more powerful than the military. So, what we need really is a serious program to counter violent extremism, as well as a serious program to build good governance rather than martial law, is that not correct?

ATTY. DIOKNO:

That is true, Your Honor.

JUSTICE LEONEN:

Because no matter the numbers of fighting forces and firearms, it will always recur if the root causes are not addressed, is that not correct?

ATTY. DIOKNO:

That is correct.[114]

A perusal of respondents' justification for a further extension of martial law leads to a single conclusion: there is absolutely no necessity for martial law.

In his December 6, 2018 letter, the President categorically stated that rebellion have already been put under control. The factual bases provided by the President in justifying the martial law extension is insufficient. Respondents, with all the data and information it has presented, failed to discharge the burden of proving that there is absolute necessity in extending martial law in Mindanao. The President is, however, not without recourse. The lawless and violent incidents in Mindanao may either be quelled by professional police action or the President's calling-out powers in relation to the Armed Forces.

XI

Judicial review of the President's exercise of his or her powers to declare martial law and suspend the privilege of the writ of habeas corpus is not a novel issue. Unfortunately, the majority cites jurisprudence out of context and without appreciation of the evolution of relevant doctrines. The majority opinion cites precedents that are no longer binding.

The Court may review the sufficiency of the factual basis of the martial law extension. The text of the Constitution is clear. The only disagreement pertains to how this Court should perform its review; that is, what this Court may examine and what standards to use. Likewise, we should determine what must be submitted to this Court as proof of factual basis and what standards should these submissions meet to be deemed sufficient.

Retracing the evolution of the constitutional provision authorizing the proclamation of martial law and suspension of the privilege of the writ of habeas corpus, as well as this Court's interpretation of the provision, provides guidance.

We begin with a discussion of *Barcelon v. Baker, Jr.*,^[115] which was decided before the 1935 Philippine Constitution, when the Philippine Bill of 1902 was in effect.

In *Barcelon*, an application for a writ of habeas corpus was filed on behalf of petitioner Felix Barcelon, because he was detained and restrained in Batangas under the orders of one of the respondents, David J. Baker, Jr. In that case, the respondents countered that the Governor-General, under a resolution and request of the Philippine Commission, had suspended the writ of habeas corpus in Cavite and Batangas, and thus, the writ of habeas corpus prayed by Barcelon should not be granted. Thus, this Court was called to determine whether it could investigate

the facts upon which the branches of government acted in suspending the privilege of the writ of habeas corpus. This Court held that the factual basis relied on by the Governor-General and the Philippine Commission in suspending the privilege of the writ was beyond judicial review, it being exclusively political in nature:

In short, the status of the country as to peace or war is legally determined by the political (department of the Government) and not by the judicial department. When the decision is made the courts are concluded thereby, and bound to apply the legal rules which belong to that condition. The same power which determines the existence of war or insurrection must also decide when hostilities have ceased — that is, when peace is restored. In a legal sense the state of war or peace is not a question in pais for courts to determine. It is a legal fact, ascertainable only from the decision of the political department.[116] (Citations omitted)

At the time of *Barcelon*, there was no constitutional provision on martial law to interpret, much less any constitutional provision authorizing this Court to review any government act in relation to its declaration.

This did not change with the passage of the 1935 Constitution, which authorized the President to place any part of the Philippines under martial law in cases of invasion, insurrection, or rebellion, or imminent danger thereof, when required by public safety. Article VII, Section 10(2) of the 1935 Constitution provided:

(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.

Thus, the first relevant constitutional provision authorized the president to declare martial law, but did not expressly authorize this Court to review his or her exercise of this power.

In *Montenegro v. Castañeda*,^[117] when the 1935 Constitution was in effect, this Court was called upon to determine the validity of the president's suspension of the privilege of the writ of habeas corpus. The petitioner in that case argued that there was no state of invasion, insurrection, rebellion, or imminent danger to justify the suspension of the privilege of the writ. This Court, citing *Barcelon*, deferred to the president's authority to decide on the matter as being final and conclusive:

To the petitioner's unpracticed eye the repeated encounters between dissident elements and military troops may seem sporadic, isolated, or casual. But the officers charged with the Nation's security, analyzed the extent and pattern of such violent clashes and arrived at the conclusion that they are warp and woof of a general scheme to overthrow this government *vi et armis*, by force and arms.

And we agree with the Solicitor General that in the light of the views of the United States Supreme Court thru Marshall, Taney and Story quoted with approval in *Barcelon vs. Baker* (5 Phil., 87, pp. 98 and 100) the authority to decide whether the exigency has arisen requiring suspension belongs to the President and "his decision is final and conclusive" upon the courts and upon all other persons.

Indeed as Justice Johnson said in that decision, whereas the Executive branch of the Government is enabled thru its civil and military branches to obtain information about peace and order from every quarter and corner of the nation, the judicial department, with its very limited machinery cannot be in better position to ascertain or evaluate the conditions prevailing in the Archipelago.^[118] (Emphasis supplied)

However, almost 19 years later, this Court unanimously reversed this deferential policy in *In the Matter of the Petition for Habeas Corpus of Lansang v. Garcia*.^[119]

Still operating under the 1935 Constitution, this Court, in *In Re: Lansang*, was called upon to revisit its deferential position in *Montenegro* and *Barcelon*, to determine whether it should inquire into the existence of the factual basis

required for the suspension of the privilege of the writ of habeas corpus. Abandoning its previous position, this Court decided that it had this authority, and should use it. It held:

[T]he members of the Court are now unanimous in the conviction that it has the authority to inquire into the existence of said factual bases in order to determine the constitutional sufficiency thereof.

Indeed, the grant of power to suspend the privilege is neither absolute nor unqualified. The authority conferred by the Constitution, both under the Bill of Rights and under the Executive Department, is limited and conditional. The precept in the Bill of Rights establishes a general rule, as well as an exception thereto. What is more, it postulates the former in the negative, evidently to stress its importance, by providing that "(t)he privilege of the writ of habeas corpus shall not be suspended...." It is only by way of exception that it permits the suspension of the privilege "in cases of invasion, insurrection, or rebellion" — or, under Art. VII of the Constitution, imminent danger thereof — "when the public safety requires it, in any of which events the same may be suspended wherever during such period the necessity for such suspension shall exist." For from being full and plenary, the authority to suspend the privilege of the writ is thus circumscribed, confined and restricted, not only by the prescribed setting or the conditions essential to its existence, but, also, as regards the time when and the place where it may be exercised. These factors and the aforementioned setting or conditions mark, establish and define the extent, the confines and the limits of said power, beyond which it does not exist. And, like the limitations and restrictions imposed by the Fundamental Law upon the legislative department, adherence thereto and compliance therewith may, within proper bounds, be inquired into by courts of justice. Otherwise, the explicit constitutional provisions thereon would be meaningless. Surely, the framers of our Constitution could not have intended to engage in such a wasteful exercise in futility.[120] (Emphasis in the original, citation omitted)

This Court further ruled that the separation of powers under the Constitution is not absolute. The system of checks and balances recognizes the executive department's supremacy on the suspension of the privilege of the writ of habeas corpus only when it is exercised within certain discretionary limits. Determining whether the executive department has acted within the ambit of its discretion is vested with the judicial department, where it is constitutionally supreme.[121]

Shortly after *In Re: Lansang*, on September 22, 1972, former President Ferdinand E. Marcos (former President Marcos) issued General Order No. 2, causing the arrest and detention of the petitioners in the consolidated petitions of *In the Matter of the Petition for Habeas Corpus of Aquino, et al. v. Ponce Enrile*.^[122] The majority in that case ruled that the sufficiency of the declaration of martial law and the suspension of the privilege of the writ of habeas corpus was purely political, and was outside the ambit of the courts' power of review. The case, therefore, not justiciable. The ruling in *In Re: Aquino* effectively abandoned the doctrine laid down in *In Re: Lansang*.

On January 17, 1973, former President Marcos issued Proclamation No. 11-02, which certified and proclaimed that the 1973 Constitution has been ratified and has come into effect. The 1973 Constitution reiterated the president's commander-in-chief powers under the 1935 Constitution.

Article VII, Section 11 of the 1973 Constitution provided:

SECTION 11. 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.

Almost a decade after, this Court, in *In the Issuance of the Writ of Habeas Corpus for Parong, et al. v.*

Enrile,[123] reiterated the doctrine of political question in *Baker and Montenegro*. It decreed:

In times of war or national emergency, the legislature may surrender a part of its power of legislation to the President. Would it not be as proper and wholly acceptable to lay down the principle that during such crises, the judiciary should be less jealous of its power and more trusting of the Executive in the exercise of its emergency powers in recognition of the same necessity? Verily, the existence of the emergencies should be left to President's sole and unfettered determination. His exercise of the power to suspend the privilege of the writ of habeas corpus on the occasion thereof, should also be beyond judicial review. Arbitrariness, as a ground for judicial inquiry of presidential acts and decisions, sounds good in theory but impractical and unrealistic, considering how well-nigh impossible it is for the courts to contradict the finding of the President on the existence of the emergency that gives occasion for the exercise of the power to suspend the privilege of the writ. For the Court to insist on reviewing Presidential action on the ground of arbitrariness may only result in a violent collision of two jealous powers with tragic consequences, by all means to be avoided, in favor of adhering to the more desirable and long-tested doctrine of "political question" in reference to the power of judicial review.

Amendment No. 6 of the 1973 Constitution, as earlier cited, affords further reason for the reexamination of the *Lansang* doctrine and reversion to that of *Barcelon vs. Baker and Montenegro vs. Castaneda*.^[124] (Citations omitted)

Notably, barely six (6) days after the promulgation of *In Parong, et al.*, this Court, in *In the Matter of the Petition for Habeas Corpus of Morales, Jr. v. Enrile*^[125] reverted to the ruling of justiciability as pronounced in *In Re: Lansang*. In that case, it ruled that the issue of the sufficiency of the factual bases the president relied on in suspending the privilege of the writ of habeas corpus raises a justiciable, rather than a political, question. It further decreed that this Court "must inquire into every phase and aspect of petitioner's detention ... up to the moment the court passes upon the merits of the petition"^[126] to ensure that the due process clause of the Constitution had not been violated.

The justiciability of the president's discretion was finally laid to rest upon the ratification of the 1987 Constitution.^[127] Under Article VII, Section 18, this Court is duty bound to review the sufficiency of the factual basis of the declaration of martial law and suspension of the privilege of the writ of habeas corpus. It provides, in part:

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 any 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 or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

In *David v. Senate Electoral Tribunal*,^[128] this Court stressed that legal provisions are the result of the re-adoption or re-calibration of previously existing rules. More often than not, these recalibrated legal provisions are introduced to address and cure the shortcomings and inadequacies of the previous rules:

Interpretation grounded on textual primacy likewise looks into how the text has evolved. Unless completely novel, legal provisions are the result of the re-adoption — often with accompanying re-calibration — of previously existing rules. Even when seemingly novel, provisions are often introduced as a means of addressing the inadequacies and excesses of previously existing rules.

One may trace the historical development of text: by comparing its current iteration with prior counterpart provisions, keenly taking note of changes in syntax, along with accounting for more conspicuous substantive changes such as the addition and deletion of provisos or items in enumerations, shifting terminologies, the use of more emphatic or more moderate qualifiers, and the imposition of heavier penalties. The tension between consistency and change galvanizes meaning.^[129]

The historical developments that led to the advent of the 1987 Constitution show its framers' unmistakable intent to expand the power of this Court to review and check on possible abuses committed by the executive department in the exercise of its powers. As it stands, the 1987 Constitution mandates this Court to review and assess the factual bases relied upon by the President in declaring martial law.^[130] The political question doctrine has steadily diminished.

The conclusion reached by the majority on the authority of this Court to review the factual basis of the martial law extension ignores this historical and jurisprudential backdrop. The majority cites *Montenegro* as basis for the presumption of correctness to which the judiciary should accord the acts of the executive and legislative departments.^[131] However, *Montenegro* was decided almost 60 years ago, in 1952, under a different constitution. The opinion it holds has become passe not only because it was delivered more than half a century ago, but also because it runs counter against the categorical mandate of the fundamental law of the land.

I reiterate my opinion in *Lagman, et al. v. Medialdea, et al.*:^[132]

The Supreme Court cannot shirk from its responsibility drawn from a historical reading of the context of the provision of the Constitution through specious procedural devices. As experienced during the darker Marcos Martial Law years, even magistrates of the highest court were not immune from the significant powerful and coercive hegemony of an authoritarian. It is in this context that this Court should regard its power. While it does not substitute its own wisdom for that of the President, the sovereign has assigned it the delicate task of reviewing the reasons stated for the suspension of the writ of habeas corpus or the declaration of martial law. This Court thus must not be deferential. Its review is not a disrespect of a sitting President, it is rather its own Constitutional duty.^[133]

XII

Years from now, the younger generation will look back to review history as we write them today. They will then hold all of us to account.

They will discover how, during these trying times, the very institution that our society depends on to secure their liberties to pursue meaningful freedoms under the framework of a constitution won by our people allowed the steady slide toward authoritarianism and the consequent loss of critical dissent. They will look to the saga of these four (4) cases relating to Proclamation No. 216 and the way that the clear text, jurisprudence, and historical context of Article VII, Section 18 of the 1987 Constitution was mangled.

The majority in all these cases have normalized martial law and the suspension of the writ of habeas corpus. They

have reduced the most stringent modality of judicial review found in our Constitution into a mere token and cursory exercise. Worse, they have allowed the exercise of an undefined set of commander-in-chief powers within an arbitrary time frame, without a goal, and within a wide territorial area without clear judicially discoverable basis. They have allowed the Commander-in-Chief to declare martial law and suspend the privilege of the writ of habeas corpus against violent acts which did not call for such remedies.

It is no argument that this martial law is different from the martial law of the seventies. Those of us who lived through those days were also told of the myth of the New Society or the Bagong Lipunan. Many among us were beguiled with the narrative of a strong, brilliant, and omniscient leader — only to wake up years later with all our democratic institutions not only undermined but also rendered impotent. The narrative of a benevolent authoritarian is never true.

We have not learned our lessons well. The violent manifestations by those whom we call rebels or violent extremists are the product of the abuses and inequality within our society. These are acts of desperation delivered by corruption and a system that rewards greed and fails to make meaningful citizens of us all.

History writes of the folly of the authoritarian that keeps power through fear. Reading the history of our people correctly, we should already know that it will be the political and economic empowerment of our people that will assure that those who resort to violence will be dissuaded, discovered, or weakened.

The declaration of martial law and the suspension of the privilege of the writ of habeas corpus over a wide swath of territory does the exact opposite. That is why it should never be normal. It cannot be allowed to be extended three (3) times. That is why its declaration should be scrutinized carefully, deliberately and conscientiously, by both the Congress and this Court. It is an exceptional measure. It should not hide the lack of professionalism, the failures of intelligence, and the inefficiencies that have spawned our troubles.

Those who dissent within a society are not necessarily its enemies, or its government's. It may just be that they perform the role of asking those in power and in the majority to pause and listen to reason, rather than acquiesce to the tendencies of the strongest among them.

I regret that, in this case and for the fourth time, we did not again take careful pause. Despite the woeful state of the data provided to us, the majority looked the other way. It would have been this Court's opportunity to show that we can reason better and truly think for ourselves.

Sapiere aude.

For these reasons and for the sake of this and future generations, I dissent.

Accordingly, I vote to GRANT the Petitions.

[1] Dare to know. Alternatively, dare to think for yourself. Immanuel Kant, *An Answer to the Question:*

What is enlightenment (1784).

[2] G.R. Nos. 231671 and 231694, July 25, 2017, 832 SCRA 282 [Per J. Leonardo-De Castro, En Banc].

[3] G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1 [Per J. Del Castillo, En Banc].

[4] G.R. Nos. 235935, 236061, 236145 and 236155, February 9, 2018, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/february2018/235935.pdf>> [Per J. Tijam, En Banc].

[5] Lagman, et al. v. Medialdea, et al., G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1, 132 [Per J. Del Castillo, En Banc].

[6] Resolution Expressing the Sense Of The Senate, Supporting Proclamation No. 216 Dated May 23, 2017, Entitled 'Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao' and Finding No Cause to Revoke the Same available at <https://www.senate.gov.ph/lisdata/2613422471!.pdf>. Accessed February 15, 2019.

[7] Expressing the Full Support of the House of Representatives to President Rodrigo Duterte as it Finds No Reason to Revoke Proclamation No. 216 Entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao" available at http://www.congress.gov.ph/legisdocs/basic_17/HR01050.pdf. Accessed February 15, 2019.

[8] Lagman, et al. v. Medialdea, et al., G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1 [Per J. Del Castillo, En Banc].

[9] Id. at 194.

[10] Id. at 184.

[11] J. Leonen, Dissenting Opinion in Lagman, et al. v. Medialdea, et al., G.R. Nos. 231658, 231771 and 231774, 829 SCRA 1, 490 [Per J. Del Castillo, En Banc].

[12] Id. at 602.

[13] Id. at 304.

[14] Id. at 308.

[15] Id. at 659.

[16] Mara Cepeda, READ: Duterte's letter to Congress asking for martial law extension, RAPPLER, July 19 2017, <<https://www.rappler.com/nation/176084-document-duterte-letter-congress-martial-law-extension>> [Accessed on February 15, 2019].

[17] The other rebel groups mentioned were the Bangsamoro Islamic Freedom Fighters (BIFF), Abu Sayyaf Group (ASG) and New People's Army (NPA).

[18] Letter of President Rodrigo Duterte to the Senate and the House of Representatives dated July 18, 2017 available at <https://www.rappler.com/nation/176084-document-duterte-letter-congress-martial-law-extension> (last accessed on February 15, 2019).

[19] Resolution of Both Houses Extending until 31 december 2017 Proclamation No. 216, Series of 2017, Entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao" available at http://www.congress.gov.ph/legisdocs/second_17/RBH0011.pdf. Accessed February 15, 2019.

[20] TIMELINE: The Battle for Marawi, ABS-CBN NEWS, October 17, 2017, <<https://news.abs-cbn.com/news/10/17/17/timeline-the-battle-for-marawi>> (last accessed on February 15, 2019).

[21] TIMELINE: The Battle for Marawi, ABS-CBN NEWS, October 17, 2017, <<https://news.abs-cbn.com/news/10/17/17/timeline-the-battle-for-marawi>> (last accessed on February 15, 2019).

[22] Pia Ranada, Duterte asks Congress for 1-year martial law extension, RAPPLER, December 11, 2017,

<<https://www.rappler.com/nation/191015-duterte-asks-congress-one-year-martial-law-extension-mindanao>> (last accessed on February 16, 2019).

[23] Pia Ranada, Duterte asks Congress for 1-year martial law extension, RAPPLER, December 11, 2017, <<https://www.rappler.com/nation/191015-duterte-asks-congress-one-year-martial-law-extension-mindanao>> (last accessed on February 16, 2019).

[24] J. Leonen, Dissenting Opinion in Lagman, et al. v. Pimentel III, et al., G.R. Nos. 235935, 236061, 236145 and 236155, February 9, 2018, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/february2018/235935.pdf>> [Per J. Tijam, En Banc].

[25] Resolution of Both Houses Further Extending Proclamation No. 216, Series of 2017, Entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao" For a Period of One (1) Year from January 1, 2018 to December 31, 2018 available at http://www.congress.gov.ph/legisdocs/second_17/RBH0014.pdf. Accessed February 15, 2019].

[26] G.R. Nos. 235935, 236061, 236145 and 236155, February 9, 2018, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/february2018/235935.pdf>> [Per J. Tijam, En Banc].

[27] J. Leonen, Dissenting Opinion in Lagman, et al. v. Pimentel III, et al., G.R. Nos. 235935, 236061, 236145 and 236155, February 9, 2018, 4 <<http://sc.judiciary.gov.ph/pclf/web/viewer.html?file=/jurisprudence/2018/february2018/235935.pdf>> [Per J. Tijam, En Banc].

[28] Id. at 3.

[29] Id. at 41.

[30] Id. at 47.

[31] Id. at 75.

[32] J. Jardeleza, Dissenting Opinion in Lagman, et al. v. Pimentel III, et al., G.R. Nos. 235935, 236061, 236145 and 236155, February 9, 2018, 17 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/february2018/235935.pdf>> [Per J. Tijam, En Banc].

[33] Id.

[34] Id. at 20.

[35] J. Carpio, Dissenting Opinion in Lagman, et al. v. Pimentel III, et al., G.R. Nos. 235935, 236061 236145 and 236155, February 9, 2018, 11 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/february2018/235935.pdf>> [Per J. Tijam, En Banc].

[36] Rollo (G.R. No. 243522), Vol. 1, pp. 201-202. Comment, Annex 1.

[37] Id. at 208-213. Comment, Annex 2.

[38] Id. at 201-202.

[39] Id. at 201.

[40] Id. at 202.

[41] Petition (G.R. No. 243522), pp. 51-55. Annex A.

[42] Id. at 52-53.

[43] Id. at 53-54. Annex A.

[44] Id. at 56-58. Annex B.

[45] The petitioners were Representatives Edcel C. Lagman et al. v. Hon. Salvador C. Medialdea, Executive Secretary et al. (G.R. No. 243522), Bayan Muna Partylist Representative Carlos Isagani T. Zarate et al. v. President Rodrigo Duterte et al. (G.R. No. 243677), Christian S. Monsod et al. v. Senate of the Philippines (Represented by Senate President Vicente Sotto III) et al. (G.R. No. 243745), and Rius Valle et al. v. The Senate of the Philippines, represented by the Senate President Vicente C. Sotto III et al. (G.R. No. 243797).

[46] Memorandum (G.R. No. 243797), pp. 80-82.

[47] Implementing Proclamation No. 216 Dated 23 May 27, available at <http://www.officialgazette.gov.ph/downloads/2017/05may/20170530-GO-I-RRD.pdf>. Accessed February 17, 2019.

[48] J. Leonen, Dissenting Opinion in Lagman, et al. v. Medialdea, et al., G.R. Nos. 231658, 231771 and 231774, 829 SCRA 1, 492-493 [Per J. Del Castillo, En Banc].

[49] Id. at 493.

[50] Id.

[51] General Order No. 1 (2017), sec. 6.

[52] General Order No. 1 (2017), sec. 6.

[53] Rollo (G.R. No. 243522), Vol. 2, pp. 826-827. OSG Memorandum.

[54] Id. at 826.

[55] Ponencia, p. 19.

[56] See J. Leonen, Dissenting Opinion in Lagman, et al. v. Pimentel III, et al., G.R. Nos. 235935, 236061, 236145 and 236155, February 9, 2018, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/february2018/235935.pdf>> [Per J. Tijam, En Banc].

[57] TSN dated January 29, 2019, pp. 40-41.

[58] TSN dated January 29, 2019, pp. 51-59.

[59] TSN dated January 29, 2019, p. 70.

[60] TSN dated January 29, 2019, pp. 66-70.

[61] Delfin N. Lorenzana, The National Security Outlook in the Philippines in 2019 (Proposed Remarks for the Secretary of National Defense, February 4, 2019).

[62] Rollo (G.R. No. 243522), Vol. 2, p. 834.

[63] Rollo (G.R. No. 243522), Vol. 1, pp. 201-202.

[64] Rollo (G.R. No. 243522), Vol. 1, p. 205.

[65] CONST., art. VII, sec. 18 partly 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 any 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 or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

[66] J. Leonen, Dissenting Opinion in *Lagman, et al. v. Medialdea, et al.*, G.R. Nos. 231658, 231771 and 231774, 829 SCRA 1, 489 (2017) [Per J. Del Castillo, En Banc].

[67] *Id.*

[68] *Id.* at 552.

[69] *Id.*

[70] *Id.* at 553.

[71] *Id.* at 553-554.

[72] Rollo (GR. No. 243522), Vol. 1, pp. 214-292. Comment, Annexes 3-8.

[73] Oral Arguments dated January 19, 2019.

[74] TSN dated January 29, 2019, pp. 24-28.

[75] TSN dated January 29, 2019, p. 65.

[76] Rollo (G.R. No. 243522), Vol. 2, pp. 847-859. See Memorandum for Respondents, Annex 1. Reports of government agencies performing security and law enforcement functions.

[77] *Id.* at 838.

[78] *Id.*

[79] *Id.*

[80] Id.

[81] Rollo (G.R. No. 243522), Vol. 1, p. 225.

[82] Id.

[83] Id. at 226.

[84] Id. at 229.

[85] Id. at 230.

[86] Id. at 231. Spelling error in the original.

[87] Id. at 233.

[88] Id. at 243.

[89] Id. at 244.

[90] Id. at 245.

[91] Rollo (G.R. No. 243522), Vol. 2, pp. 863, 867, 868 and 869. Memorandum for Respondents, Annexes 2-C, 2-G, 2-H, and 2-I.

[92] Rollo (G.R. No. 243522), Vol. 1, pp. 51-55.

[93] Rollo (G.R. No. 243522), Vol. 1, p. 218.

[94] Id. at 224. Spelling error in the original.

[95] Id. at 227.

[96] Id. at 235.

[97] Id. at 272.

[98] TSN dated January 29, 2019, pp. 70-71.

[99] Rollo (G.R. No. 243522), Vol. 1, p. 215. Comment, Annex 4.

[100] Id. at 246. Comment, Annex 5.

[101] Id. at 283. Comment, Annex 6.

[102] Monthly Report, Annex A. For the month of January 2018.

[103] AFP Monthly Report, Annex B. For the month of February 2018.

[104] AFP Monthly Report, Annex D. For the month of March 2018.

[105] AFP Monthly Report, Annex E. For the month of May 2018.

[106] AFP Monthly Report, Annex F. For the month of June 2018.

[107] See J. Leonen, Dissenting Opinion in *Lagman, et al. v. Pimentel III, et al.*, G.R. Nos. 235935, 236061, 236145 and 236155, February 9, 2018, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/february2018/235935.pdf>> [Per J. Tijam, En Banc].

[108] Rollo (G.R. No. 243522), Vol. 1, pp. 53-54. Annexes to the Petition.

[109] Id. at 59-66. Annex C of the Corrected Monthly Reports.

[110] TSN, pp. 82-83.

[111] J. Leonen, Dissenting Opinion in *Lagman, et al. v. Medialdea, et al.*, G.R. Nos. 23J658, 231771 and 231774, July 4, 2017, 829 SCRA 1 [Per J. Del Castillo, En Banc].

[112] Id. at 35.

[113] Const., Art. VII, Sec. 18 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 any 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 or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

....

[114] TSN dated January 29, 2019, pp. 107-111.

[115] 5 Phil. 87 (1905) [Per J. Johnson, En Banc]

[116] Id. at 107.

[117] 91 Phil. 882 (1952) [Per J. Bengzon, En Banc].

[118] Id. at 886-887.

[119] 149 Phil. 547 (1971) [Per C.J. Concepcion, En Banc].

[120] Id. at 585-586.

[121] Id.

[122] 158-A Phil. 1 (1974) [Per C.J. Makalintal, En Banc].

[123] 206 Phil. 392 (1983) [Per J. De Castro, En Banc]. Also known as *Garcia v. Padilla*.

[124] Id. at 431-432.

[125] 206 Phil. 466 (1983) [Per J. Concepcion, Jr., Second Division]

[126] Id. at 496.

[127] J. Leonen, Dissenting Opinion in Lagman, et al. v. Medialdea, et al., G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1, 510 [Per J. Del Castillo, En Banc].

[128] 795 Phil. 529 (2016) [Per J. Leonen, En Banc].

[129] Id. at 572-573.

[130] J. Leonen, Dissenting Opinion in Lagman v. Medialdea, G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1, 551 [Per J. Del Castillo, En Banc].

[131] Ponencia, p. 22.

[132] G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1 [Per J. Del Castillo, En Banc].

[133] Id. at 512.

DISSENTING OPINION

JARDELEZA, J.:

Through Resolution of Both Houses No. 6 dated December 12, 2018, the Congress of the Philippines, in a Joint Session, by 235 affirmative votes comprising the majority of all its members, has voted to further extend Proclamation No. 216, series of 2017, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao," from January 1, 2019 to December 31, 2019. Once again, this Court's power under Section 18, Article VII of the Constitution is invoked to determine the sufficiency of the factual bases for yet another year's extension of martial law.

Similar to my position in *Lagman v. Medialdea*,^[1] which involved the constitutionality of the first extension of Proclamation No. 216, I do not dispute that a state of rebellion exists in Mindanao. However, I remain unconvinced that the Government has met the burden of the Constitution's public safety requirement as to support the continued extension of martial law and suspension of the privilege of the writ of habeas corpus. To me, the Government's own evidence shows that the scale of the rebellion which started in 2016, and continued into 2017, has been materially degraded in 2018, as a result of the success and bravery of the men and women of the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP). As a result, I do not believe that there is sufficient factual basis to support any further extension of martial law in Mindanao. I thus vote to GRANT the petitions.

Furthermore, I submit this Opinion to reiterate my grave concerns over the Court's seeming abdication of its duty under Section 18, Article VII of the Constitution as a consequence of its adamant refusal to "substitute [its] own judgment"^[2] over that of the President or Congress. Respect for the President's assessment of the necessity of the declaration of martial law and/or suspension of the privilege of the writ of habeas corpus is not incompatible with the Court's faithful fulfillment of its duty to determine the sufficiency of the President's factual bases. Such "permissive deference" becomes all the more objectionable when presentation by the Government of its factual bases is allowed to be made in camera.

I

To begin, I reiterate my position that public interest is better served when proceedings such as these are conducted with full transparency.[3] In fact, our actual experience with three successive years of martial law litigation convinces me that the Court should reject, for being anathema to our constitutional system, any plea from the Government to present its evidence in camera. By requiring authorship of its own evidence and submissions, full accountability can be exacted from the Government to justify its resort to such an extreme measure as the declaration of martial law and/or suspension of the privilege of the writ.

In his Compliance[4] dated January 21, 2019, the Solicitor General manifested that the Government would submit in "an executive session" the Monthly/Periodic Reports on Martial Law Implementation made by the Department of National Defense (DND) to the Congress from January 1, 2018 to December 31, 2018 (the Reports). According to the Solicitor General, presentation of its evidence in an executive session is necessary as the Reports "involve highly sensitive and confidential matters affecting the security of the State." [5] The Court issued a Resolution[6] directing the OSG to submit the Reports in 15 sealed copies, to be filed directly with the Office of the Clerk of Court En Banc only, for the Members of the Court to make a preliminary assessment of whether the Reports may only be appropriately discussed and deliberated upon in an executive session. By noon of January 25, 2019, the Solicitor General submitted 15 copies of the Reports in sealed envelopes,[7] which were promptly distributed to the Members of the Court.

In its En Banc session in the morning of January 29, 2019, the Court briefly discussed the Reports and decided to call for an executive session to be held just before the oral argument scheduled in the afternoon of the same day. During this executive session, and in the presence of counsel for petitioners, the Solicitor General again argued against the release of the Reports to the public. After I expressed the view that the Reports did not contain sensitive material, such as secret sources of information or names of confidential informants, and thus should be made available to the public,[8] the Solicitor General changed tack and asked to seek clearance from his principals on the matter.

As it would turn out, the Government had no objections and the Reports were eventually made available to petitioners. Still, and considering the effects of a declaration of martial law and the suspension of the privilege of the writ of habeas corpus, I feel strongly that such a decision (whether to make public the presentation of the Government's factual bases) should not be left to the latter's will or benevolence.

Furthermore, I feel that the Court could have had a more robust response to the Government's claims of confidentiality. In cases such as this, transparency should be the rule, confidentiality the exception. The Court should be neither allayed nor cowed by general invocations of reasons of national security; to be the meaningful check the Constitution intended it to be, the Court should require more than general invocations of confidentiality. All evidence should be made public, save for instances when the Government is able to immediately show how a specific piece of evidence, if publicly disclosed, may reveal critical information.[9]

For the same reasons, it is my view that the public, through petitioners and their counsel, must be given access to the Government's evidence at the earliest possible time. Here, although copies were made available to petitioners the same afternoon of the oral argument, they (and, more importantly, the public) were still deprived of four days, from the time the Reports were made available to the Court, to vet the Government's evidentiary claims.[10] As shown by Justice Benjamin S. Caguioa's thoughtful and detailed analysis, the accuracy of the Government's Reports leaves much to be desired, including, but not limited to, its identification of its sources, attribution of responsible groups, and the number and location of violent incidents. An approach that gives the public more time to independently verify the facts as presented by the Government would also serve to sharpen the sense of

obligation and responsibility of the concerned Government functionaries to make their Reports as accurate as possible, and, in turn, enable the Court to better ascertain the truth respecting the matters of fact presented to it.

I shall now discuss the grounds on which I base my judgment that these petitions should be granted.

II

I have previously articulated my views on the definition of "rebellion" as used under Section 18, Article VII of the Constitution, which is simply "armed public resistance to the Government." [11] A "rebel," on the other hand, is defined as "a person who refuses allegiance to, resists, or rises in arms against the government or ruler of his or her country," or a "person who resists any authority, control, or tradition;" [12] one "who unjustly take up arms against the ruler of the society, or the lawful and constitutional government, whether their view be to deprive him of the supreme authority or to resist his lawful commands in some instance, and to impose conditions on him." [13]

These definitions overlap with what is considered "terrorism" or a "terrorist" under Republic Act (RA) No. 9372, otherwise known as the Human Security Act of 2007, [14] which lists rebellion under Article 134 of the Revised Penal Code (RPC) as one of the predicate crimes for the commission of terrorism.

Since a rebel, as above defined, can fit the profile of the local and communist terrorist groups sought to be quelled by the Government in this present extension of martial law in Mindanao, I take no issue on the question of whether local or communist terrorist groups are actually perpetrating rebellion as defined in the RPC, or merely carrying out terrorist attacks or lawless violence. As long as these groups commit public, armed resistance to the government, to me, the requirement of rebellion as used under Section 18, Article VII of the Constitution has been reasonably met. In fact, I have no serious disagreement with the majority's conclusion that, with the proliferation of both local and communist terrorist groups, a state of rebellion continues to exist in Mindanao.

I thus maintain my view that the Court should accord "rebellion" a meaning that will not unduly tie the government's hands and unwittingly make it ill-equipped to deal with the exigencies of the times. To be sure, there are many lives lost, ruined, and threatened by the presence of communist and local terrorist groups. The present administration should be allowed reasonable leeway to mitigate these groups' impact on society and the economic development of our nation.

In any case, I believe that the purpose of the strict proscriptions under Section 18, Article VII of the Constitution is not so much to limit the meaning of rebellion but more to limit the instances calling for the President's exercise of his power to declare martial law and/or suspend the privilege of the writ of habeas corpus. Otherwise stated, the restrictions in Section 18, Article VII of the Constitution are directed mainly on the exercise of presidential power; it is not necessarily fixated on the meaning of the terms used. If the purpose of martial law is self-preservation, then the government should be allowed to wield that power as a potent tool to realize its purpose, unhampered by technicalities in meaning that was neither placed nor intended by the framers in the first place.

III

A

Even conceding that a state of rebellion exists in Mindanao, I still do not find that the situation has reached such scale as to satisfy the public safety requirement under Section 18, Article VII of the Constitution.

In *Lagman v. Pimentel*, [15] involving the constitutionality of the second extension of martial law in Mindanao, I

had occasion to express my view that "the public safety requirement under Section 18, Article VII of the Constitution operates to limit the exercise of the President's extraordinary powers only to rebellions of a certain scale as to sufficiently threaten public safety." [16] I, thereafter, sought to identify certain circumstances present in the rebellion in Marawi City which, in my view, could serve as minimum indicators of scale as to reasonably justify the President's resort to extraordinary measures: (1) there are actual and sustained armed hostilities with government forces; and (2) armed groups have actually taken over, and are holding, territory. [17]

In these present petitions, the Government attempts once more to present evidence showing the magnitude of the rebellion for purposes of extending martial law in Mindanao until December 31, 2019. After going over the Government's evidence, I do not find any of the circumstances present which reasonably indicate that the state of rebellion in Mindanao has reached a scale as to justify the President's exercise of his extraordinary powers.

Nowhere in its presentation or its pleadings did the Government assert that there are actual and sustained armed hostilities (e.g., continuous exchange of fire) between government troops and the terrorist groups in any place in Mindanao. Neither was there any claim (much less, actual evidence) that these terrorist groups have taken over, or are actually holding, territory, similar to what the Maute rebels were able to achieve during the Marawi siege. At most, the Government's data shows that the armed terrorist groups have not been quelled, and that they continue to be dangerous and capable of inflicting violence and terror in Mindanao. This notwithstanding, the declaration of martial law and suspension of the privilege of the writ of habeas corpus, given their tremendous effect on certain civil liberties, are measures of last resort, not knee-jerk responses, to address such terror threats.

B

Even if taken in their best light and for the avowed purposes for which they were presented, the totality of the Government's evidence still does not support a reasonable conclusion that they meet the Constitution's public safety requirement as to justify the extension of martial law in Mindanao.

In defending against the petitions that led to *Lagman v. Pimentel*, the Government, using data supplied by the AFP, introduced into evidence, for the first time in the history of martial law litigation, certain metrics by which to gauge the magnitude of the rebellion waged by the two terrorist groups in the year 2017. The AFP's metrics, as reaffirmed by Lieutenant General Madrigal (Gen. Madrigal) during oral arguments in this case, [18] has four components: (1) the manpower count; (2) firearms count; (3) number of controlled barangays; and (4) number of violent incidents (which include harassment, liquidation, ambush, arson, carnapping, grenade throwing, improvised explosive device (IED) explosions, kidnapping and murder).

For the year 2017, the figures corresponding to these metrics, as summarized from the AFP Presentation [19] in *Lagman v. Pimentel*, are as follows:

Rebel/Terrorist Groups

Manpower

Firearms

Controlled Barangays

Violent Incidents

Communist Rebels

1,748

2,123

426

422

Dawlah Islamiyah

137

162

-

53

BIFF

388

328

59

116

ASG

508

598

52

44

GRAND TOTAL

2,781

3,211

537

635[20]

For purposes of the present petitions, the Government employed the same metrics and presented as evidence the following statistics[21] for the year 2018:

Rebel/Terrorist Groups

Manpower

Firearms

Controlled Barangays

Violent Incidents

Communist Rebels

1,636[22]
1,568[23]
232[24]
193
Dawlah Islamiyah
150
91
16
10
BIFF
264
254
50
76
ASG
424
473
138
66
GRAND TOTAL
2,474
2,386
436
345[25]

Even the most cursory comparison of the 2017 and 2018 data would show that all five components of the AFP's capability metrics went down.

In his letter to President Duterte recommending the extension of martial law, Secretary of National Defense Delfin N. Lorenzana attributed the "degradation in manpower and capabilities" of rebel groups to be "a result of the continued operations of the security forces of the National Government." [26]

AFP Chief of Staff, General Carlito Galvez, Jr. (Gen. Galvez), for his part, also reported a "significant reduction on the capability of the threat groups." [27] In his letter to President Duterte, he mentioned a 62% and 45% reduction in the manpower and firepower, respectively, of local terrorist groups, and a 31% and 38% reduction in manpower and firepower, respectively, of communist terrorist groups. He also reported a reduction in threat

atrocities from local and communist terrorist groups by 22% and 36%, respectively.[28]

Thus, and as a trier of fact who previously voted against the extension of martial law in 2018 due to lack of reasonable showing of scale, I find even less reason to further extend martial law here, when even by the Government's own estimation, the scale or magnitude of the rebellion in Mindanao has been significantly reduced or degraded.

Notably, publicly available information seems to validate the government's findings of degradation/reduction. A report to the United States (US) Congress,[29] for example, gave the following account: (1) the "force strength" of violent extremist Philippine organizations affiliated with the ISIS,[30] which was around "300 to 550 members" in the last quarter of 2018, is "significantly less than the group's peak strength during the Marawi siege," where "more than 1,000 militants fought;" (2) there were "approximately 40 foreign fighters, mostly from Malaysia and Indonesia, in the Philippines during the [last quarter of 2018]," and there is "no evidence of either an influx or exodus of foreign fighters during the [same] quarter;"[31] and (3) ISIS-Philippines "neither gained nor lost territory during the quarter, and extremist activity was limited to the Sulu archipelago. x x x [It] made no progress in expanding its operations or influence outside of the Sulu archipelago." [32]

C

I now take this occasion to share some further observations:

First. The AFP's use of certain metrics by which our armed forces measures enemy capability appears consistent with the practice of the United States military in their war against terror, specifically as waged against ISIS and ISIS-related or ISIS-inspired groups.[33]

Second. Statements made by our top military officials confirm that there is some science behind the military's recommendation to declare martial law and/or suspend the privilege of the writ of habeas corpus. This, I feel, is important to help assuage any fears that the President's exercise of his extraordinary powers was made without rhyme or reason, or worse, on pure whim.

In his testimony before the Joint Session of Congress on December 12, 2018, Secretary Lorenzana professed:

We need more time to catch these people, to neutralize them, to reduce their capability to create trouble. Kapag po nai-reduce iyan ng about 30 percent ng kanilang capability and they become law enforcement problems, then the police forces can take over without the military. Kaunti na lang kami siguro, so support na lang kami.[34]

During the oral argument, Gen. Madrigal affirmed Secretary Lorenzana's statement before Congress[35] and explained that, the "military definition of destruction of the enemy," is "[reduction of their capability] by 30% in terms of strength, firearms, the support system." [36] In such case, the conflict will be considered a law enforcement, rather than military, matter, on the basis of which the AFP "will gladly recommend the lifting of martial law." [37] Gen. Madrigal's statements were seconded by Solicitor Calida, who afterwards declared:

Your Honor, I'd like to clarify when we were speaking about the 30%, Your Honor, statement of Secretary Lorenzana, I asked them, what is the baseline and what did 30%, when will you impose this? And they said, this year, Your Honor. If in this year they can reduce the capability to 30% this year, then they will recommend as you heard from the General, Your Honor.[38]

Third. Although Solicitor General Calida committed to clarify, through the Memorandum to be submitted by the Government, the baseline on which the 30% capability reduction threshold will be applied,[39] he would unfortunately renege on this commitment. Instead of clarifying the 70%-30% baseline as initially promised, the

Solicitor General, in the Government's Memorandum, would thereafter assert that: "[t]he assessment of whether to extend martial law defies computation: it is not subject to any mathematical formula;"[40] the AFP's calculus "cannot bind the President who is only bound by Section 18, Article VII of the Constitution;"[41] "it would be contrary to common sense if the decision of the President is to depend on the calculations of his alter ego;"[42] and "an extension of martial law would still be valid even if the DND Secretary declares that the rebels' capabilities had been degraded by more than seventy percent." [43]

I find the above assertions by the Solicitor General to be worrisome and disconcerting, to say the least. Having heard the explanation of the AFP, admitted the existence of the mathematical formula, and committed to clarify the baseline for its application during oral arguments, the Solicitor General now refuses to admit responsibility to any of these. This effectively puts the cart before the horse and adopts a stance of self-preservation that is inconsistent with the ideal of public accountability.

Indeed, the power to declare martial law rests solely in the executive. Gen. Madrigal exhibited sufficient discernment when he stated during oral arguments that the AFP's role is recommendatory,[44] meaning it does not bind the president. I find that the position taken by the Solicitor General underrates the military's competence to recommend the lifting of martial law based on verifiable facts, as it also undermines the president's ability to act upon the recommendation of his own subordinates. The stance taken by the Solicitor General, to my mind, is not only unfair to the Court, but also unfair to its principals.

Fourth. The AFP's statements on its use of certain metrics and the baselines considered for a recommendation on martial law are entitled to the highest credibility, having been conveyed by high-ranking military officials in proceedings sanctioned by the Constitution.

More importantly, as a Member of the Court specifically mandated by the Constitution to determine the sufficiency of the factual bases for the President's declaration of martial law and/or suspension of the privilege of the writ of habeas corpus, I appreciate the AFP's use of science and metrics. To me, these serve as objective[45] and reasonable measures by which I can arrive at a conclusion. In fact, it is my view that the Court should inquire into its application in similar future cases as a way of measuring the factual existence of the twin requirements for the declaration or extension of martial law. In the same manner, the government is duty-bound to make a truthful reporting and make information transparent. This is the essence of public accountability of all government entities whose primary duty is to serve and protect the People.

Finally, public office is a public trust; public officers and employees must, first and foremost, be accountable to the people at all times. They must serve the people with utmost responsibility, integrity, loyalty, and efficiency.[46] Public officials and employees are expected to discharge their duties with the highest degree of excellence, professionalism, intelligence and skill.[47] Consequently, the AFP is expected to remain as faithful to its duty make the correct reporting of facts as it is with its mandate to protect the people[48] and safeguard their rights.[49] Thus, it should stand to reason that if the AFP finds that there is no longer a need to extend martial law based on facts gathered from its intelligence activities and the application of the 30% rule on degradation, it is duty-bound to make a recommendation to the President to lift the declaration.

Similarly, if the President determines that there is no longer any factual basis to extend martial law based, among others, on the recommendation of the AFP, then it is also his duty to lift it. He is no less accountable to the people by virtue of his position. In fact, it is his first and foremost duty to uphold the sanctity of our laws.

To end, the proceeding provided for under the third paragraph of Section 18, Article VII of the Constitution is not a game of superiority or popularity. It is, in essence, a proceeding to determine whether the actions undertaken by the Government are in furtherance of the welfare of its constituents. It is of such nature that, regardless which of

the opposing parties win, the outcome should be a victory of the people.

ACCORDINGLY, I vote to GRANT the petitions in G.R. Nos. 243522, 243677, 243745 and 243797 and DECLARE INVALID Resolution of Both Houses No. 6 of the Senate and the House of Representatives dated December 12, 2018, for failure to comply with Section 18, Article VII of the 1987 Constitution.

[1] G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1.

[2] Ponencia, p. 27.

[3] See Jardeleza, J., Separate Opinion, Lagman v. Medialdea, G.R. Nos. 231658, 231771, & 231774, July 4, 2017, 829 SCRA 1, 602-668.

[4] See Resolution, Lagman v. Medialdea, G.R. No. 243522, January 21, 2019.

[5] That the Government wotrfd deign to renew a plea for in camera proceedings (after having decided not to do so in Lagman v. Pimentel) is for me a lamentably disappointing experience of constitutional deja vu.)

[6] Rollo, pp. 716-720.

[7] Supra note 4.

[8] To my mind, the Reports did not implicate the types of information falling within the "single, extremely narrow class of cases" that the United States Supreme Court, in the leading case of *New York Times Co. v. United States* (403 U.S. 713, 1971), held may be validly covered by prior restraint. These types of information include, for example, sailing dates of transports or the number and iocation of troops, when the Nation is at war. (See also Separate Opinion in Lagman v. Medialdea, supra.)

[9] Supra note 3.

[10] Given the unusually short timeframe in martial law litigation, four days is an eternity.

[11] Supra note 3.

[12] <https://www.dictionary.com/browse/rebel>, last accessed on February 9, 2019.

[13] <https://thelawdictionary.org/rebel/>, last accessed on February 9, 2019.

[14] Sec. 3. Terrorism. — Any person who commits an act punishable under any of the following provisions of the Revised Penal Code:

- a. Art. 122 (Piracy in General and Mutiny in the High Seas or in the Philippine Waters);
- b. Art. 134 (Rebellion or Insurrection);
- c. Art. 134-a (Coup d' Etat), including acts committed by private persons;
- d. Art. 248 (Murder);
- e. Art. 267 (Kidnapping and Serious Illegal Detention);
- f. Art. 324 (Crimes Involving Destruction), or under:
 - Presidential Decree No. 1613 (The Law on Arson);
 - Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990);

- Republic Act No. 5207 (Atomic Energy Regulatory and Liability Act of 1968);
- Republic Act No. 6235 (Anti-Hijacking Law);
- Presidential Decree No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974); and
- Presidential Decree No. 1866, as amended (Decree codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunition or Explosives)

Thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand shall be guilty of the crime of terrorism and shall suffer the penalty of forty (40) years of imprisonment, without the benefit of parole as provided for under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended. (Emphasis supplied.)

[15] G.R. No. 235935, February 6, 2018.

[16] See Jardeleza, J., Dissenting Opinion, *Lagman v. Pimentel*, G.R. No. 235935, February 6, 2018.

[17] *Id.* After finding that none of the above indicators obtained in *Lagman v. Pimentel*, I voted against the further extension of martial law and the suspension of the privilege of the writ of habeas corpus in Mindanao.

[18] Transcript of Oral Arguments-En Banc, pp. 52-53; In the oral argument on January 29, 2019, the following exchanges were made between Associate Justice Jardeleza and Gen. Madrigal:

Justice Jardeleza: x x x I think, correct me, if I am correct, if I'm right, the capability of the enemies of the State is measured and I see it that's how you present it to Congress in terms of (1) manpower; that's why you have number of people; (2) firearms; (3) I think controlled barangays...

Gen. Madrigal: Yes, Your Honor.

Justice Jardeleza: And no. (4) violent incidents?

Gen. Madrigal: Yes, Your Honor.

Justice Jardeleza: So those four, which are in your data and as presented today and as presented to Congress. The sum total is what you call capability?

Gen. Madrigal: Yes, Your Honor.

[19] AFP presentation in *Lagman v. Pimentel*, slide nos. 19, 26, 37, 52 and 75.

[20] *Id.*

[21] OSG Comment, Annexes "4," "5," "6," and "7"; undated letter of Major General Fernando T. Trinidad to Cong. Edcel C. Lagman, Annex "E-14" of Lagman petition; OSG Comment, paragraph 33 states that these are 2018 "end of first semester data" without citing sources or providing figures for communist terrorist groups. In addition, I note that the 2018 figures vary per source of information. For example, the figures on firearms and controlled barangays corresponding to communist rebels are not found in the government's submissions. They were instead provided by Major General Lorenzo (Maj. Gen. Lorenzo) in his presentation at the oral arguments. Moreover, in his testimony before the Joint Session of Congress, Gen. Madrigal stated that the government is still pursuing a total of 2,435 communist and local terrorist groups, which is less than the total manpower tallied above.

[22] Testimony of Gen. Madrigal during the Joint Session of Congress on December 12, 2018, Transcript, p. 27. Per Gen. Madrigal, the figures were "current... at this point."

[23] Presentation of Maj. Gen. Lorenzo, Transcript of the Oral Arguments-En Banc, pp. 18-19.

[24] Id.

[25] OSG Comment, Annexes "4," "5," "6," and "7."

[26] OSG Comment, Annex "1." Letter of Gen. Delfin N. Lorenzana to President Duterte dated December 4, 2018.

[27] OSG Comment, Annex "1." Undated Letter of Gen. Carlito Galvez, Jr. to President Duterte, emphasis supplied.

[28] Id.

[29] Report of the Lead Inspector General to the United States Congress on Operation Pacific Eagle-Philippines, October 1, 2018 to December 31, 2018, p. 5, https://media.defense.gov/2019/Feb/05/2002086502/-1/-1/1/FY2019_LIG_OCOREPORT.PDF (last accessed February 17, 2019)

[30] Collectively referred as "ISIS-Philippines" or "ISIS-P" in the Report, https://media.defense.gov/2018/Jun/18/2001932643/1/1/1/FY2018_LIG_OCO_OIR_Q1_12222017_2.PDF (last accessed on February 17, 2019).

[31] Report of the Lead Inspector General to the United States Congress on Operation Pacific Eagle-Philippines, October 1, 2018 to December 31, 2018, p. 6, https://media.defense.gov/2019/Feb/05/2002086502/-1/-1/1/FY2019_LIG_OCOREPORT.PDF (last accessed on February 17, 2019).

[32] Id.

[33] Id. My appreciation of the use of metrics by the American military was reinforced when I came across the report submitted to the United States Congress that I earlier adverted to. In the report, the United States Indo-Pacific Command was stated to be using "four metrics to track the degradation of ISIS- Philippines," namely: (1) lack of an ISIS-Core designated ISIS-Philippines emir; (2) the amount of funding ISIS-Core provides ISIS-Philippines; (3) the quality of ISIS-Core media coverage of ISIS-Philippines activities; and 4) cohesion or fragmentation of ISIS-Philippines' individual elements.

[34] Transcript of the Joint Session of Congress, p. 57.

[35] I asked the Government to explain Secretary Lorenzana's statement. My question was, "Is it the position of the government that when the capability of the local and the communist terrorist groups are degraded by 30%, then you can already recommend to the president that martial law is over?" (Transcript of Oral Arguments-En Banc, January 29, 2019, p. 51.)

[36] Transcript of Oral Arguments-En Banc, January 29, 2019, p. 52.

[37] Transcript of Oral Arguments-En Banc, January 29, 2019, p. 52-54.

[38] Transcript of Oral Arguments-En Banc, January 29, 2019, p. 55.

[39] Transcript of Oral Arguments-En Banc, January 29, 2019, pp. 56-58. In the oral argument, the following exchanges transpired:

Justice Jardeleza: So, Mr. SolGen, the position we would like to know from the government and please cover it in

the memo. If we can agree now, we are looking, the Court will be looking to you what is the baseline? We have to agree. If the baseline is January 1, 2019...?

Solicitor General Calida: Yes, Your Honor.

Justice Jardeleza: If the baseline is January 1, 2019, that is the meaning of what the officers have testified today.

Solicitor General Calida: That's correct, Your Honor.

Justice Jardeleza: So, I do not know how the Court will decide. If the Court decides not to grant an extension, then that's the end of it. If the Court decides to grant an extension, we have agreed today that you will give us what is the baseline in terms of manpower, in terms of firearms, controlled barangays...

Solicitor General Calida: Capability.

x x x x

Justice Jardeleza: So we have a deal. That's the...

Solicitor General Calida: Yes, Your Honor.

[40] OSG Memorandum, para. 82.

[41] OSG Memorandum, para. 82.

[42] OSG Memorandum, para. 83.

[43] OSG Memorandum, paras. 82-83.

[44] Transcript of Oral Arguments-En Banc, p. 54; Gen. Madrigal stated that "We will gladly recommend the lifting of martial law if we attain that," referring to 70% reduction of rebel and terrorist capability.

[45] As circumstances would allow.

[46] CONSTITUTION, Art. XI, Sec. 1.

[47] Sec. 4, R.A. No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees.

[48] Sec. 3, Art. II, of the 1987 Constitution provides: The Armed Forces of the Philippines is the protector of the people and the State.

[49] Sec. 5, Art. XVI of the 1987 Constitution provides:

- All members of the armed forces shall take an oath or affirmation to uphold and defend this Constitution.
- The State shall strengthen the patriotic spirit and nationalist consciousness of the military, and respect for people's rights in the performance of their duty.

DISSENTING OPINION

CAGUIOA, J.:

Before the Court are consolidated petitions filed under Section 18, Article VII of the Constitution, assailing the constitutionality of the third extension of the proclamation of martial law and suspension of the privilege of the writ of habeas corpus in the entire Mindanao for another year, from January 1 to December 31, 2019. The

petitioners in G.R. Nos. 243522, 243745, and 243797 additionally pray for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction (WPI).

Sufficiency of Factual Basis

A. Whether there exists sufficient factual basis for the extension of martial law in Mindanao

All four petitions question the sufficiency of the factual basis of the third extension of martial law, arguing cumulatively that there is no longer any rebellion in Mindanao and public safety does not require the extension.

The respondents, on the other hand, claim that there are ongoing rebellions being waged by the Communist Party of the Philippines (CPP) - New People's Army (NPA) - National Democratic Front (NDF) and the DAESH-inspired groups in Mindanao and that public safety requires the extension. Moreover, the respondents maintain that the President and Congress had probable cause to believe that there are ongoing rebellions in Mindanao.

A.1. Whether rebellion exists and persists in Mindanao

In support of the President's request for extension of martial law, the Executive department presented to the Congress during the joint session of the Senate and the House of Representatives a compilation of violent incidents committed by the Abu Sayyaf Group (ASG), the Bangsamoro Islamic Freedom Fighters (BIFF), the Daulah Islamiyah (DI) and other groups that have established affiliation with ISIS/DAESH (collectively called by the Executive and respondents as Local Terrorist Rebel Groups [LTRGs]), and by what the Executive calls the Communist Terrorist Rebel Groups (CTRGs), the components of which are: the CPP, the NPA, and the NDF for the period of January 1 to November 30, 2018.[1]

The violent incidents attributed to the ASG, BIFF and DI consist of one hundred thirty-seven (137) incidents of ambushes, arson, firefighting/attack, grenade throwing, harassment, IED/landmining explosion, attempted kidnapping, kidnapping, liquidation, murder and shooting. As for the NPA, the violent incidents consist of one hundred seventy-seven (177) incidents involving ambushes, raids, nuisance harassments and harassments, disarming, landmining, SPARU operations, liquidations, kidnappings, robberies/holdups, bombings, and arson.[2]

According to the respondents, these criminal acts constitute rebellion as they were committed in furtherance of the crime.[3] The President was aware that these criminal activities are part and parcel of rebellion as he stated in the letter that "[the ASG, BIFF, DI], and other terrorist groups x x x continue to defy the government by perpetrating hostile activities during the extended period of Martial Law" and "x x x the CTG which has publicly declared its intention to seize political power through violent means and supplant the country's democratic form of government with Communist rule, took advantage and likewise posed serious security concerns x x x." [4]

Before the Court, the respondents submitted as Annexes to their submissions an updated compilation of reports of these violent incidents to include all violent incidents for the entire period of 2018 which they attributed to the ASG, the BIFF, the DI, and the NPA. These Annexes, in turn, had covering tables summarizing the contents of the submitted data. With the exception of the NPA-initiated violent incidents, these covering tables/summaries are supported by individual reports that supply the date of the incident, the type of incident, and the particulars of the said incident. In some cases, these include acronyms that tend to show the source of the information.

The respondents argue that these reports, being duly validated and authenticated in accordance with military procedure, are akin to entries in official records by a public officer which under the law enjoy the presumption as prima facie evidence of the facts stated therein, and that the trustworthiness of these official records is reinforced by the legal presumption of regularity in the performance of official duty.[5] As well, the respondents point out

that the petitioners have not advanced any basis for the Court to doubt the reports which emanated from the AFP Office of the Deputy Chief of Staff for Intelligence J2 (OJ2).[6] They submit that there really are no inconsistencies, and the annexes are faithful accounts of the violent incidents in 2018 attributed to a specific threat group.[7]

These arguments do not persuade.

Section 18, Article VII of the Constitution squarely places the burden of proof upon the political departments to show sufficient factual basis for the extension of martial law and the suspension of the privilege of the writ of habeas corpus. This is the Court's rulings in *Lagman v. Medialdea*[8] and *Lagman v. Pimentel III*[9] and no reason exists to deviate therefrom. Accordingly, applying the presumption of regularity in the performance of official duty and the presumption that these reports are prima facie evidence of the facts stated therein in a manner that excuses the respondents from introducing substantial evidence to prove to the Court that the twin requirements for the extension exist, defeats any intelligent review under Section 18.

To stress anew, Section 18 is in the nature of a neutral fact-checking mechanism by the Court. Having established the quantum of evidence required for the determination of the elements of rebellion as defined in the Revised Penal Code (RPC) as "probable cause", and in the determination of the twin requirements as substantial evidence, there are certain fundamental precepts in administrative fact-finding that are applicable. In *Ang Tibay v. CIR*,[10] the Court held:

x x x The fact, however, that the Court of Industrial Relations may be said to be free from the rigidity of certain procedural requirements does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character. There are cardinal primary rights which must be respected even in proceedings of this character:

x x x x

(2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented. x x x In the language of this Court in *Edwards vs. McCoy*, 22 Phil., 598, "the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration."

(3) "While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. A decision with absolutely nothing to support it is a nullity, a place when directly attacked." x x x This principle emanates from the more fundamental principle that the genius of constitutional government is contrary to the vesting of unlimited power anywhere. Law is both a grant and a limitation upon power.

(4) Not only must there be some evidence to support a finding or conclusion x x x, but the evidence must be "substantial." x x x "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind accept as adequate to support a conclusion." x x x The statute provides that 'the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order, x x x But this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence. x x x

(5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record

and disclosed to the parties affected. x x x Only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them. It should not, however, detract from their duty actively to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy. x x x[11]

As applied to a Section 18 review, these fundamental principles require the government to show as much of its factual basis to enable the Court to reach the conclusion that the third extension of martial law and the suspension of the privilege of the writ of habeas corpus is justified by substantial evidence.

This burden entails the introduction of evidence of such quality and quantity that, after the consideration by the Court, there is "substantial evidence," that is, relevant evidence with rational probative force, as a reasonable mind might accept as adequate to support a conclusion. Stated differently, the evidence of the government must be such that, after weeding out the irrelevant evidence and those that are incompetent (uncorroborated hearsay or rumor) even under flexible evidentiary rules of an administrative proceeding, enough evidence remains to engender in the mind of the Court the finding that (1) rebellion persists in Mindanao, and (2) public safety requires the extension. This cannot be hurdled by the expediency of a presumption.

To be certain, according to the political departments the presumption of regularity in a Section 18 proceeding is simply untenable and completely opposite to the duty of government to positively establish, with facts and evidence, the basis for the extension of Martial Law:

x x x [W]hile the Executive and Legislative departments cannot be compelled to produce evidence to prove the sufficiency of factual basis, these presumptions cannot operate to gain judicial approbation in the face of the refusal to adduce evidence, or presentation of insufficient evidence. For otherwise, the ruling that fixes the burden of proof upon the Executive and Legislative departments becomes illusory, and logically inconsistent: the Court cannot rule on the one hand that respondents in a Section 18 proceeding bear the burden of proof, and then on the other, rule that the presumptions of constitutionality and regularity apply. In short, the Court cannot say that the respondents must present evidence showing sufficient factual basis, but if they do not or cannot, the Court will presume that sufficient factual basis exists. x x x

Indeed, if the Court needs to rely upon presumptions during a Section 18 review, then it only goes to show that the Executive and Legislative departments failed to show sufficient factual basis for the declaration or extension. Attempts at validation on this ground is equivalent to the Court excusing the political departments from complying with the positive requirement of Section 18.[12]

That said, and even if the presumption of regularity can somehow apply in a Section 18 proceeding, it will not prevent the Court from examining the government's evidence for consistency and credibility and weighing their rational probative force.

In this regard, the Court notes that this disputable presumption, even if accorded, may not even apply. After a careful examination of the submissions of the government, it is immediately evident that the evidence itself contain irregularities that foreclose the application of the presumption.

These include, just to name a few examples:

- The government describes its evidence as consisting of reports duly validated and authenticated according to military procedure. Moreover, it is described as "reports x x x [emanating] from the OJ2"[13]. However, in the government's report of the April 30, 2018 liquidation[14] attributed to the BIFF, the Report states:

30 April 2018

LIQUIDATION

Inihatid na sa kani kanilang pamilya ang dalawang SF member na pinagbabaril Patay sa Mother Bagua to sa lungsod noong isang araw.

Sa Impormasyong ibinahagi ng Col. Eros James Uri sa BNFM COT. Kahapon ng tanghali ng bigyan ng Military Honor ang dalawa bago paman mahatid sa kani kanilang mga pamilya sina Pfc. Richard Bendanillo. Na taga Alamada, North Cotabato at Cpl. Nelson Paimalan na taga UPI, Maguindanao. BIFF naman ang nakikitang mga suspek sa dalawang sundalo.

A cursory search of BNFM COT yields the result that BNFM COT means Brigada News FM Cotabato.

Clearly, the source of the information for the foregoing entry is a news report. This belies, therefore, the claimed "validation" and "authentication" warranted by the government of the said AFP Reports as to the information that is proffered therein.

In this regard, it should be noted that out of the one hundred fifty (150) reports (entries) of violent incidents making up the respondents' submission, only seventy-one (71) entries had acronyms tending to point to the military or the police as the ultimate source of the information.[15] The inclusion of the foregoing stray entry thus prevents the Court from presuming that the remaining seventy-nine (79) entries that did not state their source actually come from the military or the police.

This thus casts doubt as to the source and the level of validation and authentication of the said information as warranted by the government of the said AFP Reports. In the same manner that the Court in *Lagman v. Pimentel III* held that online news articles have no probative value with respect to proving human rights violations, the Court cannot now presume as a regular military report that which obviously appears to be but based on a newsbyte. Without the identification of the source of information, the report is nothing but an uncorroborated hearsay or rumor, using the words of *Ang Tibay v. CIR*. [16]

- Moreover, as noted by certain members of the Court during the oral arguments, the Annexes are replete with entries that are incomplete. Examples [17] of these, as flashed on the screen during the oral arguments, include:

31-Jan-18

AMBUSCADE

(3) workers of DPWH, ARMM identified as Abdulbasit Daimun, Adzhar Dakis and Abdul Sarabin, with one SCAA escort identified as Mittoy Estajal onboard a dump truck emanated from Ungkayu Pukan going to DPWH Office in Brgy Lagasan, Lanitan City, both in Basilan were fired upon by two (2) unidentified gunmen using M203 Grenade launcher upon reaching vicinity of Brgy Baas, same city that resulted to the killing of two (2) civilians (Daimun and Dakis) and wounding of two (2) others (Sarabin and Estajal). Afterwiche, the perpetrators withdrew towards the direction of Brgy Lebbuh, same city. The wounded victims were brought to Ciudad Medical in Zamboanga City for medication. Comments: a. The incident is an extortion related and possibly perpetrated by the group of Arjan Apinu under A5GSL Abdulla Jovel Indanan @ GURU, b. Since 2015, the group of @ GURU was monitored engaged in extortion activity targeting Construction Company, who has ongoing government projects in Tipo Tipo and Tuburan municipalities and prominent businessmen in the cities of

01-Feb-18

AMBUSCADE

certain Muksin Kaidin and Mukim (LNU) while onboard their vehicle were ambushed by undermined number of unidentified armed men at So Kapok Hawani, Brgy Latih, Patikul, Sulu. The victims sustained multiple GSWs and the body of Muksin Kaidin was burned due to the explosion of gasoline of said vehicle causing their death. Afterwhich, the suspects withdrew towards unknown directions while the cadavers of the victims were brought to IPHO Hospital, KHTB, Brgy Bus-Bus, Jolo, same province for proper disposition. Comments: a. Initial investigation conducted by the PNP averred that the motive of the incident is said to be a long-standing family feud or RIDO between the family of the victims and the suspects, b. On the other hand, it is most likely that this could be a handiwork of the Ajang-Ajang group tasked by the ASG to liquidate suspected military informants in the area. c. Patikul MPS conducted not pursuit operations on the suspects and will likewise conduct investigation to establish the motive and identity of the perpetrators.

The respondents were given the opportunity to rectify or supplement these gaps in the evidence. Unfortunately, these gaps were not addressed.[18]

Given the state of the government's evidence as observed above, the presumption of regularity in the performance of official duties, even if accorded, has been negated by the gaps and inconsistencies therein.

With the presumption unavailing, the evidence presented by the respondents will now be examined.

Evidence of persisting rebellion

The Court has previously held that the rebellion required for the declaration of martial law or the suspension of the privilege of the writ of habeas corpus, or the extension thereof, is rebellion as defined under Article 134 of the Revised Penal Code:

Article 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 Philippines or any part thereof, of 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.

In this regard, the rule as it stands — and that which is applicable for the instant review — is that for purposes of establishing the sufficiency of the factual basis for the extension of martial law, the government bears the burden of proof to show that:

First,

(1)

[T]here is a (a) public uprising and (b) taking [of] arms against the [G]overnment; and

(2)

[T]he purpose of the uprising or movement is either (a) to remove from the allegiance to the Government or its laws: (i) the territory of the Philippines or any part thereof; or (ii) 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.[19]

And second, that public safety requires the extension.

To show the first requirement — the persistence of rebellion already parsed in *Lagman v. Medialdea*, the government must show with substantial evidence the concurrence of both the overt act of rebellion and the

specific purpose. This is consistent with the jurisprudence on rebellion, thus:

From the foregoing, it is plainly obvious that it is not enough that the overt acts of rebellion are duly proven. Both purpose and overt acts are essential components of the crime. With either of these elements wanting, the crime of rebellion legally does not exist. In fact, even in cases where the act complained of were committed simultaneously with or in the course of the rebellion, if the killing, robbing, or etc., were accomplished for private purposes or profit, without any political motivation, it has been held that the crime would be separately punishable as a common crime and would not be absorbed by the crime [of] rebellion.[20]

The totality of the evidence presented by the respondents consists of the following:

- Specific reports of violent incidents divided into the groups which purportedly initiated them and a covering summary for each group. These were attached to the respondents' Comment as Annexes:

- Annex "4" referring to ASG-initiated violent incidents,
- Annex "5" referring to BIFF-initiated violent incidents,
- Annex "6" referring to DI-initiated violent incidents, and
- Annex "7" referring to NPA-initiated violent incidents.[21]

- Monthly Reports in the implementation of Martial Law;

- Letter[22] of Major General Pablo M. Lorenzo, Deputy Chief of Staff for Intelligence of the AFP; and Letter[23] of Police Director Ma. O R. Aplasca containing PNP Data and other supporting reports providing updates or more information on the reports contained in the Annexes.[24]

Analysis of the data

To be able to make a reasonable inference from the compiled reports submitted, these reports (also called entries) were identified, analyzed, and then grouped according to: (1) the designation of the incident,[25] (2) the perpetrator,[26] (3) the motive,[27] and (4) completeness of the entry.[28] The number of reported casualty[29] is also noted.

ASG-initiated violent incidents

Annex "4" consists of alleged ASG-initiated violent incidents for the whole year of 2018 presented through a covering summary and specific reports therefor. The covering summary[30] is replicated below:

ASG-INITIATED VIOLENT INCIDENTS ANNEX "4"
(01 January to 31 December 2018)

ACTIVITIES

INCIDENT

CASUALTIES

PROVINCE

GOV'T

CIVILIAN

ASG

BASILAN

SULU

TAWI-TAWI

ZAMBOANGA
PENINSULA

OTHERS

TOTAL

WIA

KIA

WND

MSNG

KLD

WND

KLD

APP

ARR

CAP

SUR

AMBUSCADE

4

1

5

2

4

ARSON

1

1

CARNAPPING

1

1

GRENADE THROWING

1

1

HARASSMENT

2

14

16

6

1

4

1

IED LANDMINING/EXPLOSION

3

5

8

10

6

8

5

ATTEMPTED KIDNAPPING

1

1

2

KIDNAPPING

15

1

2

18

3

LIQUIDATION

3

3

6

1

5

MURDER

3

1

4

4

SHOOTING

3

1

4

1

6

1

SUBTOTAL

18

43

1

2

2

66

17

9

19

3

22

0

2

0

0

0

0

GRANDTOTAL

66

17

9

19

3

22

0

2

The above table shows a total of sixty-six (66) incidents attributed to the ASG that resulted in thirty-three (33) persons dead, thirty-six (36) persons wounded, and three (3) persons missing.

The specific reports accompanying the summary, on the other hand, show sixty-six (66) incidents resulting in thirty-seven (37) persons dead (not 33), thirty-eight (38) persons wounded (not 36), and thirty-nine (39) persons missing (not 3). For ease of reference, the totality of the data in Annex "4," when analyzed, shows:

ASG-initiated Violent Incidents

Reported Casualty

No. of Reports

Dead

Wounded

Missing

No perpetrator, no motive[31]

20

12

19

15

No perpetrator, motive not political[32]

1

0

0

0

Suspected ASG, no motive[33]

7

6

3

1

Suspected ASG, motive not political[34]

4

2

4

2

ASG generally identified, no motive[35]

13

9

6

5

ASG specifically identified, no. motive[36]

17

7

6

16

ASG specifically identified, motive not political[37]

4

1

0

0

Total

66

37

38

39

Per respondents' summary

66

33

36

3

Incomplete Reports

10

16

12

11

Of these sixty-six (66) entries, ten (10) are incomplete entries. Thirty-two (32) entries either do not identify perpetrators or identify the perpetrators as "suspected ASG" or "believed to be ASG." Fifty-seven (57) entries either do not identify the motive or state that the motive is undetermined. These gaps concur in twenty-six (26) entries which neither identify the perpetrators nor supply the motive.

Of the nine (9) entries that supply the motive, seven (7) are equivocal as to the political purpose. The information contained in these entries even lend to the conclusion that these are common crimes committed for private purposes or without the political motivation required in rebellion. These are:

- The January 31, 2018 account of ambuscade wherein DPWH workers were fired upon by "two (2) unidentified gunmen" with a grenade launcher. The Report goes on to state that it was "possibly perpetrated by the group of Arjan Apinu under ASGSL Abdulla Joven Indanan x x x Group of @ GURU was monitored engag[ing] in extortion activit[ies] targeting [construction [c]ompan[ies]]" and that the motive is "extortion[-]related." [38]

- The February 1, 2018 account of an ambuscade wherein a vehicle was ambushed by "unde[te]rmined number of unidentified armed men x x x most likely x x x [the] handiwork of the Ajang-Ajang group tasked by the ASG to liquidate suspected military informants." The stated motive is "long-standing family feud or RIDO between the family of the victims and the suspects." [39]

- The February 14, 2018 account of kidnapping committed by "undetermined number of men" by abducting a DPWH-ARMM Engineer at gunpoint. The Report states that "motive of the incident is probably part of the express kidnapping efforts of the ASG." [40]

- The February 28, 2018 account of harassment of BPAT and LGU conducting road construction projects by "[more or less ten (10)] fully armed ASG led by ASGSL Abdullah Jovel INDANAN @ GURO." The Report goes on to state that "@ GURO has a family feud with the incumbent Barangay Chairman of Dugaa" where the shooting happened. [41]

- The March 7, 2018 account of the kidnapping of a school teacher "by three (3) unidentified armed men onboard a single motorcycle" but "it could not be ignored that the ASG could have been involved in said abduction since x x x incidents were rampant in the area." The Report continues, "[i]nitial [PNP] investigation [show] that the victim was in debt with a large amount of money from an unidentified man and has been neglecting paying her dues." [42]

- The April 16, 2018 account of a grenade thrown at the warehouse of the ARMM District Engineer by an "unidentified person wearing black jacket." The Report states that the "initial motive x x x is believed to be extortion." [43]

- The June 17, 2018 account of the shooting of ASGSL Bagade @ Sayning who was "mistakenly shot and killed

by his own brother Muslim Bagade."[44] The PNP data[45] confirms this accidental shooting.

As well, among the violent incidents used to support the persistence of rebellion and requirement of public safety are two (2) incidents that appear to have taken place outside of Philippine jurisdiction:

- The September 11, 2018 account of the kidnapping of the captain and crew of a fishing trawler in Sempornah, Sabah by "two (2) armed men with M16." The report states that the kidnap victims were taken by pumpboat towards Sitangkai/Sibutu Island in the Philippines.[46]
- The December 5, 2018 account of the kidnapping of one (1) Malaysian and two (2) Indonesians who were kidnapped in Lahad Datu, [Sabah] and thereafter monitored in Pata, Sulu. According to the report, the kidnappers were "around 20 ASG members with three of them identified as ASGSL RADEN ABU, SALIP MURA, and @ BONG" and "ASG had already contacted the Consul x x x."[47]

BIFF-initiated violent incidents

Annex "5" consists of alleged BIFF-initiated violent incidents for the whole year of 2018 presented through a covering summary followed by specific reports therefor. The summary[48] submitted by the respondents is replicated as follows:

BIFF-INITIATED VIOLENT INCIDENTS ANNEX "5"

(01 January to 31 December 2018)

ACTIVITIES

INCIDENT

CASUALTIES

PROVINCE

GOV'T

CAA

CIVILIAN

BIFF

NORTH COTABATO

MAGUINDANAO

TOTAL

WIA

KIA

WIA

KIA

WND

MSNG

KLD

WND

KLD

APP

ARR

CAP

SUR

AMBUSCADE

1

1

1

ARSON

2

2

EXPLOSION

1

FIREFIGHTATTACK

1

3

4

4

2

2

6

GRENADE THROWING

3

2

1

HARASSMENT

9

31

40

7

1

2

IED LANDMINING/ROADSIDE BOMBING

2

19

21

13

1

2

4

1

KIDNAPPING

1

1

2

MURDER

1

1

2

SHOOTING

1

1

1

LIQUIDATION

1

1

2

2

1

1

SUBTOTAL

14

62

76

21

4

2

3

5

2

8

2

9

0

0

0

0

GRANDTOTAL

76

21

4

2

3

5

2

8

2

9

The table shows a total of seventy-six (76) incidents attributed to the BIFF that resulted in twenty-four (24)

persons dead, thirty (30) persons wounded, and two (2) persons missing.

The specific reports, on the other hand, show seventy-four (74) incidents[49] (not 76) resulting in sixteen (16) persons dead (not 24), thirty-five (35) persons wounded (not 30), and two (2) persons missing. For ease of reference, the totality of the data in Annex "5," when analyzed, shows:

BIFF-initiated Violent Incidents

Reported Casualty

No. of Reports

Dead

Wounded

Missing

No perpetrator, no motive[50]

28

3

26

0

Suspected BIFF, no motive[51]

6

2

0

0

Suspected BIFF, motive not political[52]

1

0

0

0

BIFF generally identified, no motive[53]

20

1

8

0

BIFF generally identified, motive not political[54]

2

3

0

2

BIFF specifically identified, no motive[55]

13

5

0

0

BIFF specifically identified, motive not political[56]

4

2

1

0

Total

74

16

35

2

Per respondents' summary

76

24

30

2

Incomplete Reports

1

0

0

0

Of these seventy-four (74) incidents attributed to the BIFF, thirty-five (35) entries either do not identify the perpetrators or identify them merely as "suspected BIFF" or "believed to be BIFF." Sixty-seven (67) entries either do not supply the motive or state that the motive is undetermined. Twenty-eight (28) of these entries neither identify the peipetrators nor supply the motive.

Only seven (7) entries supply both perpetrators and the motive. However, they are also equivocal as to the purpose:

- The April 18, 2018 account of an ambush by "[more or less] 10 fully armed men led by Guinda Mamaluba and @ Walo, all members of BIFF under Duren Mananpan @ Marines" of a CAFGU member thereafter carting away the latter's cows. The stated motive is "Rido." [57]
- The May 6, 2018 account of a firefight between MILF and BIFF, specifically, between "Cmdr @ Diego of 105th BC, MILF against Mando Manot BIFF Karialan Faction." The Report states that Datu Manot opposed Taya placing his campaign tarp because Datu believes Taya killed his brother Tatu. Further @ Diego, cousin of Datu, supports Taya. [58]
- The July 24, 2018 account of arson committed by "unidentified armed men believed to be members of BIFF under unknown commander." The Report states that "subject did not give into the mandatory zakat to the armed group in the area during the harvest of his farm land." [59]
- The July 23, 2018 account of a kidnapping. The Report described it as two (2) suspected assets of the operating troops in Pidsandawan, Mamasapano allegedly kidnapped by "BIFF x x x for interrogation." [60]
- The August 13, 2018 account of a liquidation involving a CAFGU member assigned at Ginatilan detachment together with a CVO member shot to death. The perpetrators were identified as the "group of Allan and Walo Bungay, both BIFF members under Durin Manampan @ Marines," the stated motive is "personal grudge." [61]
- The October 15, 2018 account of a firefight between BIFF and Maliga, supporter of Vice Mayor Montawal. The Report identifies the groups involved as "combined groups of an estimated thirty (30) fully armed men of Gapor GUIAMLOD and Mastura BUDI, both followers of Buto SAND AY of BIFF against the group of Maliga GUIALAL who is known supporter of Vice Mayor Utto Montawal." The Report goes on to say, "firefight is in relation to the harassment initiated by the group of Gapor against certain civilian who is a resident of Brgy. Talapas, wherein the said group is also situated x x x." [62]
- The October 18, 2018 account of a firefight between the "groups MILF, Task Force ITIHAD led by @ CMDR AKOB and @ CMDR BADRUDIN of 118BC against the group of BIFF led by Zainudin KIARO @ KIARO under Hassan INDAL." The stated reason is "Rido due to death o[f] the relative of ACOB family who was killed by the group of @ KIARO x x x sometime [in] August 2018." [63]

There is no entry or incident that shows the concurrence of the overt acts of rebellion and the specific political purpose required by Article 134 in the recitation of violent incidents attributed to the BIFF.

DI-initiated violent incidents

Annex "6" consists of alleged DI-initiated violent incidents for the whole year of 2018 presented through a covering summary accompanied by specific reports therefor. The table [64] submitted by the respondents is replicated below, as follows:

DI-INITIATED VIOLENT INCIDENTS ANNEX "6"

(01 January to 31 December 2018)

ACTIVITIES

INCIDENT

CASUALTIES

PROVINCE

GOV'T

CIVILIAN

ASG

DI MAUTE

DI MAGUID

DI TURAIFIE

TOTAL

WIA

KIA

WND

MSNG

KLD

WND

KLD

APP

ARR

CAP

SUR

AMBUSCADE

0

ARSON

0

BEHEADING

0

FIREFIGHT/ATTACK

1

1

2

GRENADA THROWING

0

HARASSMENT

0

IED LANDMINING/EXPLOSION

1

3

4

91

6

KIDNAPPING

1

1

1

LIQUIDATION

1

1

1

MURDER

0

SHOOTING

1

1

2

SNIPING

0

STRAFING

1

1

SUBTOTAL

5

1

4

10

2

0

91

1

7

0

0

0

0

0

0

GRANDTOTAL

10

2

0

91

1

7

0

0

The table/summary shows a total often (10) incidents attributed to the DI that resulted in seven (7) persons dead, ninety-one (91) persons wounded, and one (1) person missing.

The specific reports, in turn, show ten (10) incidents resulting in six (6) persons dead (not 7), ninety-one (91) persons wounded, and one (1) person missing. For ease of reference, the totality of the data in Annex "6," when analyzed, shows:

DI-initiated Violent Incidents

No. of Reports

Reported Casualty

Dead

Wounded

Missing

No perpetrator, no motive[65]

5

5

91

0

Suspected DI, no motive[66]

1

0

0

1

Suspected DI, motive not political[67]

1

1

0

0

Perpetrators specifically identified, no motive[68]

3

0

0

0

Total Incidents

10

6

91

1

Incomplete Reports[69]

4

4

45

1

Per respondents' summary

10

7

93

1

Of the ten (10) incidents attributed to the DI, seven (7) entries either do not identify the perpetrators or identify them merely as "suspected DI" or "believed to be DI." Eight (8) entries do not supply the motive. From the context of one report, the motive appears to have been given but the text was incomplete.

Only three (3) reports specifically identified the perpetrators. These three incidents include: (1) the strafing of the residence of a Barangay Chairman by two identified suspects, although there is nothing to show that they are members of DI;^[70] (2) an incident described as "harassment" involving an exchange of fire between groups of MILF Commanders and groups of Maranaos and Maguindanaoans;^[71] and (3) a firefight between "groups of Salahudin HASSAN @ ORAK" and "group of Gani SALINGAN."^[72] It is not clear whether either of these groups were DI or government forces. No casualties were stated for these incidents.

Of the seven (7) remaining incidents, two (2) identified the DI as the suspected perpetrators:

- The May 13, 2018 account of a liquidation incident involving an incumbent barangay chairman candidate who was shot to death in his house identified the perpetrators as "[more or less] 10 armed men believed to be LTG (DI Maute Group)" with "[possible motives:] [(1)] long[-]time political rivalry with the family of Samer SULTAN, a noted DI/Maute Group supporter;" and [(2)] "he was suspected as military informant and x x x was also seen talking in public near the highway x x x with unidentified persons believed to be government Intelligence operatives."^[73] This is the extent of what can be gathered from the incomplete entry.

- The May 6, 2018 account of a kidnapping incident involving the abduction of a man "by the group" in relation to the May 13, 2018 liquidation.^[74] The text tends to show that the motive was given in the cut-off part of the entry.

In the other five (5) incidents, which included all the IED explosions attributed to the DI, including the Brgy. Apopong and two Isulan, Sultan Kudarat explosions^[75] that the President cited in his letter to Congress requesting for the Martial Law extension, neither the identity of the perpetrators nor their motive was identified. These incidents with unidentified perpetrators accounted for almost all the casualties in DI-initiated violent incidents, resulting in five (5) persons dead and ninety-one (91) wounded.

Following the oral arguments, the PNP submitted its Report on these incidents.^[76] It stated that cases were filed against Bungos and Karialan for the Brgy. Apopong explosion^[77] and a certain Salipudin Lauban Pasandalan was charged with two (2) counts of murder and thirty-four (34) counts of frustrated murder from the explosion near firecracker vendors in a mall in Cotabato City.^[78] The PNP generally^[79] attributes the two Isulan, Sultan Kudarat explosions to the BIFF.^[80]

After considering all the foregoing submissions of the respondents relating to violent incidents attributed to DI, all IED explosions attributed to DI (i.e., all IED entries in Annex "6") were subsequently attributed by the PNP either specifically or generally to the BIFF.^[81]

Given that all the evidence in Annex "6" appear to be equivocal as to purpose or point to common crimes committed for private purpose, or the incidents were subsequently attributed to the BIFF, the unavoidable conclusion is that there is no DI-initiated incident that sufficiently shows an overt act of rebellion or the political purpose. In fine, no substantial evidence exists to support the claim of an ongoing DI rebellion. The fact that the crimes of murder and frustrated murder were filed instead of rebellion under Article 134 of the RPC against the

DI members shows the lack of political motive to qualify them as rebellion.

NPA-initiated violent incidents

Annex "7"[82] consists of NPA-initiated violent incidents for the whole year of 2018:

RECAPITULATION OF NPA-INITIATED VIOLENT INCIDENTS (NIVIs) ANNEX "7"

TYPE OF INCIDENT

01 Jan to 22 May 2017

23 May to 23 Oct 2017

24 Oct to 31 Dec 2017

Total 2017

01 Jun to 31 Dec 2018

A. GUERILLA OPNS

AMBUSH

12

24

9

45

39

RAID

15

8

1

24

8

NUISANCE HARASSMENT

75

71

24

170

79

HARASSMENT

50

49

20

119

59

DISARMING

8

8

1

17

7

LANDMINING

13

13

0

26

18

SPARU OPNS

12

20

5

37

42

SUB-TOTAL

185

193

60

438

252

B. TERRORIST ACTVS

LIQUIDATION

35

32

14

81

61

KIDNAPPING

18

23

2

43

8

ROBBERY/HOLD-UP

6

2

1

9

1

BOMBING

1

1

0

2

2

ARSON

54

33

7

94

44

SABOTAGE

1

0

0

1

1

SUB-TOTAL

115

91

24

230

117

GRAND TOTAL

300

284

84

668

369

RECAPITULATION OF NPA-INITIATED VIOLENT INCIDENTS (NIVIs) IN MINDANAO

TYPE OF INCIDENT

01 Jan to 22 May 2017

23 May to 23 Oct 2017

24 Oct to 31 Dec 2017

Total 2017

01 Jun to 31 Dec 2018

A. GUERRILLA OPNS

AMBUSH

5

6

4

15

18

RAID

6

2

0

8

5

NUISANCE HARASSMENT

50

53

13

116

41

HARASSMENT

43

28

15

86

30

DISARMING

4

5

0

9

5

LANDMINING

10

7

0

17

10

SPARU OPNS

8

12

0

20

21

SUB-TOTAL

126

113

32

271

130

B. TERRORIST ACTVS

LIQUIDATION

17

9

9

35

24

KIDNAPPING

17

18

2

37

7

ROBBERY/HOLD-UP

6

2

0

8

1

BOMBING

1

1

0

2

2

ARSON

42

21

5

68

29

SABOTAGE

1

0

0

1

0

SUB-TOTAL

84

51

16

151

63

GRAND TOTAL

210

164

48

422

193

The tables above, along with statements from Jose Maria Sison, founding Chairman of the CPP, and the accounts of surrender of CPP-NPA persons and firearms in the monthly reports of the implementation of martial law, make up the entirety of the government's submission on the factual basis on the ground of the CPP-NPA's ongoing rebellion. These statements by Sison include:

The people's army can launch tactical offensives against the increasingly more vulnerable points of the enemy forces whenever these are overstretched and spread thinly in campaigns of suppression. The enemy armed

forces does not have enough armed strength to concentrate on and destroy the Party and the people's army in any region, without those in other regions launching offensives to relieve their comrades in the region under attack.

x x x x

As of the latest report, 75 of the total 98 maneuver battalions of the reactionary armed forces are concentrated in Mindanao under conditions of martial law. Forty-four battalions are deployed against the NPA areas and 31 against Bangsamoro groups. x x x[83]

And

x x x [T]he Communist Party of the Philippines is relevant. It is leading a vibrant revolutionary movement. The CPP itself has grown from only 80 members in 1968 to tens of thousands now, and it has organized [the] New People's Army, and the New People's Armies all over the country like the Communist Party. The CPP and NPA and the mass organizations have created the local organs of political power which constitutes the people's government. So, that's a lot of achievement. The revolutionary movement has grown strong because it has the correct line.[84]

During the oral arguments, the respondents were asked whether they would be submitting additional details with respect to the rebellion by the NPA. Despite their assurance that they would submit, no additional submissions were made in their Memorandum.

As it stands, therefore, the evidence of the respondents as to the NPA rebellion consist only of (1) the tables above, totally unsupported by any specific reports or details that will allow a reasonable review by the Court, (2) reports of surrender of persons and firearms in the monthly reports and (3) what can only be considered as celebratory and aspirational claims of a private person.

Moreover, even if it is conceded that the CPP is actively engaged in rebellion, there is no showing of any damage to property, security or loss of life by which a determination on the requirement of public safety can be made. All told, the evidence presented does not discharge the burden to show by substantial evidence the persistence of a communist rebellion that endangers public safety to a degree that requires the extension of martial law in Mindanao.

Reports of Harassment Incidents

It is acknowledged that the Reports contain accounts of harassment against military or government installations and personnel. Analyzed, the data in the specific reports with respect to harassment are shown in the following table:

Harassment

ASG

Reported
Casualty

BIFF

Reported Casualty

DI

Reported Casualty

Total

Total Reported Casualty

D

W

D

W

D

W

D

W

No. of incidents per cover summary

16

7

5

40

3

7

0

0

0

56

10

12

Based on specific reports

Against other armed groups[85]

0

0

0

0

0

0

1

0

0

1

0

0

Against civilians/open spaces[86]

3

4

1

1

0

0

0

0

0

4

4

1

Against military/CAFGU/BPAT personnel[87]

1

0

0

5

0

2

0

0

0

6

0

2

Against military detachments/posts[88]

7

0

6

34

4

9

0

0

0

41

4

15

No. of incidents per specific reports

11

4

7

40

4

11

1

0

0

52

8

18

Legend: D - Dead; W - Wounded.

While these violent incidents are to be condemned, the commission of the acts without identifying any political motive constitutes lawless violence, and is not sufficient to prove the persistence of rebellion in Mindanao.

For one, of the fifty-two (52) incidents tagged by the respondents as "harassment," the three (3) that supply the motive appear equivocal or inconsistent with the political purpose of rebellion:

(1)

The February 4, 2018 account of harassment committed by an "undetermined number of Ajang-Ajang Group" against the detachment of 5Coy, PA under NIWANE. The stated motive is that "related to the planned atrocities of ASGSL Hatib Hadjan SAWADJAAN tapping the Ajang-Ajang Group to conduct harassments and liquidations to military installations and personnel as well as informants x x x." [89]

(2)

The February 28, 2018 account of a harassment against BPAT and LGU conducting road construction projects by "MOL [ten (10)] fully armed ASG led by ASGSL Abdullah Jovel INDANAN @ GURO." The Report explains that "@ GURO has a family feud with the incumbent [Brgy.] Chairman of Dugaa" where the shooting happened. [90]

(3)

The March 30, 2018 account of a brief firefight between the Latih Detachment and "MOL forty (40) fully armed ASG members led by ASGSL Hajan SAWADJAAN" for the reason "x x x [t]he ASG's harassment of Latih Detachment was to avenge the death of ASG member Roger SAMLAON who was killed last [March 15], 2018 after encounter with government troops." [91]

In his Clarificatory Letter for Solicitor General Calida which was submitted to the Court, Major General Lorenzo explains,

The word 'harassment' is a military term for a type of armed attack where the perpetrators fire at stationary military personnel, auxiliaries, or installations for a relatively short period of time (as opposed to a full armed attack) for the purpose of inflicting casualties, as a diversionary effort to deflect attention from another tactical undertaking, or to project presence in the area. At times, like in the case of the November 10, 2018 incident in Marogong, Lanao del Sur, harassments or attacks are directed against the MILF or any group perceived to be an ally or is supportive to the government. Harassments are undertaken not in isolation but as part of a bigger military strategy. This is a common tactic employed by the Communist Terrorist Group, the ASG, DI, and BIFF. [92]

Elsewhere in the letter, he explains,

x x x motive is not an element of rebellion; it is not necessary to show motive to prove that there are groups presently waging a rebellion in Mindanao. As long as the perpetrators are associated with the mentioned rebel groups and they engage in armed attacks against government forces and civilians for the purpose of overthrowing the government, a reasonable mind would consider these acts as having been committed in furtherance of rebellion. [93]

Unfortunately, however, this legal argument cannot take the place of proof. In this case, the burden of the government is to establish, at the first instance, the persistence of rebellion. Since the government has not yet proven the existence or persistence of an ongoing rebellion, then the requisite of proving each incident as an act of rebellion has not been dispensed with. The determination of whether an act is "in furtherance of rebellion," or a distinct or separate crime in itself, precisely contemplates a situation where there is an ongoing rebellion the evidence of which is sorely missing here.

Second, the fact that the government has not charged any person of rebellion during the second extension militates against the presumption that these acts, on their own, constitute substantial evidence of a persisting rebellion in

Mindanao.

Based on the submission of the OJ2 of the DND dated December 13, 2018,[94] which lists the arrested personalities during the declaration and extension of martial law, there were only four (4) persons arrested during the second extension from January 1, 2018 to December 31, 2018. The table below shows that no one has been captured, arrested, or charged with rebellion during the entire second extension.

NAME

DATE OF ARREST

PLACE OF ARREST/APPREHENDING UNIT

STATUS

REMARKS

Abdelhakim Labdi Adib

22 January 2018

Basilan

CHARGED

On 24 January, filed case for illegal possession of explosives (c/o CPT POPANES)

[Najiya Dilangalen Karon Maute]

23 January 2018

Cotabato

RELEASED

Released for insufficiency of evidence

Jamar Abdulla Mansul

22 January 2018

NAIA

RELEASED

Released for lapse of period

[Fehmi Lassqued]

16 February 2018

Malate, Manila

FOR INQUEST

Pending Preliminary Investigation for Illegal Possession of Firearms, Illegal Possession of Explosives[95]

This was also confirmed by the PNP data submitted by the respondents which shows that there were no charges filed against the persons identified to have participated in the harassment of military or government installations or personnel.[96]

On the other hand, during the original period of Proclamation No. 216 and its first extended period ending in December 31, 2017, a total of thirty-nine (39) persons were charged with rebellion.[97] The submission shows that out of these thirty-eight (38) persons, twenty-eight (28) cases were filed in June 2017, eight (8) cases in July 2017 and three (3) cases in August 2017.[98]

The government's omission in filing rebellion charges against those identified to have attacked military or government facilities and personnel is in the nature of an admission that even by the determination of the Executive department, there was no probable cause to indict the persons involved with rebellion.

Lastly, as for the other violent incidents described in the respondents' submissions that are not designated as harassment, the AFP explains,

x x x On the other hand, kidnapping is undertaken particularly by the ASG to finance its operational and administrative expenses in waging rebellion. As shown in the presentation during the oral arguments, the ASG has amassed an estimated PhP41.9 million in ransom proceeds for 2018 alone. With regard to arson, the tactic is commonly used by the same rebel groups for various purposes such as intimidating people who are supportive of the government, as punitive action for those who refuse to give in to extortion demands, or simply to terrorize the populace into submission. All these activities are undoubtedly undertaken in furtherance of rebellion.[99]

Again, this explanation is not sufficient because without a single incident wherein the purpose and overt act of rebellion concur, rebellion does not legally exist.[100] Hence, there is no room to argue that any common crime is undertaken in furtherance of rebellion.

Totality of evidence

The evidence readily shows certain gaps that needed to either be completed or supplemented in order to make a showing of relevance and comprehensibility.

- As adverted to above, fifteen (15) incomplete entries[101] do not allow the Court the full information on these reports.
- There were reports that did not identify the perpetrators. Of the one hundred fifty (150) incidents, the entries on fifty-four (54)[102] incidents did not identify the perpetrators.
- Almost ninety percent (90%) of the entries, or one hundred thirty-three (133) entries,[103] do not identify the motive or state that the motive is undetermined.
- Fifty-three (53) entries[104] neither identify the perpetrators nor supply the motive.
- For the eighteen (18) total entries that do identify the perpetrators as members or suspected members of the said groups and supplies the motive, in at least sixteen (16)[105] of these entries, the specific details supplied tend to show that these crimes were committed for private motives or purposes or without the political motivation required in rebellion.

During the oral arguments, these gaps were painstakingly identified by some members of the Court to allow the respondents to address them. The respondents were even given a list of these incidents and were requested to complete or supplement them in their Memorandum.

Remarkably, the AFP Letter in response to the Court's request for additional information explained the paucity of information of some reports on account of them being "spot reports" that contain information that are only available at that given reporting time window.[106] It went on to state that "[subsequent developments are communicated through 'progress reports' and detailed 'special reports.'"[107]

Unfortunately, nothing in the Memorandum of the respondents was submitted to complete the incomplete entries. As well, even as the Court requested an update on these "spot reports," no reports designated as "progress reports" or "special reports" were submitted. Neither did the respondents attempt to even explain how a fair amount of these incidents were attributed, or could be attributable, to what the respondents called "rebels" — despite the fact that the reports do not identify the perpetrators or the motive, or supply the identity of the perpetrators, all of which point to the conclusion that these are common crimes committed for private purposes. The respondents only explained that "[i]nquiries made with informants thereafter have become the basis in ascribing these violent activities to a particular threat group." [108]

The Court cannot make this leap for the respondents.

While the Court does not now presume to impose a mathematical or mechanical formula to determine sufficiency of factual basis, the totality of the respondents' submissions in support of the extension in this case does not constitute substantial evidence to show that rebellion persists in Mindanao.

A.2. Whether or not public safety is imperiled and requires the third extension of Proclamation No. 216 which imposed Martial Law and suspended the privilege of the writ of habeas corpus in the whole Mindanao

The petitioners in G.R. No. 243522 (Lagman Petition) argue that public safety was not imperiled, and thus should not justify or necessitate the third extension of martial law. [109] Petitioners therein posit that "the existence of actual invasion or rebellion does not necessarily actualize the requirement of public safety because rebellion can be effectively contained outside of populated communities or in isolated or remote areas where public safety is not imperiled or the overwhelming presence of superior government forces forestalls the danger to public safety." [110]

Meanwhile, the petitioners in G.R. No. 243677 (Makabayan Bloc Petition) advances the theory that there is a distinction between the threat to public safety that justifies the imposition of martial law, and one that simply triggers the President's calling out powers. According to them, the threat to public safety, in order to justify the imposition of martial law, "must have risen to a level that government cannot sufficiently or effectively govern, as exemplified by the closure of courts or government bodies, or at least the extreme difficulty of courts, the local government and other government services to perform their functions." [111] They further explain:

x x x If there is rebellion or invasion but government continues to function nonetheless, the calling out powers may be employed by the President, but not martial law or the suspension of the privilege of the writ of habeas corpus. Only in cases where the rebellion or invasion has made it extremely difficult, if not impossible, for the government (or the courts) to function, to the extent that government or the local government in the area affected by the rebellion can no longer assure public safety and the delivery of government services, that the imposition of martial law is constitutionally permissible. [112]

x x x x

x x x It must be reiterated that while government may assert that all rebellions threaten the safety of the public, this generic definition of public safety is not the same as the definition of public safety that triggers the imposition of martial law. Otherwise, there is no difference at all between the rebellion that necessitates the imposition of martial law, from the rebellion that merely triggers the calling out powers. x x x [113]

Petitioners therein then add that the letter of the President dated December 6, 2018 requesting Congress to extend martial law in Mindanao from January 1, 2019 to December 31, 2019 did not allege that the situation had deteriorated to the extent that the civilian government no longer functioned effectively. [114] Thus, the petitioners conclude that public safety was not imperiled, and consequently, the further extension of martial law was void.

The arguments of petitioners in the G.R. No. 243745 (Monsod Petition) are similar to the arguments of petitioners in the Makabayan Bloc Petition. They argue that martial law — being an extraordinary power of the President — may only be declared, or extended, in the context of a "theater of war."^[115] They contend that the existence of an actual rebellion is not the only requirement to validly declare martial law, and that the public safety requirement means "that the civilian government is unable to function,"^[116] such that it is necessary to declare martial law.

The respondents, on the other hand, argue that threats to public safety exist, such that it was necessary for martial law to be extended. In its Memorandum, the OSG cited the following instances as concrete proof that public safety is imperiled:

- No less than 181 persons in the martial law Arrest Orders have remained at large.
- Despite the dwindling strength and capabilities of the local terrorist rebel groups, the recent bombings that transpired in Mindanao that collectively killed 16 people and injured 63 others in less than 2 months is a testament on how lethal and ingenious terrorist attacks have become.
- On October 5, 2018, agents from the Philippine Drug Enforcement Agency (PDEA) who conducted an anti-drug symposium in Tagoloan II, Lanao del Sur, were brutally ambushed, in which five (5) were killed and two (2) were wounded.
- The DI continues to conduct radicalization activities in vulnerable Muslim communities and recruitment of new members, targeting relatives and orphans of killed DI members. Its presence in these areas immensely disrupted the government's delivery of basic services and clearly needs military intervention.
- Major ASG factions in Sulu and Basilan have fully embraced the DAESH ideology and continue their express kidnappings. As of December 6, 2018, there are still seven (7) remaining kidnap victims under captivity.
- Despite the downward trend of insurgency parameters, Mindanao remains to be the hotbed of communist rebel insurgency in the country. Eight (8) out of the 14 active provinces in terms of communist rebel insurgency are in Mindanao.
- The Communist Terrorist Rebel Group in Mindanao continues its hostile activities while conducting its organization, consolidation and recruitment. In fact, from January to November 2018, the number of Ideological, Political and Organizational (IPO) efforts of this group amounted to 1,420, which indicates their continuing recruitment of new members. Moreover, it is in Mindanao where the most violent incidents initiated by this group transpire. Particularly, government security forces and business establishments are being subjected to harassment, arson and liquidations when they defy their extortion demands.
- The CTRG's exploitation of indigenous people is so rampant that Lumad schools are being used as recruiting and training grounds for their armed rebellion and anti-government propaganda. On November 28, 2018, Satur Ocampo and 18 others were intercepted by the Talaingod PNP checkpoint in Davao del Norte for unlawfully taking into custody 14 minors who are students of a learning school in Sitio Dulyan, Palma Gil in Talaingod town. Cases were filed against Ocampo's camp for violations of Republic Act (R.A.) No. 10364, in relation to R.A. No. 7610, as well as violation of Article 270 of the Revised Penal Code (RPC), due to the Philippine National Police's (PNP) reasonable belief that the school is being used to manipulate the minds of the students' rebellious ideas against the government.^[117]

As previously held by the Court in *Lagman v. Medialdea*, the parameters for determining the sufficiency of the factual basis for the declaration of martial law are set by no less than the Constitution itself.^[118] Section 18, Article VII provides that to justify the declaration of martial law, two requisites must concur: (1) actual invasion or rebellion, and (2) public safety requires the exercise of such power.^[119] In *Lagman v. Medialdea*, the Court held that "[w]ithout the concurrence of the two conditions, the President's declaration of martial law and/or

suspension of the privilege of the writ of habeas corpus must be struck down." [119a] Thus, the mere fact of a persisting rebellion or existence of rebels, standing alone, cannot be the basis for the extension. [120]

In the same case, the Court unequivocally held that "[i]nvasion or rebellion alone may justify resort to the calling out power but definitely not the declaration of martial law or suspension of the privilege of the writ of habeas corpus." [121]

It is thus clear that the requirement that public safety is imperiled is a separate and distinct requirement that the respondents have the burden to prove. Indeed, "the requirement of actual rebellion serves to localize the scope of martial law to cover only the areas of armed public uprising. Necessarily, the initial scope of martial law is the place where there is actual rebellion, meaning, concurrence of the normative act of armed public uprising and the intent. Elsewhere, however, there must be a clear showing of the requirement of public safety necessitating the inclusion." [122]

In the present case, the respondents failed to prove that the public safety of the whole of Mindanao is imperiled.

Again, in *Lagman v. Medialdea*, the Court defined public safety as that which "involves the prevention of and protection from events that could endanger the safety of the general public from significant danger, injury/harm, or damage, such as crimes or disasters." [123] The Court therein likewise discussed that public safety is an abstract term, and thus, its range, extent, or scope could not be physically measured by metes and bounds. [124] The Court therein expounded:

In fine, it is difficult, if not impossible, to fix the territorial scope of martial law in direct proportion to the "range" of actual rebellion and public safety simply because rebellion and public safety have no fixed physical dimensions. Their transitory and abstract nature defies precise measurements; hence, the determination of the territorial scope of martial law could only be drawn from arbitrary, not fixed, variables. The Constitution must have considered these limitations when it granted the President wide leeway and flexibility in determining the territorial scope of martial law. [125]

It is well, however, to qualify that while rebellion and public safety indeed have no fixed physical dimensions — and that, as a result, the Executive is given sufficient leeway to determine the scope of the territory covered by martial law in light of the information before him — the said discretion granted by the Constitution cannot be so broad so as to render nugatory the specific limitations placed by it to justify the imposition of the extraordinary power.

This limited, although sufficient, discretion is precisely the rationale for the power granted to, and duty imposed upon, the Court, under Section 18, Article VII of the Constitution, to check the sufficiency of the factual basis for the declaration of martial law and the suspension of the privilege of the writ of habeas corpus. To state once more, Section 18 is a neutral and straightforward fact-checking mechanism that serves the functions of (1) preventing the concentration in one person — the Executive — of the power to put in place a rule that significantly implicates civil liberties, (2) providing the sovereign people a forum to be informed of the factual basis of the Executive's decision, or, at the very least, (3) assuring the people that a separate department independent of the Executive may be called upon to determine for itself the propriety of the declaration of martial law and suspension of the privilege of the writ of habeas corpus. [126]

Thus, the Court — in the performance of the afore-discussed constitutionally-granted power and duty — was called upon to hold that public safety no longer requires the extension of martial law in the whole of Mindanao from January 1, 2019 to December 31, 2019 for the following reasons:

First, by the respondents' own submissions, [127] the supposed attacks that compromised public safety were

limited only to certain cities and municipalities in the following provinces in Mindanao: Basilan, Sulu, Tawi-Tawi, Zamboanga Sibugay, Zamboanga del Norte, Maguindanao, North Cotabato, Lanao del Sur, and Sultan Kudarat. This means that for the entirety of 2018, there were no attacks in other provinces such as Agusan del Norte, Agusan del Sur, Bukidnon, Camiguin, Isabela, Compostela Valley, Davao del Norte, Davao del Sur, Davao Occidental, Davao Oriental, Dinagat Islands, Lanao del Norte, Misamis Occidental, Misamis Oriental, Sarangani, South Cotabato, Surigao del Norte, Surigao del Sur, and Zamboanga del Sur.

In fact, during the Joint Session of Congress held on December 12, 2018, no less than the Secretary of the Department of Interior and Local Government (DILG), Secretary Eduardo M. Año (Año), unequivocally confirmed that the government has already "restricted x x x the movement of the armed groups and x x x restored order [in Mindanao], especially in the most affected areas." [128]

When asked about the current public safety situation in Mindanao during the Joint Session, DILG Secretary Año clearly and categorically pronounced that "[n]ot all in Mindanao are actually affected" [129] and that the people of Mindanao can already "go around without fear of being subjected to violence x x x" [130] and "feel more secured and safer." [131]

Hence, with the Executive department itself revealing that the people of Mindanao can now go around without fear, feeling more secure and safe, and with order already being restored especially in the most affected areas, it is clear that the current public safety situation in Mindanao does not warrant the further extension of martial law and the suspension of the privilege of the writ of habeas corpus.

Second, the respondents cite the following attacks perpetrated in the year 2018 as concrete proof that public safety was compromised, such that it is necessary to extend martial law for the whole Mindanao for the entire year of 2019: (1) 66 attacks by the ASG, (2) 74 attacks by the BIFF, and (3) 10 attacks by the DI. However, as already shown, all of these were not duly proven by the respondents.

For instance, the PNP data submitted by the respondents admitted to having no record of thirty-three (33) of the sixty-six (66) attacks they alleged to have been committed by the ASG, [132] and likewise admitted that one (1) of the attacks cited was not connected to the "ongoing rebellion." [133]

For the attacks claimed to have been perpetrated by the BIFF, the respondents were, as previously mentioned, asked to expound upon and provide proof for fifty-one (51) of the seventy-four (74) attacks whose perpetrators were unidentified but were nevertheless attributed to the BIFF. [134] Despite the Court's request, the respondents failed to explain how these attacks were attributable to the BIFF, [135] and with the PNP data even admitting to having no record of three (3) of these incidents. [136]

Of the ten (10) attacks attributed to DI, the respondents did not identify the perpetrators for four (4) of these attacks. They were likewise requested to provide further information regarding these attacks. [137] The respondents, however, again failed to do so, and even admitted that "the above excerpts of the reports do not identify the perpetrators and their motives as these were basically extracted from spot reports." [138] The respondents only offered a blanket claim that "[i]nquiries made with informants thereafter have become the basis in ascribing these violent activities to a particular threat group." [139]

These blanket generic claims do not, as they cannot, constitute substantial evidence that the attacks cited were connected with the supposed rebellion, and that, consequently, public safety was endangered thereby.

The respondents argue:

Lastly, it is significant to point out that the AFP is dealing with irregular rebel forces that have no formal organizational structure and whose members have no formal appointment papers. For security purposes, they

commonly use aliases to hide their real identity. Therefore, establishing the identities of perpetrators for every attack takes time. The intelligence community, in validating the participation of the perpetrators of violence in the rebellion, cannot be reasonably expected to operate on the basis of the strict rules of evidence. The asymmetric warfare being waged by the rebel groups allows them to thrive despite lopsided force disparity in favor of the military. Unlike government security forces, the rebels' actions are not constrained by legal restrictions. They are largely anonymous and can easily merge with the population when confronted by the military.[140]

The respondents' point is well-taken. Investigations do take time — and for that exact reason, the respondents were given sufficient time and opportunity to submit reports on the outcome of further investigations, and to clarify or ascertain unclear entries (that showed incidents as early as January of 2018). In addition, that these various groups use aliases in their operations is acknowledged. That is why the Court accepted, for instance, that the report only states that "around 10 ASG elements led by @ ABU DARDA" were the perpetrators for the August 18, 2018 Ambuscade in Ungkaya Pukan, Basilan.[141] In this instance, the respondents were requested only to explain the attack's connection with the supposed rebellion, for the report itself only stated, without more, that the victim was a Barangay Peacekeeping Action Team (BPAT) member.

Thus, contrary to the claim of the respondents, they are not expected to "operate on the basis of the strict rules of evidence." The difficulty in establishing who the perpetrators of these attacks were is recognized. Yet, despite this recognition, the Court is called upon to be a trier of fact in the context of a Section 18 proceeding. Therefore, the Court must be provided with proof — it must be convinced by evidence duly offered — that these attacks have indeed happened, and that they were in connection with an ongoing rebellion. As amply put by Justice Francis Jardeleza in his Dissenting Opinion in *Lagman v. Pimentel III*:

x x x Indeed, when our Framers tasked the Court to determine the sufficiency of the factual basis for the proclamation of martial law or suspension of the privilege of the writ of habeas corpus, it certainly did not mean for the Court to verify only the factual bases for the alleged rebellion and "permissively" rely on the President's assessment of the public safety requirement given the facts presented.

For the Court to take such an approach goes against the very reason why it was given the specific mandate under Section 18, Article VII in the first place. Such an approach defeats the deliberate intent of our Framers to "shift [the] focus of judicial review to determinable facts, as opposed to the manner or wisdom of the exercise of the power" and "[create] an objective test to determine whether the President has complied with the constitutionally prescribed conditions." [142]

At the risk of being repetitive, a Section 18 proceeding, such as the present case, is a fact-checking mechanism. Thus, the Court expects and requires a certain level of proof, and blanket claims of "according to informants", "suspected ASG", "believed to be BIFF" would not suffice.

In light of the foregoing failure of the respondents to substantiate a significant number of the attacks they claim to have imperiled public safety, the inevitable conclusion is that public safety does not require the further extension of martial law and suspension of the privilege of the writ of habeas corpus for the entire year of 2019.

A.3. Whether the further extension of Martial Law has been necessary to meet the situation in Mindanao

Lest it be misunderstood, the foregoing discussion does not mean that I am turning a blind eye to the situation in Mindanao. While the facts do fall short of qualifying the situation into an existing rebellion, they do indicate that there is a threat thereof. However, the Constitution requires an actual rebellion or invasion, along with a concurrent real threat to public safety, in order for the President to declare martial law — a threat of rebellion, no matter how imminent, cannot be a ground to declare martial law or extend such declaration.

To be sure, in the drafting of the present Constitution, the phrase "imminent danger" of insurrection or rebellion as ground for the declaration of martial law and suspension of the privilege of the writ of habeas corpus had been removed. This was because the phrase was "fraught with possibilities of abuse" and that in any case, the framers have recognized that the calling out power of the President is "sufficient for handling imminent danger." [143]

Verily, martial law is a law of necessity. "Necessity creates the conditions for martial law and at the same time limits the scope of martial law." [144] In this context, the necessity of martial law is dictated not merely by the gravity of the rebellion sought to be quelled, but also by the necessity of martial law to address the exigencies of a given situation. [145]

Thus, the President's exercise of extraordinary powers must be measured against the scale of necessity and calibrated accordingly. The Court's determination of insufficiency of factual basis implies that the conditions for the use of such extraordinary power are absent. This does not mean, in any manner whatsoever, that the Court assumes to do such calibration in the President's stead. Rather, the Court merely checks the said calibration in hindsight, in accordance with its power and mandate under the Constitution.

Necessity in the context of martial law should be understood in the concept envisioned by the framers of the 1987 Constitution, i.e., a theater of war. In *Lagman v. Medialdea*, the Court cited the following portions of the Constitutional deliberations discussing the conditions existing in a theater of war:

FR. BERNAS. That same question was asked during the meetings of the Committee: What precisely does martial law add to the power of the President to call on the armed forces? The first and second lines in this provision state:

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies...

The provision is put there, precisely, to reverse the doctrine of the Supreme Court. I think it is the case of *Aquino v. COMELEC* where the Supreme Court said that in times of martial law, the President automatically has legislative power. So these two clauses denied that. A state of martial law does not suspend the operation of the Constitution; therefore, it does not suspend the principle of separation of powers.

The question now is: During martial law, can the President issue decrees? The answer we gave to that question in the Committee was: During martial law, the President may have the powers of a commanding general in a theatre of war. In actual war when there is fighting in an area, the President as the commanding general has the authority to issue orders which have the effect of law but strictly in a theater of war, not in the situation we had during the period of martial law. In other words, there is an effort here to return to the traditional concept of martial law as it was developed especially in American jurisprudence, where martial law has reference to the theater of war.

x x x x

FR. BERNAS. This phrase was precisely put here because we have clarified the meaning of martial law; meaning, limiting it to martial law as it has existed in the jurisprudence in international law, that it is a law for the theater of war. In a theater of war, civil courts are unable to function. If in the actual theater of war civil courts, in fact, are unable to function, then the military commander is authorized to give jurisdiction even over civilians to military courts precisely because the civil courts are closed in that area. But in the general area where the civil courts are open then in no case can the military courts be given jurisdiction over civilians. This is in reference to a theater of war where the civil courts, in fact, are unable to function.

MR. FOZ. It is a state of things brought about by the realities of the situation in that specified critical area.

FR. BERNAS. That is correct.

MR. FOZ. And it is not something that is brought about by a declaration of the Commander-in-Chief.

FR. BERNAS. It is not brought about by a declaration of the Commander-in-Chief. The understanding here is that the phrase 'nor authorize the conferment of jurisdiction on military courts and agencies over civilians' has reference to the practice under the Marcos regime where military courts were given jurisdiction over civilians. We say here that we will never allow that except in areas where civil courts are, in fact, unable to function and it becomes necessary for some kind of court to function.[146]

Consequently, the necessity of martial law requires a showing that it is necessary for the military to perform civilian governmental functions or acquire jurisdiction over civilians to ensure public safety. As further stated in *Lagman v. Medialdea*:

The powers to declare martial law and to suspend the privilege of the writ of habeas corpus involve curtailment and suppression of civil rights and individual freedom. Thus, the declaration of martial law serves as a warning to citizens that the Executive Department has called upon the military to assist in the maintenance of law and order, and while the emergency remains, the citizens must, under pain of arrest and punishment, not act in a manner that will render it more difficult to restore order and enforce the law. As such, their exercise requires more stringent safeguards by the Congress, and review by the Court.[147]

While the standard of necessity may appear exacting, it should not be seen as an undue restraint on the powers that the President may exercise in the given exigencies. As already explained, the President is equipped with broad and expansive powers to suppress acts of lawless violence, and even actual rebellion or invasion in a theater of war, through the calling out power — a power which neither requires any concurrence by the legislature nor is subject to judicial review.

Indeed, the Court in *Lagman v. Medialdea* recognized that the extraordinary powers are conferred by the Constitution with the President as Commander-in-Chief; hence, it follows that the power to choose which among these extraordinary powers to wield in a given set of conditions is a judgment call on the part of the President. However, the Court therein emphasized that this power to choose is only initially vested in the President, stating that "the power and prerogative to determine whether the situation warrants a mere exercise of the calling out power; or whether the situation demands suspension of the privilege of the writ of habeas corpus; or whether it calls for the declaration of martial law, also lies, at least initially, with the President." [148] This means that the choice of the President, particularly as regards martial law, is not unfettered and immune to subsequent review. Indeed, the President's power to declare martial law is qualified by the Legislature's concurrence and the Court's review and the same must satisfy the requirements set forth by the Constitution.

Thus, a finding by the Court that the President need not declare martial law as the situation in Mindanao may be addressed by the calling out powers is not by any means an encroachment on the Executive's prerogative in the exercise of the extraordinary powers. On the contrary, the Court would be merely doing its Constitutionally-mandated duty of ensuring that the declaration of martial law, or the extension thereof, has been made in accordance with the limits prescribed by the Constitution, i.e., that actual invasion or rebellion exists (or persists) and that public safety requires the imposition of martial law and the suspension of the privilege of the writ of habeas corpus.

In this case, the respondents have failed to prove that rebellion persists and that public safety has been imperiled to the extent necessitating the extension of martial law and the suspension of the privilege of the writ of habeas corpus. As mentioned earlier, the events and circumstances, while worthy of stern condemnation and military reprisal, do not show the existence of an actual rebellion in a theater of war — at most, they merely indicate a threat or imminent danger. Thus, in the absence of an armed public uprising which imperils the operation of the

civilian government, a declaration of martial law or any extension thereof necessarily fails the test of sufficiency, as such absence negates not only the existence of an actual (or persisting) rebellion, but also refutes the respondents' assertion that said declaration or extension is necessitated by the requirements of public safety.[149]

Through these pronouncements, the mistaken notion that martial law is required to quell the rebellion, or to empower the military and the police to engage the lawless elements in Mindanao is addressed. As already stated, the Executive is fully empowered to deploy the armed forces as necessary to suppress lawless violence, and even rebellion, whether actual or imminent, without martial law. That the extension of martial law is to be nullified does not mean that the government is suddenly rendered powerless to address the complex problems in Mindanao. The following exchange during the oral arguments between Justice Marvic M.V.F. Leonen and the counsel for petitioners illustrates this point:

JUSTICE LEONEN:

Yes, by a protracted declaration of martial law which means the military rules regardless of whether or not it is benign, there is an implicit message that local governments cannot do it, is that not correct?

ATTY. DIOKNO:

That is the case, yes.

JUSTICE LEONEN:

And the danger there is recognized by our Constitution because, therefore, it said that martial law is only exigent and contingent, is that not correct?

ATTY. DIOKNO:

I think it's clear, Your Honor, that the martial law is really intended to be a temporary to address an emergency.

JUSTICE LEONEN:

And to win against one thousand six hundred (1600) communists and five hundred seventy-five (575), I will not even say Muslim, I will say Salafis, I will say violent extremists, will take not only the might of the military no matter how professional they are, but good governance, is that not correct?

ATTY. DIOKNO:

That is so true, Your Honor, no... (interrupted)

JUSTICE LEONEN:

And martial law is antithetical to good governance, is that not correct?

ATTY. DIOKNO:

That is the case, Your Honor.

JUSTICE LEONEN:

Because we do not give an opportunity to civilian authorities to catch up, is that not correct?

ATTY. DIOKNO:

Yes, Your Honor.

JUSTICE LEONEN:

Okay, may I ask you, can checkpoints be set up without martial law?

ATTY. DIOKNO:

Yes, Your Honor.

JUSTICE LEONEN:

Can busses (sic) be searched without martial law?

ATTY. DIOKNO:

Yes, Your Honor.

JUSTICE LEONEN:

Saluday vs. People under the ponentia (sic) of Justice Carpio, unanimous Court said it can, very recently, 2018 only. Can the attendance of LGUs be checked without martial law?

ATTY. DIOKNO:

Of course, yes, Your Honor.

JUSTICE LEONEN:

In fact, will they, will the local governments in the ARMM be more fearful and attend to their duties if it is ordered by the President himself rather than simply the military?

ATTY. DIOKNO:

Yes, I believe so.

JUSTICE LEONEN:

Who is more feared, the president or the military?

ATTY. DIOKNO:

(Chuckles) I'm not sure, Your Honor.

JUSTICE LEONEN:

Well, I guess people will say the Commander-in-Chief is more powerful than the military. So, what we need really is a serious program to counter violent extremism, as well as a serious program to build good governance rather than martial law, is that not correct?

ATTY. DIOKNO:

That is true, Your Honor.

JUSTICE LEONEN:

Because no matter the numbers of fighting forces and firearms, it will always recur if the root causes are not addressed, is that not correct?

ATTY. DIOKNO:

That is correct.[150]

To reiterate, martial law is an emergency governance response — the least benign of the emergency powers — that is directed against the civilian population, thereby allowing the military to perform what are otherwise civilian government functions and vesting military jurisdiction over civilians. It is through this lens that the Court determines the sufficiency of the basis for the extension of martial law. However, as already mentioned, the respondents have failed to prove the requisites, along with the necessity, for the extension of martial law and the suspension of the privilege of the writ of habeas corpus.

B. Whether Proclamation No. 216 has become *functus officio* with the cessation of the Marawi Siege that it may no longer be extended

The four petitions assert that the martial law declared in Proclamation No. 216 has become *functus officio* with the cessation of the Marawi siege. These petitions argue that Proclamation No. 216 and the President's Report dated May 25, 2017 pronounced that the sole objective or purpose of the proclamation of martial law and the suspension of the privilege of the writ of habeas corpus in Mindanao was to quell the Maute-Abu Sayyaf rebellion.[151] With the siege having been quelled, the petitioners now argue that the objective or purpose of the proclamation has already been achieved, and therefore an extension thereof is no longer necessary.[152]

Meanwhile, the respondents contend that while it may be admitted that Proclamation No. 216 specifically cited the attack of the Maute group on Marawi City as the basis for the declaration of martial law, the Court has recognized in *Lagman v. Pimentel III* that the rebellion in Mindanao, which the proclamation seeks to address, was not necessarily ended by the cessation of the Marawi siege.[153] The Court recognized the fact that the attack on Marawi City has spilled over to the areas in Mindanao and has spurred attacks from other rebel and terrorist groups.[154]

The respondents further advance that the issue of whether Proclamation No. 216 has become *functus officio* was consequently and indirectly rejected by the Court in affirming the second extension based on the same grounds cited for the third extension now in question.[155]

Today, the Court was called upon to finally definitively rule that Proclamation No. 216 has become *functus officio* with the cessation of the Marawi siege; thus, it may no longer be extended.

Functus officio is the Latin phrase for "having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority." [156] It is applied to an officer whose term has expired, and who has consequently no further official authority; and also to an instrument, power, agency, which has fulfilled the purpose of its creation, and is therefore of no further virtue or effect.[157]

In this relation, the Dissenting Opinion of Senior Associate Justice Antonio T. Carpio in *Lagman v. Pimentel III* is illuminating:

The Constitution provides that Congress, voting jointly, may extend the period of martial law and the suspension of the privilege of the writ "if the x x x rebellion shall persist." Literally and without need of constitutional construction, the word "persist" means the continued existence of the same invasion or rebellion when martial law was initially proclaimed or the privilege of the writ was initially suspended. In the

deliberations of the Constitutional Commission, the framers understood that the extension could be justified "if the invasion (or rebellion) is still going on." The authority of Congress to extend martial law and the suspension of the privilege of the writ is, therefore, limited to the same rebellion persisting at the time of the extension. In other words, the rebellion used by Congress as justification to extend martial law and the suspension of the privilege of the writ must be the same rebellion identified in the initial proclamation of the President.

x x x x

Indeed, the authority of Congress to extend the proclamation of martial law and the suspension of the privilege of the writ must be strictly confined to the rebellion that "persists," the same rebellion cited by President Duterte in Proclamation No. 216. Hence, the end of the Maute rebellion marked the end of the validity of Proclamation No. 216. Any extension pursuant thereto is unconstitutional since the Maute rebellion already ceased, with the death of its leader Isnilon Hapilon and the liberation of Marawi City. To uphold the extension of martial law and the suspension of the privilege of the writ when the Maute rebellion no longer persists, in Marawi City or anywhere else in Mindanao, would sanction a clear violation of Section 18, Article VII of the Constitution.[158]

The Constitution cannot be any clearer: the Congress may extend the President's proclamation of martial law if the same rebellion necessitating such proclamation shall persist.[159]

To recall, the relevant portion of Proclamation No. 216 reads:

WHEREAS, part of the reasons for the issuance of Proclamation No. 55 was the series of violent acts committed by the Maute terrorist group such as the attack on the military outpost in Butig, Lanao del Sur in February 2016, killing and wounding several soldiers, and the mass jailbreak in Marawi City in August 2016, freeing their arrested comrades and other detainees;

WHEREAS, today 23 May 2017, the same Maute terrorist group has taken over a hospital in Marawi City, Lanao del Sur, established several checkpoints within the City, burned down certain government and private facilities and inflicted casualties on the part of Government forces, and started flying the flag of the Islamic State of Iraq and Syria (ISIS) in several areas, thereby openly attempting to remove from the allegiance to the Philippine Government this part of Mindanao and deprive the Chief Executive of his powers and prerogatives to enforce the laws of the land and to maintain public order and safety in Mindanao, constituting the crime of rebellion; and

WHEREAS, this recent attack shows the capability of the Maute group and other rebel groups to sow terror, and cause death and damage to property not only in Lanao del Sur but also in other parts of Mindanao.[160]

With the foregoing, it is clear that Proclamation No. 216 was issued to quell the Marawi siege as perpetrated by the Maute group. The third extension, on the other hand, as advanced by the respondents themselves, is based on the alleged ongoing rebellion perpetrated by the LTRGs and the CTRGs. This cannot be, as violent attacks by different armed groups could easily form the basis of an endless chain of extensions, so long as there are overlaps in the attacks.[161] This dangerously supports the theoretical possibility of perpetual martial law.[162] Thus, by clear mandate of the Constitution that Congress may extend the President's proclamation of martial law only if the same rebellion necessitating such proclamation shall persist, then Proclamation No. 216 has become *functus officio* with the cessation of the Marawi Siege.

Nevertheless — and this point is crucial — even if the attacks by the LTRGs and the CTRGs were to be considered, the extension still fails the test of sufficiency of factual basis, as both the (a) existence of an actual rebellion or invasion, and (b) that public safety necessitates such declaration or suspension, do not exist.

C. Whether or not grave abuse of discretion was attendant in the manner by which Congress approved the

extension of martial law and the suspension of the privilege of the writ of habeas corpus is a political question and thus not reviewable by the Court

As to whether the Court may take cognizance of the petitioners' argument that Congress, in joint session, committed grave abuse of discretion amounting to lack or excess of jurisdiction with respect to the manner by which it approved the extension of martial law and the suspension of the privilege of the writ of habeas corpus, the answer is in the negative.

First and foremost, there can be no serious doubt that the instant petitions were brought "under the third paragraph of Section 18 of Article VII of the 1987 Constitution x x x." [163]

The constitutional mandate under Section 18, Article VII is to delve into both factual and legal issues indispensable to the final determination of the sufficiency of the factual basis of the extension of martial law and suspension of the privilege of the writ of habeas corpus.

As a neutral and straightforward fact-checking mechanism, the Court's role prescind independently from how the Legislature evaluated the President's request. The Court's role in Section 18 is to make its own determination. This necessarily means that a Section 18 review does not concern itself with the correctness or wrongness of the assessment made by Congress.

In other words, the question of whether there is sufficient basis for extending Martial Law is to be resolved by the Court under the aegis and within the parameters only of Section 18 — without regard to the question of whether or not Congress committed grave abuse of discretion. The Court fulfills its role under Section 18 totally independent of whatever Congress may have said.

In the fairly recent case of *Baguilat, Jr. v. Alvarez*, [164] citing *Defensor-Santiago v. Guingona*, [165] the Court held that the Constitution "vests in the House of Representatives the sole authority to determine the rules of its proceedings." [166] Hence, as a general rule, "[t]his Court has no authority to interfere and unilaterally intrude into that exclusive realm, without running afoul of [Constitutional principles that it is bound to protect and uphold x x x. Constitutional respect and a becoming regard for the sovereign acts of a coequal branch prevents the Court from prying into the internal workings of the [House of Representatives]."[167] The Constitutional grant to Congress to determine its own rules of proceedings has generally been "traditionally construed as a grant of full discretionary authority to the Houses of Congress in the formulation, adoption and promulgation of its own rules. As such, the exercise of this power is generally exempt from judicial supervision and interference x x x." [168]

Hence, as Congress is bestowed by the Constitution the power to formulate, adopt, and promulgate its own rules, the Court will not hesitate to presume good faith on the part of Congress with respect to the rules it adopted in deliberating the extension of martial law and the suspension of the privilege of the writ of habeas corpus.

In contrast, however, good faith belief is irrelevant in the Court's duty under a Section 18 review. To be sure, a nullification resulting from a Section 18 review does not ascribe any grave abuse to the actors involved in the declaration of martial law or the suspension of the privilege of the writ of habeas corpus or the extension thereof. Stated differently, the declaration or suspension, or the extension thereof may fail to pass constitutional muster under Section 18 despite the good faith belief of the actors. The test of sufficient factual basis — the establishment of the twin requirements — goes beyond a showing of good faith belief. Good faith belief would not be far removed from the standard of grave abuse in *Lansang v. Garcia* [169] (*Lansang*) which is decidedly no longer the standard of a Section 18 review under the 1987 Constitution. [170] The independent review of the Court, being akin to administrative fact-finding, must either be supported by substantial evidence [171] or pass the test of reasonableness [172] in order to hurdle the standard of Section 18.

Accordingly, the test of grave abuse, even the existence thereof in the declaration, suspension, or extension, will not be determinative of the outcome of a Section 18 review by the Court. If the government can show sufficient factual basis for the proclamation, suspension, or extension — meaning that it presents to the Court substantial evidence to support the existence or persistence of rebellion and the requirement of public safety, as the case may be, — then the assailed action will be upheld even without having to determine whether or not there is a showing of grave abuse. Conversely, no amount of good faith belief will save a declaration, suspension, or extension from being nullified if the government fails to meet its burden to adduce substantial evidence to the Court in a Section 18 review proving the twin requirements for the declaration, suspension, or extension.

In this regard, jurisprudence has defined a political question as involving "those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the Legislature or executive branch of the Government." [173]

Hence, with the Constitution granting Congress express authority to promulgate its own internal rules in the conduct of its deliberations, the issues raised by the petitioners as to the propriety of the time limits imposed upon members of Congress in making interpellations and explaining their individual votes, the failure of Congress to provide to its members certain documents, figures, and other data, as well as other procedural issues surrounding the Congress' manner of conducting the deliberations, are political questions not cognizable by the Court.

The Constitution does not provide specific rules as to the time limits to be observed by the members of Congress in conducting its deliberations, as well as with respect to the quality and quantity of documents and data that must be furnished to the members of Congress during the deliberations. Hence, as Section 18 is silent as to the procedural rules that Congress must observe in conducting its deliberations, Congress, as an independent branch of government, is given some leeway in determining how it should conduct its deliberations for the extension of martial law and the suspension of the privilege of the writ of habeas corpus.

Further, there is no specific procedural rule on the deliberations for the extension of martial law and the suspension of the privilege of the writ of habeas corpus laid down in the most recent version of the Rules of the House of Representatives promulgated by the House. [174] Hence, not only are the rules on time limits and the insufficient furnishing of documents raised by the petitioners not contrary to the existing Rules of the House, but, even assuming for the sake of argument that the conduct observed by Congress during the joint session digressed from the existing Rules of the House, such would still not be invalid as the Court, as long as no constitutional provision is violated, "will not interfere with the right of Congress to amend its own rules." [175]

Therefore, considering the foregoing, the manner by which Congress approved the extension of martial law and the suspension of the privilege of the writ of habeas corpus is beyond the scope of the Court's review in a Section 18 petition, and is a political question that is not reviewable by the Court.

Nevertheless, as already exhaustively discussed, the political question doctrine does not impact on the duty of the Court to discharge its own duty under Section 18 to determine, for itself, whether or not there is sufficient basis to extend martial law. Consequently, as to this determination by the Court, the Congress cannot interfere.

At this juncture, I would like to take the opportunity to clarify certain fundamental points where I wholly disagree with the ponencia:

I. On the scope of a Section 18 review

The ponencia rules that the sufficiency of factual basis for the extension must be determined from the facts or information contained in the President's request supported by the reports made by his alter ego to Congress. [176] The ponencia also rules that the Court cannot expect exactitude and preciseness of the facts or information stated

in the written Report as the Court's review is confined to the sufficiency and not the accuracy thereof.[177]

As I have previously observed in *Lagman v. Pimentel III*, this view is not a reasonable interpretation of the extent of review contemplated in Section 18. Suppose that the reports given to Congress were insufficient, but the political departments are ready and able to submit evidence of sufficient factual basis during a subsequent Section 18 review. Is the Court then bound to invalidate based on a lack of sufficient factual basis before Congress?

All submissions of the government in this case have been considered. The need for accuracy in the information is not difficult to grasp. Section 18 is a judicial proceeding. Thus, when the government is tasked to show sufficient factual basis to the Court, it must be through evidence. Evidence, in turn, is the means of ascertaining in a judicial proceeding the truth respecting a matter of fact.[178] Evidence must at the very least be accurate[179] in order to serve its purpose.

Otherwise, if the political departments are excused from presenting accurate information, if even the most lenient standards of an administrative fact-finding do not apply in Section 18 as Justice Ramon Paul L. Hernando suggests, then the Court is merely going through the motions in a Section 18 review. For what value does it carry for the Court to find sufficient inaccurate factual basis?

In layman's terms, how can something that is inaccurate and untrue be considered sufficient? Thus, the repeated insistence and talismanic reliance on the phrase "accuracy is not equivalent to sufficiency" amounts to nothing more than a complete and total abdication by the Court of its duty under Section 18. The recurrent use of the foregoing pronouncement renders nugatory the power and duty of the Court under Section 18, for it binds the Court to view as gospel truth — whether supported by evidence or otherwise — any claim of untoward incidents put forth by the Executive and the military to justify the existence of rebellion and the perils to public safety. If this is the majority's formulation, Section 18 can just as well be deleted from the Constitution as it is totally useless within the checks and balances framework of the Constitution.

This mindset — that the Court should not require correctness or accuracy in the reports submitted by the Executive — makes little to no sense in a review of sufficiency of factual basis of an extension of martial law, as compared to its initial declaration. This pronouncement may have been understandable in the initial declaration of martial law through Proclamation No. 216 as the Executive indeed had to respond to an urgent situation, i.e., the Marawi siege. Hence, in the ensuing emergency, it was understandable that the Executive no longer had the opportunity to verify the claims before acting accordingly. It cannot be said, however, that this same urgency exists for the extension, especially the one in the case at hand wherein a third extension is sought, for the Executive and the military have had ample time (all of a year, if not more) to compile information and further investigate, if necessary, so that their claims may qualify as "evidence" in court. This is the reason why, as I stated earlier, blanket claims of "according to informants," "suspected ASG," and "believed to be BIFF" would not suffice.

Going back to the case at hand, the review of the sufficiency of the factual basis extended beyond the facts and information contained in the President's request and the supporting reports — the more generous interpretation being precisely to allow the government a fuller opportunity to show to the Court and to the people sufficient factual basis for the extension. The political departments were even given the opportunity to complete, correct, and supplement their submissions. Notwithstanding that all submissions, no matter if incomplete, inconsistent, or unintelligible, were considered, the totality of the evidence was still not constitutive of substantial evidence to prove the persistence of rebellion or the requirement of public safety to justify the third extension.

II. On the false dichotomy between probable cause and substantial evidence

The ponencia draws an apparent distinction between probable cause and substantial evidence, as if probable cause

is a lower standard compared to substantial evidence. When a probable cause determination reaches the Court, as it does in a Section 18 review, the evidence required to support probable cause is substantial evidence. This is rudimentary.

When the Court reviews the probable cause determination of the Ombudsman, the threshold is substantial evidence:

x x x It is well-settled that courts do not interfere with the Ombudsman's discretion in determining probable cause whose findings, when supported by substantial evidence and in the absence of grave abuse of discretion or any capricious, whimsical and arbitrary judgment as to amount to an evasion of a positive duty, are entitled to great weight and respect, as in this case.[180]

And:

x x x It is settled that the Ombudsman's determination of whether or not probable cause exists is entitled to great weight and respect, and should stand so long as supported by substantial evidence x x x.[181]

When the Court or a judge reviews the probable cause determination of the prosecutor, the threshold is substantial evidence:

The general rule of course is that the judge is not required, when determining probable cause for the issuance of warrants of arrests, to conduct a de novo hearing. The judge only needs to personally review the initial determination of the prosecutor finding a probable cause to see if it is supported by substantial evidence.

But here, the prosecution conceded that their own witnesses tried to explain in their new affidavits the inconsistent statements that they earlier submitted to the Office of the Ombudsman. Consequently, it was not unreasonable for Judge Yadao, for the purpose of determining probable cause based on those affidavits, to hold a hearing and examine the inconsistent statements and related documents that the witnesses themselves brought up and were part of the records. Besides, she received no new evidence from the respondents.[182]

When the third extension is validated by the majority based on the existence of probable cause divorced from substantial evidence, there is basic misunderstanding of the quantum of evidence continuum. When the fundamental requirements in the most permissive of judicial and administrative proceedings are held not to apply to review the factual basis for the extension of martial law, then is this not basically saying that the Court is willing to accept even a scintilla of evidence? This is simply egregious error.

III. Totality versus piecemeal examination of the evidence

The ponencia attempts to discredit any in-depth analysis of the government submissions as "piecemeal." It states, "[i]n finding sufficiency of the factual basis for the third extension, the Court has to give due regard to the military and police reports which are not palpably false, contrived, or untrue; consider the full complement or totality of the reports submitted, and not make a piecemeal or individual appreciation of the facts and the incidents reported." [183] Elsewhere, it continues, "[t]he absence of motives indicated in several reports does not mean that these violent acts and hostile activities committed are not related to rebellion which absorbs other common crimes." [184]

Herein lies another crucial flaw in the ponencia's reasoning, not less important than the Court's failure to exact some level of accuracy.

The rule remains the same as in *Lagman v. Pimentel III*: the government is required to show two things in a Section 18 review of an extension of martial law: (1) the persistence of the original rebellion, and (2) demand of public safety.

To show the persistence of rebellion, the government is required to prove, at least one incident wherein the overt act of rebellion (i.e., rising up publicly and taking arms against the government) and the specific political purpose of rebellion (i.e., removing from the allegiance to said government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or of depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives) concur.

When the ponencia concedes that there is absence of motive in several reports, what it really thus concedes is that it failed to find a single report that presents convincingly an act of rebellion with a rebellious purpose. This dissent presents all reports that state the motive. However, none of these reports presents convincingly an act of rebellion with a rebellious purpose.

Accordingly, when the ponencia does not find in one, it says it finds in the totality of the evidence — this is simply nonsensical. Any close examination of the evidence is accused of missing the forest for the trees. The ponencia, however, illogically finds a forest where there is not a single tree. The examination of all the violent incidents can only show, at most, a demand of public safety arising from a proliferation of private crimes. It is well to emphasize that the requirement of public safety is separate from the requirement of an actual rebellion.

IV. On the reliance upon *Montenegro v. Castañeda* and other inapplicable cases to defer to the determination of the political departments and excusing them from showing accuracy in the factual basis presented

The ponencia also rules that "the Court need not make an independent determination of the factual basis for the proclamation or extension of martial law and the suspension of the privilege of the writ of habeas corpus. x x x It would be impossible for the Court to go on the ground to conduct an independent investigation or factual inquiry, since it is not equipped with resources comparable to that of the Commander-in-Chief to ably and properly assess the ground conditions." [185]

Citing a passage in *Montenegro v. Castañeda* [186] (*Montenegro*) to compare the machinery of the Court and the Executive branch and that the former "cannot be in a better position to ascertain or evaluate the conditions prevailing in the Archipelago," [187] the ponencia then concludes, "[t]he Court need not delve into the accuracy of the reports upon which the President's decision is based, or the correctness of his decision to declare martial law or suspend the writ, for this is an executive function. The threshold or degree of sufficiency is, after all, an executive call." [188] Furthermore, it cites the decision of the Court in *David v. Macapagal-Arroyo* [189] citing the case of *Integrated Bar of the Philippines (IBP) v. Zamora*, [190] that the Court cannot undertake an independent investigation beyond the pleadings. [191]

I strongly disagree. The danger of recklessly citing *Montenegro* cannot be overstated.

Montenegro involved the validity of Proclamation No. 210, s. 1950 suspending the privilege of the writ of habeas corpus, operating under the 1935 Constitution. [192] Completing the picture of the passage quoted by the ponencia, the ultimate basis for that ratio in *Montenegro* is its reliance upon the decisions of the United States Supreme Court that were likewise used as basis for the holding in *Barcelon v. Baker, Jr.* [193] (*Barcelon*):

And we agree with the Solicitor General that in the light of the views of the United States Supreme Court thru, Marshall, Taney and Story quoted with approval in *Barcelon vs. Baker* (5 Phil., 87, pp. 98 and 100) the authority to decide whether the exigency has arisen requiring suspension belongs to the President and "his decision is final and conclusive" upon the courts and upon all other persons.

Indeed as Justice Johnson said in that decision, whereas the Executive branch of the Government is enabled thru its civil and military branches to obtain information about peace and order from every quarter and corner of the nation, the judicial department, with its very limited machinery can not be in better position to ascertain or evaluate the conditions prevailing in the Archipelago.

But even supposing the President's appraisal of the situation is merely prima facie, we see that petitioner in this litigation has failed to overcome the presumption of correctness which the judiciary accords to acts of the Executive and Legislative Departments of our Government.[194]

Turning our attention to *Barcelon*, it is instantly apparent that it cannot be basis for the Court to anchor its findings in a Section 18 review to the determination of the political departments on account of the latter's far more superior information-gathering machinery. The Court in *Barcelon* refused to review the factual basis of the suspension of the privilege of the writ of habeas corpus for being a political question:

We are of the opinion that the only question which this department of the Government can go into with reference to the particular questions submitted here are as follows:

(1) Admitting the fact that Congress had authority to confer upon the President or the Governor-General and the Philippine Commission authority to suspend the privilege of the writ of habeas corpus, was such authority actually conferred? and

(2) Did the Governor-General and the Philippine Commission, acting under such authority, act in conformance with such authority?

If we find that Congress did confer such authority and that the Governor-General and the Philippine Commission acted in conformance with such authority, then this branch of the Government is excluded from an investigation of the facts upon which the Governor-General and the Philippine Commission acted, and upon which they based the resolution of January 31, 1905, and the executive order of the Governor-General of the same date. Under the form of government established in the Philippine Islands, one department of the Government has no power or authority to inquire into the acts of another, which acts are performed within the discretion of the other department.[195]

Relying upon decisions of the United States Supreme Court to this effect, *Barcelon* concludes:

We base our conclusions that this application should be denied upon the following facts:

x x x x

Fourth. That the conclusion set forth in the said resolution and the said executive order, as to the fact that there existed in the Provinces of Cavite and Batangas open insurrection against the constituted authorities, was a conclusion entirely within the discretion of the legislative and executive branches of the Government, after an investigation of the facts.

Fifth. That one branch of the United States Government in the Philippine Islands has no right to interfere or inquire into, for the purpose of nullifying the same, the discretionary acts of another independent department of the Government.

Sixth. Whenever a statute gives to a person or a department of the Government discretionary power, to be exercised by him or it, upon his or its opinion of certain facts, such statute constitutes him or it the sole and exclusive judge of the existence of those facts.

Seventh. The act of Congress gave to the President, or the Governor-General with the approval of the Philippine Commission, the sole power to decide whether a state of rebellion, insurrection, or invasion existed in the Philippine Archipelago, and whether or not the public safety required the suspension of the privilege of the writ of habeas corpus.

Eighth. This power having been given and exercised in the manner above indicated, we hold that such authority is exclusively vested in the legislative and executive branches of the Government and their decision is final and conclusive upon this department of the Government and upon all persons.[196]

Verily, this has not been the state of the law for close to thirty-three (33) years - counted from the adoption of the 1987 Constitution, and close to fifty (50) years if counted from Lansang.

Even the deferential Court in *Lansang* abandoned *Barcelon* and exercised some level of review of the factual basis of the suspension.^[197] Most discretionary acts of the political departments are now subject to the Court's expanded power of judicial review,^[198] with the declaration of martial law and the suspension of the privilege of the writ of habeas corpus and the extension thereof being subject to the test for sufficiency of factual basis under Section 18. To be sure, the ponencia unwarrantedly seeks to rewrite the 1987 Constitution, and unduly reverts back to the 1935 and 1973 Constitutions.

Any presumption of correctness in a Section 18 proceeding will be in violation of the express provision of the Constitution. This is why the two earlier Section 18 decisions were silent as to the applicability of the presumption of regularity in the performance of official functions. This is why the totality of the government's submissions is examined.

As for the cases of *David v. Macapagal-Arroyo* and *IBP v. Zamora*, a reading of the cases reveals that these do not purport to make a rule with respect to a Section 18 review of the declaration of martial law, suspension of the privilege of the writ of habeas corpus, or the extension thereof. Both cases deal with the exercise of the calling out powers of the President.

In *David v. Macapagal-Arroyo*, the issue was the constitutionality of President Arroyo's Presidential Proclamation No. 1017 and General Order No. 5 that "declare[d] a [s]tate of [n]ational [e]mergency" and "call[ed] upon the AFP and the PNP to prevent and suppress acts of terrorism and lawless violence in the country," respectively.^[199]

In *IBP v. Zamora*, the issue was the validity of President Estrada's Letter of Instruction 02/2000 and the deployment of the Philippine Marines. To place the ponencia's premise within its proper context, the ratio for the Court's statement that the Court cannot undertake an independent investigation beyond the pleadings was only to support the ultimate conclusion that "[t]here is a clear textual commitment under the Constitution to bestow on the President full discretionary power to call out the armed forces and to determine the necessity for the exercise of such power."^[200] The Court then clearly drew a distinction between the review of the power to call on the armed forces as against the power to declare martial law or suspend the privilege of the writ of habeas corpus — primarily, that the review of the exercise of calling out powers may prove unmanageable for the Courts on account of lack of textual standards, as opposed to that of the less benign powers subject to the conditions of Section 18. Prefaced with the text of Section 18, the Court explained:

Under the foregoing provisions, Congress may revoke such proclamation or suspension and the Court may review the sufficiency of the factual basis thereof. However, there is no such equivalent provision dealing with the revocation or review of the President's action to call out the armed forces. The distinction places the calling out power in a different category from the power to declare martial law and the power to suspend the privilege of the writ of habeas corpus, otherwise, the framers of the Constitution would have simply lumped together the three powers and provided for their revocation and review without any qualification. *Expressio unius est exclusio alterius*. Where the terms are expressly limited to certain matters, it may not, by interpretation or construction, be extended to other matters. That the intent of the Constitution is exactly what its letter says, i.e., that the power to call is fully discretionary to the President, is extant in the deliberation of the Constitutional Commission. x x x

x x x x

The reason for the difference in the treatment of the aforementioned powers highlights the intent to grant the

President the widest leeway and broadest discretion in using the power to call out because it is considered as the lesser and more benign power compared to the power to suspend the privilege of the writ of habeas corpus and the power to impose martial law, both of which involve the curtailment and suppression of certain basic civil rights and individual freedoms, and thus necessitating safeguards by Congress and review by this Court.

Moreover, under Section 18, Article VII of the Constitution, in the exercise of the power to suspend the privilege of the writ of habeas corpus or to impose martial law, two conditions must concur: (1) there must be an actual invasion or rebellion and, (2) public safety must require it. These conditions are not required in the case of the power to call out the armed forces. The only criterion is that "whenever it becomes necessary," the President may call the armed forces to prevent or suppress lawless violence, invasion or rebellion. The implication is that the President is given full discretion and wide latitude in the exercise of the power to call as compared to the two other powers.

If the petitioner fails, by way of proof, to support the assertion that the President acted without factual basis, then this Court cannot undertake an independent investigation beyond the pleadings. The factual necessity of calling out the armed forces is not easily quantifiable and cannot be objectively established since matters considered for satisfying the same is a combination of several factors which are not always accessible to the courts. Besides the absence of textual standards that the court may use to judge necessity, information necessary to arrive at such judgment might also prove unmanageable for the courts. Certain pertinent information might be difficult to verify, or wholly unavailable to the courts. In many instances, the evidence upon which the President might decide that there is a need to call out the armed forces may be of a nature not constituting technical proof.

x x x x

Thus, it is the unclouded intent of the Constitution to vest upon the President, as Commander-in-Chief of the Armed Forces, full discretion to call forth the military when in his judgment it is necessary to do so in order to prevent or suppress lawless violence, invasion or rebellion. Unless the petitioner can show that the exercise of such discretion was gravely abused, the President's exercise of judgment deserves to be accorded respect from this Court.[201]

There is no question that the political departments have the machinery to determine the conditions on the ground, but this is not basis to hold that the standard of review in this case is the same as that in *David v. Macapagal-Arroyo* and *IBP v. Zamora*. This far superior information-gathering machinery of the Executive department is precisely why the Court has held, in the past Section 18 proceedings before it, that the government bears the burden of proof to show the factual basis. That is why burden of proof is upon the respondents. Let them meet their burden. If the Court is not able to determine the accuracy or the existence of the factual basis of the extension of martial law, then it only means that the government did not meet its burden.

This far superior information-gathering machinery is precisely the reason why, in my view, the evidence presented in this case — unsubstantiated, uncorroborated, and based on conjectures, rumor and hearsay — is unacceptable.

V. On the holding that rebellion that allows the exercise of Commander-in-Chief powers is more expansive than that defined in the RPC

The ponencia states that "rebellion contemplated in the Constitution as essential to the declaration of martial law has an expansive scope and cannot be confined to the definition of rebellion as a crime under the Revised Penal Code. Therefore, it is not restricted to the time and locality of actual war nor does it end when actual fighting in a particular area has ceased. It refers to a state or condition resulting from the commission of a series or combination of acts and events, past, present and future, primarily motivated by ethnic, religious, political or class

divisions which incites violence, disturbs peace and order, and pose threat to the security of the nation." [202]

It continues, "martial law cannot be restricted only to areas where actual fighting continue to occur," [203] premised by citations of the Amicus Curiae Brief of Fr. Joaquin Bernas in *Fortun v. Macapagal-Arroyo* [204] (*Fortun*), *In the Matter of the Petition for Habeas Corpus of Benigno S. Aquino v. Enrile* [205] (*Aquino v. Enrile*), and *Montenegro* because "rebels have become more cunning and instigating rebellion from a distance is now more attainable, perpetrating acts of violence clandestinely in several areas of Mindanao." [206]

First, as explained above, jurisprudence prior to the 1987 Constitution such as *Aquino v. Enrile* and *Montenegro* cannot conclusively serve as precedents.

Second, by no stretch of the imagination can *Fortun* be considered as rule-setting in a Section 18 review. *Fortun* involved the question of constitutionality of Proclamation No. 1959, s. 2009 issued by former President Gloria Macapagal-Arroyo to declare martial law and suspend the privilege of the writ of habeas corpus in Maguindanao. The Proclamation was withdrawn after just eight days, before the Congress could even convene in joint session. The Court's decision issued three years later, or in 2012, dismissed the consolidated petitions for having become moot and academic. Because of the dismissal for mootness, there was no discussion as to the scope of martial law and the proper interpretation of "rebellion" under the Constitution.

While the oft-cited Amicus Brief of Fr. Bernas is offered to advance a more "lenient" definition of rebellion, being qualified by the prudential estimation of the demand of public safety, this portion of the brief is to advance the position that the proof of rebellion required for the purpose of exercising the President's Commander-in-Chief powers is not proof beyond reasonable doubt.

This was in fact discussed in the Dissenting Opinion of Senior Associate Justice Carpio who opined 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." [207] This was the standard adopted in *Lagman v. Medialdea* and *Lagman v. Pimentel III* that rebellion in Section 18 is the same rebellion in the Revised Penal Code. This is also supported by an opinion just as astute as Fr. Bernas. In the Amicus Memorandum of Justice Vicente V. Mendoza in *Fortun*, he submitted that rebellion in the Constitution is the same rebellion in the RPC, thus:

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

The term "rebellion" has always been understood in this country as an armed public uprising against the government for the purpose of seizing power. This has always been the meaning of the crime of rebellion since the enactment of Act No. 292, Sec. 3, from which Art. 134 of the present Revised Penal Code was taken. Hence, the term "rebellion" in Art. VII, Sec. 18 of the Constitution must be understood as at present defined in Art. 134 of the Revised Penal Code, consisting of —

[the] rising publicly and taking [of] 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, of 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.

Like "treason," "bribery, graft and corruption" in the Impeachment Clause, the Constitution has left the meaning of "rebellion" in the Commander in Chief Clause to be defined by law.

Indeed, it is with the crime of rebellion as defined in the penal law that petitioners in the habeas corpus cases of *Barcelon v. Baker*, *Montenegro v. Castañeda*, and *Lansang v. Garcia* were charged. It is the same crime with which some of the accused in the Maguindanao massacre are charged in the prosecutors' offices and in trial court.

With this meaning of "rebellion," the members of the Constitutional Commission were familiar. There was an attempt to provoke a discussion of the nature of rebellion in the Constitutional Commission the discussion ended in a reiteration of the concept of rebellion as a public uprising against the government for the purpose of seizing power. It was pointed out that any other armed resistance against the government would only be either sedition or tumultuous affray, not justifying the imposition of martial law or the suspension of the privilege of the writ of habeas corpus. Thus, in the deliberations of the Commission on July 29, 1986 the following discussion took place:

MR. DE LOS REYES. May I ask some questions of the Committee.

One of the significant changes in Section 15 is that the phrase imminent danger thereof was deleted, including the word "insurrection." [I] would like to be clarified as to the reason for the deletion of the phrase "or imminent danger thereof in justifying the imposition of martial law and suspension of the privilege of the writ of habeas corpus.

MR. REGALADO. [T]he gentleman will recall that in the 1935 Constitution the phrase imminent danger thereof did not appear in the Bill of Rights. However, the framers of the 1973 Constitution wanted to have a strong President and they added the phrase imminent danger thereof in the provision on Commander-in-Chief.[208] [B]ut recent events have shown that the phrase is fraught with possibilities of abuse. Where the President states that there is an imminent danger of rebellion, it appears that he would have to rely on his word because he could always say that this is the military intelligence report. [E]ven with the Supreme Court trying to look into their factual basis under the proposed Constitution, can still be thwarted because the Supreme Court cannot just disregard a so-called classified, highly reliable intelligence report coming from different agencies which for all we know could easily be contrived in the hands of a scheming President...

MR. DE LOS REYES. As I see now, the Committee envisions actual rebellion and no longer imminent rebellion. Does the Committee mean there should be actual shooting or actual attack on the legislature or Malacanang, for example? Let us take for example a contemporary event - this Manila Hotel incident, ... would the Committee consider that an act of rebellion?

MR. REGALADO. If we consider the definition of rebellion under Article 134 and 135 of the Revised Penal Code, that presupposes actual assemblage of men in an armed public uprising for the purposes mentioned in Article 134 and by the means employed under Article 135. I am not trying to pose as an expert about this rebellion that took place in the Manila Hotel. [I] do not know whether we consider that there was really an armed public uprising. Frankly I have my doubts on that because we are not privy to the investigation conducted here.

MR. DE LOS REYES. I ask that question because I think modern rebellion can be carried out nowadays in a more sophisticated manner because of the advance of technology, mass media and others. Let us consider this for example: There is an obvious synchronized or orchestrated strike in all industrial firms, then there is a strike of drivers so that employees and students cannot attend school nor go to their places of work, practically paralyzing the government. Then in some remote barrios, there are ambushes by so-called subversives, so that the scene is that there is an orchestrated attempt to destabilize the government and ultimately supplant the constitutional government.

Would the Committee call that an actual rebellion, or is it an imminent rebellion?

MR. REGALADO. At the early stages where there was just an attempt to paralyze the government or some sporadic incidents in other areas, but without armed public uprising, that would amount to sedition under Article 138, or it can be considered tumultuous disturbance.

....

MR. REGALADO. It [then] becomes a matter of appreciation. If ... there is really an armed uprising although not all over the country, not only to destabilize but to overthrow the government, that would already be considered within the ambit of rebellion. If the President considers it, it is not yet necessary to suspend the privilege of the writ. It is not yet necessary to declare martial law because he can still resort to the lesser remedy of just calling out Armed Forces for the purpose of preventing or suppressing lawlessness or rebellion. (Sic)[209]

Thus, only an actual rebellion is contemplated in the Constitution as ground for declaring martial law or suspending the privilege of the writ of habeas corpus. Short of that, an incident may only justify using the Armed Forces for the purpose of suppressing lawless violence. This is the consequence of deleting "imminent danger [of rebellion]" and "insurrection" in our two previous Constitutions as grounds for declaring martial law or suspending the privilege of the writ.

Mere allegations — without more — that "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 law and to maintain public order and safety," and that "condition of peace and order in the province of Maguindanao has deteriorated to the extent that the local judicial system and other government mechanism in the province are not functioning, thus endangering public safety" are insufficient to constitute an allegation of actual rebellion that alone can justify the declaration of martial law and/or the suspension of the privilege of the writ of habeas corpus.

That "rebellion" in the Commander in Chief Clause means the crime of rebellion as defined in Art. 134 of the Revised Penal Code is clear from Art. VII, Sec. 18 which provides that "The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion." One can only be "judicially charged" with rebellion only if one is suspected of having committed acts defined as rebellion in Art. 134 of the Revised Penal Code.

The government's interpretation of the term "rebellion" would broaden its meaning and defeat the intention of the Constitution to reduce the powers of the President as Commander in Chief.[210]

The ponencia's holding in fact amounts to an abandonment of the holding in *Lagman v. Medialdea* and *Lagman v. Pimentel III* that required an actual rebellion, albeit not necessarily that which was covered in the original proclamation. Unbelievably, the decision reached by the majority today does not even contain a standard of what amorphous rebellion is sufficient for a Section 18 review.

VI. On the finding that the reports of violent incidents submitted by the government constituted a consistent pattern of rebellion in Mindanao.

The ponencia states, "[w]hile the primary justification for the President's request for extension is the on-going rebellion in Mindanao, the situation remains the same despite the death of the leaders, and the addition of rebel groups whose activities were intensified and pronounced after the first and second extensions." [211]

It continues, "[t]he factual basis for the extension of martial law is the continuing rebellion being waged in Mindanao by Local Terrorist Rebel Groups (LTRG) - identified as the ASG, BIFF, DI, and other groups that have established affiliation with the ISIS/DAESH, and by the Communist Terrorist Rebel Groups (CTRG) - the components of which are the Communist Party of the Philippines (CPP), New People's Army (NPA), and the National Democratic Front (NDF). [212] x x x The cited events demonstrate the spate of violence of rebel groups in Mindanao in pursuit of the singular objective to seize power over parts of Mindanao or deprive the President or Congress of their power and prerogatives over these areas. [213] x x x [T]hese violent incidents should not be viewed as isolated events but in their totality, showing a consistent pattern of rebellion in Mindanao." [214]

That the activities of "addition[al] rebel groups" "intensified and [became] pronounced after the first and second extensions" is not borne by the records. In fact, the government has consistently stated that there is a downward trend in crime, capability of violent groups, and even proliferation of drugs. A clear reduction in number of violent incidents in 2018 is shown by the specific reports in the Annexes when examined on a monthly basis. The monthly reports in the implementation of martial law in fact show a consistent upward trend in the number of "local terrorist groups (LTGs) [members]" and "CPP-NPA Terrorists (CNTs)" getting neutralized, the number of LTG and CNT members having surrendered, and the number of loose firearms being surrendered.[215] This same upward trend is apparent in the efforts of the military and the police in the establishment of Barangay Intelligence Networks and security patrols that insulate unaffected areas, the conduct of checkpoint operations, joint AFP-PNP operations and joint intelligence operations, even in the campaign against illegal drugs. The ponencia's statements or reasons are therefore bereft of any basis, if not totally contradicted by, the respondents' assertions.

There is no disagreement that the reports paint a violent picture of Mindanao. Where, however, the majority finds a "consistent pattern of rebellion," only a consistent pattern of lawless violence, or an imminent threat of rebellion, in reality exists.

As exhaustively examined in the body of this opinion, each and every incident was examined to see if in any one of these incidents the overt act of rebellion and the political purpose of rebellion concur. There was not one incident that was positively shown to have been committed for the purpose of removing from the allegiance to the government or its laws, the territory of the Republic of the Philippines or any part thereof, of 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 and prerogatives as required by Article 134 of the RPC.

Without an actual rebellion therefore, no amount of lawless violence can justify martial law.

This same question had already been clearly raised in the resurrected *Barcelon*. More than a century ago, Justice Willard, dissenting, asked:

The question in the case is this: Have the Governor-General and the Commission power to suspend the writ of habeas corpus when no insurrection in fact exists? If tomorrow they should suspend the writ in Manila, would that suspension be recognized by the courts?

That in such a case they ought not to suspend the writ and that where no insurrection in fact exists they would have no right to do so, are propositions which have no bearing upon the case. The question is, Have they the power to do it?

Prior to the passage of the act of Congress of July 1, 1902, the Commission had that power. They could suspend the writ, take it away entirely from certain provinces, or repeal entirely the law which authorized it to be issued. They had absolute control over it. (In re Calloway, 1 Phil. Rep., 11.)

By the decision of the majority in this case the Governor-General and the Commission still have that power. The effect of this decision is to give them the same power which the Commission exercised before the passage of the act of Congress of July 1, 1902. In other words, that part of the act which relates to the writ of habeas corpus has produced no effect. It is repealed by this decision, and Congress accomplished nothing by inserting it in the law. No construction which repeals it should be given to this article. If a given construction leads to that result it seems to me that it must be certain that the construction is wrong. No other argument to prove that it is wrong is needed. Congress must have intended that this provision should produce some effect. To hold that it has produced no effect is to defeat such intention.

But it is said that by the terms of the act, while the Governor-General and the Commissioners have the power to suspend the writ, they should not do it except in cases where insurrection in fact exists, and they, being men

of character and integrity, would not do it except in such cases. As the Government is at present constituted, this is undoubtedly true. This argument, however, is fully answered by what was said by the Supreme Court of the United States in the case of *Ex parte Milligan* (4 Wallace 2, 125):

"This nation, as experience has proved, can not always remain at peace, and has no right to expect that it will always have wise and humane rulers, sincerely attached to the principles of the Constitution. Wicked men, ambitious of power, with hatred of liberty and contempt of law, may fill the place once occupied by Washington and Lincoln." [216]

VII. On the ratio that because rebellion is a continuing crime, it continues despite the cessation of the armed public uprising

The ponencia states "[c]lashes between rebels and government forces continue to take place in other parts of Mindanao. Kidnapping, arson, robbery, bombings, murder — crimes which are absorbed in rebellion — continue to take place therein. These crimes are part and parcel of the continuing rebellion in Mindanao. The report of the military shows that the reported IED incidents, ambush, murder, kidnapping, shooting, and harassment in 2018 were initiated by ASG members and the BIFF." [217]

The ponencia explains further, "[b]e it noted that rebellion is a continuing crime. It does not necessarily follow that with the liberation of Marawi, rebellion no longer exists. It will be a tenuous proposition to confine rebellion simply to a resounding clash of arms with government forces." [218]

Taken together with the refusal to exact some level of accuracy in evidence, this lackadaisical legal standard for rebellion is so unworkable that it can admit of martial law for as long as the political departments claim that rebellion found to have existed during the initial declaration persists. This rule prevents any intelligent and functional Section 18 review. Again, the ponencia may just as well have deleted Section 18 from the Constitution.

The jurisprudence on rebellion as a continuing crime, predominantly *Umil v. Ramos* [219] (*Umil*), was made in the context of warrantless arrests. Instead of being in support for the proposition that martial law may be declared and extended in areas where there is no armed public uprising, *Umil*, while I hesitate to speak of its lingering applicability, is precisely an argument against declaring or extending martial law anywhere and everywhere rebels may be without the demand of public safety because, to reiterate, martial law is not necessary to run after rebels even outside the areas of armed uprising.

Rebellion is not a continuing crime in the sense that once it has been determined to have existed, rebellion becomes *res judicata*. The floodgates have been opened for a perpetual martial law in *Lagman v. Pimentel III*, and we are seeing the results now.

This is unfortunate, because there has been no dearth of opinions attempting to place "rebellion as a continuing crime" in its proper context — which is demonstrably entirely separate from the question presented in Section 18, that is, whether a rebellion found in Section 18 continues to exist. Justice Florentino Feliciano registered his opinion in *Umil*, thus:

9.1 respectfully submit that an examination of the "continuing crimes" doctrine as actually found in our case law offers no reasonable basis for such use of the doctrine. More specifically, that doctrine, in my submission, does not dispense with the requirement that overt acts recognizably criminal in character must take place in the presence of the arresting officer, or must have just been committed when the arresting officer arrived, if the warrantless arrest is to be lawful. The "continuing crimes" doctrine in our case law (before rendition of *Garcia-Padilla vs. Enrile*) does not sustain warrantless arrests of person who, at the time of the actual arrests, were performing ordinary acts of day-to-day life, upon the ground that the person to be arrested is, as it were, merely resting in between specific lawless and violent acts which, the majority conclusively presumes, he will commit the moment he gets an opportunity to do so.

Our case law shows that the "continuing crimes" doctrine has been used basically in relation to two (2) problems: the first problem is that of determination of whether or not a particular offense was committed within the territorial jurisdiction of the trial court; the second problem is that of determining whether a single crime or multiple crimes were committed where the defense of double jeopardy is raised.

x x x x

12. My final submission, is that, the doctrine of "continuing crimes," which has its own legitimate function to serve in our criminal law jurisprudence, cannot be invoked for weakening and dissolving the constitutional guarantee against warrantless arrest. Where no overt acts comprising all or some of the elements of the offense charged are shown to have been committed by the person arrested without warrant, the "continuing crime" doctrine should not be used to dress up the pretense that a crime, begun or committed elsewhere, continued to be committed by the person arrested in the presence of the arresting officer. The capacity for mischief of such a utilization of the "continuing crimes" doctrine, is infinitely increased where the crime charged does not consist of unambiguous criminal acts with a definite beginning and end in time and space (such as the killing or wounding of a person or kidnapping and illegal detention or arson) but rather of such problematic offenses as membership in or affiliation with or becoming a member of, a subversive association or organization. For in such cases, the overt constitutive acts may be morally neutral in themselves, and the unlawfulness of the acts a function of the aims or objectives of the organization involved.[220]

In the context of validity of warrantless arrests, Justice Santiago Kapunan also sought to clarify the import and applicability of Umil in the later case of *Lacson v. Perez*[221] (*Lacson*):

Petitioners were arrested or sought to be arrested without warrant for acts of rebellion ostensibly under Section 5 of Rule 113. Respondent's theory is based on *Umil vs. Ramos*, where this Court held:

The crimes of rebellion, subversion, conspiracy or proposal to commit such crimes, and crimes or offenses committed in furtherance thereof or in connection therewith constitute direct assault against the State and are in the nature of continuing crimes.

Following this theory, it is argued that under Section 5(a), a person who "has committed, is actually committing, or is attempting to commit" rebellion and may be arrested without a warrant at any time so long as the rebellion persists.

Reliance on *Umil* is misplaced. The warrantless arrests therein, although effected a day or days after the commission of the violent acts of petitioners therein, were upheld by the Court because at the time of their respective arrests, they were members of organizations such as the Communist Party of the Philippines, the New Peoples Army and the National United Front Commission, then outlawed groups under the Anti-Subversion Act. Their mere membership in said illegal organizations amounted to committing the offense of subversion which justified their arrests without warrants.

In contrast, it has not been alleged that the persons to be arrested for their alleged participation in the "rebellion" on May 1, 2001 are members of an outlawed organization intending to overthrow the government. Therefore, to justify a warrantless arrest under Section 5(a), there must be a showing that the persons arrested or to be arrested has committed, is actually committing or is attempting to commit the offense of rebellion. In other words, there must be an overt act constitutive of rebellion taking place in the presence of the arresting officer. x x x[222]

Again, this was still the context when the doctrine of rebellion as a continuing crime was touched upon in the 2004 case of *Sanlakas v. Reyes*.[223] In her Separate Opinion, Justice Consuelo Ynares-Santiago explains this doctrine in *Umil* and *Lacson*:

Rebellion has been held to be a continuing crime, and the authorities may resort to warrantless arrests of persons suspected of rebellion, as provided under Section 5, Rule 113 of the Rules of Court. However, this

doctrine should be applied to its proper context — i.e., relating to subversive armed organizations, such as the New People's Army, the avowed purpose of which is the armed overthrow of the organized and established government. Only in such instance should rebellion be considered a continuing crime.[224]

Verily, there is no pretense at precedent that can support the proposition that rebellion continues when it has not been shown to exist.

As for the argument that these violent acts are "part and parcel of rebellion," "in furtherance of rebellion," or "absorbed by rebellion," this is placing the cart before the horse; plainly an egregious error. Here as well, the context of cited jurisprudence was whether violent acts are separate, complexed or absorbed by rebellion — very clearly divorced from the question of whether rebellion exists. Violent acts that are absorbed in rebellion for being considered as having been committed in furtherance thereof, requires the existence of a rebellion in the first place.

The requirement of concurrence of overt act and political purpose in a specific intent felony of rebellion is not new. *People v. Geronimo*[225] is instructive on this point:

x x x As in treason, where both intent and overt act are necessary, the crime of rebellion is integrated by the coexistence of both the armed uprising for the purposes expressed in article 134 of the Revised Penal Code, and the overt acts of violence described in the first paragraph of article 135. That both purpose and overt acts are essential components of one crime, and that without either of them the crime of rebellion legally does not exist, is shown by the absence of any penalty attached to article 134. It follows, therefore that any or all of the acts described in article 135, when committed as a means to or in furtherance of the subversive ends described in article 134, become absorbed in the crime of rebellion, and can not be regarded or penalized as distinct crimes in themselves. In law they are part and parcel of the rebellion itself, and can not be considered as giving rise to a separate crime that, under article 48 of the Code, would constitute a complex one with that of rebellion.[226]

At the risk of being repetitive — but if only to belabor the truth that the majority have closed their eyes to — there is no single incident in the government's submissions wherein the purpose and overt act of rebellion concur. Hence, in this case, as instructed by *People v. Geronimo*, the Court should have found that rebellion does not exist (or persist). Without a political purpose, these ambushes, murder, kidnapping, shooting and other violent incidents are common crimes committed for private purposes, as is clearly shown by the reports themselves. The Court cannot find the persistence of rebellion by supplying the political or rebellious purpose where the government itself did not show any.

VIII. On taking into consideration public clamor in a Section 18 review

The ponencia states, "[t]he Resolutions coming from the [Regional and Provincial Peace and Order Councils] x x x reflect the public sentiment for the restoration of peace and order in Mindanao. [Having been] initiated by the people x x x who live through the harrows of war, x x x importance must be given to these resolutions as they are in the best position to determine their needs." [227]

Moreover, "[t]he Court must remember that We are called upon to rule on whether the President, and this time with the concurrence of the two Houses of Congress, acted with sufficient basis in approving anew the extension of martial law. We must not fall into or be tempted to substitute Our own judgment to that of the People's President and the People's representatives. We must not forget that the Constitution has given us separate and quite distinct roles to fill up in our respective branches of government." [228]

Testing for constitutional compliance is not a question of popularity. The people in their sovereign capacity speak in and through the Constitution. There is nothing in Section 18 that takes into consideration the perceived public clamor for martial law. The role of the Court in Section 18 is not to validate the extension of a popular martial

law; but to validate the extension of martial law that has sufficient basis in fact and nullify one that does not.

When the Court reviews the factual basis under Section 18, it merely discharges its duty under the Constitution; it does not substitute its own discretion to that of the "People's President and the People's representatives." As early as *The Federalist Papers*, Alexander Hamilton had already disabused this notion:

Some perplexity respecting the rights of the courts to pronounce legislative acts void, because contrary to the Constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged that the authority which can declare the acts of another void, must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American constitutions, a brief discussion of the ground on which it rests cannot be unacceptable.

There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.

If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed, that the Constitution could intend to enable the representatives of the people to substitute their WILL to that of their constituents. It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.

x x x x

This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors, which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community. Though I trust the friends of the proposed Constitution will never concur with its enemies, in questioning that fundamental principle of republican government, which admits the right of the people to alter or abolish the established Constitution, whenever they find it inconsistent with their happiness, yet it is not to be inferred from this principle, that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents, incompatible with the provisions in the existing Constitution, would, on that account, be justifiable in a violation of those provisions; or that the courts would be under a greater obligation to connive at infractions in this shape, than when they had proceeded wholly from the cabals of the representative body. Until the people have, by some solemn and authoritative act, annulled or changed the

established form, it is binding upon themselves collectively, as well as individually; and no presumption, or even knowledge, of their sentiments, can warrant their representatives in a departure from it, prior to such an act. But it is easy to see, that it would require an uncommon portion of fortitude in the judges to do their duty as faithful guardians of the Constitution, where legislative invasions of it had been instigated by the major voice of the community.[229]

In this jurisdiction, this was very eloquently explained by Justice Jose Laurel in *Angara v. Electoral Commission*: [230]

But in the main, the Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government. The overlapping and interlacing of functions and duties between the several departments, however, sometimes makes it hard to say just where the one leaves off and the other begins. In times of social disquietude or political excitement, the great landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated. In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof.

x x x x

The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them.[231]

When the Court is called upon to undertake a Section 18 review, it is obliged to measure the evidence of the government as against positive constitutional requirements. When the Court finds that there is noncompliance with constitutional requirements, the nullification arising from the finding is not a result of the Court replacing the discretion of the political departments with its own. It is, in fact, a result of the precedence of the Constitution over the acts of the "People's President and the People's representatives."

Summary of Points

In sum, the consolidated petitions must be granted because:

1)

In the review of an extension of martial law under Section 18, the government bears the burden to show the persistence of rebellion and requirement of public safety must be separately proved by substantial evidence.

a)

The judgment in a Section 18 review is transitory; hence, both requirements must be proved anew.

b)

The rebellion must be that covered in the original Proclamation. Any pile-on rebellion prevents an intelligent Section 18 review.

c)

To prove the persistence of rebellion, the government must show at least one incident wherein the acts of rebellion and the political purpose thereof concur.

d)

To prove the demand of public safety, the endangerment of public safety must be shown to be at a scale that the lesser Commander-in-Chief powers are not sufficient to address the exigency of the situation.

2)

There is lack of sufficient factual basis for the third extension of martial law.

a)

There is insufficient factual basis that the rebellion persists.

i)

Based on statements of the President and the military establishment, Marawi has been liberated. Proclamation No. 216 has thus become *functus officio*. In fact, the government's submissions do not contain a single evidence of an attack by the DI against military installations or facilities, much less an armed public uprising.

ii)

Even if violent incidents alleged to have been initiated by the ASG, BIFF and NPA are considered, there is no violent incident presented wherein the concurrence of the act of rebellion and political purpose thereof is shown. In this regard, ALL reports that stated a motive for the violent incident were either equivocal or clearly for a private purpose.

iii)

Even if activities of the NPA are considered rebellion, no sufficient information was given to show overt acts of rebellion and the scale of endangerment of public safety for any intelligent Section 18 review.

b)

There is insufficient factual basis that the demands of public safety necessitate the extension of martial law.

i)

The reports localize lawless violence as only having occurred in nine (9) out of twenty-seven (27) provinces in Mindanao.

ii)

Actions and statements by government organs show that endangerment of public safety has not reached a scale requiring martial law — elections are being conducted, people feel safe, investments have risen, and the monthly reports reveal a downward trend in the capability of terrorists.

Conclusion

Today, the Court reiterates the wholesale branding of common criminals and terrorists in Mindanao as "rebels," of acts of violence and lawlessness as "rebellion from several fronts," — all in an unbecoming deference to the political departments so inconsistent with the provisions of the present Constitution that it requires a hark back to cases that applied the very different provisions of the 1935 and 1973 Constitutions. The Court not only effectively reverted to *Lansang* that only tests for grave abuse, it regressed to *Barcelon* and *Montenegro* where the

determination of the basis for the suspension of the privilege of the writ of habeas corpus was a political question. Again, all to justify the third extension of martial law over the whole of Mindanao in the face of a clear paucity — nay, total absence — of factual basis.

If indeed, the challenge posed by each of these groups — ASG, BIFF, DI, NPA — is sufficient to warrant the declaration of martial law then, by all means, the President can declare martial law citing the same as the basis. But this in no way allows a declaration that identifies one rebellion, and pile-on additional, different "rebellions" by any and all common criminals who happen to capitalize on the perceived precarious peace and order situation obtaining in a subsisting declaration as basis for its extension. This also in no way allows the government to rely on a previous finding of actual rebellion to meet the burden of proving the persistence of that actual rebellion such that the mere showing of violent incidents by "rebels" is enough to validate an extension. The Court cannot make a rule that prevents a reasoned discharge of its role under Section 18.

The issue can no longer be framed so simplistically as that of the President's decisive action in an emergency. Almost two years no longer counts as a blink of an eye. Even Fr. Bernas's position in the oft-cited Dissent of Justice Presbitero Velasco, Jr. in *Fortun* recognizes a shift in focus in a Section 18 review:

It may be noted, however, that Section 18, Article VII of the 1987 Constitution requires the Honorable Court to resolve the petitions challenging martial law within thirty days. More than thirty days have elapsed since the filing of the petitions. Does this therefore mean that the Court is now bereft of power to review the proclamation of martial law?

The answer to this question depends on the purpose of the thirty[-]day limit prescribed by the Constitution. The purpose is for the Court to be able to put an end, at the soonest possible time, to the continuing effects of martial law should the Court find the proclamation to be unconstitutional. It should be obvious, however, that once martial law is lifted the thirty[-]day limit no longer serves any purpose. There no longer is any rush to terminate an emergency. The Court therefore is already afforded the luxury of a more leisurely study of whatever issues there might be that need to be resolved.[232]

Thus, two years in, the Court's Section 18 review should have already transcended well beyond the question of whether the President correctly declared martial law. That train left the station in *Lagman v. Medialdea*. Two years in, it is no longer unreasonable to ask for complete, consistent, and accurate information to support a claim that there is sufficient factual basis for a third extension of martial law.

True, the demands of Section 18 are not so unreasonable as to demand a city taken over or overrun, or a certain number of deaths and injuries or amount of property damage before the President can exercise his Commander-in-Chief powers.

But Section 18 is also not so accommodating as to not ask, when martial law — the least benign of the Commander-in-Chief powers — is sought to be kept in place for an extended period, why: (1) the government insists on martial law still without having identified what additional powers are sought to be exercised; (2) the government claims there is a persisting rebellion, but did not charge a single person with rebellion during the last extension; (3) despite the request of the Court to update the factual basis submitted, the AFP is still confined to "spot reports" that detail incidents that happened as early as thirteen months ago, in January of 2018; (4) in 2019, the PNP still has no record of most of the violent incidents in 2018 that form the basis of the President's request for extension to the Congress; (5) despite the massive gains the government achieved in making Mindanao safe enough for people to move about freely, for investments to grow, for the conduct of free and honest elections and plebiscites, it is still not safe enough to return to normalcy.

The government's whole of nation approach to national security is working. The monthly reports in the

implementation of martial law and the statements of the Executive functionaries during the joint session of Congress confirm this. The insufficiency of factual basis for the third extension of martial law is not a failure on the part of the President or Congress; it is a continuing testament to the unwavering heroism of our military, police and civilian auxiliaries, and the commendable resilience of the people in Mindanao.

Accordingly, I vote to GRANT the consolidated petitions and DECLARE that the third extension of Martial Law over the whole of Mindanao does not have sufficient factual basis.

[1] Rollo (G.R. No. 243522), Vol. 2, pp. 825-826, citing Slide Nos. 8 and 9 of the AFP Presentation.

[2] Id. at 826-827, citing Slide Nos. 27 and 26 of the AFP Presentation.

[3] Id. at 827.

[4] Id. at 828. Emphasis in the original.

[5] Id. at 838.

[6] Id.

[7] Id. at 839.

[8] G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1 [En Banc, per J. Del Castillo].

[9] G.R. Nos. 235935, 236061, 236145 & 236155, February 6, 2018 [En Banc, per J. Tijam].

[10] 69 Phil. 635 (1940) [En Banc, per J. Laurel].

[11] Id. at 641-643. Citations omitted; emphasis and underscoring supplied.

[12] J. Caguioa, Dissenting Opinion in *Lagman v. Pimentel III*, supra note 9, at 4.

[13] Rollo (G.R. No. 243522), Vol. 2, p. 838.

[14] Rollo (G.R. No. 243522), Vol. 1, p. 265. The entry reads as follows:

"Inihatid na sa kani kanilang pamilya ang dalawang SF member na pinagbabaril Patay sa Mother Bagua to sa lungsod noong isang araw.

Sa Impormasyong ibinahagi ng Col. Eros James Uri sa BNFM COT. Kahapon ng tanghali ng bigyan ng Military Honor ang dalawa bago paman mahatid sa kani kanilang mga pamilya sina Pfc. Richard Bendanillo. Na taga Alamada, North Cotabato at Cpl. Nelson Paimalan na taga UP1, Maguindanao. BIFF naman ang nakikitang mga suspek sa pamamaril sa dalawang sundalo."

[15] During the oral arguments, the Court requested the respondents to submit a glossary of these acronyms to aid in the understanding of the reports. No submission was made.

[16] Supra note 10, at 643.

[17] See rollo (G.R. No. 243522), Vol. 1, pp. 217-218.

[18] Despite the Court's instructions to the respondents to rectify or supplement these gaps in the evidence in their Memorandum, these incomplete entries were not completed.

[19] *Lagman v. Pimentel III*, supra note 9, at 39, citing *Lagman v. Medialdea*, supra note 8, at 53 and 54.

[20] *People v. Lovedioro*, 320 Phil. 481, 489 (1995) [First Division, per J. Kapunan]. Emphasis and underscoring supplied.

[21] *Rollo* (G.R. No. 243522), Vol. 1, pp. 215-289.

[22] *Rollo* (G.R. No. 243522), Vol. 2, pp. 847-859.

[23] *Id.* at 860.

[24] Annexes "2-A" to "2-U" of the OSG Memorandum, *id.* at 861-881.

[25] Designation of the incident. The designation by the respondents of the types of the incidents (as those enumerated in the respondents' covering summaries in the column activities, e.g., ambushade, arson, carnapping, kidnapping, and murder) is adopted throughout this Opinion for consistency.

[26] Identification of the perpetrator. The reports are grouped according to these criteria:

- No perpetrator. Entries are considered to have identified no perpetrator when the report does not state any perpetrator at all, states that the violent incident was committed by "[an] unidentified person," simply "armed men," "unidentified perpetrators," or descriptions of similar import.
- Suspected perpetrator. Entries are considered as stating a suspected perpetrator when it states that the violent incident was committed by "[more or less] ten (10) suspected [ASG/BIFF/DI]," "unidentified armed men believed to be [ASG/BIFF/DI] member" or other descriptions of similar import.
- General identification. Entries are considered as having generally identified the perpetrator when it states that the violent incident was committed by "[ASG/BIFF/DI]," "undetermined number of [ASG/BIFF/DI]," "riding-in-tandem [ASG/BIFF/DI]" or other descriptions of similar import.
- Specific identification. Entries are considered to have specifically identified a perpetrator when it names a specific person belonging to either ASG, BIFF or DI as having committed the violent incident described, e.g., "three (3) individuals with one (1) identified as Darmin Nani @ Kulot, an ASG member x x x," "undetermined number of ASG members led by Abdulla Jovel Indanan @ Guru," and "assailants identified as @ Ben, Mungkay, Alaam and Allam."

[27] Statement of motive. A report is considered to have no motive when no motive is stated or when the report states that the "motive of the incident not yet determined," "motive x x x is yet to be determined," or "motive of the incident is still unknown." All reports that state a motive are discussed under the Annexes where they are found. See February 5, 2018 account of liquidation, *rollo* (G.R. No. 243522), Vol. 1, p. 221; June 25, 2018 account of kidnapping, *id.* at 237; and July 15, 2018 account of murder, *id.* at 239, as examples.

[28] Incomplete entries. As shown by the exemplars in pages 8-9, these entries show, on their face, that the text in the cells were incomplete. For purposes of conclusions made below, these incomplete entries are still considered. However, if the missing text prevents the Court from identifying the perpetrator or the motive, even if by context these are supplied, then these entries are considered to have stated no perpetrator or motive, as applicable. See May 6, 2018 account of a kidnapping incident, *id.* at 285; and May 13, 2018 account of a liquidation incident, *id.* at 284, in Annex "6" as examples of the treatment for missing text.

[29] Casualty. Casualty count is a total count including all reported casualty, without distinguishing between government, civilian or armed groups.

[30] *Rollo* (G.R. No. 243522), Vol. 1, p. 215.

- [31] Id. at 216, 219, 220, 223, 226-229, 232-233, 237, 239-243 and 245.
- [32] Id. at 230.
- [33] Id. at 216, 223, 225, 229, 231 and 240.
- [34] Id. at 217-218, 222 and 226.
- [35] Id. 221, 226-227, 234, 236-238 and 242-245.
- [36] Id. at 216, 221-222, 224, 232-235, 239, 241 and 244-245.
- [37] Id. at 219, 224, 227 and 235.
- [38] Id. at 217. Emphasis and underscoring supplied.
- [39] Id. at 218. Emphasis and underscoring supplied.
- [40] Id. at 222. Emphasis and underscoring supplied.
- [41] Id. at 224. Emphasis and underscoring supplied.
- [42] Id. at 226. Emphasis and underscoring supplied.
- [43] Id. at 230. Emphasis and underscoring supplied.
- [44] Id. at 235. Emphasis and underscoring supplied.
- [45] Rollo (G.R. No. 243522), Vol. 2, p. 881.
- [46] Rollo (G.R. No. 243522), Vol. 1, p. 242. Emphasis and underscoring supplied.
- [47] Id. at 244. Emphasis and underscoring supplied
- [48] Id. at 246.
- [49] Annex "5" contains 76 entries. There were two double entries; hence, only 74 distinct incidents.
- [50] Id. at 247-250, 254, 256-257, 259-260, 263-264, 266, 269-278 and 281-282.
- [51] Id. at 248, 251, 265, 269, 275 and 279.
- [52] Id. at 272.
- [53] Id. at 247-248, 253, 255-256, 258-263, 265, 267, 271 and 278-280.
- [54] Id. at 272 and 274.
- [55] Id. at 248, 252, 257, 262, 267-271, 273 and 276-277.
- [56] Id. at 264, 266 and 281.
- [57] Id. at 264. Emphasis and underscoring supplied.
- [58] Id. at 266. Emphasis and underscoring supplied.
- [59] Id. at 272. Emphasis and underscoring supplied.
- [60] Id. Emphasis and underscoring supplied.
- [61] Id. at 274. Emphasis and underscoring supplied.

[62] Id. at 280. Emphasis and underscoring supplied.

[63] Id. at 281. Emphasis and underscoring supplied.

[64] Id. at 283.

[65] Id. at 285-288.

[66] Id. at 285.

[67] Id. at 284.

[68] Id. at 286-287.

[69] Id. at 284-286, 288.

[70] Id. at 286.

[71] Id. at 287.

[72] Id.

[73] Id. at 284. Emphasis and underscoring supplied.

[74] Id. at 285.

[75] Id. at 285-286. Emphasis and underscoring supplied.

[76] Rollo (G.R. No. 243522), Vol. 2, pp. 861-881.

[77] Id. at 880.

[78] Rollo (G.R. No. 243522), Vol. 1, p. 288.

[79] In relation to these incidents, the identification by the PNP data took this form: "The incident was perpetrated by the BIFF."

[80] Rollo (G.R. No. 243522), Vol. 2, p. 880.

[81] See id.

[82] Rollo (G.R. No. 243522), Vol. 1, p. 289.

[83] Rollo (G.R. No. 243522), Vol. 1, p. 168, citing Jose Maria Sison, "Great achievements of the CPP in 50 years of waging revolution," available at <<https://josemariasison.org/great-achievements-of-the-cpp-in-50-years-of-waging-revolution/>> (last accessed February 19, 2019). Underscoring omitted.

[84] Id. at 169-170, citing ABS-CBN News, "Early Edition: Joma Sison on 50[th] anniversary of the CPP" (December 25, 2018), available at: <<https://www.youtube.com/watch?v=m2LM5wZa2q8>> (last accessed February 19, 2019).

[85] Id. at 287.

[86] Id. at 224, 231, 235 & 253.

[87] Id. at 243 and 271.

[88] Id. at 226-227, 237-238, 242, 244, 247-248, 251, 253, 255-263, 265, 267-271, 275-280 and 282.

[89] Id. at 219. Emphasis and underscoring supplied.

[90] Id. at 224. Emphasis and underscoring supplied.

[91] Id. at 227. Emphasis and underscoring supplied.

[92] Rollo (G.R. No. 243522), Vol. 2, pp. 853-854.

[93] Id. at 858.

[94] Rollo (G.R. No. 243522), Vol. 1, pp. 72-85.

[95] Id. at 85.

[96] See rollo (G.R. No. 243522), Vol. 2, pp. 861-881. Annexes "2-A" to "2-U," Reports of charges filed did not relate to any of the incidents tagged as "Harassment" in Annexes "4" to "7" of the OSG Comment.

[97] Rollo (G.R. No. 243522), Vol. 1, pp. 73-80 and 84.

[98] Id.

[99] Rollo (G.R. No. 243522), Vol. 2, p. 854.

[100] *People v. Geronimo*, 100 Phil. 90 (1956) [En Banc, per J. J.B.L. Reyes].

[101] For ASG-attributed incidents, there are ten (10) incomplete entries. For BIFF-attributed incidents, there is one (1) incomplete entry. For DI-attributed incidents, there are four (4) incomplete reports.

[102] These are: Twenty-one (21) entries of the sixty-six (66) incidents attributed to the ASG; twenty-eight (28) entries of the seventy-four (74) incidents attributed to the BIFF; and five (5) entries of the ten (10) incidents attributed to the DI.

[103] These are: Fifty-seven (57) entries of the sixty-six (66) incidents attributed to the ASG; sixty-seven (67) entries of the seventy-four (74) incidents attributed to the BIFF; and nine (9) entries of the ten (10) incidents attributed to the DI.

[104] These are: Twenty (20) entries of the sixty-six (66) incidents attributed to the ASG; twenty-eight (28) entries of the seventy-four (74) incidents attributed to the BIFF; five (5) entries of the ten (10) incidents attributed to the DI.

[105] For ASG-attributed incidents, of the nine (9) entiles that supply both perpetrators and motive, seven (7) are equivocal as to the political purpose. For BIFF-attributed incidents, all seven (7) entries that supply both perpetrators and the motive are equivocal as to the political purpose. For DI-attributed incidents, the single (1) entry that supplies both perpetrators and motive is equivocal as to political purpose.

[106] Rollo (G.R. No. 243522), Vol. 2, p. 848.

[107] Id.

[108] Id. at 852.

[109] Rollo (G.R. No. 243522) Vol. 1, p. 37.

[110] Id. at 38.

[111] Rollo (G.R. No. 243677), p. 22.

- [112] Id. Emphasis omitted.
- [113] Id. at 17.
- [114] Id. at 18.
- [115] Rollo (G.R. No. 243745), p. 22.
- [116] Id.
- [117] Rollo (G.R. No. 243522), Vol. 2, pp. 832-833. Citations omitted.
- [118] Supra note 8, at 182.
- [119] Id.
- [119a] Id.
- [120] J. Caguioa, Dissenting Opinion in Lagman v. Pimantel III, supra note 12, at 3.
- [121] Lagman v. Medialdea, supra note 8, at 197. Emphasis and underscoring supplied.
- [122] J. Caguioa, Dissenting Opinion in Lagman v. Medialdea, supra note 8, at 661.
- [123] Supra note 8, at 207.
- [124] Id.
- [125] Id. at 208-209.
- [126] J. Caguioa, Dissenting Opinion in Lagman v. Medialdea, supra note 122, at 644-645.
- [127] Annexes "4" to "7," OSG Comment, rollo (G.R. No. 243522), Vol. 1, pp. 215-289.
- [128] Rollo (G.R. No. 243522), Vol. 2, pp. 521-522. Emphasis and underscoring supplied.
- [129] Id. at 522. Emphasis supplied.
- [130] Id. at 521. Emphasis supplied.
- [131] Id. Emphasis supplied.
- [132] See Annexes "2-A" to "2-U," OSG Memorandum, id. at 861-881.
- [133] Id. at 854.
- [134] Id. at 851.
- [135] Respondents did not address bullet K in either Annex "1" or Annexes "2-A" to "2-U" of the OSG Memorandum.
- [136] Rollo (G.R. No. 243522), Vol. 2, p. 881.
- [137] Id. at 852.
- [138] Id.
- [139] Id.
- [140] Id. at 858-859.

[141] Rollo (G.R. No. 243522), Vol. 1, p. 241.

[142] J. Jardeleza, Dissenting Opinion in *Lagman v. Pimentel III*, supra note 9, at 15-16.

[143] *Lagman v. Medialdea*, supra note 8, at 159, citing Bernas, Joaquin, G., *THE INTENT OF THE 1986 CONSTITUTION WRITERS*, 1995 ed., pp. 456-458.

[144] *Lagman v. Pimentel III*, supra note 9, at 59, citing Benias, Joaquin, G., *THE 1987 CONSTITUTION OF THE PHILIPPINES, A COMMENTARY*, 2009 ed., p. 903.

[145] J. Caguioa, Dissenting Opinion in *Lagman v. Pimentel III*, supra note 12, at 19-20.

[146] Supra note 8, at 159-161, citing *II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND Debates*, pp. 398 and 402 (1986). Emphasis and underscoring supplied.

[147] *Id.* at 159. Emphasis and underscoring supplied.

[148] Supra note 8, at 162. Emphasis supplied.

[149] J. Caguioa, Dissenting Opinion in *Lagman v. Pimentel III*, supra note 12, at 27.

[150] TSN, January 29, 2019, pp. 109-111.

[151] Rollo (G.R. No. 243522), Vol. 2, p. 772.

[152] Rollo (G.R. No. 243522), Vol. 1, p. 173.

[153] *Id.* at 174.

[154] *Id.*

[155] *Id.* at 175.

[156] (last accessed February 19, 2019).

[157] *Id.*

[158] J. Carpio, Dissenting Opinion in *Lagman v. Pimentel III*, supra note 9, pp. 6-7, 10. Citations omitted; emphasis and underscoring supplied.

[159] J. Caguioa, Dissenting Opinion in *Lagman v. Pimentel III*, supra note 12, at 14.

[160] Emphasis supplied.

[161] J. Caguioa, Dissenting Opinion in *Lagman v. Pimentel III*, supra note 12, at 15.

[162] *Id.*

[163] See rollo (G.R. No. 243522), Vol. 1, p. 3; rollo (G.R. No. 243677), p. 5; rollo (G.R. No. 243745), p. 7.

[164] G.R. No. 227757, July 25, 2017, 832 SCRA 111 [En Banc, per J. Perlas-Bernabe].

[165] 359 Phil. 276, 300 (1998) [En Banc, per J. Panganiban].

[166] *Baguilat, Jr. v. Alvarez*, supra note 164, at 132-133.

[167] *Id.* at 133.

[168] *Spouses Dela Paz v. Senate Committee on Foreign Relations*, 598 Phil. 981, 986 (2009) [En Banc, per J.

Nachura].

[169] 149 Phil. 547 (1971) [En Banc, per C.J. Concepcion].

[170] Lagman v. Medialdea, supra note 8 and Lagman v. Pimentel III, supra note 9.

[171] J. Caguioa, Dissenting Opinion in Lagman v. Medialdea, supra note 122, at 647.

[172] J. Jardeleza, Dissenting Opinion in Lagman v. Pimentel III, supra note 142, at 2.

[173] Tañada v. Cuenco, 103 Phil. 1051, 1067 (1957) [En Banc, per J. Concepcion].

[174] <www.congress.gov.ph/download/docs/hrep.house.rules.pdf> (last accessed February 19, 2019).

[175] Pimentel, Jr. v. Senate Committee on the Whole, 660 Phil. 202, 220 (2011) [En Banc, per J. Carpio].

[176] Ponencia, p. 15.

[177] See id.

[178] RULES OF COURT, Rule 128, Sec. 1.

[179] Preferably complete, comprehensible, and credible.

[180] Tolentino, Jr. v. Jallores, G.R. No. 242051, November 5, 2018 (Unsigned Resolution). Citation omitted; emphasis supplied.

[181] Sandoval II v. Office of the Ombudsman, G.R. No. 241671, October 1, 2018 (Unsigned Resolution). Citation omitted.

[182] People v. Dela Torre-Yadao, 698 Phil. 471, 487-488 (2012) [En Banc, per J. Abad]. Citations omitted; emphasis supplied.

[183] Ponencia, p. 16.

[184] Id. at 19.

[185] Ponencia, p. 15.

[186] 91 Phil. 882, 887 (1952) [En Banc, per J. Bengzon].

[187] Ponencia, p. 16.

[188] Id.

[189] 522 Phil. 705 (2006) [En Banc, per J. Sandoval-Gutierrez].

[190] 392 Phil. 618 (2000) [En Banc, per J. Kapunan].

[191] Ponencia, p. 16.

[192] The Commander-in-Chief Clause in the 1935 Constitution reads:

ARTICLE VII.—EXECUTIVE DEPARTMENT

SEC. 11. (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, or imminent danger thereof, when the public safety requires it, he may suspend the privileges of the writ of habeas corpus, or place the Philippines or any part thereof under martial law. The

extension of the proclamation and suspension is subject to the Court's review; probable cause as the quantum of proof

There was no counterpart provision to the third paragraph of Section 18 for a review by the Court.

[193] 5 Phil. 87 (1905) [En Banc, per J. Johnson].

[194] *Montenegro v. Castañeda*, supra note 186, at 887.

[195] *Barcelon v. Baker, Jr.*, supra note 193, at 96-97. *Italics in the original.*

[196] *Id.* at 97-98.

[197] In *Lansang*, the Court stated: "The first major question that the Court had to consider was whether it would adhere to the view taken in *Barcelon v. Baker* and reiterated in *Montenegro v. Castañeda*, pursuant to which, 'the authority to decide whether the exigency has arisen requiring suspension (of the privilege or the writ of habeas corpus) belongs to the President and his "decision is final and conclusive" upon the courts and upon all other persons.' x x x Upon mature deliberation, a majority of the Members of the Court had, however, reached, although tentatively, a consensus to the contrary, and decided that the Court had authority to and should inquire into the existence of the factual bases required by the Constitution for the suspension of the privilege of the writ; x x x." (*Lansang v. Garcia*, supra note 169, at 577.)

[198] 1987 CONSTITUTION, Art. VIII, Sec. 1.

[199] Supra note 189, at 740 and 741 -742.

[200] Supra note 190, at 640.

[201] *Id.* at 642-644. Emphasis and underscoring supplied.

[202] Ponencia, p. 20.

[203] *Id.* at 22.

[204] Cited in *J. Velasco, Dissenting Opinion in Fortun v. Macapagal-Arroyo*, 684 Phil. 526, 629-630 (2012).

[205] 158-A Phil. 1 (1974) [En Banc, per C.J. Makalintal].

[206] Ponencia, p. 22.

[207] *J. Carpio, Dissenting Opinion in Fortun v. Macapagal-Arroyo*, supra note 204, at 597.

[208] *J. V.V. Mendoza Amicus Memorandum in Fortun*, p. 11. He adds: The phrase "imminent danger thereof" was already in the Commander in Chief Clause. What was done was to write it also in the Bill of Rights.

[209] *Id.* at 11-12, citing II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 411-413 (1986).

[210] *Id.* at 9-13.

[211] Ponencia, p. 17.

[212] *Id.*

[213] *Id.* at 19.

[214] *Id.*

[215] See AFP Monthly Reports on the implementation of Martial Law in Mindanao from January to December 2018.

[216] *Barcelon v. Baker, Jr.*, supra note 193, at 118-119. Emphasis and underscoring supplied.

[217] Ponencia, p. 27.

[218] *Id.*, citing *Lagman v. Pimentel III*, supra note 9, at 43 and 44.

[219] 279 Phil. 266 (1991) [En Banc, Per Curiam].

[220] *Id.* at 328-331.

[221] 410 Phil. 78 (2001) [En Banc, per J. Melo].

[222] *Id.* at 105-106. Citations omitted; emphasis supplied.

[223] 466 Phil. 482 (2004) [En Banc, per J. Tinga].

[224] *Id.* at 532.

[225] Supra note 100.

[226] *Id.* at 95. Citations omitted; emphasis supplied.

[227] Ponencia, p. 23.

[228] *Id.* at 27.

[229] Federalist No. 78, "The Judiciary Department," Alexander Hamilton, available at: <http://avalon.law.yale.edu/18th_century/fed78.asp> (last accessed February 19, 2019). Citations omitted; emphasis supplied.

[230] 63 Phil. 139 (1936) [En Banc, per J. Laurel].

[231] *Id.* at 157-158. Emphasis and underscoring supplied.

[232] Fr. Joaquin Bernas, Brief of Amicus Curiae in *Fortun v. Macapagal-Arroyo*, p. 7. Emphasis and underscoring supplied.

CONCURRING OPINION

REYES, JR., A. J.:

As to purpose, martial law is known in the west as the dramatic solution to a violent situation - to quell a riot, to suppress anarchy, to overcome rebellion. Here in the Philippines, this primary purpose remains, but it has been enlarged to embrace also the extirpation of the ills and conditions which spawned the riot, the anarchy, and the rebellion.[1]

Chief Justice Fred Ruiz Castro's Speech during the 8[th] World Peace Through Law Conference held in Manila

Martial law has been a tempestuous issue in the Philippines since its imposition in 1972. Many correlate the same to being a mere tool for the vesting of unlimited and unchecked powers to a then sitting President.

This phenomenon, while understandable, has unfortunately shunted to the side the good that legitimate martial law can bring: the efficiency in combating grave crises, the boon to a state and its citizens' safety and security, and the promise of peace. This, especially when operating within the overall rule of law, subject to certain and specific constitutional constraints.[2] These restraints have been immortalized in the 1987 Constitution, known to have been drafted and promulgated with the intent of permitting martial law only when public order and safety will it.

While martial law is an exercise of the President, as aided by the military, and in place "of certain governmental agencies which for the time being are unable to cope with existing conditions in a locality which remains subject to the sovereignty,"[3] the present Constitution has limited the exercise of this discretion of the President and put it under the review powers of Congress and of the Supreme Court. Under the 1987 Constitution: "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,"[4] to wit:

The next text gives to the Supreme Court the power not just to determine executive arbitrariness in the manner of arriving at the suspension but also the power to determine the sufficiency of the factual basis of the suspension. Hence, the Court is empowered to determine whether in fact actual invasion and rebellion exists and whether public safety requires the suspension. Thus, quite obviously too, since the Court will have to rely on the fact-finding capabilities of the executive department, the executive department, if the President wants his suspension sustained, will have to open whatever findings the department might have to the scrutiny of the Supreme Court.

It is thus clear that it is the Supreme Court's specific mandate to determine the fact of actual rebellion and the need for public safety. While not supplanting the discretion of the President, the Court must nonetheless rule as to whether the power granted to the President was arbitrarily exercised, and if such was used to the detriment of the affected populace. A reluctance to do so adequately would amount to shirking the Court's responsibility to utilize its review power, while a failure to do so would cause great prejudice to the State. A proper exercise of the same would gain ground in turning the existence of martial law as a remnant of the abusive legacy, into a tool that is used to uphold peace and prosperity when the need calls for it.

The Court's power of judicial review over extensions to martial law and suspensions of the privilege of the writ of habeas corpus is limited to the determination of whether there is "sufficient factual basis."

Section 18, Article VII of the 1987 Constitution[5] vests upon the Court the authority to review the factual basis of the President's declaration of martial law and suspension of the privilege of the writ of habeas corpus or to any extension thereof. This authority has been expressly recognized as *sui generis* and in *Lagman v. Pimentel III*,[6] it has been opined that if invoked, it allows the Court to act as champions of the Constitution.[7]

However, in order to properly exercise this special power of judicial review, the Court must be mindful of its boundaries and limitations. As pronounced by the Court in *Lagman v. Medialdea*,[8] and subsequently affirmed in *Lagman v. Pimentel III*,[9] the scope of the Court's power to review under Section 18, Article VII should be confined to the determination of whether the President's exercise of his powers as Commander-in-Chief under said provision, or in this case, the extension of the imposition of martial law and the suspension of the writ of habeas corpus, has "sufficient factual basis."

Probable cause is the standard of proof required in establishing sufficiency of the factual basis.

With that being said, the Court has been unequivocal in ruling that "sufficient factual basis" necessarily connotes that the President has probable cause to believe that: (1) that there exists an actual invasion or rebellion; and (2) that public safety so requires the imposition of martial law or the suspension of privilege of the writ of habeas

corpus or the extension thereof.[10]

The Court has already clarified in the past that it is axiomatically the probable cause standard, and none other, that should guide the President to establish the existence of the above-mentioned conditions. Probable cause here means such evidence which would lead a reasonable man, making use of common sense, to believe that more likely than not, there is actual rebellion or invasion. This point has been extensively elucidated on by the Court in *Lagman v. Medialdea*,[11] to wit:

In determining the existence of rebellion, the President only needs to convince himself that there is probable cause or evidence showing that more likely than not a rebellion was committed or is being committed. x x x Along this line, Justice Carpio, in his Dissent in *Fortun v. President Macapagal-Arroyo*, concluded that the President needs only to satisfy probable cause as the standard of proof in determining the existence of either invasion or rebellion for purposes of declaring martial law, and that probable cause 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. This is because unlike other standards of proof, which, in order to be met, would require much from the President and therefore unduly restrain his exercise of emergency powers, the requirement of probable cause is much simpler. It merely necessitates an average man [to weigh] the facts and circumstances without resorting to the calibration of the rules of evidence of which he has no technical knowledge. He [merely] relies on common sense [and] x x x needs only to rest on evidence showing that, more likely than not, a crime has been committed x x x by the accused.[12] (Citations omitted and Emphasis supplied)

The President found probable cause for the extension of martial law and the suspension of the writ of habeas corpus.

As his Letter[13] dated December 6, 2018 to both Houses of Congress would show, the President was thoroughly convinced of the existence of rebellion in Mindanao and that the extension of martial law was necessary to maintain public safety, to wit:

Notwithstanding these gains, the security assessment submitted by the AFP and PNP highlights certain essential facts which indicate that rebellion still persists in Mindanao and that public safety requires the continuation of Martial Law in the whole of Mindanao.

The Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, Daulah Islamiyah (DI), and other terrorist groups (collectively labelled as LTG) which seek to promote global rebellion, continue to defy the government by perpetrating hostile activities during the extended period of Martial Law. At least four (4) bombings/Improvised Explosive Device (IED) explosions had been cited in the AFP report. The Lamitan City bombing on 31 July 2018 that killed eleven (11) individuals and wounded ten (10) others, the Isulan, Sultan Kudarat IED explosion on 28 August and 02 September 2018 that killed five (5) individuals and wounded forty-five (45) others, and the Barangay Apopong IED explosion that left eight (8) individuals wounded.

The DI forces continue to pursue their rebellion against the government by furthering the conduct of their radicalization activities, and continuing to recruit new members, especially in vulnerable Muslim communities.

While the government was preoccupied in addressing the challenges posed by said groups, the CTG which has publicly declared its intention to seize political power through violent means and supplant the country's democratic form of government with Communist rule x x x. On the part of the military, the atrocities resulted in the killing of eighty-seven (87) military personnel and wounding of four hundred eight (408) others.

Apart from these, major Abu Sayyaf Group factions in Sulu continue to pursue kidnap for ransom activities to finance their operations x x x.

The foregoing merely illustrates in general terms the continuing rebellion in Mindanao. x x x.

A further extension of the implementation of Martial Law and suspension of the privilege of the writ of habeas corpus in Mindanao will enable the AFP, the PNP, and all other law enforcement agencies to finally put an end to the on-going rebellion in Mindanao and continue to prevent the same from escalating in other parts of the country. We cannot afford to give the rebels any further breathing room to regroup and strengthen their forces. Public safety indubitably requires such further extension in order to avoid the further loss of lives and physical harm, not only to our soldiers and the police, but also to our civilians. Such extension will also enable the government and the people of Mindanao to sustain the gains we have achieved thus far, ensure the complete rehabilitation of the most affected areas therein, and preserve the socio-economic growth and development now happening in Mindanao.

For all of the foregoing reasons, I implore the Congress of the Philippines to further extend the proclamation of Martial Law and the suspension of the privilege of the writ of habeas corpus in the whole of Mindanao for a period of one (1) more year from 1 January 2019 to 31 December 2019, or for such other period of time as the Congress may determine, in accordance with Section 18, Article VII of the 1987 Philippine Constitution.[14] (Emphasis supplied)

In fact, the records readily display the numerous reports[15] which were submitted to the President prior to the extension of martial law. These reports described violent incidents, disturbances, and skirmishes carried out by the Abu Sayyaf Group (ASG), the Bangsamoro Islamic Freedom Fighters (BIFF), the Dawlah Islamiyah (DI), and other Local Terrorist Groups (LTGs) covering the period of January 1, 2018 to December 31, 2018.

One of the reports submitted summarized ASG-initiated violent incidences in Mindanao. It exhibited data revealing a total of sixty-six (66) incidents, among which were sixteen (16) harassment operations, eighteen (18) kidnappings, five (5) ambushes, and eight (8) IED explosion related incidents. Consequently, a total of thirty-three (33) persons were killed while thirty-six (36) were wounded.[16]

Another report detailed BIFF-initiated violent incidences. The report revealed that a total of seventy-four (74) incidents were recorded which led to the death of twenty-four (24) people and the wounding of thirty (30). The report also indicated that out of said incidents, forty (40) were harassment operations while twenty one (21) were connected to IED and roadside bombings.[17]

Additionally, the report which summarized DI-initiated violent incidents revealed that these incidences resulted in the injuring of ninety-three (93) individuals and the death of seven (7).[18]

Finally, the report which dealt with NPA-initiated violent incidences in Mindanao displayed a staggering one hundred and ninety three (193) incidents occurring during the period of January 1, 2018 up until December 31, 2018. Among these incidents, one hundred and thirty (130) were reported to be guerilla operations while the other sixty three (63) were attributed to terrorist acts.[19]

The Philippine National Police (PNP), through Police Director Ma. O. Aplasca, submitted a Letter[20] which supplemented the above-mentioned reports. More specifically, the supplemental data was able to identify various LTGs as the perpetrators of different kidnappings, bombings, and harassment operations against the government and civilians alike.

In line with the above-mentioned reports, respondents were able to indicate the following circumstances which took place in Mindanao during the second extension of martial law covering the period of January 1, 2018 to December 31, 2018:

- No less than 181 persons in the martial law Arrest Orders have remained at large.
- Despite the dwindling strength and capabilities of the local terrorist rebel groups, the recent bombings that transpired in Mindanao that collectively killed 16 people and injured 63 others in less than 2 months is a

testament on how lethal and ingenious terrorist attacks have become.

- On October 5, 2018, agents from the Philippine Drug Enforcement Agency (PDEA) who conducted an anti-drug symposium in Tagoloan II, Lanao del Sur, were brutally ambushed, in which five (5) were killed and two (2) were wounded.
- The DI continues to conduct radicalization activities in vulnerable Muslim communities and recruitment of new members, targeting relatives and orphans of killed DI members. Its presence in these areas immensely disrupted the government's delivery of basic services and clearly needs military intervention.
- Major ASG factions in Sulu and Basilan have fully embraced the DAESH ideology and continue their express kidnappings. As of December 6, 2018, there are still seven (7) remaining kidnap victims under captivity.
- Despite the downward trend of insurgency parameters, Mindanao remains to be the hotbed of communist rebel insurgency in the country. Eight (8) out of the 14 active provinces in terms of communist rebel insurgency are in Mindanao.
- The Communist Terrorist Rebel Group in Mindanao continues its hostile activities while conducting its organization, consolidation and recruitment. In fact, from January to November 2018, the number of Ideological, Political and Organizational (IPO) efforts of this group amounted to 1,420, which indicates their continuing recruitment of new members. Moreover, it is in Mindanao where the most violent incidents initiated by this group transpire. Particularly, government security forces and business establishments are being subjected to harassment, arson and liquidations when they defy their extortion demands.
- The CTRG's exploitation of indigenous people is so rampant that Lumad schools are being used as recruiting and training grounds for their armed rebellion and anti-government propaganda. On November 28, 2018, Satur Ocampo and 18 others were intercepted by the Talaingod PNP checkpoint in Davao del Norte for unlawfully taking into custody 14 minors who are students of a learning school in Sitio Dulyan, Palma Gil, in Talaingod town. Cases were filed against Ocampo's camp for violations of Republic Act (R.A.) No. 10364, in relation to R.A. No. 7610, as well as violation of Article 270 of the Revised Penal Code (RPC), due to the Philippine National Police's (PNP) reasonable belief that the school is being used to manipulate the minds of the student's rebellious ideas against the government.[21]

These incidences, taken altogether, showcase the insurgents' overall purpose of furthering rebellion in Mindanao. To further shed light on the connection between the aforementioned acts of harassment, kidnapping, arson, and other violent acts to rebellion, the AFP, through Major General Pablo. M. Lorenzo, submitted a Letter[22] to the Court clarifying the same, to wit:

The word "harassment" is a military term for a type of armed attack whether the perpetrators fire at a stationary military personnel, auxiliaries, or installations for a relatively short period of time (as opposed to a full armed attack) for the purpose of inflicting casualties, as diversionary effort to deflect attention from another tactical undertaking, or to project presence in the area. x x x This is a common tactic employed by the Communist Terrorist Group, the ASG, DI, and BIFF. On the other hand, kidnapping is undertaken particularly by the ASG to finance its operational and administrative expenses in waging rebellion. x x x With regard to arson, the tactic is commonly used by the same rebel groups for various purposes such as intimidating people who are supportive of the government, as punitive action for those who refuse to give in to extortion demands, or simply to terrorize the populace into submission. All these activities are undoubtedly undertaken in furtherance of rebellion. x x x. But as mentioned earlier, the events in the lists were not selected but rather constitute the complete record of all violent incidents that occurred in 2018 that are attributed to a specific threat group or any of its members. The argument advanced is that these incidents should be viewed in their totality and not as unrelated, isolated events. These violent incidents, when combined with the recorded armed encounters or clashes between government troops and rebel groups, and taking into account the substantial casualties

resulting from these combined events, show a consistent pattern of armed uprising or rebellion in Mindanao.[23] (Emphasis supplied)

Unsurprisingly, a quick run-through of the offenses included in the reports from the AFP will show a stark and disturbing similarity with the actions used as basis for the initial proclamation of martial law and its subsequent second extension.

In *Lagman v. Medialdea*,^[24] the military reports therein contained intelligence data detailing numerous acts of violence perpetrated by the Maute Group, alongside other Local Terrorist Groups (LTGs), against civilians and government authorities. Among these acts of violence committed by the LTGs were bombings of government and civilian establishments, armed hostilities against government troops, kidnappings and ransoming, and recruitment of members.^[25] Specifically, the following formed the probable cause basis for the President to declare a state of martial law and suspend the privilege of the writ of habeas corpus:

(1) Attacks on various government and privately owned facilities.

At 1400H members of the Maute Group and ASG, along with their sympathizers, commenced their attack on various facilities - government and privately owned - in the City of Marawi; Other educational institutions were also burned, namely, Senator Ninoy Aquino College Foundation and the Marawi Central Elementary Pilot School; The Maute Group also attacked Amai Pakpak Hospital and hoisted the DAESH flag there, among other several locations. As of 0600H of [24 May] 2017, members of the Maute Group were seen guarding the entry gates of Amai Pakpak Hospital. They held hostage the employees of the Hospital and took over the PhilHealth office located thereat; The groups likewise laid siege to another hospital, Filipino-Libyan Friendship Hospital, which they later set ablaze; Lawless armed groups likewise ransacked the Landbank of Philippines and commandeered one of its armored vehicles.^[26]

(2) Forcible entry and assaults on personnel.

At 1600H around fifty (50) armed criminals assaulted Marawi City Jail being manage by the Bureau of Jail Management and Penology (BJMP); The Maute Group forcibly entered the jail facilities, destroyed its main gate, and assaulted on-duty personnel. BJMP personnel were disarmed, tied, and/or locked inside the cells; The group took cellphones, personnel-issued firearms, and vehicles (i.e., two [2] prisoner vans and private vehicles).^[27]

(3) Facilitating inmate escapes.

The Maute Group facilitated the escape of at least sixty-eight (68) inmates of the City Jail.^[28]

(4) Interruption/blackouts of energy supplies.

By 1630H, the supply of power into Marawi City had been interrupted, and sporadic gunfights were heard and felt everywhere. By evening, the power outage had spread citywide. (As of 24 May 2017, Marawi City's electric supply was still cut off, plunging the city into total black-out.)^[29]

(5) Illegal/aggressive occupation of territories.

As of 2222H, persons connected with the Maute Group had occupied several areas in Marawi City, including Naga Street, Bangolo Street, Mapandi, and Camp Keithly, as well as the following barangays: Basak Malutlot, Mapandi, Saduc, Lilod Maday, Bangon, Saber, Bubong, Marantao, Caloocan, Banggolo, Barionaga, and Abubakar; These lawless armed groups had likewise set up road blockades and checkpoints at the Iligan City-Marawi City junction.^[30]

(6) Ambushes/ambuscades.

From 1800H to 1900H, the same members of the Maute Group ambushed and burned the Marawi Police

Station. A patrol car of the Police Station was also taken.[31]

(7) Bomb threats.

By evening of 23 May 2017, at least three (3) bridges in Lanao del Sur, namely, Lilod, Bangulo, and Sauiaran, fell under the control of these groups. They threatened to bomb the bridges to pre-empt military reinforcement.[32]

(8) Kidnapping/taking of hostages.

Later in the evening, the Maute Group burned Dansalan College Foundation, Cathedral of Maria Auxiliadora, the nun's quarters in the church, and the Shia Masjid Moncado Colony. Hostages were taken from the church.[33]

(9) Forcible recruitment.

They are also preventing Maranaos from leaving their homes and forcing young male Muslims to join their groups.[34]

(10) Murders.

A member of the Provincial Drug Enforcement Unit was killed during the takeover of the Marawi City Jail; About five (5) faculty members of Dansalan College Foundation had been reportedly killed by the lawless groups.; Latest information indicates that about seventy-five percent (75%) of Marawi City has been infiltrated by lawless armed groups composed of members of the Maute Group and the ASG. As of the time of this Report, eleven (11) members of the Armed Forces and the Philippine National Police have been killed in action, while thirty-five (35) others have been seriously wounded; There are reports that these lawless armed groups are searching for Christian communities in Marawi City to execute Christians.[35]

On the other hand, in *Lagman v. Pimentel III*,[36] the President based his request for the second extension of martial law on reports which indicated that various LTGs: (1) continuously offered armed resistance against the government, (2) actively recruited and trained new members, and (3) executed retaliatory attacks and bombings.[37] The following excerpts from the report emphasize the serious threat these various LTGs posed to our country's liberty, viz:

(q) Mindanao remains the hotbed of communist rebellion considering that 47% of its manpower, 48% of its firearms, 51% of its controlled barangays and 45% of its guerrilla fronts are in this region. Of the 14 provinces with active communist insurgency, 10 are in Mindanao. Furthermore, the communist rebels' Komisyon Mindanao (KOMMID) is now capable of sending augmentation forces, particularly "Party Cadres," in Northern Luzon.

(r) The hostilities initiated by the communist rebels have risen by 65% from 2016 to 2017 despite the peace talks. In 2017 alone, they perpetrated 422 atrocities in Mindanao, including ambush, raids, attacks, kidnapping, robbery, bombing, liquidation, land mine/IED attacks, arson, and sabotage, that resulted in the death of 47 government forces and 31 civilians. An ambush in Bukidnon in November 2017 killed one PNP personnel, two civilians and a four-month old baby. [Fifty-nine] (59) incidents of arson committed by the Communist rebels against business establishments in Mindanao last year alone destroyed P2.378 billion worth of properties. Moreover, the amount they extorted from private individuals and business establishments from 2015 to the first semester of 2017 has been estimated at P2.6 billion.[38] (Citations omitted and Emphasis supplied)

It is readily observable that, with only minor deviation, the facts alleged by respondents in their reports show a clear and bothersome parallel with those presented as findings of fact in the previous two cases.[39] The similarities of the factual circumstances between the initial proclamation, the second extension, and the herein third extension only bolster the latter's validity.

For petitioners' part, they argue that there is no longer any rebellion in Mindanao endangering public safety. They advocate that the dated letters and reports of the military, particularly the letter dated December 6, 2018, do not contain any tangible proof of acts constituting and actually related to rebellion, but instead contain mere acts of lawlessness and terrorism by so-called remnants of terrorist groups and by the communist insurgents.[40] It is further alleged that respondents failed to alleviate doubts as to the veracity of the incidents of violence as stated in the reports, even when given the opportunity to explain the numerous inconsistencies and gaps in the same, especially as to the connection of the acts to the atmosphere of rebellion in the region.

Moreover, petitioners claim that the failure of respondents to properly substantiate the reports bolsters the former's point that there is an absence of an actual and physical rebellion consisting of an armed uprising against the government for the purpose of removing Mindanao or a portion thereof from allegiance to the Republic of the Philippines.[41]

I humbly disagree.

The totality of the evidence presented is enough to convince the President that a state of rebellion continues to exist.

In making an assessment, the Court should consider the totality of the information constituting the "factual basis" of the declaration or extension. All the pieces of evidence should be appraised and evaluated in their entirety, and not on a piecemeal or individual basis. Taken altogether, the information must be sufficient to convince an ordinary man of ordinary intelligence that there is an on-going rebellion.[42]

Whether the said reports, taken as a whole, constitute sufficient basis for the President to conclude that more likely than not, actual rebellion exists, is entirely the latter's prerogative. This point was emphasized in *Lagman v. Medialdea*,[43] to wit:

To be sure, the facts mentioned in the Proclamation and the Report are far from being exhaustive or all-encompassing. At this juncture, it may not be amiss to state that as Commander-in-Chief, the President has possession of documents and information classified as "confidential", the contents of which cannot be included in the Proclamation or Report for reasons of national security. These documents may contain information detailing the position of government troops and rebels, stock of firearms or ammunitions, ground commands and operations, names of suspects and sympathizers, etc. In fact, during the closed door session held by the Court, some information came to light, although not mentioned in the Proclamation or Report. But then again, the discretion whether to include the same in the Proclamation or Report is the judgment call of the President. In fact, petitioners concede to this. During the oral argument, petitioner Lagman admitted that the assertion of facts [in the Proclamation and Report] is the call of the President.

It is beyond cavil that the President can rely on intelligence reports and classified documents. "It is for the President as [C]ommander-in-[C]hief of the Armed Forces to appraise these [classified evidence or documents reports] and be satisfied that the public safety demands the suspension of the writ." Significantly, respect to these so-called classified documents is accorded even "when [the] authors of or witnesses to these documents may not be revealed.[44] (Citations omitted and emphasis supplied)

Furthermore, as explained emphatically in *Lagman v. Medialdea*,[45] the mere 'presence of inconsistencies and ambiguities in the reports should not operate to detract from the bigger picture these reports are painting. After all, the determination of the absolute correctness, accuracy, or precision of the facts which were made the basis of the imposition of martial law or its extension is not within the power of this Court to ascertain.[46]

More simply put, the determination of whether all the information presented, taken as a whole, in spite of inherent obscurities and inconsistencies, is enough to portray that a state of rebellion exists and that the further extension

of martial law is required to protect public safety, is entirely the judgment call of the President.[47]

Identifying rebellion.

By its nature and through a perusal of the elements that make up the offense, rebellion can be properly termed as a crime of the masses or multitudes involving crowd action done in furtherance of a political end.[48] Rebellion 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 Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or depriving the President or the Legislature, wholly or partially, of any of their powers or prerogatives.[49]

For a finding of rebellion to prosper, the following elements must be present:[50]

- That there be a (a) public uprising and (b) taking arms against the Government; and
- 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.

The crime of rebellion is complete the very moment a group rises publicly and takes up arms against the Government, for the purpose of overthrowing the latter by force. The Revised Penal Code (RPC) speaks of the intent or purpose to overthrow the Government as the subjective element, while the acts of rising publicly and taking arms against the Government, which is milder than the more aggressive phrase "levies war" used in the definition of treason under the RPC,[51] is the normative element of the offense,[52] i.e. related to the norms or standards given.

Justice Montemayor in his separate opinion in *People v. Geronimo*,[53] offers a guide in identifying these norms for the overt acts constitutive of the crime of rebellion, to wit:

One of the means by which rebellion may be committed, in the words of said article 135, is by "engaging in war against the forces of the government" and 'committing serious violence' in the prosecution of said 'war'. These expressions imply everything that war connotes, namely: resort to arms, requisition of property and services, collection of taxes and contributions, restraint of liberty, damage to property, physical injuries and loss of life, and the hunger, illness and unhappiness that war carries in its wake — except that, very often, it is worse than war in the international sense, for it involves internal struggle, a fight between brothers, with a bitterness and passion or ruthlessness seldom found in a contest between strangers. Being within the purview of "engaging in war" and 'committing serious violence', said resort to arms, with the resulting impairment or destruction of life and property, constitutes not two or more offenses, but only one crime — that of rebellion plain and simple.

Now that we find that what article 135 provides is not engaging in war, but merely engaging in combat, and knowing the vast difference between war and mere combat, there is the possibility that some of the considerations and conclusions made in that majority resolution in the *Hernandez* case may be affected or enervated. In other words, our law in rebellion contemplates on only armed clashes, skirmishes, ambushade, and raids, not the whole scale conflict of civil war like that between the Union and Confederate forces in the American Civil War, where the rebels were given the status of belligerency under the laws of war, and

consequently, were accorded much leeway and exemption in the destruction of life and property and the violation of personal liberty and security committed during the war.

In the consolidated petition,[54] with respect to the "hostile activities during the extended period of martial law" committed or attributed to the ASG, - the BIFF, the DI, and other terrorist groups, petitioners alleged that both the military and the President failed to connect these "hostile activities" to rebellion. Petitioners mentioned that the reported acts, among others, either lack clarification, lack some or all of the elements of rebellion, or are even completely unrelated or do not constitute the offense. Some of these incidents cited as questionable in relation to the finding of rebellion include, among others, four bombings/IED explosions, radicalization and recruitment activities, acts of harassment against government installations, liquidation operations and arson attacks as part of extortion schemes, kidnap-for-ransom activities of major ASF factions in Sulu.

However, it is opined that the various acts of violence presented by respondents as basis for the extension are part and parcel of the already existing state of rebellion in Mindanao, and in fact cannot be deemed or considered separate from the same. It is not necessary that said rebels succeed in overthrowing the government, nor is an actual clash with the forces of the Government absolutely necessary,[55] especially as we need to take into context the understanding of modern warfare that oftentimes wars are fought without set rules, that they may be fought psychologically, in the air, or on the ground. Many ascribe images of well-organized, uniformed armies marching in close formation in the midst of exploding shells when picturing armed conflict,[56] in actuality, however, the real image differs from depictions of conflicts in countries such as Vietnam, Iraq, or Afghanistan,[57] which can be characterized more by irregular or guerilla tactics.

Of particular and relevant note is that military conflicts which are motivated by potentially borderless ideological, criminal, religious, or economic goals instead of mere defense of territory, are on the rise.[58] Today, the monopoly on violence and the prevention of the same has been fractured on multiple levels, as "governments from Mexico and Venezuela to Pakistan and to here in the Philippines have lost control of swathes of national territory used by armed groups as the base for military activities that often support cross-border ambitions or enterprises." [59]

A modern state of rebellion highlights the prevalent idea that rebels have the military capacity to challenge and harass the state, but lack the capacity to confront it in a direct and frontal way,[60] and oftentimes, a devastating, proactive response on the part of a government to a direct armed

challenge will ensure that the rebels' only option is to fight asymmetrically.[61] As in several in-country wars such as those which occurred in El Salvador (1979-92), Peru (1980-96), and Nepal (1996-2006), the rebel groups therein tended to "hover just below the military horizon," hiding and relying on harassment and surprise, stealth, and raiding.[62] Despite the utilization of these unconventional methods, the rebel forces are frequently still able to establish territorial control in crucial and strategic areas,[63] to the vast detriment of the innocent civilians residing in the region.

The violent incidences have unveiled the new nature of the conflict between the government and insurgency, one that the military is behooved to respect otherwise they will quickly lose control of the situation and subsequently the region. This includes the modern tactics and tools the insurgents have utilized to threaten the government to adhere to their philosophy. IEDs for instance have become one of the most devastating weapons in military conflicts in the past few years,[64] and a look at the incidences of violence as reported will show that the rebel factions have not hesitated to rely on the same to strike the region's citizenry and infrastructure. The IED devices are small, easy to camouflage, come in multiple types with many combinations of munitions and detonating systems. They can often and easily be assembled from easily obtainable ingredients such as agricultural supplies or chemicals from a factory or drugstore.[65] The ease that they may be put together and used are buoyed by the

fact that they require no complicated supply chain or time-consuming deployment, and instructions for manufacturing are simple and circulated all over the internet.[66] It has in fact been opined that the sheer contrast between the homemade quality of IEDs and the usual technological superiority of the state forces that they undermine go a long way in promoting propaganda such as David-versus-Goliath narratives, helping in public relations and inspiring more insurgents to join the cause to combat the government.[67]

Aside from weaponized individual bombers and the internet, the latter used at the frontier of cyberwar and hacking civilian and military infrastructure, what these tools and techniques have in common is their ease of access.[68] These not only improve the chances of rebel forces when it comes to direct clashes, but also have deleterious indirect effects, such as the "constellation of online militant voices that amplify hostile messages, spread propaganda materials and threats, and attract new recruits to their cause." [69]

Therefore, it is incorrect for petitioners to state that public safety is not imperiled and martial law does not necessitate a third extension because of the absence of an "actual rebellion consisting of an armed uprising." [70] While petitioners have used the continuous and consistent incidences of violence as reported by the government to declare that there is no rebellion taking place in the region, for purposes of erring on the side of pragmatism one must adhere to an opposite standard of thinking which is to take the problem of political violence as one aggravated by each and every violent act committed within the rebellion zone.

As for the other indispensable element, the facts show that the political purpose for the uprising remains extant. I draw attention to the fact that the crimes cited were perpetrated by groups previously recognized by the Court as rebel groups in *Lagman v. Medialdea* and *Lagman v. Pimentel III*. The purpose of the acts committed, a fundamental element of the crime of rebellion, was identified as present in those cases, for the purposes of removing Mindanao - starting with the City of Marawi, Lanao del Sur - from its allegiance to the Government and its laws and depriving the Chief Executive of his powers and prerogatives to enforce the laws of the land and to maintain public order and safety in Mindanao, to the great damage, prejudice, and detriment of the people therein and the nation as a whole, [71] to clearly establish an Islamic State and a seat of power in the region for a planned establishment of a DAESH wilayat or province covering the entire Mindanao.

The Court in fact found in *Lagman v. Pimentel III* that while there may be ideological differences between the different groups (the NPA and the DAESH/ISIS-inspired rebels, among others), they have the shared purpose of overthrowing the duly constituted government. [72] The political purpose, then, is determined not individually, but in its totality, and is hereby present in this case.

Again, at the risk of being repetitive, the reports showing the presence of numerous violent acts, which as previously highlighted have been correctly found valid and adequate by the President himself utilizing the probable cause standard.

Rebellion has not ceased; public safety continues to be imperiled.

The finding that the incidences of violence are recurring are a logical and alarming consequence of rebellion's characterization as continuous and supportive of the stance to extend martial law. As expanded upon in the case of *Umil v. Ramos*:

The crimes of rebellion, subversion, conspiracy or proposal to commit such crimes, and crimes or offenses committed in furtherance thereof or in connection therewith constitute direct assaults against the State and are in the nature of continuing crimes.

From the facts as above-narrated, the claim of the petitioners that they were initially arrested illegally is, therefore, without basis in law and in fact. The crimes of insurrection or rebellion, subversion, conspiracy or

proposal to commit such crimes, and other crimes and offenses committed in the furtherance, on the occasion thereof, or incident thereto, or in connection therewith under Presidential Proclamation No. 2045, are all in the nature of continuing offenses which set them apart from the common offenses, aside from their essentially involving a massive conspiracy of nationwide magnitude. Clearly then, the arrest of the herein detainees was well within the bounds of the law and existing jurisprudence in our jurisdiction.[73]

The continuance and lingering effects of rebellion can be seen from the tangible incidents still attendant even at this later juncture. As mentioned earlier, the letter[74] of Major General Pablo M. Lorenzo to Solicitor-General Jose C. Calida showed the enumeration of a high number of violent incidences. These reported acts constitute the public uprising and a show of force against the government that would indicate that the rebellion has yet to be quelled. Martial law will be beneficial and not prejudicial in bringing safety and security to the Mindanao region, especially as already manifested by the respondents, there have been orders issued during both the proclamation of martial law in Mindanao and the subsequent extension, which have not yet completed the implementation phase.

In conclusion, in *Lagman v. Medialdea*, the Supreme Court aptly held that in determining the probable cause used as basis of the declaration and/or the suspension, the Court should look into the full complement or totality of the factual basis, and not piecemeal or individually. There is no reason to deviate from this finding of the Court in the aforesaid case. This is especially poignant considering the need to preserve the public's safety in the affected areas. Public safety, which is another component element for the declaration of martial law, "involves the prevention of and protection from events that could endanger the safety of the general public from significant danger, injury/harm, or damage, such as crimes or disasters,"[75] and the continuing and even escalating violence and threats to public safety dictate that this Court finds in favor of the executive's prerogative to move forward with the extension of martial law.

There are sufficient mechanisms to safeguard against any abuse of martial law.

Furthermore, I find that the concerns of petitioners that there may be a usurpation of functions and a violation of rights to be unfounded. Aside from failing to properly substantiate that any abuse was attendant, any allegation is misplaced in a petition to question the validity of extending martial law. As the Court already conclusively settled in *Lagman*, alleged human rights violations committed during the implementation of martial law or the suspension of the privilege of the writ of habeas corpus should be resolved in a separate proceeding.

The staunch fears of petitioners that abuse is rampant in Mindanao as a result of the state of martial law, or with another extension, are unfounded. While it is beyond the review power of this Court to examine allegations of human rights violations, it has been observed that the current implementation on the part of the Executive has been effective thus far in suppressing the threat caused by the insurgents. Especially with the midterm elections about to take place, it is advised that martial law in the Mindanao region be seen for what it has represented, which is the upholding of safety and security of the region. This, instead of being seen as an opportunity for abuse on the part of the government, which as highlighted has no basis in fact or law.

To recall, the Constitution itself already expressly, clearly, and indubitably provides strict safeguards against any potential abuse by the President. Justice Carpio's dissenting opinion in *Fortun v. Macapagal-Arroyo*[76] aptly explains, to wit:

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. (Emphasis supplied)

In *Pequet v. Tangonan*,^[77] the Supreme Court highlighted the call to the military to exercise care and prudence to avoid incidents involving illegal and involuntary restraint, and that martial law was precisely provided to assure the country's citizenry 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, as in the case at bar, it is precisely in accordance with and not in defiance of the fundamental law.^[78] In fact, this is even more reason then for the rule of the law to be followed.^[79]

The fear that human rights are set aside and abuse will grow rampant have no basis. In the absence of any substantiated proof that the extension of martial law is an origination or extension of human rights violations by the government, this Court is behooved to respect and provide the President with sufficient discretion to exercise its powers.

One cannot turn a blind eye to the fact that political conflicts between the government and the various rebel groups in Mindanao have continued up to the present to devastate the region's economy as well as hampered its development,^[80] and the incidences of violence reported to the President only highlight the hostile and tense atmosphere and state of rebellion in Mindanao. John Abbink of the Department of Social and Cultural Anthropology at Vrije Universiteit Amsterdam^[81] in fact notes, "violent actions are much more meaningful and rule bound than reports about them lead us to believe."^[82] As seen, the plethora of incidents, especially those involving the regular bombings, actually aggravate the existing state of rebellion to the point that they are subsumed by it. Authorities have in fact opined that this phenomenon frequently occurs in areas where government or a central authority is weak and in areas where there is a perceived lack of justice and security.^[83]

While the government has been able to show that security has been improved and that the measures taken have stymied insurgent efforts to forcibly separate Mindanao from the Republic, it must continue to exercise vigilance until these threats have been eradicated and peace once again reigns in the Philippines south. The executive department through the President is merely fulfilling its Constitutional mandate to affect police power for the overall welfare of the state and performing its duty to protect its citizens from threats of harm and violence.

As a final note, the Court cannot simply turn a blind eye to the unceasing threats and acts of violence which plague the everyday lives of those in Mindanao. One of the primordial duties of the Court is to protect the State in its entirety and secure the public's safety. Given the overwhelming evidence presented, the Court is convinced that there is sufficient factual basis for the extension of martial law and the suspension of the writ of habeas corpus. To rule otherwise would be to court danger to our sovereignty.

ACCORDINGLY, in view of the foregoing, I vote to DISMISS the petitions and grant the President's request for extension of the period covered by Proclamation No. 216 series of 2017 and Congress' Resolution of Both Houses No. 6 issued on December 12, 2018.

[1] Bernas, J.J. *The 1987 Constitution of the Philippines: A Commentary* (2009 ed.) p. 912.

[2] Reynolds, John *Empire, Emergency, and the Law* (last published May 27, 2014), p. 88.

[3] Bernas, J.J. *The 1987 Constitution of the Philippines: A Commentary* (2009 ed.) p. 916.

[4] *Id.* at p. 917.

[5] 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 or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

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[6] G.R. Nos. 235935, 236061, 236145 & 236155, February 6, 2018.

[7] Id.

[8] G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1, 176-177.

[9] G.R. Nos. 235935, 236061, 236145 & 236155, February 6, 2018.

[10] See *Lagman v. Pimentel III* (2018) & *Lagman v. Medialdea* (2017).

[11] *Lagman v. Medialdea*, G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1.

[12] Id. at p. 184.

[13] Rollo (G.R. No. 243522), Vol. 1, pp. 51-55.

[14] Id. at 108-112.

[15] Rollo (G.R. No. 243522), Vol. 1, pp. 214-289.

[16] Id. at 215-245.

[17] Id. at 246-282.

[18] Id. at 283-288.

[19] Id. at 289.

[20] Rollo (G.R. No. 243522), Vol. 2, pp. 860-881.

[21] Id. at 832-833.

[22] Id. at 847-859.

[23] Id. at 853-854.

[24] G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1.

[25] Id. at 128-130.

[26] Id.

[27] Id.

[28] Id.

[29] Id.

[30] Id.

[31] Id.

[32] Id.

[33] Id.

[34] Id.

[35] Id.

[36] G.R. Nos. 235935, 236061, 236145 & 236155, February 6, 2018.

[37] Id.

[38] Id.

[39] Lagman v. Medialdea, G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1.

[40] Rollo (G.R. No. 243522), Vol. 1, pp. 20-21.

[41] Rollo (G.R. No. 243522), Vol. 1, pp. 11-12.

[42] Lagman v. Medialdea, G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1, 179.

[43] G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1.

[44] Id. at 200-201.

[45] G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1.

[46] Id. at 179.

[47] Id. at 178.

[48] Ladlad v. Velasco, G.R. No. 172070, June 1, 2007, 523 SCRA 318, 336.

[49] Section 2 of R.A. No. 6968, Article. 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 Republic of the Philippines or any part thereof, of 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.

[50] Ladlad v. Senior State Prosecutor, G.R. No. 172070-72, June 1, 2007, 523 SCRA 318, 336.

[51] Ateneo Law Journal, Judge Jesus P. Morfe, Rebellion May Be Simple or Complex pp. 164-175, p. 165.

[52] Reyes, The Revised Penal Code Book Two, 18[th] Ed. 2012, p. 87, citing People v. Cube, C.A. 46 O.G.

4412; *People v. Perez*, C.A., G.R. No. 8186-R, June 30, 1954.

[53] G.R. No. L-8936, October 23, 1956, 100 Phil. 90 (1956).

[54] *Rollo* (G.R. No. 243522), Vol. 1, p. 131.

[55] Reyes, *The Revised Penal Code Book Two*, 18[th] Ed. 2012, p. 86, citing *People v. Cube*, C.A. 46 O.G. 4412; *People v. Perez*, C.A., G.R. No. 8186-R, June 30, 1954.

[56] N. KALYVAS, STATHIS & Balcells, Laia. (2010). *International System and Technologies of Rebellion: How the End of the Cold War Shaped Internal Conflict*. *American Political Science Review*. 104. 415 - 429. 10.1017/S0003055410000286.

[57] *Id.*

[58] *Id.* at 113.

[59] *Id.* at 115.

[60] *Id.*

[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] Moises Naim, *The End of Power: From Boardrooms to Battlefields and Churches to States, Why Being in Charge Isn't What it Used to Be* 2014, 19.

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] *Id.* at 121.

[69] *Id.* at 120.

[70] *Rollo* (G.R. No. 243522), Vol. 1, p. 12.

[71] G.R. Nos. 231658, 231771, 231774, July 4, 2017, 829 SCRA 1, 190, citing Report p. 1, 1[st] par.

[72] G.R. Nos. 235935, 236061, 236145 & 236155, February 6, 2018.

[73] *Id.*

[74] *Rollo* (G.R. No. 243522), Vol. 2, pp. 847-859.

[75] *Lagman v. Medialdea*, G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1, 207.

[76] G.R. No. 190293, March 20, 2012, 668 SCRA 504, 561-562.

[77] G.R. No. L-40970, August 21, 1975, 66 SCRA 216.

[78] *Id.* at 219.

[79] *Id.*

[80] Survey of Feuding Families and Clans in Selected Provinces in Mindanao, Jamail A. Malian MSU-Institute of Technology. P. 36 (Rido: Clan Feuding and Conflict Management in Mindanao - Wilfredo Magno Torres III, Editor, 2007 The Asia Foundation.

[81] https://www.researchgate.net/profile/Jon_Abbink2 (last accessed: February 16, 2019).

[82] Big War, Small Wars: The Interplay of Large-scale and Community Armed Conflicts in Five Central Mindanao Communities Jose Jowel Canuday p. 256.

[83] Id.

SEPARATE CONCURRING OPINION

GESMUNDO, J.:

Again, before the Court are several petitions assailing the extension of the period of martial law and the suspension of the privilege of the writ of habeas corpus in the entire Mindanao for one (1) more year, i.e. from January 1 to December 31, 2019 granted by Congress upon the request of the President.

As the Constitution remains supreme and ultimate, the Court will fervently abide by its duty to review the sufficiency of the factual basis for the extension of the proclamation of martial law and the suspension of the privilege of the writ of habeas corpus. Time and again, the Court will serve as the penultimate safeguard on the powers of the two other co-equal branches of government.

For reasons discussed below, I vote to dismiss the petitions.

The Constitutional power to extend the period of martial law and suspension of privilege of writ of habeas corpus

The 1987 Constitution grants the Congress of the Philippines (Congress, for brevity) the power to shorten or extend the President's proclamation of martial law or suspension of the privilege of the writ of habeas corpus. Section 18, Article VII of the 1987 Constitution, in pertinent part, states:

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 or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.[1] (emphasis supplied)

As discussed in *Lagman v. Pimentel III*, [2] Congress is given the constitutional authority to extend the

proclamation of martial law or the suspension of the privilege of the writ of habeas corpus. The provision does not specify the number of times Congress is allowed to approve an extension of such proclamation or suspension. Neither does the provision fix the period of the extension of the proclamation and suspension. It clearly gives Congress the authority to decide on its duration; thus, the provision stating that the extension shall be "for a period to be determined by the Congress." [3]

Further, when approved by Congress, the extension of the proclamation or suspension, as described during the deliberations on the 1987 Constitution, becomes a "joint executive and legislative act" or a "collective judgment" of the President and Congress. [4]

Nevertheless, Sec. 18, Art. VII specifically establishes the limitations in the exercise of the congressional authority to extend such proclamation or suspension, to wit:

- That the extension should be upon the President's initiative;
- That it should be grounded on the persistence of the invasion or rebellion and the demands of public safety; and
- That it is subject to the Court's review of the sufficiency of its factual basis upon the petition of any citizen. [5]

Hence, these three (3) limitations must be present in any extension of the proclamation of martial law or suspension of the privilege of the writ of habeas corpus. Failure to comply with any of these limitations shall result to the invalidity and nullity of the extension of such proclamation and suspension.

The President initiated the extension

In this case, the extension of the proclamation and suspension was upon the initiative of the President. On December 4, 2018, Secretary Delfin Lorenzana of the Department of National Defense wrote a Letter [6] addressed to President Rodrigo Duterte recommending the extension of Proclamation No. 216 from January 1, 2019 to December 31, 2019. Also, Armed Forces of the Philippines (AFP) Chief of Staff Carlito G. Galvez, Jr. (Galvez), wrote a similar Letter [7] addressed to the President recommending the extension of said proclamation and suspension for another year.

In another Joint Letter [8] issued by the AFP and the Philippine National Police (PNP), through AFP Chief Galvez and PNP Chief Oscar D. Albayalde, they recommended to the President another one-year extension of such proclamation and suspension citing compelling reasons based on the current security assessment.

Acting on those recommendation, on December 6, 2018, the President wrote a Letter [9] addressed to both Houses of Congress, requesting that Congress initiate the further extension of such proclamation and suspension in Mindanao from January 1, 2019 to December 31, 2019. According to the President, "the security assessment submitted by the AFP and PNP highlights certain essential facts which indicate that rebellion still persists in Mindanao and that public safety requires the continuation of Martial Law in the whole of Mindanao." [10] It was also stated therein that several incidents support the assertion of the persisting and continuing rebellion in Mindanao.

The first limitation of the extension of the proclamation of martial law and the suspension of the privilege of the writ of habeas corpus has been complied with because the President initiated such extension when he wrote the December 6, 2018 letter to both Houses of Congress.

The extension of the proclamation and suspension is subject to the

Court's review; probable cause
as the quantum of proof

The third limitation is also complied with because the extension of such proclamation and suspension is currently the subject of the Court's review for the sufficiency of its factual basis.

Further, in *Lagman v. Medialdea*[11] it was explained that in determining the sufficiency of the factual basis in such petitions, the Court should consider whether the President is convinced that there is probable cause or evidence showing that, more likely than not, a rebellion was committed or is being committed, to wit:

In determining the existence of rebellion, the President only needs to convince himself that there is probable cause or evidence showing that more likely than not a rebellion was committed or is being committed. To require him to satisfy a higher standard of proof would restrict the exercise of his emergency powers. Along this line, Justice Carpio, in his Dissent in *Fortun v. President Macapagal-Arroyo*, concluded that the President needs only to satisfy probable cause as the standard of proof in determining the existence of either invasion or rebellion for purposes of declaring martial law, and that probable cause 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. This is because unlike other standards of proof, which, in order to be met, would require much from the President and therefore unduly restrain his exercise of emergency powers, the requirement of probable cause is much simpler. It merely necessitates an "average man [to weigh] the facts and circumstances without resorting to the calibration of the rules of evidence of which he has no technical knowledge. He [merely] relies on common sense [and] x x x needs only to rest on evidence showing that, more likely than not, a crime has been committed x x x by the accused." [12] (emphasis supplied)

Verily, in reviewing the present petitions, the Court must always bear in mind that it must determine whether or not the President is convinced based on the quantum of proof of probable cause that, more likely than not, a rebellion was committed or is being committed.

Likewise, it was stated in *Lagman v. Medialdea* that while the Court's power is independent from Congress, its power is limited to the review of the sufficiency of factual basis.[13] The Court considers only the information and data available to the President prior to or at the time of the declaration; it is not allowed to "undertake an independent investigation beyond the pleadings." On the other hand, Congress may take into consideration not only data available prior to, but likewise events supervening the declaration. Also, Congress could probe deeper and further; it can delve into the accuracy of the facts presented before it.[14]

In addition, the Court cannot require the absolute correctness of the facts relied on by the President due to the urgency of the situation, to wit:

In determining the sufficiency of the factual basis of the declaration and/or the suspension, the Court should look into the full complement or totality of the factual basis, and not piecemeal or individually. Neither should the Court expect absolute correctness of the facts stated in the proclamation and in the written Report as the President could not be expected to verify the accuracy and veracity of all facts reported to him due to the urgency of the situation. To require precision in the President's appreciation of facts would unduly burden him and therefore impede the process of his decision-making. Such a requirement will practically necessitate the President to be on the ground to confirm the correctness of the reports submitted to him within a period that only the circumstances obtaining would be able to dictate. Such a scenario, of course, would not only place the President in peril but would also defeat the very purpose of the grant of emergency powers upon him, that is, to borrow the words of Justice Antonio T. Carpio in *Fortun*, to "immediately put an end to the root cause of the emergency." Possibly, by the time the President is satisfied with the correctness of the facts in his possession, it would be too late in the day as the invasion or rebellion could have already escalated to a level that is hard, if

not impossible, to curtail.[15]

In any case, the compliance with the second limitation under Sec. 18 of Art. VII - whether the extension of the proclamation of martial law and the suspension of the privilege of the writ of habeas corpus is grounded on the persistence of an invasion or rebellion and the demands of public safety - is the primordial issue that must be determined by the Court.

Concept of rebellion

Art. 134 of the Revised Penal Code (RPC) defines the crime of rebellion, viz:

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.

Thus, the elements of the crime of rebellion are as follow:

1. That there be (a) public uprising, and (b) taking up 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, the territory of the Philippines or any part thereof, or 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 or prerogatives.[16]

On the other hand, Art. 135 of the RPC, as amended by Republic Act (R.A.) No. 6968,[17] states the following means to commit the crime of rebellion and the penalties for different participations thereof:

Art. 135. Penalty for rebellion, insurrection or coup d'etat. — Any person who promotes, maintains, or heads rebellion or insurrection shall suffer the penalty of reclusion perpetua.

Any person merely participating or executing the commands of others in a rebellion shall suffer the penalty of reclusion temporal.

Any person who leads or in any manner directs or commands others to undertake a coup d'etat shall suffer the penalty of reclusion perpetua.

Any person in the government service who participates, or executes directions or commands of others in undertaking a coup d'etat shall suffer the penalty of prision mayor in its maximum period.

Any person not in the government service who participates, or in any manner supports, finances, abets or aids in undertaking a coup d'etat shall suffer the penalty of reclusion temporal in its maximum period.

When the rebellion, insurrection, or coup d'etat shall be under the command of unknown leaders, any person who in fact directed the others, spoke for them, signed receipts and other documents issued in their name, as performed similar acts, on behalf of the rebels shall be deemed a leader of such a rebellion, insurrection, or coup d'etat.

In *People v. Hernandez, et al.*,[18] the Court explained that in the crime of rebellion, there may be several acts committed such as: resort to arms, requisition of property and services, collection of taxes and contributions, restraint of liberty, damage to property, physical injuries and loss of life, in furtherance of the internal struggle. Nonetheless, there is only one crime of rebellion because said several acts were committed in furtherance of the purpose of rebellion, to wit:

One of the means by which rebellion may be committed, in the words of said Article 135, is by "engaging in war against the forces of the government" and "committing serious violence" in the prosecution of said "war". These expressions imply everything that war connotes, namely; resort to arms, requisition of property and services, collection of taxes and contributions, restraint of liberty, damage to property, physical injuries and loss of life, and the hunger, illness and unhappiness that war leaves in its wake — except that, very often, it is worse than war in the international sense, for it involves internal struggle, a fight between brothers, with a bitterness and passion or ruthlessness seldom found in a contest between strangers. Being within the purview of "engaging in war" and "committing serious violence", said resort to arms, with the resulting impairment or destruction of life and property, constitutes not two or more offense, but only one crime — that of rebellion plain and simple. Thus, for instance, it has been held that "the crime of treason may be committed by executing either a single or similar intentional overt acts, different or similar but distinct, and for that reason, it may be considered one single continuous offense.

Inasmuch as the acts specified in said Article 135 constitute, we repeat, one single crime, it follows necessarily that said acts offer no occasion for the application of Article 48, which requires therefor the commission of, at least, two crimes. Hence, this court has never in the past, convicted any person of the "complex crime of rebellion with murder". What is more, it appears that in every one of the cases of rebellion published in the Philippine Reports, the defendants were convicted of simple rebellion, although they had killed several persons, sometimes peace officers.[19] (emphases supplied and citations omitted)

Based on the purpose of the crime of rebellion - which is to remove from the allegiance to Government or its laws, the territory of the Philippines or any part thereof, or any body of land, naval or other armed forces - several acts may be committed necessarily in furtherance of the rebellion. But, even though several acts were committed, these acts still constitute as one crime of rebellion as long as they were committed in furtherance of their secessionist goal.

Further, in *Umil v. Ramos*,[20] the Court emphasized that rebellion is a continuing offense and all crimes committed in furtherance of the ideological bases are absorbed therein, to wit:

The Court's decision of 9 July 1990 rules that the arrest of Rolando Dural (G.R. No. 81567) without warrant is justified as it can be said that, within the contemplation of Section 5(a), Rule 113, he (Dural) was committing an offense, when arrested, because Dural was arrested for being a member of the New People's Army, an outlawed organization, where membership is penalized, and for subversion which, like rebellion is, under the doctrine of *Garcia vs. Enrile*, a continuing offense, thus:

"The crimes of insurrection or rebellion, subversion, conspiracy or proposal to commit such crimes, and other crimes and offenses committed in the furtherance (sic) on the occasion thereof, or incident thereto, or in connection therewith under Presidential Proclamation No. 2045, are all in the nature of continuing offenses which set them apart from the common offenses, aside from their essentially involving a massive conspiracy of nationwide magnitude x x x."

Given the ideological content of membership in the CPP/NPA which includes armed struggle for the overthrow of organized government, Dural did not cease to be, or became less of a subversive, FOR PURPOSES OF ARREST, simply because he was, at the time of arrest, confined in the St. Agnes Hospital. Dural was identified as one of several persons who the day before his arrest, without warrant, at the St. Agnes Hospital, held shot two (2) CAPCOM policemen in their patrol car. That Dural had shot the two (2) policemen in Caloocan City as part of his mission as a "sparrow" (NPA member) did not end there and then. Dural, given another opportunity, would have shot or would shoot other policemen anywhere as agents or representatives of organized government. It is in this sense that subversion like rebellion (or insurrection) is perceived here as a continuing offense. Unlike other so-called "common" offenses, i.e. adultery, murder, arson, etc., which generally end upon their commission, subversion and rebellion are anchored on an ideological base which compels the repetition of the same acts of

lawlessness and violence until the overriding objective of overthrowing organized government is attained.[21] (emphases supplied)

Likewise, the rebellion contemplated under the Constitution for the declaration or extension of the proclamation of martial law or suspension of the privilege of the writ of habeas corpus is not confined to the traditional concept of armed struggle or in the theater of war. As early as *United States v. Lagnason*[22] the Court ruled that there may be a state of rebellion not amounting to a state of war.

More importantly, during the deliberations of the present Constitution, the framers discussed the possibility of modern tactics in rebellion or invasion, to wit:

MR. DE LOS REYES. I ask that question because I think modern rebellion can be carried out nowadays in a more sophisticated manner because of the advance of technology, mass media and others. Let us consider this for example: There is an obvious synchronized or orchestrated strike in all industrial firms, then there is a strike of drivers so that employees and students cannot attend school nor go to their places of work, practically paralyzing the government. Then in some remote barrios, there are ambushes by so-called subversives, so that the scene is that there is an orchestrated attempt to destabilize the government and ultimately supplant the constitutional government. Would the Committee call that an actual rebellion, or is it an imminent rebellion?

MR. REGALADO: At the early stages, where there was just an attempt to paralyze the government or some sporadic incidents in other areas but without armed public uprising, that would only amount to sedition under Article 138, or it can only be considered as a tumultuous disturbance.

MR. DE LOS REYES: The public uprising are not concentrated in one place, which vised to be the concept of rebellion before.

MR. REGALADO: No.

MR. DE LOS REYES: But the public uprisings consists of isolated attacks in several places - for example in one camp here; another in the province of Quezon; then in another camp in Laguna; no attack in Malacanang - but there is complete paralysis of the industry of the whole country. If we place these things together, the impression is clear - there is an attempt to destabilize the government in order to supplant it with a new government.

MR. REGALADO: It becomes a matter of factual appreciation and evaluation. The magnitude is to be taken into account when we talk about tumultuous disturbance, to sedition, then graduating to rebellion. All these things are variances of magnitude and scope. So, the President determines, based on the circumstances, if there is presence of rebellion.[23] (emphases supplied)

The Constitutional framers had the astute foresight to consider the possibility that modern rebellion would involve a more sophisticated manner of execution with the use of advanced technology and even mass media. They discussed the possibility that rebels may conduct isolated attacks in different places orchestrated to paralyze the country and destabilize the government. In such case, Justice Regalado suggested it would be a matter of factual appreciation and evaluation of the President, based on the circumstances, in determining if rebellion exists. Thus, the traditional concept of rebellion, where there is actual use of weapons concentrated in a single place, is not the sole concept of actual rebellion envisioned under the 1987 Constitution.

While there may be several acts committed separately in a particular region, these predicate acts would still be included in one crime of rebellion. These isolated attacks in different places must be examined on whether they were orchestrated to paralyze the country and destabilize the government. In other words, these attacks should not be considered in isolation in a particular area; rather, these must be considered in the totality of the armed struggle of the perpetrators. Also, the Court must consider a broader scope of rebellion, to include modern tactics which do

not contemplate traditional armed struggle. With this complete picture of the concept of rebellion, the Court can judiciously determine the persistence of actual rebellion in Mindanao based on the probable cause or delivered by the President.

Actual rebellion in Mindanao persists

In *Lagman v. Medialdea* and *Lagman v. Pimentel III*, the Court ruled that in determining the existence or persistence of actual rebellion, the President may rely on a wide array of reports and documents that are available to him as the Commander-in-Chief, to wit:

The magnitude of the atrocities already perpetrated by these rebel groups reveals their capacity to continue inflicting serious harm and injury, both to life and property. The sinister plans of attack, as uncovered by the AFP, confirm this real and imminent threat. The manpower and armaments these groups possess, the continued radicalization and recruitment of new rebels, the financial and logistical build-up cited by the President, and more importantly, the groups' manifest determination to overthrow the government through force, violence and terrorism, present a significant danger to public safety.

In *Lagman*, the Court recognized that the President, as Commander-in-Chief, has possession of intelligence reports, classified documents and other vital information which he can rely on to properly assess the actual conditions on the ground, thus:

It is beyond cavil that the President can rely on intelligence reports and classified documents. "It is for the President as [C]ommander-in-[C]hief of the Armed Forces to appraise these [classified evidence or documents] reports and be satisfied that the public safety demands the suspension of the writ." Significantly, respect to these so-called classified documents is accorded even "when [the] authors of or witnesses to these documents may not be revealed."

In fine, not only does the President have a wide array of information before him, he also has the right, prerogative, and the means to access vital, relevant, and confidential data, concomitant with his position as Commander-in-Chief of the Armed Forces.[24] (emphases supplied)

In this case, the President relied on several military and classified reports and documents, particularly, the report provided by the Deputy Chief of Staff for Intelligence, OJ2, AFP. The detailed and extensive AFP report presents the violent incidents committed by Abu Sayyaf Group (ASG), the Bangsamoro Islamic Freedom Fighters (BIFF), and the Dawlah Islamiyah (DI), and other such violent incidents committed by threat groups. These violent acts cover the period between January 1 to December 31, 2018, to wit:

a. The ASG-Initiated Violent Incidents resulted to: (a) 17 soldiers and 19 civilians wounded in action; (b) 3 civilians missing; and (c) 9 soldiers, 22 civilians, and 2 ASG killed.[25] The following are the specific incidents divided by province:

- Basilan: 4 ambushes, 1 arson, 1 grenade throwing, 2 harassments, 3 IED land mining/explosions, 1 attempted kidnapping, 3 liquidations, and 3 murders.
- Sulu: 1 ambush, 1 carjacking, 14 harassments, 5 IED landmining/explosions, 1 attempted kidnapping, 15 kidnappings, 3 liquidations, and 3 shootings.
- Tawi-Tawi: 1 murder.
- Zamboanga Peninsula: 1 kidnapping and 1 shooting.
- Other Provinces: 2 kidnappings.

b. The BIFF-Initiated Violent Incidents resulted in: (a) 21 soldiers, 2 CAA, 5 civilians, and 2 BIFF wounded in action; (b) 2 civilians missing; and (c) 4 soldiers, 3 CAA, 8 civilians, and 9 BIFF killed.[26] The following are

the specific incidents divided between North Cotabato and Maguindanao:

- North Cotabato: 1 ambushade, 1 firefight/attack, 9 harassments, 2 IED land mining/roadside bombings, and 1 liquidation.

- Maguindanao: 2 arsons, 3 firefights/attacks, 3 grenade throwing, 31 harassments, 19 IED landmining/roadside bombings, 1 kidnapping, 1 murder, 1 shooting, and 1 liquidation.

c. The DI-Initiated Violent Incidents resulted in: (a) 2 soldiers and 91 civilians wounded in action; (b) 1 civilian missing; and (c) 7 civilians killed.[27] The following are the specific incidents for each DI faction:

- DI-Maute: 1 firefight/attack, 1 kidnapping, 1 liquidation, 1 shooting, and 1 strafing.

- DI-Maguid: 1 IED landmining/explosion.

- DI-Turaifie: 1 firefight/attack and 3 IED land mining/ explosions.[28]

The report shows that violent attacks still persist in Mindanao and these are committed by the very same groups that committed rebellion in *Lagman v. Medialdea* and *Lagman v. Pimentel III*. In its Letter[29] dated February 1, 2019, even the PNP confirmed that these groups continuously commit atrocities in Mindanao.

As stated in *Lagman v. Pimentel III*, the DI is the Daesh-affiliate organization in the Philippines responsible for the Marawi Siege. It is comprised of several local terrorist groups that pledged allegiance to Daesh leader Abu Bakr Al-Baghdadi. On the other hand, the ASG in Basilan, Sulu, Tawi-rTawi, and the Zamboanga Peninsula remain a serious security concern. Also, the BIFF continues to defy the government by perpetrating violent incidents during the martial law period. Further, the Court recognizes that these ISIS-linked rebel groups have formed an alliance for the unified mission of establishing a Daesh/ISIS territory in Mindanao. Verily, the purpose of these groups to create a separate Daesh/ISIS territory in Mindanao is an act of rebellion against the government.

In addition, the New People's Army continues to perpetrate violent attacks in Mindanao. The Court in numerous instances has recognized that the purpose of their group is to overthrow the organized government.[30]

Evidently, in spite of the extension of the proclamation of martial law and the suspension of the privilege of the writ of habeas corpus, the violent attacks of these groups persist in major areas of Mindanao. The DND enumerated the numerous attacks perpetrated by these rebels even though martial law had been in effect from January 1, 2018 to December 31, 2018, to wit:

Type of Incident

Number of Incidents

Ambuscade

6

Arson

2

Firefighting/Attack

4

Grenade Throwing

4

Harassment

54

IED/Landmining Explosion

31

Attempted Kidnapping

1

Kidnapping

19

Liquidation

9

Murder

4

Shooting

3

TOTAL

137[31]

In the same reference material, the DND reports the following violent incidents for the period January 1 to

November 30, 2018 relative to the continuing rebellion being conducted by the communist groups:

Type of Incident

Number of Incidents

Ambush

15

Raid

4

Nuisance Harassment

41

Harassment

29

Disarming

5

Landmining

8

SPARU Operations

18

Liquidation

23

Kidnapping

5

Robbery/Hold-Up

1

Bombing

1

Arson

27

TOTAL

177[32]

The AFP explained how the violent attacks of these rebel groups were committed in furtherance of rebellion, as follows:

The word "harassment" is a military term for a type of armed attack where the perpetrators fire at stationary military personnel, auxiliaries, or installations for a relatively short period of time (as opposed to a full armed attack) for the purpose of inflicting casualties, as a diversionary effort to deflect attention from another tactical undertaking, or to project presence in the area. At times, like in the case of the November 10, 2018 incident in Marogong, Lanao del Sur, harassments or attacks are directed against the MILF or any group perceived to be an ally or is supportive to the government. Harassments are undertaken not in isolation but as part of a bigger military strategy. This is a common tactic employed by the Communist Terrorist Group, the ASG, DI, and BIFF. On the other hand, kidnapping is undertaken particularly by the ASG to finance its operational and administrative expenses in waging rebellion. As shown in the presentation during the oral arguments, the ASG has amassed an estimated Php41.9 million in ransom proceeds for 2018 alone. With regard to arson, the tactic is commonly used by the same rebel groups for various purposes such as intimidating people who are supportive of the government, as punitive action for those who refuse to give in to extortion demands, or simply to terrorize the populace into submission. All these activities are undoubtedly undertaken in furtherance of rebellion.[33] (emphasis supplied)

Indeed, harassment, kidnapping for ransom, extortion, and arson are contemporary tactics within the definition of the armed struggle in rebellion. As stated earlier, the Constitutional framers already envisioned that modern rebellion would involve a more sophisticated manner of execution and the possibility that rebels may conduct isolated attacks in different places orchestrated to paralyze the country and destabilize the government. These separate acts of violence should be woven and taken together in furtherance of the rebel groups' purpose of seceding from the State.

Reliability of the military information

During the oral arguments, the Court sought clarification as to the reliability of information received from the OJ2 to determine the sufficiency of the factual basis in extending such proclamation.[34] In its Letter,[35] the AFP Office of Deputy Chief of Staff for Intelligence explained the reliability and credibility of the reports they submitted to the President, as follows:

The office of the Deputy Chief of Staff for Intelligence, AFP (OJ2) is the depository of all information collected by various AFP units on the activities of groups that threaten national security. These AFP units obtain information through formal (reports of government agencies performing security and law enforcement functions) as well as informal channels (information networks in areas of interest and informants who are members of the threat groups). The information through these sources are collected to gain situational awareness particularly on enemy intentions and capabilities that become the basis of military operations and policy making. x x x.

Nevertheless, the information gathered by various AFP units are expected to have undergone validation before being forwarded to OJ2 although there are instances where reports come from a single source, i.e., they come from a single informant and there is no way to validate the accuracy and veracity of its contents. It is for this reason that the AFP has a method of assessing the reliability of its informants based on their track record.

When it comes to violent incidents as well as armed clashes or encounters with threat groups, AFP units are required to submit reports as soon as possible. Called "spot reports," they contain information that are only available at that given reporting time window. This practice is anchored on the theory that an incomplete information is better than a complete information that is too late to be used. Subsequent developments are communicated through "progress reports" and detailed "special reports." [36] (emphases supplied)

Manifestly, the information provided by the AFP is not merely raw data from their sources; rather, they are validated through different methods. Also, the OJ2 or the AFP Office of the Deputy Chief of Staff for Intelligence is tasked with the duty to ensure that these data are consolidated and verified. While there may be some minor discrepancies on these data, as some are sourced from spot reports, these data are subsequently validated through progress reports and detailed special reports.

Thus, when these pieces of information were delivered to the President, he made a detailed and well-founded conclusion based on the totality of evidence that there is probable cause that actual rebellion persists in Mindanao. This is evident from his letter to both Houses of Congress dated December 6, 2018, viz:

[T]he security assessment submitted by the AFP and PNP highlights certain essential facts which indicate that rebellion still persists in Mindanao and that public safety requires the continuation of Martial Law in the whole of Mindanao.

The Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, Daulah Islamiyah (DI), and other terrorist groups (collectively labeled as LTG) which seek to promote global rebellion, continue to defy the government by perpetrating hostile activities during the extended period of Martial Law...

The DI forces continue to pursue their rebellion against the government by furthering the conduct of their radicalization activities, and continuing to recruit new members, especially in vulnerable Muslim communities.

While the government was preoccupied in addressing the challenges posed by said groups, the CTG, which has publicly declared its intention to seize political power through violent means and supplant the country's democratic form of government with Communist rule, took advantage and likewise posed serious security concerns...

Apart from these, major Abu Sayyaf Group factions in Sulu continue to pursue kidnap for ransom activities to finance their operations...

The foregoing merely illustrates in general terms the continuing rebellion in Mindanao. [37]

Likewise, as to the fact that there was no criminal case of rebellion filed in Mindanao from January 1 to December 31, 2018, suffice it to state that this does not diminish the existence of actual rebellion therein because: first, there is nothing in the constitutional provision that requires there be criminal cases filed in court to prove

actual rebellion. As discussed in *Lagman v. Medialdea*, it is only required that the President has probable cause to believe that an actual rebellion persists. Second, even as there was no rebellion case filed during the existence of martial law and yet the aimed conflict continues, this demonstrates that the rebellion had not ceased and the perpetrators were still on the loose. It was reported by the Office of the Solicitor General (OSG) that a total of 181 persons in the martial law arrest orders have remained at large.[38]

Indeed, with these factual bases, the military needs to intensify their efforts against these terrorist groups through the continued imposition of martial law. Lifting martial law would remove the leverage of the military against these terror groups during their on-going operations and would weaken the rigorous campaign against them and allow them to continuously threaten the civilian population.[39]

Public safety requires the extension

The overriding and paramount concern of martial law is the protection of the security of the nation and the good and safety of the public. Indeed, martial law and the suspension of the privilege of the writ of habeas corpus are necessary for the protection of the security of the nation; suspension of the privilege of the writ of habeas corpus is precautionary, and although it might curtail certain rights of individuals, it is for the purpose of defending and protecting the security of the state or the entire country and our sovereign people.[40]

In this case, after determining that actual rebellion exists based on probable cause, the President also found that the extension of the proclamation of martial law and the suspension of the privilege of the writ of habeas corpus are necessary for ensuring the public safety of the people in Mindanao.

As discussed by the OSG, there are several circumstances which show that the persisting actual rebellion in Mindanao is a threat to the public's safety therein, viz:

- No less than 181 persons in the martial law Arrest Orders have remained at large.
- Despite the dwindling strength and capabilities of the local terrorist rebel groups, the recent bombings that transpired in Mindanao that collectively killed 16 people and injured 63 others in less than 2 months is a testament on how lethal and ingenious terrorist attacks have become.
- On October 5, 2018, agents from the Philippine Drug Enforcement Agency (PDEA) who conducted an anti-drug symposium in Tagoloan II, Lanao del Sur, were brutally ambushed, in which five (5) were killed and two (2) were wounded.
- The DI continues to conduct radicalization activities in vulnerable Muslim communities and recruitment of new members, targeting relatives and orphans of killed DI members. Its presence in these areas immensely disrupted the government's delivery of basic services and clearly needs military intervention.
- Major ASG factions in Sulu and Basilan have fully embraced the DAESH ideology and continue their express kidnappings. As of December 6, 2018, there are still seven (7) remaining kidnap victims under captivity.
- Despite the downward trend of insurgency parameters, Mindanao remains to be the hotbed of communist rebel insurgency in the country. Eight (8) out of the 14 active provinces in terms of communist rebel insurgency are in Mindanao...[41]

During the oral arguments, it was affirmed that rebellion persists in Mindanao and that the armed struggle of the rebel groups threatens public safety, to wit:

ASSOCIATE JUSTICE BERNABE:

Or based on current developments, can you say that the situation contemplated in Proclamation 216 has

already changed?

SOLICITOR GENERAL CALIDA:

There is still a need, Your Honor, to extend the martial law because of the on-going threat to public safety, Your Honor, and the rebellion waged by the, not only by the communist terrorist groups but as well as the local terrorist groups, especially those groups that were DAESH-inspired, Your Honor.

ASSOCIATE JUSTICE BERNABE:

Except of course that the leadership of Hapilon and the Maute brothers have already changed?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

ASSOCIATE JUSTICE BERNABE:

Now, in the Comment, respondents reference that December 8, 2017 letter of the President which justified the second extension by saying that, I quote: "Despite the death of Hapilon and the Maute brothers, the remnants of their groups have continued to rebuild their organization." Are the activities of the Maute Hapilon group still a consideration now for the third extension?

SOLICITOR GENERAL CALIDA:

Well, because of their recruitment, Your Honor, their strength is again, they have recruited more members, Your Honor. In fact, the Jolo bombing incident yesterday is in Jolo, Your Honor, and this is the hotbet of ASG insurgency, Your Honor.

ASSOCIATE JUSTICE BERNABE:

All right. Now, can you give us specifics such as an estimate of how many of these remnants are left or report of what activities were recently conducted? You can probably just state this in the memorandum.

SOLICITOR GENERAL CALIDA:

Yes, Your Honor, we will do that.

ASSOCIATE JUSTICE BERNABE:

Okay. Now, under the Revised Penal Code you have the purpose of the uprising or movement to be considered as a rebellion and you have to remove from the allegiance to the government the territory of the Philippines, or deprive the Chief Executive or Congress of any of their powers and prerogatives, is that correct?

SOLICITOR GENERAL CALIDA:

That's correct, Your Honor.

ASSOCIATE JUSTICE BERNABE:

Now, based on the long history of the CNT, ASG and BIFF in Mindanao, do you believe that their purpose is to remove allegiance from the government, or deprived the Chief Executive and Congress of their powers and prerogatives? Or are these activities based on social and political ideologies?

SOLICITOR GENERAL CALIDA:

You were correct in saying, Your Honor, that these atrocities deprived not only the President and Congress of their powers and prerogatives in the areas where they control, Your Honor. x x x.[42] (emphasis supplied)

The magnitude of the atrocities continuously perpetrated by these rebel groups reveals their capacity to continue inflicting serious harm and injury, both to life and property. The sinister plans of attack, as uncovered by the AFP, confirm this real and imminent threat. The manpower and armaments these groups possess, the continued radicalization and recruitment of new rebels, the financial and logistical build-up cited by the President, and more importantly, the groups' manifest determination to overthrow the government through force, violence and terrorism, present a significant danger to public safety.[43]

Proper exercise of the joint executive and legislative act; coordinate powers of review

Based on the foregoing, these facts and circumstances are sufficient for the Court to conclude that actual rebellion in Mindanao puts the public's safety in peril. The President and the Congress properly exercised their joint executive and legislative act in extending the proclamation of martial law and the suspension of the privilege of the writ of habeas corpus.

As discussed above, unlike the power of the Court, Congress has a broad power of review under Sec. 18, Art. VII. In *Lagman v. Medialdea*, it was explained that:

The Court may strike down the presidential proclamation in an appropriate proceeding filed by any citizen on the ground of lack of sufficient factual basis. On the other hand, Congress may revoke the proclamation or suspension, which revocation shall not be set aside by the President.

In reviewing the sufficiency of the factual basis of the proclamation or suspension, the Court considers only the information and data available to the President prior to or at the time of the declaration; it is not allowed to "undertake an independent investigation beyond the pleadings." On the other hand, Congress may take into consideration not only data available prior to, but likewise events supervening the declaration. Unlike the Court which does not look into the absolute correctness of the factual basis as will be discussed below, Congress could probe deeper and further; it can delve into the accuracy of the facts presented before it.

In addition, the Court's review power is passive; it is only initiated by the filing of a petition "in an appropriate proceeding" by a citizen. On the other hand, Congress' review mechanism is automatic in the sense that it may be activated by Congress itself at any time after the proclamation or suspension was made.

Thus, the power to review by the Court and the power to revoke by Congress are not only totally different but likewise independent from each other although concededly, they have the same trajectory, which is, the nullification of the presidential proclamation. Needless to say, the power of the Court to review can be exercised independently from the power of revocation of Congress.[44]

Consequently, when Congress approved the extension of the proclamation of martial law and the suspension of the privilege of the writ of habeas corpus initiated by the President, which resulted into a joint executive and legislative act, Congress exercised its broad power of review. It had the power to take into consideration not only data available prior to, but likewise events supervening the declaration, and it could delve into the accuracy of the facts presented before it. In spite of the rigorous review undertaken by the legislative branch, the President's request for the extension of such proclamation and suspension was approved by Congress.

Nevertheless, while the Court and Congress' powers of review are independent and distinct, these powers should, at the very least, be coordinate with each other in determining the validity of the extension of the such proclamation and suspension. As held in the landmark case of *Angara v. Electoral Commission*:[45]

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... 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.[46] (emphasis supplied)

Indeed, the three co-equal branches of the government, while acting independently, must give utmost respect to the findings of each other. When there is a clear insufficiency of factual basis, the Court must effectively nullify the extension of such proclamation or suspension for violating the Constitution; otherwise, the joint executive and legislative act must be upheld and recognized.

Pursuant to the Court's review of sufficiency of factual basis, the extension of such proclamation and suspension, which was approved by the overwhelming majority of Congress, passed the arduous requirements imposed by Sec. 18, Art. VII of the Constitution. Thus, the extension of the proclamation of martial law and the suspension of the privilege of the writ of habeas corpus is constitutionally justified.

Defanged Martial Law

While I vote to dismiss the petitions, I must emphasize my position in my Concurring Opinion in *Lagman v. Pimentel III* that martial law has been defanged under the 1987 Constitution. Martial law, while it has no precise definition, is employed to authorize the military to act vigorously for the maintenance of an orderly civil government and for the defense of the State against actual rebellion or invasion.[47]

When the framers of the present Constitution discussed the power of the President to declare martial law and suspend the privilege of the writ of habeas corpus, they ensured that such abuses would not be repeated. Commissioner Monsod even noted that the martial law of then President Marcos was an aberration in history and that the grounds for the imposition of martial law and suspension of the privilege were reduced, and that should a second Marcos arise, there would be enough safeguards in the new Constitution to take care of such eventuality. Accordingly, the following safeguards are now in place to limit the Chief Executive's power to declare martial law:

- The initial declaration of martial law has a time limit of sixty (60) days;
- The President is required to submit a report in person or in writing to the Congress to substantiate his declaration of martial law;
- There is a process for its review and possible revocation of Congress;
- There is also a review and possible nullification by the Supreme Court based on the sufficiency of factual basis;
- The removal of the phrases "imminent danger thereof and "insurrection" as grounds for declaring martial law;
- 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. Thus, during the martial law, the President can neither promulgate proclamations, orders and decrees when legislative assemblies are functioning nor create military courts to try civilians when the civil courts are open.

- The declaration of martial law does not automatically suspend the privilege of the writ of habeas corpus;
- During the suspension of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.
- The extension of the declaration of martial law initiated by the President shall only take effect when approved by Congress for a period reasonably determined by it.

Hence, as long as the safeguards of the Constitution are observed and the Court diligently exercises its mandate to review any declaration or extension of the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, then the citizenry of the State, particularly in Mindanao, can rest assured that their primordial constitutional rights shall be upheld and respected.

As there is sufficient factual basis to extend the proclamation of martial law and suspension of the privilege of the writ of habeas corpus in Mindanao, I vote to DISMISS the petitions.

[1] 1987 CONSTITUTION, Art. VII, Sec. 18.

[2] G.R. Nos. 235935, 236061, 236145 & 236155, February 6, 2018.

[3] Id.

[4] Id.

[5] Id.

[6] Rollo, G.R. No. 243522, Vol. 1, pp. 201-202.

[7] Id. at 203-207.

[8] Id. at 208-213.

[9] Id. at 51-55.

[10] Id. at 53.

[11] G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1.

[12] Id. at 184.

[13] Id. at 181-182.

[14] Id. at 154-155.

[15] Id. at 179-180.

[16] REVISED PENAL CODE, Art. 134.

[17] An Act Punishing the Crime of Coup Dé Normal 0 false false false EN-US X-NONE X-NONE /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-priority:99; mso-style-qformat:yes; mso-style-parent:""; mso-padding-alt:0cm 5.4pt 0cm 5.4pt; mso-para-margin-top:0cm; mso-para-margin-right:0cm; mso-para-margin-bottom:10.0pt; mso-para-margin-left:0cm; line-height:115%; mso-pagination:widow-orphan; font-size:11.0pt; font-family:"Calibri","sans-serif"; mso-ascii-font-family:Calibri; mso-ascii-theme-font:minor-latin; mso-hansi-font-family:Calibri; mso-hansi-theme-font:minor-latin;

mso-bidi-font-family:"Times New Roman"; mso-bidi-theme-font:minor-bidi;} tat 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, October 24, 1990.

[18] 99 Phil. 515 (1956).

[19] Id. at 520-521.

[20] 279 Phil. 266 (1991).

[21] Id. at 294-295.

[22] 3 Phil. 472 (1904).

[23] Record of the Constitutional Commission Proceedings and Debates, Vol. II, pp. 412-413.

[24] Supra note 2.

[25] Rollo, G.R. No. 243522, Vol. I, p. 215; see Table of ASG-Initiated Violent Incidents (01 January to 31 December 2018), attached as Annex "4" of the Comment of Respondents.

[26] Id. at 246; see Table of BIFF-Initiated Violent Incidents (01 January to 31 December 2018), attached as Annex "5" of the Comment of Respondents.

[27] Id. at 283; see Table of DI-Initiated Violent Incidents (01 January to 31 December 2018), attached as Annex "6" of the Comment of Respondents.

[28] Id. at 165-167; Comment of the Respondents, pp. 15-17.

[29] Rollo, G.R. No. 243522, Vol. II, p. 860. Annex "2," Memorandum of the Respondents.

[30] Id. at 830; see Memorandum of the Respondents, pp. 36-37.

[31] Id. at 826; Memorandum of the Respondents, p. 33.

[32] Id. at 826-827; Memorandum of the Respondents.

[33] Id. at 853-854; Annex "1" of the Memorandum of the Respondents.

[34] Transcript of the Oral Arguments, January 29, 2019, pp. 61-64.

[35] Supra note 33.

[36] Id. at 847-848.

[37] Rollo, G.R. No. 243522, Vol. I, pp. 53-54; see Annex "A" of the Lagman Petition.

[38] Rollo, G.R. No. 243522, Vol. II, p. 832; Memorandum of the Respondents.

[39] See concurring opinion of Justice Alexander G. Gesmundo in *Lagman v. Pimentel III*.

[40] Supra note 10.

[41] Rollo, G.R. No. 243522, Vol. II, pp. 832-833; Memorandum of the Respondents, pp. 39-40.

[42] Transcript of the Oral Arguments, January 29, 2019, pp. 47-48.

[43] Supra note 2.

[44] Supra note 11 at 154-155.

[45] 63 Phil. 139(1936).

[46] Id. at 156-157.

[47] See concurring opinion of Justice Alexander G. Gesmundo in *Lagman v. Pimentel III*.

SEPARATE CONCURRING OPINION

REYES, J. JR., J.:

President Rodrigo Roa Duterte sent a Letter dated December 6, 2018, requesting for a third extension of Proclamation No. 216 to the Congress. This was issued on the basis of the letters-recommendation sent by the Department of National Defense Secretary Delfin Lorenzana and then AFP Chief Carlito Galvez, Jr.

In said letter, President Duterte mentioned that although there were gains during the period of extension of Martial Law in 2018, the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP) highlighted certain essential facts indicating that rebellion still exists in Mindanao. He emphasized that several bombings with the use of Improvised Explosive Devices were committed by various terrorist groups. President Duterte also cited various kidnapping incidents by major Abu Sayyaf Group (ASG) factions in Sulu and perpetrations of at least 243 violent incidents by the Communist Terrorist Groups. All of which were in furtherance of its public declaration to seize political power and supplant the nation's democratic form of government with communism.

In the Joint Resolution No. 6 entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao for Another Period of One Year from January 1, 2019 to December 31, 2019," both Houses of Congress approved the President's request.

In response, some members of the Congress, teachers, and residents of some parts of Mindanao filed their respective petitions, essentially questioning the third extension of Martial Law and the suspension of the privilege of the writ of habeas corpus, under the third paragraph of Section 18, Article VII of the Constitution.

On this matter, I concur with the ponencia in ruling that (1) there was sufficient factual basis for the extension of Martial Law and the suspension of the privilege of the writ of habeas corpus; and (2) the basis for which the martial law was initially proclaimed, i.e., Proclamation No. 216, has not become *functus officio* with the cessation of the Marawi siege.

Sufficiency of factual basis for the extension of Martial Law and the Suspension of the Privilege of the Writ of Habeas Corpus

On rebellion

This Court had already definitively addressed the issue on the determination of the presence of rebellion and its relation to the supposed inaccuracies in reports in the case of *Lagman v. Medialdea*.^[1] In said case, this Court considered it imperative to review the factual circumstances in all respects and not independently, to wit:

In determining the sufficiency of the factual basis of the declaration and/or the suspension, the Court should look into the full complement or totality of the factual basis, and not piecemeal or individually. Neither should the Court expect absolute correctness of the facts stated in the proclamation and in the written Report as the President could not be expected to verify the accuracy and veracity of all facts reported to him due to the urgency of the situation.

Undoubtedly, this calls for the survey of the reports in its entirety.

While during oral arguments, some members of this Court pointed out inaccuracies and irregularities in the submitted reports by the AFP and PNP, it must be considered that such inconsistencies do not necessarily negate the truth; for these inaccuracies do not essentially capture the factual circumstances which called for the extension. Admittedly, these violent incidents prove that rebellion persists in Mindanao. The Letter dated December 6, 2018 as well as the reports of the AFP evince that the ASG, the Bangsamoro Islamic Freedom Fighters (BIFF), the Daulah Islamiyah (DI) and the other rebel groups continue to perpetrate hostile activities in Mindanao. The bombings, violent incidents and other related crimes cannot be discounted as many were killed and injured. Similarly, the recruitment of new members must be noted. All these events were executed in furtherance of the rebel groups' purpose of seizing parts of Mindanao and depriving the government of its power over the same.

Moreover, it is worthy to emphasize that it is unlikely to acknowledge rebellion as being committed by identified groups of men engaging in an armed conflict with the government in the case of *Lagman v. Pimentel III*,^[2] thus:

Rarely is rebellion now committed by a large group of identified men engaging the government in an all-out conventional war in accordance with the Geneva Conventions. It would then be simply naive to dismiss, as the petitioners have, the remaining armed groups in Mindanao as but "phantom remnants" of the defeated terrorists and rebels. The fact that they do exist and still continue fighting is by itself proof of the subsistence of the condition that compelled the administration to proclaim Martial Law in Mindanao. (Emphasis supplied)

On the requirement of public safety

In *Lagman v. Medialdea*,^[3] this Court highlighted that rebellion is not confined within predetermined bounds; and for the crime of rebellion to be consummated, it is not required that all armed participants should congregate in one place and publicly rise in arms against the government for the attainment of their culpable purpose. Alternatively put, the fact that reported violent incidents occurred in certain areas does not negate their advancement in other parts of Mindanao. In *Lagman v. Pimentel III*,^[4] this Court reasoned:

We held that the grounds on which the armed public uprising actually took place should not be the measure of the extent, scope or range of the actual rebellion when there are other rebels positioned elsewhere, whose participation did not necessarily involve the publicity aspect of rebellion, as they may also be considered as engaged in the crime of rebellion.

For this matter, there is an imperative need to consider the Resolutions issued by several Regional Peace and Order Councils in Region XI (Davao City), Region XIII (Caraga), Agusan Del Norte, Agusan Del Sur, and Dinagat Islands in Mindanao wherein the Whereas Clauses provide: (a) their intention to extend the period of Martial Law so that developments and growth that the region achieved can be sustained (Davao City); (b) they support the extension of Martial Law in pursuit of lasting peace, order, and security (Caraga); and (c) they appreciated the proclamation of Martial Law because they could feel the security in their jurisdictions against lawless elements due to the presence and efforts of AFP and PNP (Agusan Del Norte, Agusan Del Sur, and Dinagat Islands).

Notably, these councils have the obligation to focus on coordination and orchestration of measures to ensure the safety of the people within their own jurisdictions. The duties and functions of these councils are enshrined in Executive Order No. 773 (Further Reorganizing the Peace and Order Council), viz.:

Sec. 3. Duties and Functions of Sub-National Councils. — The RPOCs, PPOCs, CPOCs, and MPOCs shall have the following duties and functions:

- (a) Provide a forum for dialogue and deliberation of major issues and problems affecting peace and order, including insurgency;
- (b) Recommend measures which will improve or enhance peace and order and public safety in their respective areas of responsibility, including anti-insurgency measures;
- (c) Recommend measures to converge and orchestrate internal security operations efforts of civil authorities and agencies, military and police.

x x x x

Clearly from the foregoing, it is apparent that such councils are tasked with communicating with the people matters regarding peace, security, and public order within their respective jurisdictions. As such, they can be regarded as medium of the people in declaring their apprehensions. These councils also have the recommendatory functions to secure institutive action for peace and order. The issuance of these Resolutions, which are reflective of the voice of their constituents, strengthens the proposition that public safety necessitates the continued implementation of Martial Law and the suspension of the privilege of the writ of habeas corpus in Mindanao.

Proclamation No. 216 was not rendered functus officio by the cessation of the Marawi Siege

The acts committed by the rebel groups, aside from the Maute group, cannot simply be avoided. The halting of the armed combat in Marawi did not automatically amount to an absence of rebellion. As discussed above, rebellion in Mindanao is still subsisting. It is worthy to emphasize that in the two Lagman cases, this Court already accepted that rebellion cannot be characterized in isolation. Significantly, the perpetration by the local terrorist groups and other communist terrorist groups, as indicated in Proclamation No. 216, should be unquestioned. To reiterate, absolute precision cannot be expected from the President who would have to act quickly given the urgency of the situation.[5] It would be more dangerous to require the President to classify and tag rebel groups with rigor before deciding on the need to implement the extension of Martial Law and the suspension of the privilege of the writ of habeas corpus, precisely because the actual rebellion and attack, more than the exact identity of all its perpetrators, would be his utmost concern.[6]

Within constitutional bounds, the government has the prime duty of serving and protecting the people.[7] To this end, our government actively pursues its constitutional mandate by administering measures which not only keep and reserve its power and authority but likewise uphold the safety of the citizenry against peril and adversities.

In this view, I vote to DISMISS the petitions in G.R. Nos. 243522, 243677, 243745, and 243797.

[1] G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1, 179.

[2] G.R. Nos. 235935, 236061, 236145 and 236155, February 6, 2018.

[3] Lagman v. Medialdea, supra note 1, at 205-206.

[4] Supra note 2.

[5] G.R. Nos. 235935, 236061, 236145 and 236155, February 6, 2018.

[6] Id.

[7] CONSTITUTION (1987), Art. II, Sec. 4.

SEPARATE CONCURRING OPINION

HERNANDO, J.:

THE CASE

These consolidated petitions challenge the constitutionality of Resolution of Both Houses (RBH) No. 6 issued by the Senate of the Philippines and the House of Representatives approving the extension, for the period of January 1, 2019 until December 31, 2019, of Proclamation No. 216 entitled, "Declaring a State of Martial Law and Suspending the Privilege of Writ of Habeas Corpus in the whole of Mindanao" issued by President Rodrigo Roa Duterte (President Duterte).

FACTUAL ANTECEDENTS

On May 23, 2017, President Duterte issued Proclamation No. 216 for a period not exceeding sixty (60) days. The Senate and the House of Representatives respectively issued Senate Resolution No. 388 and House Resolution No. 1050, supporting Proclamation No. 216 and finding no cause to revoke the same. Forthwith, a constitutional challenge was mounted before the Supreme Court against Proclamation No. 216. This was rejected in *Lagman v. Medialdea*,^[1] where the High Court categorically pronounced that there was sufficient factual basis for the issuance of Proclamation No. 216 and thus decreed it as constitutional.

In a course of action without precedent, President Duterte requested Congress to extend the effectivity of Proclamation No. 216. On July 22, 2017, in a Special Joint Session, the Congress adopted RBH No. 2 extending for the first time Proclamation No. 216 until December 31, 2017.

Thereafter, in a letter dated December 7, 2017, President Duterte requested for a second extension of Proclamation No. 216 for the period of January 1, 2018 to December 31, 2018 or for such period as may be determined by Congress.

On December 13, 2017, the Senate and the House of Representatives, in joint session, adopted RBH No. 4 further extending Proclamation No. 216 from January 1, 2018 to December 31, 2018. Significantly, this second extension was contested before this Court anchored on the absence of rebellion in Mindanao, specifically the end of the Marawi siege, and the requirement of public safety. However, this opposition was again spurned in *Lagman v. Pimentel III*^[2] where the Court found sufficient factual basis for the further extension of Proclamation No. 216.

When the second extension was about to expire, Secretary of National Defense Delfin N. Lorenzana (Secretary Lorenzana) wrote to President Duterte on December 5, 2018 where he recommended a further extension of Proclamation No. 216 from January 1, 2019 to December 31, 2019. And, in a joint letter^[3] to the President, both the Armed Forces of the Philippines (AFP) Chief of Staff and the Philippine National Police (PNP) Director General echoed Secretary Lorenzana's advocacy for the extension of martial law for another 12 months based on: (1) the Islamic State's (IS) fundamental shift in operational methodology, from caliphate-building to waging a global insurgency and rebellion; and (2) the mid-year recognition by the IS of the East Asia Wilayat, with the Philippines at its epicenter.^[4] The letter likewise cited four bombing incidents in Mindanao which killed 16 people and injured 63 others in a span of two months.^[5]

Acting on, and spurred by, the foregoing advice of his top brass in the military and police establishments, President Duterte, in a letter dated December 6, 2018, requested Congress for a third extension of Proclamation No. 216 from January 1, 2019 to December 31, 2019, specifying various bombing incidents in Mindanao, such as:

- The Lamitan Bombing on July 31, 2018 that killed eleven (11) individuals and wounded ten (10) others;

- The two (2) Isulan, Sultan Kudarat IED explosions on August 28, 2018 and September 2, 2018 which collectively left five (5) casualties and wounded forty-five (45) individuals; and
- The Barangay Apopong, General Santos City IED explosion on September 16, 2018 that left eight (8) individuals, including a three-year old child, wounded.[6]

In his letter, President Duterte likewise adverted to the following events: (a) kidnapping incidents staged by Abu Sayyaf Group (ASG) factions in Sulu involving a Dutch, a Vietnamese, two Indonesians, and four Filipinos; (b) at least 342 violent incidents, such as harassment, attacks against government installations, liquidation operations, and various arson attacks, perpetrated by communists mostly in Eastern Mindanao from January 1, 2018 to November 30, 2018 in furtherance of their public declaration to seize political power and overthrow the government; (c) twenty-three recorded arson incidents which destroyed properties approximately valued at one hundred fifty-six million pesos (PhP156,000,000.00); and (d) atrocities which resulted in the killing of 87 military personnel and wounding of 408 others.[7]

On December 12, 2018, Congress issued RBH No. 6 entitled, "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao for Another Period of One (1) Year from January 1, 2019 to December 31, 2019" which approved the Commander-in-Chief's supplication for the third extension of Martial Law in Mindanao.

Hence, these petitions, all of which commonly assail the factual basis of the third extension of Martial Law in Mindanao, were lodged before the Court by: (a) Congressmen Edcel C. Lagman, Tomasito S. Villarin, Teddy Brawner Baguilat, Jr., Edgar R. Erice, Gary C. Alejano, Jose Christopher Y. Belmonte, and Arlene "Kaka" J. Bag-ao docketed as G.R. No. 243522 (Lagman Petition); (b) Bayan Muna Partylist Representative Carlos Isagani T. Zarate, et al., docketed as G.R. No. 243677 (Bayan Muna Petition); (c) Christian Monsod, et al., docketed as G.R. No. 243745 (Monsod Petition); and (d) Rius Valle, et al., docketed as G.R. No. 243797 (Lumad Petition).

THE PETITIONS SUBMITTED BEFORE THE COURT

G.R. No. 243522 (Lagman Petition)[8]

The Lagman Petition posits that the Supreme Court must make an independent and critical assessment of the President's factual submission pertaining to the third extension of martial law.[9] Moreover, actual rebellion does not exist in Mindanao which would warrant a third extension of Proclamation No. 216. Even the President, in his letter dated December 6, 2018 to Congress, merely expressed in general terms the state of the supposed continuing rebellion in Mindanao.[10] Additionally, the President failed to submit a detailed report to substantiate his claim that rebellion persists in Mindanao; thus, there is no sufficient factual basis to further extend the proclamation of Martial Law.[11] Even the military admitted that no one was arrested or charged with rebellion during the second extension of Martial Law in Mindanao. More significant, the purported reported violent incidents were never connected to rebellion.[12]

Said petition maintains that the alleged public clamor for the extension of martial law, as well as the claimed economic growth brought about by the imposition of martial law, cannot be considered as a valid ground for the extension thereof.[13] In the same vein, it points out that public safety is not imperiled.[14]

The Lagman Petition also argues that acts of terrorism such as the bombings in different places of Mindanao, which were perpetrated during the effectivity of Martial Law in the island, were not equivalent to rebellion because there were differences in motive, target and scope. In evaluating such acts of terrorism, it advances the argument that the President can instead exercise his calling out power and not declare a state of martial law.[15] The previous rulings in *Lagman v. Medialdea*[16] and *Lagman v. Pimentel III*[17] should not be accorded blind adherence just because these cases were the precedents of the cases at bench. The circumstances surrounding the

third extension differed from the situation when Martial Law was initially declared.[18] Since public safety is no longer imperiled, there is no longer a need for a third extension.[19]

What is more, Proclamation No. 216 cannot be extended because it has become *functus officio*. The so-called rebellion of the Maute Group and the Abu Sayyaf Group (ASG), which was the basis for the declaration of Martial Law, has been vanquished with the killing of the respective groups' leaders, together with the President's declaration that Marawi City has been liberated. In other words, the purpose and mission of Proclamation No. 216 had been accomplished. A third extension also violates the limited period envisioned in the Constitution. Congress does not have the discretion to determine the duration of the extension of martial law and the suspension of the privilege of the writ.

The Lagman Petition exhorts that Section 18, Article VII should be read in its entirety and interpreted as a restriction and limitation on the declaration of martial law and the suspension of the privilege of the writ.[20] It stated that the "little flexibility" for the Congress to determine the length of the extension must be consistent with the intent of the Constitution to limit the duration of the extension of the original period of martial law with a benchmark of not exceeding sixty (60) days. Such "limited flexibility" must similarly not be abused by the President and Congress.[21]

The Lagman Petition avers that Congress granted the extension with inordinate haste by the supermajority allies of the President because the periods to interpellate and to explain votes were restricted.[22] The imposition of Martial Law only emboldened the military and the police to violate the rights of the citizens of Mindanao, citing the recent arrest of former Representative Satur Ocampo and incumbent Representative Francis Castro during a humanitarian mission to rescue the Lumads.[23]

Said petition further argues that the 1987 Constitution removed the declaration of martial law, the suspension of the privilege of the writ, or the extension thereof from the purview of the doctrine of "political question." [24] It opines that the Court's power to review the sufficiency of factual basis does not require a prior finding of grave abuse of discretion on the part of the President and Congress.[25] In any case, it asserts that the imposition and extension of martial law and the suspension of the privilege of the writ are undue restrictions on the citizens' rights.[26]

Finally, the petition prays for the issuance of a Temporary Restraining Order (TRO) or a Writ of Preliminary Injunction (WPI) to stop the implementation of the third extension of Martial Law and the suspension of the privilege of the writ of habeas corpus in Mindanao, as well as the disbursement of funds to finance the said declaration.[27]

On January 17, 2019, the Lagman Petition was amended to implead the House of Representatives and the Senate of the Philippines for approving RBH No. 6 dated December 12, 2018.[28]

G.R. No. 243677 (Bayan Muna Petition)[29]

The Bayan Muna Petition contends that there is no actual rebellion that exists and persists in Mindanao. President Duterte's letter to Congress asking for a third extension of Proclamation No. 216 merely enumerated the isolated incidents committed by various groups. These incidents did not point to a clear political purpose of rebellion as defined under the Revised Penal Code (RPC). The radicalization and recruitment activities allegedly being spearheaded by the Daulah Islamiya (DI) forces cannot be categorized as actual rebellion as there is no public uprising yet. In addition, the various reported incidents failed to (a) positively identify the perpetrators; (b) show basis for attributing said incidents to a particular rebel group; and (c) state or identify the motive for the commission of the said offenses.[30]

Moreover, in the December 4, 2018 letter of Defense Secretary Lorenzana, as well as in the undated joint letter of AFP Chief of Staff Galvez, Jr. and PNP Chief Albayalde to President Duterte, it was mentioned that the number of atrocities and degradation of capacities of the identified rebel groups significantly decreased by virtue of the implementation of Martial Law in Mindanao. These reported gains brought about by Martial Law in Mindanao negate the presence of a threat to public safety and militates against the further extension of Proclamation No. 216 from January 1, 2019 to December 31, 2019.[31]

The Bayan Muna Petition further posits that the factual bases alleged and relied upon by the respondents to further extend Proclamation No. 216 are merely generic threats to public safety which are consequences of and inherent damage or injury resulting from, any rebellion. The threat to public safety referred to in Section 18, Article VII that would require the imposition or extension of martial law must have risen to the level where the government cannot sufficiently or effectively govern, as exemplified by the closure of courts or government bodies, or at least the extreme difficulty of courts, the local government and other government services to perform their functions. Thus, if the threat to public safety in a rebellion has not risen to a level that would necessitate the imposition of martial law, this Court should intervene in case the President implores the implementation of Martial Law instead of exercising his calling-out powers.[32]

Furthermore, the Bayan Muna Petition maintains that Proclamation No. 216 has become *functus officio* with the cessation of the Marawi siege. Thus, considering that the actual rebellion for which Proclamation No. 216 was issued has ceased, there is no longer any basis for its further extension as there is no persisting actual rebellion in Mindanao.[33] During the joint session of Congress for the third extension, Secretary Lorenzana made a material misrepresentation when he testified that a kidnapping case was filed against Bayan Muna Party-List Representatives Satur Ocampo and petitioner Castro, and sixteen (16) teachers, pastors and other delegates of a humanitarian and rescue mission in Talaingod Davao del Norte, when in fact none was filed because the prosecution found no probable cause. This incident was, however, listed and considered as one of the bases for the extension of Proclamation No. 216.[34]

Lastly, the petition cites various sources, namely: (a) human rights monitor Karapatan; (b) International Fact Finding and Solidarity Mission (IFFSM); and (c) the Association of Southeast Asian Nations (ASEAN) Parliamentarians for Human Rights, which documented human rights violations by reason of the implementation of Martial Law in Mindanao. The petition argues that this Court has the duty to consider the human rights situation in Mindanao in the determination of the sufficiency of the factual basis for the extension of Proclamation No. 216 from January 1, 2019 to December 31, 2019.[35]

G.R. No. 243745 (Monsod Petition)[36]

The Monsod Petition argues that the extension of Martial Law is null and void for lack of sufficient factual basis. It asserts that the present factual situation does not call for the extension of martial law and the suspension of the privilege of the writ as the so-called rebellion existing in Mindanao is not sufficient to warrant an extension.[37] The rebellion which warrants the imposition of martial law when public safety requires it refers to the rebellion as defined under Article 134 of the RPC.[38]

In this case, the present public safety situation in Mindanao does not call for the extension of martial law and the suspension of the privilege of the writ; if at all, the President can resort to his extraordinary power to call out the armed forces when it becomes necessary.[39] In any case, respondents have not shown that the supposed rebellion in Mindanao is of such an intensity that would render the civilian government incapable of functioning.[40] It emphasizes that the further extension of martial law and the suspension of the privilege of the writ are not necessary to meet the situation in Mindanao, given that the factual circumstances in the region have drastically

improved.[41]

The Monsod Petition avers that while the Constitution does not expressly state a specific duration for the allowable extension of martial law and the suspension of the privilege of the writ, any extension should be supported by sufficient factual basis. As such, the number of extensions is limited by the existence of invasion or rebellion, and the requirement of public safety, as supported by sufficient factual basis.[42] The current factual situation renders Proclamation No. 216 *functus officio* considering the cessation of the Marawi siege. Public safety no longer requires it, and the civilian government is able to exercise its functions.[43]

Said petition points out that the postponement of the Barangay and Sanggunian Kabataan (SK) Elections by the Commission on Elections (COMELEC) in Mindanao in 2017 and the subsequent conduct of the elections in 2018 after it was determined that conditions are conducive for the conduct of the elections amidst the existence of Martial Law shows that the basis for martial law no longer exists in Mindanao.[44]

Along the same lines, the Monsod Petition contends that martial law has a transitory nature and that the President's exercise of martial law and suspension powers is temporary in nature and was never meant to be the status quo.[45]

Moreover, this Court has the power and constitutional mandate to independently determine the sufficiency of the factual basis for the further extension of Proclamation No. 216. It should independently determine the factual basis and should not confine itself to the data presented by the Executive and Legislative branches of government. The intent of the framers of the Constitution was for the Court's review to be transitory in nature and responsive to the factual situation and changes thereafter.[46]

The Monsod Petition further asserts that while Congress has the power to determine the manner in which to approve the extension of martial law, it must also meet the requirement of sufficient factual basis. The same standard should likewise apply as regards the Congress' discretion to respond to the President's request for an extension.[47] All the same, it calls upon the Court to consider that the Constitution provides that the sufficiency of the factual circumstances be weighed by the court of law and not on whether the President was satisfied or not with his or her assessment of the circumstances to declare martial law.[48] It should not be hindered from exercising its expanded jurisdiction under Section 1, Article VIII of the Constitution, which includes the review of the actions of other branches of government, i.e., its power to determine the factual basis for the proclamation and extension of martial law.[49] In doing so, the totality of factual circumstances will determine if there is adequate ground to warrant a nullification of the extension of martial law.[50]

Said petition emphasizes that the burden of proof is upon the Executive and the Legislative Departments to show that there is sufficient factual basis for the declaration and extension of martial law, in light of the factual milieu existing in Mindanao.[51]

In view of these, the Monsod Petition sought the issuance of a TRO or injunction in order to enjoin the respondents from further implementing Proclamation No. 216, as there is a possibility of abuse of rights.[52]

G.R. No. 243797 (Lumad Petition)[53]

The Lumad Petition contends that the Court may take judicial notice that the original factual basis for the issuance of Proclamation No. 216 no longer exists and that the same proclamation has already been rendered *functus officio*. Because of this, the third extension no longer has factual basis due to the President's declaration that Marawi City has been liberated.[54] The President's reasons for requesting an extension from Congress are inadequate since the President's own report indicated that the situation has improved.[55] Congress did not effectively review the factual basis for the request for extension which amounted to grave abuse of discretion.

Moreover, Congress should not have considered "terrorism" as a ground for the proclamation of martial law, much more for its extension. In the same vein, the Legislature's failure to ascertain the change in the factual basis relied upon by the President led to its being remiss in its duty to review Proclamation No. 216.[56]

Likewise, the Lumad Petition argues that the respondents failed to justify the need for a third extension as well as the sufficiency of its factual basis.[57] In line with this, current events such as the bombing in Jolo, Sulu, do not retroactively justify the continued existence of martial law.[58] Neither can the ongoing rebellion by the New People's Army (NPA) justify the extension of Proclamation No. 216, as this should be covered by a new proclamation.[59] Said Proclamation grants powers that are overbroad and undefined which suspend and curtail other rights, rendering an effective legislative or judicial review impossible. This includes General Order No. 1[60] which implements martial law.[61]

Relevantly, the Lumad Petition argues that the wholesale extension of martial law and the suspension of the privilege of the writ has resulted in an environment of continued impunity directed against Lumad schools which have been intimidated, harassed, and "red tagged." In support of this argument, it narrated the first-hand experiences of the petitioners therein.[62]

Notably, the Lumad Petition likewise asked for the issuance of an injunctive relief.[63]

Respondents, through the Office of the Solicitor General (OSG)

Respondents, on the other hand, argue that there is sufficient factual basis for the extension of Proclamation No. 216. Contrary to the Monsod Petition which demands that this Court should independently determine the sufficiency of the factual basis for extension of Proclamation No. 216. It is impossible for the Court to conduct an independent factual inquiry as its review is limited to the information given to the President by the AFP and the PNP. In fact, in *Lagman v. Medialdea*,[64] this Court acknowledged that it does not have the same resources available to the President; hence, its determination of the sufficiency of factual basis must be limited only to the facts and information mentioned in the Report and Proclamation. This Court must then rely on the fact-finding capabilities of the executive department. Also, respondents contend that the Constitution does not authorize the Court to conduct an independent inquiry as it is not an inquisitorial tribunal.[65]

As regards the manner by which Congress deliberated on the President's request for the third extension of Proclamation No. 216, respondents posit that the same is not subject to judicial review pursuant to the Court's ruling in *Lagman v. Pimentel III*[66] wherein the Court ruled, that considering that martial law is a law of necessity and self-preservation mechanism of the State, its proclamation or extension must be deliberated with speed. Thus, as this Court held, it "cannot engage in undue speculation that members of Congress did not review and study the President's request based on a bare allegation that the time allotted for deliberation was too short." [67]

Respondents further point out that the *Lagman* Petition raised the same issue already resolved in *Lagman v. Pimentel III*,[68] that is, whether the Congress has the power to extend martial law and suspend the privilege of the writ of habeas corpus. The 1987 Constitution did not fix the period of extension which gives Congress a wider latitude in determining the period for the extension of martial law and the suspension of the privilege of the writ of habeas corpus. The Constitution is clear, plain and free from any ambiguity; thus it must be given its literal meaning and applied without any attempted interpretation. *Verba legis non est recedendum*, or from the words of the Constitution, there should be no departure. Hence, the period for which the Congress may extend martial law and suspend the privilege of the writ of habeas corpus is a matter that it can define by any predetermined length of time. The Congress is given the power to determine the period of extension for a limited duration as specifically mandated under Section 18, Article VII of the 1987 Constitution.[69]

As to the alleged human rights violations, respondents argue that such do not warrant the nullification of martial law and the suspension of the privilege of the writ of habeas corpus. Respondents assert that the issue of alleged human rights violations has been threshed out in *Lagman v. Medialdea*[70] where it was declared that "any act committed under the said orders in violation of the Constitution and the laws, such as criminal acts or human rights violations, should be resolved in a separate proceeding." In the case at bar, the Court is only tasked to determine the sufficiency of the factual basis for the extension of Proclamation No. 216 and not to rule on the veracity of the alleged human rights violations by reason of the implementation of martial law.[71]

Furthermore, respondents contend that the sufficiency of the factual basis for the extension of Proclamation No. 216 and the public safety requirement are fully supported and addressed by the Department of National Defense's (DND) "Reference Material, Joint Session on the Extension of Martial Law in Mindanao" which was presented during the joint session of Congress which showed that rebellion still persists in Mindanao on account of: (a) the Local Terrorist Rebel Groups (LTRG) which consists of Abu Sayyaf Group (ASG), Bangsamoro Islamic Freedom Fighters (BIFF), Daulah Islamiya, and other groups that have established affiliation with ISIS/DAESH; and (b) Communist Terrorist Rebel Groups (CTRG) which consists of the Communist Party of the Philippines (CPP), New People's Army (NPA), and the National Democratic Front (NDF).[72]

Respondents maintain that the ongoing rebellion committed by these rebel groups endangers public safety. They cited various events and factors which showed that the rebel groups posed a threat to public safety, such as: (a) 181 persons with martial law arrest warrants have remained at large; (b) recent bombings which collectively killed 16 people and injured 63 others in less than two months; (c) the ambush of Philippine Drug Enforcement Agency (PDEA) personnel who conducted an anti-drug symposium in Tagoloan II, Lanao del Sur on October 5, 2018 which killed five persons and wounded two others; (d) radicalization activities conducted in vulnerable Muslim communities as well as recruitment of new members; and (e) continued kidnappings by ASG factions in Sulu and Basilan with seven victims remaining in captivity.[73]

Considering these atrocities committed by the rebel groups, respondents contend that both the President and the Congress have probable cause to believe that rebellion exists in Mindanao and the same endangers public safety. The quantum of evidence required to determine the existence of rebellion is merely probable cause. Thus, the President and the Congress relying on the detailed reports submitted by the DND and the AFP inferred that: (a) there is an armed public uprising in Mindanao; (b) the purpose of which is to remove from the allegiance to the government or its laws, the territory of the Republic or any part thereof, or depriving the Chief Executive or the Legislature of any of their powers or prerogatives, and (c) public safety requires the extension of martial law and suspension of the privilege of the writ of habeas corpus.[74]

So too, notwithstanding the minor discrepancies in the reports as well as alleged inclusion of entries or events which were deemed not in furtherance of rebellion, the credibility of the reports cannot be doubted as these reports were duly validated and authenticated in accordance with military procedure which are akin to entries in official records by a public officer which, under the law, enjoy the presumption as prima facie evidence of the facts stated therein.[75]

Lastly, respondents avow that the Court is not authorized to issue an injunctive writ under Section 18, Article VII of the 1987 Constitution. The jurisdiction of the Court is limited only to the determination of the sufficiency of factual basis of the extension of Proclamation No. 216. Even assuming that this Court has the power to issue an injunctive writ, respondents contend that petitioners failed to establish their right to a temporary restraining order or injunction. Simply put, petitioners have no clear and unmistakable legal right to prevent the extension of martial law in Mindanao. Petitioners also failed to prove that the alleged violations of their civil rights are directly attributed to the implementation and extension of Proclamation No. 216.

ISSUES

The Amended Advisory dated January 22, 2019 listed the following issues for resolution:

- A. Whether there exists sufficient factual basis for the extension of martial law in Mindanao.
 - 1. Whether rebellion exists and persists in Mindanao.
 - 2. Whether public safety requires the extension of martial law in Mindanao.
 - 3. Whether the further extension of martial law is not necessary to meet the situation in Mindanao.
- B. Whether the Constitution limits the number of extensions and the duration for which Congress can extend the proclamation of martial law and the suspension of the privilege of the writ of habeas corpus.
- C. Whether Proclamation No. 216 has become *functus officio* with the cessation of the Marawi siege that it may no longer be extended.
- D. Whether the manner by which Congress approved the extension of martial law is a political question and is not reviewable by the Court *en banc*.
 - 1. Whether Congress has the power to determine its own rules of proceedings in conducting the joint session under Section 18, Article VII of the Constitution.
 - 2. Whether Congress has the discretion as to how it will respond to the President's request for the extension of martial law in Mindanao - including the length of the period of deliberation and interpellation of the executive branch's resource persons.
- E. Whether the declaration of martial law and the suspension of the privilege of the writ of habeas corpus or extension thereof may be reversed by a finding of grave abuse of discretion on the part of Congress. If so, whether the extension of martial law was attended by grave abuse of discretion.
- F. Whether a temporary restraining order or injunction should issue.
- G. Whether a temporary restraining order or injunction should issue.[76]

Before delving further into the foregoing issues, it should be mentioned that some of these have already been resolved and discussed at length in *Lagman v. Medialdea*[77] and *Lagman v. Pimentel III*.[78] In particular, the issues taken up and settled by this Court in the mentioned cases are the following: a) the power of the Court to review the sufficiency of the factual basis of the declaration of martial law and the suspension of the privilege of the writ of habeas corpus and the extension thereof under Section 18, Article VII of the Constitution; b) the parameters for determining the sufficiency of the factual basis for the declaration of martial law and the suspension of the privilege of the writ of habeas corpus and the extension thereof; c) the determination of the sufficiency of the factual basis should be based on the full complement or totality of the factual basis and not on the absolute correctness of the facts stated in the Proclamation and the written report; d) the allowable standard of proof for the President, that is, probable cause; e) the power of the Congress to shorten or extend the President's proclamation of martial law or suspension of the privilege of the writ of habeas corpus; f) the manner in which the Congress deliberated on the President's request for extension is not subject to judicial review; g) the termination of armed combat in Marawi does not conclusively indicate that rebellion ceased to exist; h) alleged human rights violations committed during the implementation of martial law or the suspension of the privilege of the writ of habeas corpus should be resolved in a separate proceeding; and i) mere allegation of a constitutionally protected right does not automatically proceed to the issuance of an injunctive relief.

DISCUSSION

I concur with the ponencia in holding that RBH No. 6 extending Martial Law in the whole of Mindanao for the

period of January 1, 2019 to December 31, 2019 has sufficient factual basis; that a rebellion persists in Mindanao; and public safety requires the extension of Proclamation No. 216 for another year.

The view that I embrace is anchored on Section 18, Article VII of the Constitution from which the Supreme Court's jurisdiction over the matter emanates:

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 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.

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

Undoubtedly, the section obliges the Supreme Court to review 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 in an appropriate proceeding filed by any citizen. Consistent with the principle of checks and balances in our Constitution, the review we undertake herein is a check on the executive's and the legislative's separate but related powers to initiate and extend the declaration of Martial Law. This delineation of powers mapped out in Section 18 has already been settled and drawn by this Court in *Lagman v. Medialdea*[79] and enhanced further in *Lagman v. Pimentel III*.[80]

In *Lagman v. Medialdea*,[81] the Court firmly outlined the parameters in determining the sufficiency of the factual basis for the declaration of Martial Law: (a) actual rebellion or invasion; (b) public safety requires it; and (c) there is probable cause for the President to believe that there is actual rebellion or invasion. The Court further explained that in determining the sufficiency of the factual basis, it looks into the full complement or totality of such factual basis, thus[82]:

In determining the sufficiency of the factual basis of the declaration and/or the suspension, the Court should look into the full complement or totality of the factual basis, and not piecemeal or individually. Neither should

the Court expect absolute correctness of the facts stated in the proclamation and in the written Report as the President could not be expected to verify the accuracy and veracity of all facts reported to him due to the urgency of the situation. To require precision in the President's appreciation of facts would unduly burden him and therefore impede the process of his decision-making. Such a requirement will practically necessitate the President to be on the ground to confirm the correctness of the reports submitted to him within a period that only the circumstances obtaining would be able to dictate. Such a scenario, of course, would not only place the President in peril but would also defeat the very purpose of the grant of emergency powers upon him, that is, to borrow the words of Justice Antonio T. Carpio in *Fortun*, to "immediately put an end to the root cause of the emergency." Possibly, by the time the President is satisfied with the correctness of the facts in his possession, it would be too late in the day as the invasion or rebellion could have already escalated to a level that is hard, if not impossible, to curtail.

Besides, the framers of the 1987 Constitution considered intelligence reports of military officers as credible evidence that the President can appraise and to which he can anchor his judgment, as appears to be the case here. (Emphasis mine)

The central matter of contention in these cases is the propriety of the third extension of Martial Law from January 1, 2019 to December 31, 2019. Based on the letter of the President to Congress requesting for a third extension, and the accompanying letters of the Secretary of National Defense, the AFP Chief of Staff, and the PNP Director General addressed to the President, I find that respondents have sufficiently established the existence and persistence of an actual rebellion and that public safety requires the third extension of Proclamation No. 216.

Concededly, there were several inconsistencies and/or inaccuracies in the written reports submitted by the DND and the AFP to the President. Nevertheless, these statistical outliers are not enough to invalidate the extension of Proclamation No. 216 considering that there were other facts in the written reports which support the conclusion that there is actual rebellion which persists and that public safety requires said extension. Besides, absolute accuracy or correctness of all the information in the written reports is not required in order for the President to extend Proclamation No. 216 for to do so would unduly hamper the President's power to respond to an urgent situation. Simply put, accuracy is not equivalent to sufficiency. As sensibly held in *Lagman v. Medialdea*[83]:

Neither should the Court expect absolute correctness of the facts stated in the proclamation and in the written Report as the President could not be expected to verify the accuracy and veracity of all facts reported to him due to the urgency of the situation. To require precision in the President's appreciation of facts would unduly burden him and therefore impede the process of his decision-making. Such a requirement will practically necessitate the President to be on the ground to confirm the correctness of the reports submitted to him within a period that only the circumstances obtaining would be able to dictate. Such a scenario, of course, would not only place the President in peril but would also defeat the very purpose of the grant of emergency powers upon him, that is, to borrow the words of Justice Antonio T. Carpio in *Fortun*, to "immediately put an end to the root cause of the emergency." Possibly, by the time the President is satisfied with the correctness of the facts in his possession, it would be too late in the day as the invasion or rebellion could have already escalated to a level that is hard, if not impossible, to curtail.

This Court need not delve into the alleged inconsistencies and/or inaccuracies but on the totality of the factual basis which necessitates the extension of Proclamation No. 216. Notably, respondents cited the following incidents and/or factors for the extension of Martial Law: (a) the various bombing incidents committed by various terrorist groups that resulted in civilian casualties such as (1) the Lamitan Bombing on July 31, 2018 that killed 11 individuals and wounded 10 others, (2) the two Isulan, Sultan Kudarat IED explosions on August 28, 2018 and September 2, 2018 which collectively left five casualties and wounded 45 individuals, and (3) the Barangay Apopong, General Santos City IED explosion on September 16, 2018 that left eight individuals, including a three-year old child, wounded; (b) the kidnapping incidents staged by Abu Sayyaf Group (ASG) factions in Sulu

involving a Dutch, a Vietnamese, two Indonesians, and four Filipinos; (c) at least 342 violent incidents, such as harassment, attacks against government installations, liquidation operations, and various arson attacks, perpetrated by communists mostly in Eastern Mindanao from January 1, 2018 to November 30, 2018 in furtherance of their public declaration to seize political power and overthrow the government; (d) twenty-three recorded arson incidents which destroyed properties approximately valued at one hundred fifty-six million pesos (PhP 156,000,000.00); and (e) atrocities which resulted in the killing of 87 military personnel and wounding of 408 others. On the whole, I find these cited incidents more than sufficient factual bases for the President to request the Congress for the third extension of Proclamation No. 216, this time from January 1, 2019 to December 31, 2019.[84]

Relevantly, the intelligence division of the AFP (OJ2) explained the process of validation of information:

The Office of the Deputy Chief of Staff for Intelligence, AFP (OJ2) is the depository of all information collected by various AFP units on the activities of groups that threaten national security. These AFP units obtain information through formal (reports of government agencies performing security and law enforcement functions) as well as informal channels (information networks in areas of interest and informants who are members of the threat groups). The information through these sources are collected to gain situational awareness particularly on enemy intentions and capabilities that become the basis of military operations and policy making. Since the information gathered from these sources are not meant to be used in criminal proceedings, the degree of documentation of the data obtained is not so rigid, especially since majority of the reports come from informants. It is for this reason that some reports are classified as secret since the release of such information could reveal the identities of informants embedded in various threat groups, or compromise an operational methodology employed by the military in gathering information.

Nevertheless, the information gathered by various AFP units are expected to have undergone validation before being forwarded to OJ2 although there are instances where reports come from a single source, i.e., they come from a single informant and there is no way to validate the accuracy and veracity of its contents. It is for this reason that the AFP has a method of assessing the reliability of its informants based on their track record.

When it comes to violent incidents as well as armed clashes or encounters with threat groups, AFP units are required to submit reports as soon as possible. Called 'spot reports,' they contain information that are only available at that given reporting time window. This practice is anchored on the theory that an incomplete information is better than a complete information that is too late to be used. Subsequent developments are communicated through 'progress reports' and detailed 'special reports.' [85]

The foregoing explanation adequately answers the question, at least with regard to the process of validation of information pertaining to the recorded incidents in Mindanao during Martial Law in that island. To reiterate, and consistent with *Lagman v. Medialdea*, [86] accuracy is not required; neither is it equal to sufficiency.

In fact, during the plenary proceeding of the Joint Session of Congress regarding the third extension, figures were cited and actual experiences were described which fully bolstered respondents' position that the imposition of Martial Law in Mindanao ought to be extended. The following pertinent details were mentioned:

E.S. MEDIALDEA.

x x x x

The President, in calling upon the Congress to extend Proclamation No. 216 has observed, among others, the following:

The remnants of the local terrorist groups composed of the Abu Sayyaf group and Daulah Islamiya have continued with their political thrust of establishing a wilayah and the Philippines, as part of Daesh, pretended

global caliphate.

On the other hand, the so called Bangsamoro Islamic Freedom Fighters have remained adamant in their pursuit of establishing an independent Islamic State. These complications are further worsened by the presence of other foreign terrorist elements who, despite differences in ideologies, share the same purpose of overthrowing our government.

x x x x

The communist terrorist groups compose of the Communist Party of the Philippines, the National Democratic Front, and the New People's Army have carried on their armed struggle as part of their political elm to overthrow this government and supplant the same with communist rule. They commit armed hostilities against the people and displayed blatant, contiguous, and resolute defiance against the duly constituted government authorities.

x x x x

LT. GEN. MADRIGAL. Your Honor, Sir, based on the current - our PSR, Sir, the number of the ASG at this point is - number is about 424, with 254 firearms; the BIFF 264, with 254 firearms; Daulah Islamiyah 111, with 91 firearms; and the communist terrorist group of 1,636 or a total of 2,435, Your Honor.

REP. LAGMAN. And what are the basis for those figures?

LT. GEN. MADRIGAL. It's the deliberation, Your Honor, by the joint intelligence community, Your Honor.

x x x x

REP. CAGAS.

x x x x

While there had been considerable progress in addressing rebellion in the region, as well as promoting its overall security and peace and order situation, the threat of national security posed by rebel groups remain clear and present in the region. There had been bombings in Sultan Kudarat in August and in Basilan in July, and last month, armed men believed to be members of the communist New People's Army set fire to three dump trucks in a small village in my district. Those dump trucks had been used to work on a road project linking the municipality of Magsaysay to the town of Matanao.

The attack came barely a month after military officials said in a statement that the NPA forces in the province had already weakened. Clearly, the attack is NPA's way of sending the government a message that they are still a strong and brute force, and that they are not ready to back down.[87]

It is also worthy to note that the President, through his fact-finding capabilities, has access to confidential information which may be shared to and relied upon by the Court in determining the sufficiency of the factual basis for the extension of Proclamation No. 216. To be sure, this is not gossamer information. After all, such information underwent intelligence affirmation by the military outfit best equipped to filter the same, the Office of the Deputy Chief of Staff for Intelligence, J2. The President, however, is not expected to completely validate all the information he received before he can request for the extension of martial law. He needs only to convince himself that there is probable cause or evidence showing that more likely than not a rebellion was committed or is being committed.[88]

The quantum of evidence that the President needs to satisfy in order to declare martial law and suspend the privilege of the writ of habeas corpus and extend the same is probable cause. Probable cause does not require absolute truth.[89] It 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." [90] This Court's power to review, therefore, is limited only to the examination on whether the President acted within the bounds set by the Constitution, i.e., whether or not the facts in his possession prior to and at the time of the declaration or suspension are sufficient for him to declare martial law or suspend the privilege of the writ. [91] In holding so, I should need only to point to the soundness and sensibility of our prior ruling in *Lagman v. Medialdea* [92] where it was held that the Court does not need to satisfy itself that the President's decision is correct, rather it only needs to determine whether the President acted arbitrarily. [93]

Moreover, I cannot agree to the proposition that certain fundamental precepts in administrative fact-finding are applicable in the cases at bar. Such a proposal confuses the parameters and scope of the investigatory powers of the military and police in determining threats to national security and public safety.

There is no dissension on my end as to the exposition of *Ang Tibay v. Court of Industrial Relations*, [94] relative to fundamental precepts in administrative fact-finding investigations or proceedings. However, these tenets cannot be made to apply to recommendations made by the military and the police to the President, in relation to its fact-finding inquiries which establishes the positive threat to national security and public safety posed in Mindanao. The investigating functions of the military and the police do not endow them with quasi-judicial powers requiring them to make a finding of substantial evidence in each of their investigations.

Thus, I cite again the AFP's clarification on certain discrepancies noted by some of my Colleagues with regard to the data provided by the Office of the Deputy Chief of Staff for Intelligence, J2, and which were raised during the oral arguments:

The information through these sources are collected to gain situational awareness particularly on enemy intentions and capabilities that become the basis of military operations and policy making. Since the information gathered from these sources are not meant to be used in criminal proceedings, the degree of documentation of the data obtained is not so rigid, especially since majority of the reports come from informants. It is for this reason that some reports are classified as secret since the release of such information could reveal the identities of informants embedded in various threat groups, or compromise an operational methodology employed by the military in gathering information.

Nevertheless, the information gathered by various AFP units are expected to have undergone validation before being forwarded to OJ2 although there are instances where reports come from a single source, i.e., they come from a single informant and there is no way to validate the accuracy and veracity of its contents. It is for this reason that the AFP has a method of assessing the reliability of its informants based on their track record.

When it comes to violent incidents as well as armed clashes or encounters with threat groups, AFP units are required to submit reports as soon as possible. Called "spot reports," they contain information that are only available at that given reporting time window. This practice is anchored on the theory that an incomplete information is better than a complete information that is too late to be used. Subsequent developments are communicated through "progress reports" and detailed "special reports." [95] (Emphasis supplied.)

It is my view that the nature of the evidence that support the findings established out of this investigatory power, which is essentially the function of the military and police, is not substantial evidence, which is the norm in administrative cases. Indeed, in a Section 18 review of the sufficiency of the factual basis for the declaration of martial law, the President need only find probable cause for the existence of rebellion (or invasion) and that the declaration of martial law is required by public safety. [96]

To emphasize the distinction, I refer to the ruling in *Subido Pagente Certeza Mendoza and Binay Law Offices v. Court of Appeals* [97] which distinguished between a purely investigative body as the Anti-Money Laundering

Council (AMLC) and that bestowed with quasi-judicial powers. In that case, the Court ruled that the AMLC's initial determination of whether certain activities are constitutive of anti-money laundering offenses do not make it into a quasi-judicial body which must comply with the precepts of due process at that stage.

Here, the military and the police, performed their function of providing intelligence reports resulting from their investigations, to the President, the Commander-in-Chief. Although these reports may have contained discrepancies, the President, in his discretion, found probable cause to believe that the rebellion in Mindanao is ongoing and that public safety is endangered, thereby requiring him to request for the further extension of Martial Law in Mindanao for another year.

Thus, I find that the President's factual basis to further extend Proclamation No. 216 is grounded on validated confidential information which were lifted from ground level activities and intelligence reports gathered by the military. These validated incidents and circumstances encountered by the military in the area necessitate the extension of Proclamation No. 216 in Mindanao.

In exercising its power to review the sufficiency of the factual basis for the declaration and/or extension of Martial Law, this Court should use as a guide known and validated incident reports from the military and the police. It cannot, however, replace with its own perceptions and recommendations the actual experiences and encounters of the military, especially for those on the ground or actually stationed in Mindanao where all the attacks or threats are taking place. It would be presumptuous for us to suggest otherwise given that we are not directly affected and do not see firsthand the threats and attacks against, not only to the government, but also the innocent civilians. Likewise, I cannot volunteer our own factual findings since this Court does not have the means nor resources to actually verify the details of each encounter or threat. In fact, the Court would still need to refer back to the military's intelligence reports as they are the primary source of information in the first place. It must be stressed that in the case of *Lagman v. Medialdea*,^[98] this Court already held that even the framers of the 1987 Constitution considered intelligence reports of military officers as credible evidence that the President can appraise and to which he can anchor his judgment.^[99]

The continued threats to the country's security posed by the rebels, as supported by the data given by the military and evidenced by the recent bombings or attacks in different parts of Mindanao definitively establish that rebellion still persists. For instance, the bombing in Jolo, Sulu,^[100] despite the declaration of martial law in the area, left a number of people dead and wounded. An incident like this, and everything and anything similar, simply cannot go unnoticed and not addressed. Plainly, in light of the threats and attacks, there is no doubt that public safety requires the continued implementation of martial law over the region. There is a real and imminent threat which needs to be addressed given that life and property are at stake.

Second. The extension of Proclamation No. 216 is categorically within the powers of Congress and is shorn up by the ruling in *Lagman v. Pimentel III*.^[101]

We need not look beyond Section 18 which clearly grants unto Congress the power to shorten or extend the President's proclamation of Martial Law or suspension of the privilege of the writ of habeas corpus, the pertinent part of which provides that:

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. (Emphasis supplied.)

In *Lagman v. Pimentel III*,^[102] the Court interpreted that provision of Section 18 and ruled that Congress has the

power to approve any extension of the proclamation of martial law, as long as it is under the President's initiative, and falling within the set parameters as basis for the extension. *Lagman v. Pimentel III*[103] held that by approving the extension of martial law, Congress and the President performed a "joint executive and legislative act" or "collective judgment."

More importantly, the proviso which declares that "[U]pon 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" is silent on the number of times Congress may extend the effectivity of martial law as well as its duration. Evidently, Congress is vested with the discretion to determine the duration of and the number of extensions of the martial law.

The view that I take herein is limned by the deliberations of the Constitutional Commission on the 1987 Constitution which gave Congress the power to determine the frequency and duration of the extension for as long as the determinative factors, specifically, the invasion or rebellion persists and public safety requirement, are present, viz.:

MR. PADILLA. According to Commissioner Concepcion, our former Chief Justice, the declaration of martial law or the suspension of the privilege of the writ of habeas corpus is essentially an executive act. If that be so, and especially under the following clause: "if the invasion or rebellion shall persist and public safety requires it," I do not see why the period must be determined by the Congress. We are turning a purely executive act to a legislative act.

FR. BERNAS. I would believe what the former Chief Justice said about the initiation being essentially an executive act, but what follows after the initiation is something that is participated in by Congress.

MR. CONCEPCION. If I may add a word. The one who will do the fighting is the executive but, of course, it is expected that if the Congress wants to extend, it will extend for the duration of the fighting. If the fighting goes on, I do not think it is fair to assume that the Congress will refuse to extend the period, especially since in this matter the Congress must act at the instance of the executive. He is the one who is supposed to know how long it will take him to fight. Congress may reduce it, but that is without prejudice to his asking for another extension, if necessary.[104] (Emphasis mine)

Clearly, the framers of the Constitution fitted Congress with enough flexibility to determine the duration of the extension without prejudice to the President's request for another extension. This is only logical and proper considering that the amount of time necessary to quell a rebellion cannot be measured with mathematical accuracy, definitiveness or even finality.

Third. This Court, in *Lagman v. Pimentel III*,[105] already ruled on the issue of the manner by which Congress deliberates on the President's request for extension, which issue is not subject to judicial review. Indeed, "the Court cannot review the rules promulgated by Congress in the absence of any constitutional violation." [106] Upon evaluation, the petitioners unfortunately failed to provide evidence in order to demonstrate to this Court how Congress conducted its joint session in a manner which contradicted the Constitution or its own rules.

Hence, there is no merit in petitioners' contention that the members of the Congress were given merely a short period of time to discuss and explain their arguments before the voting to extend Proclamation No. 216. The motivations of each member of Congress and the duration on which they deliberated on the President's request for a third extension are political questions which the Court need not rule on. Simply put, Congress, as a body, performed its functions within the ambit of the Constitution and the authority granted therein.

Fourth. Despite the cessation of the Marawi siege, Proclamation No. 216 has not become *functus officio*.

This Court declared in *Lagman v. Pimentel III*[107] that the termination of armed combat in Marawi does not conclusively indicate that the rebellion has ceased to exist. It bears stressing that the situation in Mindanao involves that of an asymmetric war which is defined as a "warfare between two opposing forces which differ greatly in military power and which typically involves the use of unconventional weapons and tactics, such as but not limited to hit-and-run ambush and bombings to inflict casualties while minimizing their own risks." [108]

During the oral arguments, General Benjamin R. Madrigal, Jr, the AFP Chief of Staff, expounded on the concept of an asymmetric war, to wit:

ASSOCIATE JUSTICE HERNANDO:

I'm jumping off from what Justice Jardeleza has started from and this is on the basis of the statement of Secretary Lorenzana before Congress that there is a need to at least degrade the extent of combat that's taking place thirty percent before PNP as a law enforcement agency can come into the picture. I just want to ask this just for my perspective to be validated. I think that that thirty percent degradation is from the view point of a war that is asymmetric because what government is waging against these rebels is not a general or a conventional war rather it's an asymmetric war. And that is because we have a standing army that numbers 98,000 as of last count with 120,000 as reservists. And when we compare that number to the rebels, I'm very sure that their number is very much less than that and which is why I say that what government is waging against these rebels is an asymmetric war, not a symmetrical or conventional war. So that thirty percent, General Madrigal, is from the prospective of an asymmetric war?

GENERAL MADRIGAL:

Your Honor, that's why we have included as part of the parameters the level of influence specially on the affected barangays because the number we are referring to, the 1,600 or so regulars are still supported by the support system. We call it the underground mass organization; they call it the Sangay ng Partido sa Lokalidad or party members in the locality and Demolisyon Bayan or the armed militias in the barangay. So these are all part of the overall enemy capability as far as the CPP-NPA that we are addressing, not only the regular armed groups but also the support system. In fact we focus so much on the support system in the firm belief that it will be very easy to address armed groups if they do not have the support of the community.[109]

Plainly, even with the end of the Marawi siege, rebellion persists as confirmed by the various validated reported incidents submitted by the military such as bombing incidents, kidnapping episodes and other atrocities. In addition, modern day rebellion need not take place in the battlefield of the parties' own choosing. It may also include underground propaganda, recruitment, procurement of arms and raising of funds which are conducted far from the battle fronts. As held in *Aquino, Jr. v. Ponce Enrile*[110]:

In the first place I am convinced (as are the other Justices), without need of receiving evidence as in an ordinary adversary court proceeding, that a state of rebellion existed in the country when Proclamation No. 1081 was issued. It was a matter of contemporary history within the cognizance not only of the courts but of all observant people residing here at the time. Many of the facts and events recited in detail in the different 'Whereases' of the proclamation are of common knowledge. The state of rebellion continues up to the present. The argument that while armed hostilities go on in several provinces in Mindanao there are none in other regions except in isolated pockets in Luzon, and that therefore there is no need to maintain martial law all over the country, ignores the sophisticated nature and ramifications of rebellion in a modern setting. It does not consist simply of armed clashes between organized and identifiable groups on fields of their own choosing. It includes subversion of the most subtle kind, necessarily clandestine and operating precisely where there is no actual fighting. Underground propaganda, through printed news sheets or rumors disseminated in whispers; recruitment of armed and ideological adherents, raising of funds, procurement of arms and materiel, fifth-column activities including sabotage and intelligence — all these are part of the rebellion which by their nature are usually conducted far from the battle fronts. They cannot be counteracted effectively unless

recognized and dealt with in that context. (Emphasis supplied.)

The Lagman and Bayan Muna petitions also raised the argument that the rebel group identified to be behind the rebellion in the initial proclamation of Martial Law should be the same rebel group that is foisting the rebellion for which the third extension is being sought by the Commander-in-Chief. This is unfounded. For one, this is tantamount to imposing a limitation which is not found in Section 18, Article VII or envisioned by the framers of the Constitution. To be sure, Section 18, Article VII did not in any manner require the President to identify or specify in the initial proclamation the particular rebel group that is mounting the rebellion. For another, this would result into an absurd situation wherein the President might as well be required to issue another proclamation or request for an extension, each time that a new rebel group is identified to be behind the rebellion, and which rebel group was not mentioned or included in the initial proclamation of the President.

Thus, I hasten to add that it is quite absurd to state that with the cessation of the Marawi siege and the so-called end of the Maute rebellion, Proclamation No. 216 has become *functus officio*. To put the issue in its proper perspective, Proclamation No. 216 indeed referred mainly to the Maute group. However, it must also be pointed out that Proclamation No. 216 did not rest exclusively on the Maute rebellion. Proclamation No. 216 was so couched in such a way that the "violent acts committed by the Maute terrorist group" was only "part of the reasons for the issuance of Proclamation No. 55" which, in turn, referred to other "armed lawless groups," as well as "private armies and local warlords, bandits and criminal syndicates, terrorist groups and religious extremists."

In any event, the fact that the Maute group had been vanquished does not mean that the rebellion in Mindanao has been finally quelled; neither does it prohibit the extension of the initial or original proclamation of Martial Law. To my mind, as long as the rebellion persists and there is an undeniable threat to public safety, regardless of whoever or whichever group is waging the same, the original or initial declaration of martial law, or even its subsequent extension, would stand firmly on constitutional moorings. The lengthening of martial law should not depend on the particular group mentioned in the Proclamation; rather, it should rest on the fact that there is sufficient basis that rebellion still exists and that public safety requires the same. The qualifying factors must be the very existence of rebellion or invasion and threat to public safety. Significantly enough, Proclamation No. 216 did not exclusively refer to the Maute rebellion; "other rebel groups" were clearly referenced therein.

In fine, based on the present and existing factual milieu in Mindanao as verified by validated incident reports, I find that there is sufficient factual basis to extend the period of martial law and the suspension of the privilege of the writ of habeas corpus a third time, specifically from January 1, 2019 until December 31, 2019. The totality of the factual circumstances, coupled with Congress' power to determine the duration, necessitates in all respects the third extension of Martial Law in Mindanao.

ACCORDINGLY, I vote to DISMISS the petitions and DECLARE CONSTITUTIONAL Resolution of Both Houses No. 6.

[1] G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1.

[2] G.R. Nos. 235935, 236061, 236145 & 236155, February 6, 2018.

[3] Rollo, G.R. No. 243522, Vol. 1, pp. 208-213. Joint Letter of AFP Chief of Staff Carlito G. Galvez, Jr. and PNP Chief of Staff Oscar D. Albayalde to President Rodrigo R. Duterte.

[4] *Id.*, Vol. 2, p. 798. Memorandum for Respondents through the Office of the Solicitor General, p. 5.

[5] *Supra* note 3. Joint Letter of AFP Chief of Staff Carlito G. Galvez, Jr. and PNP Chief of Staff Oscar D.

Albayalde to President Rodrigo R. Duterte.

[6] Supra note 4 at p. 799, Memorandum for Respondents through the Office of the Solicitor General.

[7] Id.

[8] Id. at pp. 753-788. Filed by Representatives Edcel C. Lagman, Tomasito S. Villarin, Teddy Brawner Baguilat, Jr., Edgar R. Erice, Gary C. Alejano, Jose Christopher Y. Belmonte, and Arlene "Kaka" Bag-Ao.

[9] Id. at pp. 756-757. Memorandum of the Petitioners Lagman, et al.

[10] Id., Vol. 1, at pp. 26-27. Petition of the Petitioners Lagman, et al.

[11] Id. at pp. 27-28.

[12] Id. at pp. 11-22; supra note 4, pp. 757-760, Memorandum of the Petitioners Lagman, et al.

[13] Id. at pp. 34-36.

[14] Id. at p. 37.

[15] Supra note 4, pp. 771-772, 761-764, Memorandum of the Petitioners Lagman, et al.

[16] Supra note 1.

[17] Supra note 2.

[18] Supra note 4, pp. 765-768. Memorandum of the Petitioners Lagman, et al., pp. 13-15.

[19] Id. at pp. 768-771.

[20] Id. at pp. 775-786.

[21] Supra note 3 at pp. 41-44, Petition of the Petitioners Lagman, et al.; Supra note 4, p. 781, Memorandum of the Petitioners Lagman, et al.

[22] Id. at pp. 44-45.

[23] Id. at pp. 45-46.

[24] Supra note 4 at p. 782, Memorandum of the Petitioners Lagman, et al.

[25] Id. at pp. 783-784.

[26] Id. at p. 783.

[27] Supra note 3 at pp. 46-47, Petition of the Petitioners Lagman, et al.

[28] Supra note 3 at pp. 308-309, Amended Petition of the Petitioners Lagman, et al.

[29] Rollo, G.R. No. 243677, pp. 3-41; Filed by Bayan Muna Partylist Representative Carlos Isagani T. Zarate, Gabriela Women's Party Representatives Rmerenciana A. De Jesus and Arlene D. Brosas, Anakpawis Representative Ariel B. Casilao, ACT Teachers Representatives Antonio L. Tinio and France L. Castro, and Kabataan Partylist Representative Sarah Jane I. Elago.

[30] Id. at p. 127, Memorandum for Petitioner Bayan Muna, et al.

[31] Id. at pp. 263-266.

[32] Id. at p. 272.

[33] Id. at pp. 278-280, Memorandum for Petitioner Bayan Muna, et al.

[34] Id. at pp. 282-284.

[35] Id. at pp. 288-292.

[36] Rollo , G.R. No. 243745, pp. 3-31, Filed by Christian S. Monsod, Ray Paolo J. Santiago, Nolasco Ritz Lee B. Santos III, Marie Hazel E. Lavitoria, Dominic Amon R. Ladeza, and Xamantha Xofia A. Santos.

[37] Id. at pp. 14-25, Petition of the Petitioners Monsod, et al., Id. at p. 290, Memorandum of the Petitioners Monsod, et al.

[38] Id. at pp. 291-295, Memorandum of the Petitioners Monsod, et al.

[39] Id. at pp. 295-301.

[40] Id. at p. 303.

[41] Id. at pp. 303-305.

[42] Id. at pp. 305-307.

[43] Id. at pp. 307-308.

[44] Id. at pp. 27-28, Petition of the Petitioners Monsod, et al.

[45] Id. at pp. 308-309, Memorandum of the Petitioners Monsod, et al.

[46] Id. at pp. 23-27, Petition of the Petitioners Monsod, et al.; Id. at pp. 309-310, Memorandum of the Petitioners Monsod, et al.

[47] Id. at p. 311, Memorandum of the Petitioners Monsod, et al.

[48] Id. at p. 30, Petition of the Petitioners Monsod, et al.

[49] Id. at pp. 312-313, Memorandum of the Petitioners Monsod, et al.

[50] Id. at pp. 313-314.

[51] Id. at p. 316.

[52] Id. at p. 30, Petition of the Petitioners Monsod, et al.; Id. at pp. 314-315, Memorandum of the Petitioners Monsod, et al.

[53] Rollo, G.R. No. 243797, pp. 7-18, Filed by Rius Valle, Jhosa Mae Palomo, Lito Kalubag, Junjun Gambang, Jeany Rose Hayahay, and the Integrated Bar of the Philippines.

[54] Id. at pp. 10-11, Petition of the Lumad Petitioners; Id. at pp. 299-306, Memorandum of the Lumad Petitioners, et al.

[55] Id. at pp. 11-12; Id. at p. 300.

[56] Id. at p. 12; Id. at pp. 300-304.

[57] Id. at pp. 304-305, Memorandum of the Lumad Petitioners, et al.

[58] Id. at p. 306.

[59] Id. at pp. 306-307.

[60] Section 3, General Order No. 1.

Section 3. Scope and Authority. The Armed Forces of the Philippines shall undertake all measures to prevent and suppress all acts of rebellion and lawless violence in the whole of Mindanao, including any and all acts in relation thereto, in connection therewith, or in furtherance thereof, to ensure national integrity and continuous exercise by the Chief Executive of his powers and prerogatives to enforce the laws of the land and to maintain public order and safety.

[61] Supra note 53 at pp. 12-13, Petition of the Lumad Petitioners; Id. at pp. 307-308, Memorandum of the Lumad Petitioners, et al.

[62] Id. at pp. 13-17; id. at pp. 306-313.

[63] Id. at pp. 17-18, Petition of the Lumad Petitioners.

[64] Supra note 1.

[65] Supra note 3 at pp. 121-123, Memorandum for Respondents.

[66] Supra note 2.

[67] Supra note 3 at pp. 124-125, Memorandum for Respondents.

[68] Supra note 2.

[69] Supra note 3 at pp. 126-132, Memorandum for Respondents.

[70] Supra note 1 at p. 173.

[71] Supra note 3 at pp. 132-135, Memorandum for Respondents.

[72] Id. at pp. 135-138.

[73] Id. at pp. 138-151.

[74] Id. at pp. 151-154.

[75] Id.

[76] Amended Advisory of the Supreme Court.

[77] Supra note 1.

[78] Supra note 2.

[79] Supra note 1.

[80] Supra note 2.

[81] Supra note 1 at p. 184.

[82] Id. at pp. 179-180 citing the Dissenting Opinion of Justice Antonio T. Carpio in *Fortun v. President Macapagal-Arroyo*, 684 Phil. 526, 565-619 (2012).

[83] Id.

[84] Supra note 3, pp. 114-115, 135-151, Memorandum for Respondents.

[85] Supra note 4 at pp. 847-848, Letter of Major General Pablo M. Lorenzo, AFP (Deputy Chief of Staff for Intelligence, J2) to Solicitor General Jose C. Calida.

[86] Supra note 1 at p. 179.

[87] Transcript of Plenary Proceedings of Joint Session of Congress on the extension of Martial Law in Mindanao from January 1, 2019 to December 31, 2019 dated December 12, 2018, pp. 14-15, 27 and 134.

[88] G.R. Nos. 231658, 231771 & 231774 (Resolution), December 5, 2017.

[89] Id.

[90] Lagman v. Medialdea, supra note 1 at p. 193.

[91] Id. at p. 182.

[92] Id.

[93] Id.

[94] 69 Phil. 635 (1940).

[95] Supra note 4 at pp. 847-848, Letter of Major General Pablo M. Lorenzo, AFP (Deputy Chief of Staff for Intelligence, J2) to Solicitor General Jose C. Calida.

[96] Lagman v. Pimentel III, supra note 2.

[97] 802 Phil. 314 (2016).

[98] Supra note 1.

[99] II RECORD, CONSTITUTIONAL COMMISSION 470-471 (July 30, 1986).

MR. NATIVIDAD. And the Commissioner said that in case of subversion, sedition or imminent danger of rebellion or invasion, that would be the *causis belli* for the suspension of the privilege of the writ of habeas corpus. But I wonder whether or not the Commissioner would consider intelligence reports of military officers as evidence of imminent danger of rebellion or invasion because this is usually the evidence presented.

MR. PADILLA. Yes, as credible evidence, especially if they are based on actual reports and investigation of facts that might soon happen.

MR. NATIVIDAD. Then the difficulty here is, of course, that the authors and the witnesses in intelligence reports may not be forthcoming under the rule of classified evidence of documents. Does the Commissioner still accept that as evidence?

MR. PADILLA. It is for the President as commander-in-chief of the Armed Forces to appraise these reports and be satisfied that the public safety demands the suspension of the writ. After all, this can also be raised before the Supreme Court as in the declaration of martial law because it will no longer be, as the former Solicitor General always contended, a political issue. It becomes now a justiciable issue. The Supreme Court may even investigate the factual background in support of the suspension of the writ or the declaration of martial law.

MR. NATIVIDAD. As far as the Commissioner is concerned, would he respect the exercise of the right to, say, classified documents, and when authors of or witnesses to these documents may not be revealed?

MR. PADILLA. Yes, because the President, in making this decision of suspending the writ, will have to base his judgment on the document because after all, we are restricting the period to only 60 days and further we are

giving the Congress or the Senate the right or the power to revoke, reduce, or extend its period.

[100] See: Twin Blasts Hit Jolo Cathedral; At Least 20 Dead, available at: <https://news.mb.com.ph/2019/01/27/twin-blasts-hit-jolo-cathedral-at-least-20-dead/> (last accessed February 15, 2019).

[101] Supra note 2.

[102] Id.

[103] Id.

[104] Lagman v. Pimentel III, id. citing Record of the Constitutional Commission (1986), pp. 508-516.

[105] Id.

[106] Id. citing Pimentel, Jr. v. Senate Committee of the Whole, 660 Phil. 202 (2011) and Arroyo v. De Venecia, 343 Phil. 42 (1997).

[107] Id.

[108] Asymmetric Warfare, available at <https://www.merriam-webster.com/dictionary/asymmetric%20warfare> (last accessed February 15, 2019).

[109] Transcript of Stenographic Notes taken during the hearing of the case at bench on January 29, 2019, pp. 90-91.

[110] 158-A Phil. 1, 48-49 (1974).

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