

**IN THE MATTER OF THE PETITION FOR HABEAS CORPUS OF
HORACIO R. MORALES, JR., HORACIO R. MORALES, JR., PETITIONER,
VS. MINISTER JUAN PONCE ENRILE, GEN. FABIAN C. VER AND COL.
GALI...**

G.R. No. 61016. April 26, 1983

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

1. The petitions are without merit and are hereby DISMISSED.
2. Petitioners were arrested on April 21, 1982 at about 9:45 a.m. while they were riding together in a motor vehicle on Laong-Laan Street, Quezon City, by elements of Task Force Makabansa of the Armed Forces of the Philippines. Since their arrest, they have been under detention. Petitioner Morales filed his petition for habeas corpus with this Court on July 9, 1982, while petitioner Moncupa filed his on July 19, 1982. On July 20, 1982 petitioners, together with several others, were charged with rebellion (Art. 134, Revised Penal Code) before the Court of First Instance of Rizal in Criminal Case No. Q-21091 filed by the City Fiscal of Quezon City. The trial of the case has yet to be terminated. The continued detention of petitioners to answer for the offense charged is therefore legal.
3. Petitioners allege that they were arrested without any warrant of arrest; that their constitutional rights were violated, among them the right to counsel, the right to remain silent, the right to a speedy and public trial, and the right to bail. They also air the charge that they were subjected to maltreatment and torture; that they did not have the opportunity to present their defense before the inquest fiscal and therefore asked this Court to order the reinvestigation of the charges against them. Acting on such plea, this Court in a resolution en banc dated July 22, 1982 ordered the City Fiscal of Quezon City to conduct such reinvestigation and at the same time appointed him "to act as commissioner of this Court and receive evidence of the charges made by petitioners before this Court of alleged torture and violation of their constitutional rights, particularly the right to counsel." On September 28, 1982, the City Fiscal submitted his report on the reinvestigation affirming the existence of a prima facie case for rebellion against petitioners and several others. And on February 8, 1983 he submitted to this Court the transcript of the notes taken at the reception of the evidence on the charges of petitioners.
4. If petitioners had been arrested in a communist country, they would have no rights to speak of. However, the Philippines is a republican state. Sovereignty resides in the people and all government authority emanates from them.[1] We have a Constitution framed by a constitutional convention and duly ratified by the people. We subscribe to the rule of law. We believe in human rights and we protect and defend them. Petitioners are entitled to the full enjoyment of all the rights granted to them by law. And this Court stands as the guarantor of those rights.
5. Our Constitution provides:

"SEC. 20. No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence."[2]

6. After a person is arrested and his custodial investigation begins a confrontation arises which at best may be termed unequal. The detainee is brought to an army camp or police headquarters and there questioned and cross-examined not only by one but as many investigators as may be necessary to break down his morale. He finds himself in a strange and unfamiliar surrounding, and every person he meets he considers hostile to him. The investigators are well-trained and seasoned in their work. They employ all the methods and means that experience and study has taught them to extract the truth, or what may pass for it, out of the detainee. Most detainees are unlettered and are not aware of their constitutional rights. And even if they were, the intimidating and coercive presence of the officers of the law in such an atmosphere overwhelms them into silence. Section 20 of the Bill of Rights seeks to remedy this imbalance.

7. At the time a person is arrested, it shall be the duty of the arresting officer to inform him of the reason for the arrest and he must be shown the warrant of arrest, if any. He shall be informed of his constitutional rights to remain silent and to counsel, and that any statement he might make could be used against him. The person arrested shall have the right to communicate with his lawyer, a relative, or anyone he chooses by the most expedient means - by telephone if possible - or by letter or messenger. It shall be the responsibility of the arresting officer to see to it that this is accomplished. No custodial investigation shall be conducted unless it be in the presence of counsel engaged by the person arrested, by any person on his behalf, or appointed by the court upon petition either of the detainee himself or by anyone on his behalf. The right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel. Any statement obtained in violation of the procedure herein laid down, whether exculpatory or inculpatory, in whole or in part, shall be inadmissible in evidence.

8. During the period of his detention, he shall have the right to confer with his counsel at any hour of the day or, in urgent cases, of the night, alone and privately, in the jail or any other place of custody.[3]

Arrest.

9. Arrest is the taking of a person into custody in order that he may be forthcoming to answer for the commission of an offense.[4]

10. An arrest may be made with or without a warrant.

"SEC. 3. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized."[5]

11. Our Constitution clearly defines the persons who may issue a warrant of arrest and limits them to a "judge, or such other responsible officer as may be authorized by law." It also lays down in unmistakable terms the procedure required before a search warrant or warrant of arrest may issue.

12. A Presidential Arrest and Commitment Order is a warrant of arrest issued by the President of the Philippines.[6] Its issuance must therefore comply with the requirements of the Constitution, in the same manner and to the same extent, as a warrant of arrest issued by a judge.

13. An arrest may also be made without a warrant.

"SEC. 6. Arrest without warrant -- When lawful.— A peace officer or a private person may, without a warrant, arrest a person:

"(a) When the person to be arrested has committed, is actually committing, or is about to commit an offense in his presence;

"(b) When an offense has in fact been committed, and he has reasonable ground to believe that the person to be arrested has committed it;

"(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another." [7]

14. Care should be exercised in making an arrest without a warrant. Where there is no justification for the arrest, the public officer could be criminally liable for arbitrary detention[8] or unlawful arrest[9] or for some other offense.

15. The petitioners claim they were arrested without a warrant. The Memorandum to the President dated April 21, 1982 from Gen. Fabian C. Ver, Chief of Staff of the Armed Forces of the Philippines, wherein he reported the arrest of petitioners, the subversive documents seized from them and the results of the ensuing tactical interrogation, with a recommendation for the issuance of a Presidential Arrest and Commitment Order, was approved by the President only on April 23, 1982. Indeed, therefore, petitioners were arrested without a warrant. However, months before their arrest, petitioners were already under surveillance on suspicion of committing rebellion. From the results of the said surveillance, the evidence then at hand, and the documents seized from them at the time of their arrest, it would appear that they had committed or were actually committing the offense of rebellion. Their arrest without a warrant for the said offense is therefore clearly justified.

Procedure after Arrest.

16. After a person is arrested either without a warrant or by virtue of a warrant of arrest issued by a judge or by virtue of a Presidential Arrest and Commitment Order, the proper complaint or information against him must be filed with the courts of justice within the time prescribed by law, to wit:

"FURTHER AMENDING ARTICLE 125 OF THE REVISED PENAL CODE, AS AMENDED (PRESIDENTIAL DECREE NO. 1404)

"WHEREAS, the periods within which arrested person shall be delivered to the judicial authorities as provided in Article 125 of the Revised Penal Code, as amended, are on occasions inadequate to enable the government to file within the said periods the criminal information against persons arrested for certain crimes against national security and public order.

"NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution, and in the interest of national security as well as public safety and order, do hereby decree and order as part of the law of the land the following amendment to Article 125 of the Revised Penal Code, as amended:

"SECTION 1. Article 125 of the Revised Penal Code, as amended, is hereby further amended to read as follows:

"ART. 125. Delay in the delivery of detained persons.— The penalties provided in the next preceeding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of: six hours, for crimes or

offenses punishable by light penalties, or their equivalent; nine hours, for crimes or offenses punishable by correctional penalties, or their equivalent; and eighteen hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent; Provided, however, That the President may, in the interest of national security and public order, authorize by Executive Order longer periods, which in no case shall exceed 30 days, or for as long as the conspiracy to commit the crime against national security and public order continues or is being implemented, for the delivery of persons arrested for crimes or offenses against public order as defined in Title III, Book II of this Code, namely: Article 134, 136, 138, 139, 141, 142, 143, 144, 146 and 147, and for acts in violation of Republic Act No. 1700 as amended by Presidential Decree No. 885, taking into consideration the gravity of the offense or offenses, the number of persons arrested, the threat to national security or to public safety and order, and/or the occurrence of a public calamity or other emergency situation preventing the early investigation of the cases and the filing of the corresponding information before the civil courts.

"In every case, the person detained shall be informed of the cause of his detention and shall be allowed, upon his request, to communicate and confer at any time with his attorney or counsel, and to be visited by his immediate relatives."

"SEC. 2. All acts, executive order, proclamations, Presidential Decrees, General Orders, Letters of Instruction, rules and regulations, or parts thereof, inconsistent with the provisions of this decree are hereby repealed or modified accordingly.

"SEC. 3. Transitory provision.- Pending the preparation and promulgation by the President of the Executive Order referred to in Section 1 hereof, the detention of persons arrested for any of the abovementioned offenses against public order shall continue to be governed by the provisions of General Orders No. 2, dated September 22, 1972 as amended by General Order Nos. 60 and 62, dated September 24, 1977 and October 22, 1977, respectively.

"SEC. 2. This decree shall take effect immediately.

"DONE in the City of Manila, this 9th day of June, in the year of Our Lord, nineteen hundred and seventy-eight."

17. Failure of the public officer to do so without any valid reason would constitute a violation of Art. 125, Revised Penal Code, as amended. And the person detained would be entitled to be released on a writ of habeas corpus, unless he is detained under subsisting process issued by a competent court.[10]

Power of the Courts.

18. The writ of habeas corpus has often been referred to as the great writ of liberty. It is the most expeditious way of securing the release of one who has been illegally detained. The privilege of the writ of habeas corpus may be suspended, but not the writ itself.

19. The Bill of Rights provides:

"SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

20. In *Lansang vs. Garcia*, 42 SCRA 448, 473, We said:

"In our resolution of October 5, 1972, We stated that 'a majority of the court' had 'tentatively arrived at a consensus that it may inquire in order to satisfy itself of the existence of the factual bases for the issuance of Presidential Proclamations Nos. 889 and 889-A . . . and thus determine the constitutional sufficiency of such bases in the light of the requirements of Article III, Sec. 1, par. 14, and Article VII, Sec. 10, par. 2 of the Philippine Constitution . . .'. Upon further deliberation, the members of the Court are now unanimous in the convictions that it has the authority to inquire into the existence of said factual bases in order to determine the

constitutional sufficiency thereof."

21. We reiterate this doctrine.

22. Furthermore, We hold that under the judicial power of review and by constitutional mandate, in all petitions for habeas corpus the court must inquire into every phase and aspect of petitioner's detention - from the moment petitioner was taken into custody up to the moment the court passes upon the merits of the petition. Only after such a scrutiny can the court satisfy itself that the due process clause of our Constitution has in fact been satisfied.

23. The submission that a person may be detained indefinitely without any charges and the courts cannot inquire into the legality of the restraint goes against the spirit and letter of the Constitution and does violence to the basic precepts of human rights and a democratic society.

The Right to Bail.

24. Next to life a man loves his freedom. Some men love their freedom even more than their life.

25. In all criminal prosecutions the accused is presumed innocent. Because of this presumption and inasmuch as every man has a natural desire to be free, our Constitution laid down the right to bail in these words:

"SEC. 18. All persons, except those charged with capital offenses when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties. Excessive bail shall not be required." [11]

26. Although martial law was terminated on January 17, 1981, by virtue of Proclamation No. 2045 of the President of the Philippines, the privilege of the writ of habeas corpus continues to be suspended in the two autonomous regions in Mindanao and in all other places with respect to certain offenses, thus:

"NOW, THEREFORE, I, FERDINAND E. MARCOS, President/Prime Minister of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby revoke Proclamation No. 1081 (Proclaiming a State of Martial Law in the Philippines) and Proclamation No. 1104 (Declaring the Continuation of Martial Law) and proclaim the termination of the State of martial law throughout the Philippines; Provided, that the call to the Armed Forces of the Philippines to prevent or suppress lawless violence, insurrection, rebellion and subversion shall continue to be in force and effect; and Provided that in the two autonomous regions in Mindanao, upon the request of the residents therein, the suspension of the privilege of the writ of habeas corpus shall continue; and in all other places the suspension of the privilege of the writ shall also continue with respect to persons at present detained as well as others who may hereafter be similarly detained for the crimes of insurrection or rebellion, subversion, conspiracy or proposal to commit such crimes, and for all other crimes and offenses committed by them in furtherance of or on the occasion thereof, or incident thereto, or in connection therewith. . . ." (Presidential Proclamation No. 2045).

27. Normally, rebellion being a non-capital offense is bailable. But because the privilege of the writ of habeas corpus remains suspended "with respect to persons at present detained as well as others who may hereafter be similarly detained for the crimes of insurrection or rebellion, subversion, conspiracy or proposal to commit such crimes, and for all other crimes and offenses committed by them in furtherance of or on the occasion thereof, or incident thereto, or in connection therewith," the natural consequence is that the right to bail for the commission of anyone of the said offenses is also suspended. To hold otherwise would defeat the very purpose of the suspension. Therefore, where the offense for which the detainee was arrested is anyone of the said offenses he has no right to bail even after the charges are filed in court.

28. 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 attacks on the life of the State.

29. Just as an individual has a right to self-defense when his life is endangered, so does the State. The suspension

of the privilege of the writ is to enable the State to hold in preventive imprisonment pending investigation and trial those persons who plot against it and commit acts that endanger the State's very existence. For this measure of self-defense to be effective, the right to bail must also be deemed suspended with respect to these offenses.

30. However, there is a difference between preventive and punitive imprisonment. Where the filing of charges in court or the trial of such charges already filed becomes protracted without any justifiable reason, the detention becomes punitive in character and the detainee regains his right to freedom.

The Charges of Torture.

31. When petitioners charged in their petitions that they had been tortured and maltreated, the Court decided to appoint the City Fiscal of Quezon City to hear the charges and to receive the evidence. Not because We are an investigating body. Nor are We a trier of facts. But because petitioners' charges are material and relevant to the petitions before Us.

32. As mentioned earlier, the Court Commissioner submitted the transcript of the proceedings held before him. We will not pass upon the merits of the torture charges. However, they should be filed before the body which has jurisdiction over them as provided for in Presidential Decrees Nos. 1822, 1822-A and 1850.

33. The present form of our government, to all intents and purposes, merged the executive and legislative branches into one. Members of parliament are at the same time cabinet ministers. Under the system of checks and balances ordained by the Constitution, the judiciary serves as the check and balance to the merged executive and legislative branches. The judiciary is therefore called upon to express its thoughts on areas outside the traditional and narrow confines of decision making, with the end in view that together we may explore the free market of ideas and arrive at what is best for our country and our people.

34. Our people cry out for a better life. They want more food in their stomachs, roofs over their heads, health services for themselves and their families, education for their children, and other necessities that make life worth living. They cannot be denied. They want it and they want it now. Timely indeed are the thrusts of the KKK and the BLISS programs.

35. However, we cannot lead them to a truly better life, unless we achieve complete peace in our land; and we cannot have complete peace unless we improve the administration of justice.

36. It was a wise man who once said: "Tell me how a country's poor receive their justice and I will tell you how stable its government is." [12]

37. Whenever we speak of the administration of justice we refer to four principal areas: the preservation of peace and order which is the primary task of the Armed Forces of the Philippines and the National Integrated Police, both under the Ministry of Defense; the investigation and prosecution of offenses and the administration of our penal system which are under the Ministry of Justice; the application and interpretation of laws and the trial and adjudication of cases which fall under the jurisdiction of the courts; and appearance as counsel for the government particularly in appealed criminal cases and as counsel for the Commission on Elections, Securities and Exchange Commission, and others, which is the responsibility of the Office of the Solicitor General. In everyone of these areas much can be done to achieve our ultimate goal - that in this fair land of ours, no man, no matter how humble, no matter how poor shall thirst for justice.

38. Our machinery of justice should be geared towards helping and protecting the poor among us. Not knowing their rights, not having the means to pay for the services of a lawyer, possessing no influence whatsoever, they are in variably the victims of injustice. The affluent can take care of themselves. They are better aware of their rights,

they have influence, and they can engage the services of the best counsel. But the poor can only pray to God and hope to find relief in the system of justice established by their government.

39. We must open all avenues for complaints and keep them open so that the grievance procedure may be made more readily available to the masses of our people. Only by knowing their needs can we give them what they rightfully deserve.

40. It is undeniable that throughout the length and breadth of our land, lawlessness and disorder have increased and continue to increase to undesirable proportions. It is wishful thinking to believe otherwise. All efforts must be exerted now to reverse the trend. We cannot afford any delay. And we should begin by bringing to the bar of justice the culprits in particular who burned and destroyed public property, and attacked, kidnapped and killed public functionaries. For the questions may validly be asked: If the government cannot protect public property, how can it protect private property? If the government cannot guarantee the safety and lives of its officials, how can it guarantee the safety and lives of private individuals?

41. The investigation and prosecution of cases should be further improved so that only meritorious cases shall reach the courts, thus contributing to the unclogging of court dockets. Many criminal cases initiated by complainants are just harassment suits and should never have been filed in court. In the process, it is required that all fiscals be appointed in a permanent capacity. Their security of tenure is the foundation stone of their independence. Our penal system should be further updated to make more effective the rehabilitation of criminals. Let us do away with instances of first offenders who serve sentence in order to be reformed but who come out instead as hardened criminals.

42. And with the judicial revamp just effected under B.P. 129, the trial and decision making process has been modified and vastly improved to achieve better results. But it must be remembered that courts which are not filled are as good as no courts at all. Therefore, more appointments to the existing vacancies should be made.

43. One lesson our people have learned - painfully but well - is that politics and a good administration of justice - like oil and water - do not mix; that when politics infiltrates the administration of justice, injustice is often the outcome. In some jurisdictions of the United States, there are sheriffs (peace officers) and district attorneys (prosecutors) who are elected by the voters and who run for office as the candidates of a political party. In the Philippines such a system would never work because in our culture we have values peculiarly our own - value like "utang na loob," "compadre," "pakikisama," "tayo-tayo," "bigayan," "bata ko," "amo ko," and the "godfather mentality." Values like these have derailed and may derail the administration of justice. Political followers commit abuses in the belief that come what may their political bosses would shield them from punishment. Can you imagine how criminal cases would be investigated and prosecuted if fiscals (prosecutors) were chosen by election? How would our laws be enforced if policemen and members of the Armed Forces were elected by the people? And yet the heads of the Ministries of Justice and Defense and the Office of the Solicitor General are all active politicians.

44. The burdens of office fall heavily on their shoulders. Perhaps it is time we relieve them of the additional burdens that being politicians entail. Our Constitution foresaw the need for heads of ministries who are not active politicians in providing that ". . . At least a majority of the Members of the Cabinet who are heads of ministries shall come from the Regional Representations of the Batasang Pambansa . . ."[13]

45. The campaign against venality in office - malfeasance, misfeasance and nonfeasance - should be pursued with renewed vigor. For graft and corruption are like termites gnawing away the foundation of government. The harm done is sometimes not realized; or even if realized, under-estimated. In the process let us remember to stress preventive measures to save public property from loss.

46. The communist threat remains a nagging problem of government. Whether Marxist, Maoist, Leninist, aided by the New People's Army, rebels, radicals, and lawless elements, they all have but one aim - one single purpose - one defined objective: to bring down by violence the Government of the Republic of the Philippines and to forcibly seize political power in order that they may replace our existing political, social, economic, and legal order with an entirely new one based on communism.

47. Once before, in the early fifties, communists threatened the established order. They were driven back by the Armed Forces, mainly because of the support of our people. We must keep, strengthen and solidify the sympathy, faith, loyalty, and trust in the government of our brothers in the rural areas. Guns and bullets alone will not do it. We can accomplish this only by giving them better government. It is a condition sine qua non to achieve success in the fight against subversion.

48. By and large, the Armed Forces are composed of good and disciplined men. However, there are those who are not worthy of the uniforms they wear. Not a few have enriched themselves by abusing the powers of their position. Some are involved in extortion, smuggling, and kidnapping for ransom. There are others who maintain gambling, drug rings, and prostitution dens. And still others have committed robbery, rape, murder, and other offenses. The campaign to rid the organization of such misfits should be carried out with missionary zeal. For indeed victims of abuse are often alienated from the government.

49. The Filipinos are a God-loving and a God-fearing people. We believe in peace and freedom. We believe in the family and its strong ties. We can never willingly accept communism and what it stands for.

50. While the government should continue to repel the communists, the subversives, the rebels, and the lawless with all the means at its command, it should always be remembered that whatever action is taken must always be within the framework of our Constitution and our laws.

51. When the judgment of history is written, as leaders of our people, we shall be asked to account not only for what we did, not only for what we did not do, but also for what visions we have today of our tomorrow.

52. What will be our answer?

53. WHEREFORE, as aforestated, the petitions should be, as they are hereby, DISMISSED, With costs against the petitioners.

54. SO ORDERED.

Fernando, C.J., concurs in the dismissal of the petitions, expresses his conformity with the reiteration of the doctrine announced in *Lansang v. Garcia*, and dissents on the question of the right to bail, which for him may be invoked whenever allowable under the Constitution.

Teehankee, J., files a separate opinion.

Makasiar, J., see concurring and dissenting opinion.

Aquino, Plana and Vasquez, JJ., concur in the result.

Guerrero, J., I concur in the dismissal of the petitions.

Abad Santos, J., see separate opinion concurring in the result.

De Castro, J., I concur as to dismissal, with a separate opinion.

Melencio-Herrera, J., concurring in the result in a separate opinion.

Escolin, J., in the result, and in paragraph 7 of the decision.

Relova, J., I concur and will also add my own views in a separate opinion.

Gutierrez, Jr., J., I concur but am adding some views through a separate concurring opinion.

[1] Section 1, Article II, Constitution of the Republic of the Philippines.

[2] Article IV, Constitution of the Republic of the Philippines.

[3] Rule 113, Sec. 18, Revised Rules of Court.

[4] Sec. 1, Rule 113, Revised Rules of Court.

[5] Art. IV, Constitution of the Republic of the Philippines.

[6] Letter of Instruction Nos. 1125-A and 1211 which reads:

"MALACANANG

Manila

"LETTER OF INSTRUCTIONS NO. 1125-A

"TO: The Minister of National Defense

The Chief of Staff, Armed Forces of the Philippines

The Chief, Philippine Constabulary

The Chief, Criminal Investigation Service

The Director-General, NISA

The Minister of Justice

The Director, National Bureau of Investigation

The Solicitor General

"WHEREAS, by virtue of Proclamation No. 2045 the privilege of the writ of habeas corpus remains suspended in the two autonomous regions of Mindanao and in all other places with respect to -

'persons at present detained as well as others who may hereafter be similarly detained for the crimes of insurrection or rebellion, subversion, conspiracy or proposal to commit such crimes, and for all other crimes and offenses committed by them in furtherance or on the occasion thereof, or incident thereto, or in connection therewith.'

"WHEREAS, the abovesaid Proclamation has rendered unquestionable the authority of the President to cause the arrest and detention of persons engaged in, or charged with, the crimes or offenses mentioned in said Proclamation;

"WHEREAS, in views of the full normalization of the government following the inauguration of the New Republic, it is necessary and proper that the regular procedures prescribed by existing laws for the arrest and detention of persons accused of violation of criminal law be observed with respect to those charged with the above-mentioned crimes or offenses.

"NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, do hereby order and direct the following:

"1. All cases involving the crimes of insurrection, rebellion, subversion, conspiracy or proposal to commit such crimes, and all other crimes or offenses committed in furtherance of or on the occasion thereof, or incident thereto, or in connection therewith, shall be investigated by the provincial/city fiscal, or by the municipal/city

circuit/district judge, or by the duly authorized investigating officer, as the case may be, in accordance with the provisions of the Rules of Court and other existing laws.

"2. After preliminary examination/investigation in any of the aforementioned cases, the judge or other investigating officer shall, upon a finding of probable cause, respectively, issue or cause to be issued the appropriate warrant/s of arrest against any or all accused persons who shall forthwith be arrested and detained.

"3. In any of the abovementioned cases, the judge or other investigating officer shall, immediately upon the arrest of the accused, submit a report to the President specifying, inter alia, the crime/s or offense/s charged, the extent of the involvement or participation of the accused, a summary of all the evidence adduced at the investigation, and his finding on whether or not the evidence of guilt is strong.

"4. On the basis of the report submitted by the judge or other investigating officer containing a finding that the evidence of guilt is strong, the President may, pursuant to this authority under Proclamation No. 2045, issue a commitment order against the accused who shall thereafter be kept under detention in the appropriate institution specified in the commitment order until the final disposition of the case unless sooner ordered released by the President or his duly authorized representative.

"5. In every case where no commitment order is issued by the President, the accused under detention may be released on bail in accordance with the provisions of the Constitution and the applicable laws.

"6. In no case shall the powers of the President under Proclamation No. 2045 be invoked so as to authorize the arrest and indefinite detention of persons accused of the crimes mentioned in paragraph 1 hereof except insofar as the exercise of such powers may be warranted under paragraph 4 hereof.

"This Letter of Instructions shall take effect immediately and shall supersede the provisions of Letter of Instructions No. 1125.

"Done in the City of Manila, this 25th day of May, in the year of Our Lord, nineteen hundred and eighty-one.

"(SGD.) FERDINAND E. MARCOS
President of the Philippines"

"MALACANANG
Manila

"LETTER OF INSTRUCTIONS NO. 1211

"TO: The Minister of National Defense

The Chief of Staff, Armed Forces of the Philippines

The Chief, Philippine Constabulary

The Chief, Criminal Investigation Service

The Director-General, NISA

The Minister of Justice

The Director, National Bureau of Investigation

The Solicitor General

"WHEREAS, by virtue of Proclamation No. 2045 the privilege of the writ of habeas corpus remains suspended in

the two autonomous regions of Mindanao and in all other places with respect to -

'persons at present detained as well as others may hereafter be similarly detained for the crimes of insurrection or rebellion, subversion, conspiracy or proposal to commit such crimes, and for all other crimes and offenses committed by them in furtherance or on the occasion thereof, or incident thereto, or in connection therewith;'

"WHEREAS, the aforesaid Proclamation has rendered unquestionable the authority of the President to cause the arrest and detention of persons engaged in, or charged with, the crimes or offenses mentioned in said Proclamation;

"WHEREAS, on May 25, 1981 I issued Letter of Instructions No. 1125-A providing for guidelines in the arrest and detention of the aforesaid persons for the purpose of insuring that the President's power of arrest incident to the suspension of the privilege of the writ is not abused; and

"WHEREAS, it is necessary to clarify the aforesaid guidelines in order to insure protection to individual liberties without sacrificing the requirements of public order and safety and the effectiveness of the campaign against those seeking the forcible overthrow of the Government and duly constituted authorities;

"NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, do hereby order and direct the following:

"1. All cases involving the crimes of insurrection, rebellion, subversion, conspiracy or proposal to commit such crimes and all other crimes or offenses committed in furtherance of or on the occasion thereof, or incident thereto, or in connection therewith, shall be referred to the provincial or city fiscal, or to the municipal, city, circuit, or district, judge for preliminary examination or investigation in accordance with existing laws.

"2. Only upon proper warrant issued by a judge shall the person or persons charged with the above crimes be arrested and detained; Provided, however, that should the military commander or the head of the law enforcement agency determine that the person or persons to be arrested would probably escape or commit further acts which would endanger public order and safety before the proper warrant could be obtained, arrest may be immediately effected and the said person or persons shall be detained. Thereafter, he or they shall be detained. Thereafter, he or they shall immediately be investigated and charged and a judicial warrant for his or their arrest obtained.

"3. The above notwithstanding, the military commander or the head of the law enforcement agency may apply to the President thru the Minister of National Defense, for a Presidential Commitment Order covering the person or persons believed to be participants in the commission of the crimes referred to in paragraph 1 under the following circumstances:

"a) When resort to judicial process is not possible or expedient without endangering public order and safety; and

"b) When the release on bail of the persons or persons already under arrest by virtue of a judicial warrant would endanger said public order and safety.

"4. When issued, the Presidential Commitment Order shall constitute authority to arrest the subject person or persons and keep him or them under detention until ordered released by the President or his duly authorized representative.

"5. In every case where no Presidential Commitment Order is issued by the President, the accused under detention may be released on bail in accordance with the applicable laws.

"6. In no case shall the powers of the President under Proclamation No. 2045 be invoked except as provided above.

"This Letter of Instructions shall take effect immediately and shall supersede the provisions of Letter of Instructions No. 1125-A. It shall apply to those persons now detained by virtue of Presidential Commitment Order.

"Done in the City of Manila, this 9th day of March, in the year of Our Lord, Nineteen hundred and eighty-two.

"(SGD.) FERDINAND E. MARCOS
President of the Philippines"

[7] Rule 113, The Revised Rules of Court in the Philippines.

[8] Article 124, Revised Penal Code.

[9] Article 269, Revised Penal Code.

[10] Grunche vs. Director of Prisons, 77 Phil. 993.

[11] Art. IV of the Constitution of the Republic of the Philippines.

[12] M.O.

[13] Art. IX, Sec. 1, Constitution of the Republic of the Philippines.

FERNANDO, C.J., concurring in the dismissal of the petitions, expressing conformity with the reiteration of the doctrine announced in *Lansang v. Garcia*, and dissenting on the question of the right to bail, which for him may be invoked whenever allowable under the Constitution:

Let me make clear at the outset that I limit myself to a concurrence in the dismissal of the petitions, expressing conformity with the reiteration of the doctrine in *Lansang v. Garcia*,^[1] and a dissent on the question of the right to bail during a period of suspension of the privilege of the writ of habeas corpus, which for me may be invoked whenever allowable under the Constitution, a stand I took both as counsel in *Hernandez v. Montesa*^[2] and thereafter as a member of the Court in *Lansang v. Garcia*,^[3] *Buscayno v. Enrile*,^[4] and *Garcia-Padilla v. Ponce Enrile*.^[5] This is by no means to indicate lack of due recognition of the intensity of conviction and lucidity of expression so evident in the exhaustive opinion of Justice Concepcion Jr. It is merely to adhere to the norm of limiting myself to an appraisal of the constitutional rights invoked insofar as they have a bearing on these petitions.^[6] Hence this separate expression of my views.

1. The first paragraph of the decisions of this Court is worded as follows: "The petitions are without merit and are hereby DISMISSED."^[7] I am in full agreement. The authoritative doctrine followed by this Court in accordance with well-settled jurisprudence is that the moment it can be shown that the persons detained are being held in lawful custody by virtue of a judicial process, then an application of the privilege of the writ of habeas corpus cannot succeed.^[8]

2. There is equally to my mind no question about the validity as a legal proposition of paragraph 4 of the opinion, which speaks of the Philippines being "a republican state. Sovereignty resides in the people and all government authority emanates from them. We have a Constitution framed by a constitutional convention and duly ratified by the people. We subscribe to the rule of law. We believe in human rights and we protect and defend them. Petitioners are entitled to the full enjoyment of all the rights granted to them by law. And this Court stands as the guarantor of those rights."^[9] This Court in normal times as well as under emergency conditions has displayed fealty to human rights, as protected and safeguarded by the Constitution. It is a matter of legitimate pride that even under the 1935 Charter, the Philippines has accorded full recognition not only to the traditional civil and

political rights but to social and economic rights. The autonomy of the human personality and the assurance of his dignity are a matter of deep public concern. It is equally a matter of legitimate pride that during the period of martial law, with full recognition of the power of the government to maintain peace and order and preserve its authority, the judiciary, was not recreant to such a trust.[10] For the entire judiciary, not only this Court, stands as a guarantor of those rights. It does so when it has to act in a proper case submitted to it. The political branches are equally, to my mind, guarantors of human rights; the Batasan Pambansa in the enactment of laws and the President in their enforcement whether through executive orders implementing them or the issuance of decrees having the force and effect of law. In the sense, however, that decisions coming from this Court have not merely an inter partes but an erga omnes effect, binding not only the litigants but also others finding themselves similarly situated, it is quite accurate to state that "this Court stands as a guarantor of those rights."

3. It is by virtue of the respect for constitutional rights that in the resolutions of this Court in both applications for the writ, it was made clear that counsel of petitioners can visit them and confer with them in an atmosphere of confidentiality consistent with reasonable security measures to be imposed by respondents.[11] Again, it is by virtue of deference to the Constitution that in succeeding resolutions, their allegations as to other instances of violation of their rights were referred for investigation to the City Fiscal of Quezon City.[12]

4. Paragraphs 5 to 19 of the opinion of the Court elaborate further on the matter. They are notable for the concern shown for constitutional rights, with full recognition of the power of the state to deal effectively with rebellion or subversion. I view the matter similarly. The same thought was given expression in *Lansang v. Garcia*.^[13] In the memorable language of Chief Justice Concepcion: "Manifestly, however, the liberty guaranteed and protected by our Basic Law is one enjoyed and exercised, not in derogation thereof, but consistently therewith, and, hence, within the framework of the social order established by the Constitution and the context of the Rules of Law. Accordingly, when individual freedom is used to destroy that social order, by means of force and violence, in defiance of the Rule of Law - such as rising publicly and taking arms against the government to overthrow the same, thereby committing the crime of rebellion - there emerges a circumstance that may warrant a limited withdrawal of the aforementioned guarantee or protection, by suspending the privilege of the writ of habeas corpus, when public safety requires it. Although we must be forewarned against mistaking mere dissent - no matter how emphatic or intemperate it may be - for dissidence amounting to rebellion or insurrection, the Court cannot hesitate, much less refuse - when the existence of such rebellion or insurrection has been fairly established or cannot reasonably be denied - to uphold the finding of the Executive thereon, without, in effect, encroaching upon a power vested in him by the Supreme Law of the land and depriving him, to this extent, of such power, and, therefore, without violating the Constitution and jeopardizing the very Rule of Law the Court is called upon to epitomize."^[14]

5. In the opinion of Justice Concepcion Jr., paragraph 21 explicitly states: "We reiterate this doctrine." There is thus a reaffirmance of the ruling in *Lansang* cited in paragraph 20 to the effect that the suspension of the privilege of the writ raises a judicial rather than a political question. I am in complete agreement. That was the point of my dissent in the recently decided case of *Garcia-Padilla v. Enrile*.

6. There is also on my part conformity with the view set forth in paragraph 22 that "in all petitions for habeas corpus the court must inquire into every phase and aspect of petitioner's detention - from the moment petitioner was taken into custody up to the moment the court passes upon the merits of the petition."^[15]

7. I am in agreement with the view expressed in paragraph 23 that there can be no indefinite detention without charges being filed. It must be recognized, however, that in cases of invasion, rebellion and insurrection, or imminent danger thereof, the power of preventive detention is recognized by the Constitution, considering that when public safety requires, the privilege of the writ of habeas corpus may be suspended or martial law, as a last

resort, declared. I had occasion to speak on the matter in my separate opinion in *Garcia-Padilla v. Enrile*, where I stated that when the stage of punitive detention is reached, there can be reliance on the writ of habeas corpus.[16]

8. The next five paragraphs deal with the right to bail. Paragraph 24 correctly noted: "Next to life, man loves his freedom." In the next paragraph reference is made of the presumption of innocence and then of the constitutional right to bail, after which it was noted in paragraph 26 that under Presidential Proclamation No. 2045 lifting martial law, the privilege of the writ of habeas corpus "continues to be suspended in the two autonomous regions in Mindanao and in all other places with respect to certain offenses," namely "the crimes of insurrection or rebellion, subversion, conspiracy or proposal to commit such crimes, and for all other crimes and offenses committed by them in furtherance of or on the occasion thereof, or incident thereto, or in connection therewith." Paragraph 27 reaches the heart of the matter, the main opinion laying down the principle that due to the privilege of the writ of habeas corpus remain suspended, "the natural consequence is that the right to bail for the commission of anyone of the said offenses is also suspended. To hold otherwise would defeat the very purpose of the suspension. Therefore, where the offense for which the detainee was arrested is anyone of the said offenses he has no right to bail even after the charges are filed in court." Paragraph 28 sets forth the ratio decidendi: "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 attacks on the life of the State." Then an analogy is made in the next paragraph in this wise: "Just as an individual has a right to self-defense when his life is endangered, so does the State. The suspension of the privilege of the writ is to enable the State to hold in preventive imprisonment pending investigation and trial those persons who plot against it and commit acts that endanger the State's very existence. For this measure of self-defense to be effective, the right to bail must also be deemed suspended with respect to these offenses." With respect, I dissent. It is not necessary to repeat what I said right at the beginning of this opinion why I am unable to agree to the proposition that the suspension of the privilege of the writ carries with it the suspension of the right to bail. Nor is there need to quote from my concurring and dissenting opinions both in the *Lansang* and the *Garcia-Padilla* cases. Briefly put, my perception of the matter traces itself to what was said in the landmark *Milligan* decision where the American Supreme Court said that only one great right may be suspended "leaving all the rest forever inviolable." [17] This is not to ignore the practical consideration set forth in the opinion of retired Chief Justice Concepcion Lansang that militates against my approach. First he aptly summarized it in the words of Justice Tuason in *Hernandez*, "if and when formal complaint is presented, the court steps in and the executive steps out." [18] After which came this portion of the opinion of the then Chief Justice: "From a long range viewpoint, this interpretation—of the act of the President in having said formal charges filed—is, We believe, more beneficial to the detainees than that favored by Mr. Justice Fernando. His view—particularly the theory that the detainees should be released immediately, without bail, even before the completion of said preliminary examination and/or investigation—would tend to induce the Executive to refrain from filing formal charges as long as it may be possible. Manifestly, We should encourage the early filing of said charges, so that courts of justice could assume jurisdiction over the detainees and extend to them effective protection." [19]

9. That brings us to paragraph 33 of the main opinion. The characterization of a "merged executive and legislative branches" does not suffer from the taint of inaccuracy, if viewed from the practical standpoint. Viewed as a matter of legal theory, I am not prepared to go that far. This Court, in a unanimous opinion, expressly held: "The adoption of certain aspects of a parliamentary system in the amended Constitution does not alter its essentially presidential character." [20] There is therefore no repudiation of the theory of separation of powers. Through the exercise of vigorous presidential leadership, however, made manifest in party caucuses, there is attained both unity of purpose and action. In that sense, it could be asserted with truth that there is to all intents and purposes fusion of the executive and legislative branches. Hence the need for the maintenance of the concept of an

independent judiciary. So it was pointed out in *Fortun v. Labang*.^[21]

10. One last word. Doctrines have to be assessed in terms of its effect on the governmental process. The rationale cannot be dissociated from the texture of the times. They cannot ignore the forces at work which may either solidify or rent asunder the political community. A crisis situation has a compulsion all its own. There may then be a conflict between the traditional formulations and the coercion of events. That may render even more unavoidable the intrusion of the demands of the hour into the domain of law. Adherence to what has been all along the accepted basic approach to human rights calls for fealty. There must be also, however, recognition of a more fluid standard in the assessment of governmental action to protect the security of the state. It is my submission, however, that only when there may be grave public danger should reliance on the high estate accorded constitutional rights be stigmatized as being in the grip of the suffocating orthodoxies of the law.

[1] L-39964, December 11, 1971, 42 SCRA 448.

[2] 90 Phil. 172 (1951). Since there were two other cases of similar nature decided the same day, October 11, 1951, the resolution setting forth the view of a divided Court is more commonly referred to as *Nava v. Gatmaitan*. Five of the ten Justices who sat, one short of the necessary votes for a binding doctrine, the then Chief Justice Paras and Justices Bengzon, C., Tuason, Reyes, A., and Jugo sustained the right to bail.

[3] 42 SCRA 448.

[4] L-47185, January 15, 1981, 102 SCRA 7.

[5] G. R. No. 61388, April 20, 1983.

[6] Cf. *Nuñez v. Sandiganbayan*, G.R. No. 50581, January 30, 1982, 111 SCRA 433.

[7] Opinion of the Court, par. 1.

[8] Cf. *Cruz v. Montoya*, L-39823, February 25, 1975, 62 SCRA 543; *Romero v. Ponce Enrile*, L-44613, February 28, 1977, 75 SCRA 429; *De la Plata v. Escarcha*, L-46367, August 1, 1977, 78 SCRA 208; *Cañas v. Director of Prisons*, L-41557, August 18, 1977, 78 SCRA 271; *Anas v. Ponce Enrile*, L-44800, April 13, 1978, 82 SCRA 333; *Dacuyan v. Ramos*, L-48471, September 30, 1978, 85 SCRA 487; *Ventura v. People*, L-46576, November 6, 1978, 86 SCRA 188; *Florendo v. Javier*, L-36101, June 29, 1979, 91 SCRA 204.

[9] *Ibid*, par. 4.

[10] So I have invariably maintained in my separate opinions in the martial law cases. Cf. *Aquino, Jr. v. Enrile*, L-35546, September 17, 1974, 59 SCRA 183; *Aquino, Jr. v. Commission on Elections*, L-40004, January 31, 1975, 62 SCRA 275; *Aquino, Jr. v. Military Commission No. 2*, L-37364, May 9, 1975, 63 SCRA 546; *Sanidad v. Commission on Elections*, L-44640, October 12, 1976, 73 SCRA 333.

[11] Cf. Resolution of this Court dated July 13, 1982 in G.R. No. 61091, *Morales v. Enrile*, and resolution of this Court dated July 20, 1982 in G.R. No. 61107, *Moncupa v. Enrile*.

[12] Cf. Resolution of this Court dated July 22, 1982 in both petitions.

[13] 42 SCRA 448.

[14] *Ibid*, 475.

[15] Accordingly, I subscribe to the principle in paragraphs 31 and 32 as to the power of this Court to inquire in a

habeas corpus petition into allegations of torture.

[16] Paragraph 30 of the main opinion views with this matter similarly.

[17] 4 Wall 2, 123 (1866).

[18] It is usually reported as *Nava v. Gatmaitan*, 90 Phil. 172, 204, there being only one resolution.

[19] 42 SCRA 448, 494-495.

[20] *Free Telephone Workers Union v. Minister of Labor and Employment*, L-58184, October 30, 1981, 108 SCRA 757, 763.

[21] L-38383, May 27, 1981, 104 SCRA 607. Cf. *De la Llana v. Alba*, G.R. No. 57883, March 12, 1982, 112 SCRA 294.

SEPARATE OPINION

TEEHANKEE, J.:

The bench and bar and law scholars and students are in debt to the writer of the main opinion, Mr. Justice Concepcion Jr., for his thorough and perceptive restatement of the constitutional and basic human rights of accused persons and detainees. The main opinion spotlights the grievances that persons detained or charged for the crimes of insurrection, rebellion, subversion, conspiracy or proposal to commit such crimes invariably bring to this Court. They complain, as petitioners do here, of being arrested without any warrant of arrest; of being kept in isolation and being denied of their constitutional right to counsel and to silence; of prolonged detention without any charges; of having been subjected to maltreatment and torture; and of their counsel and families undergoing great difficulties in locating or having access to them.

The State through the Solicitor General on the other hand invariably denies all such charges and submits affidavits of the arresting officers and detention custodian that detainees are afforded decent and humane treatment, further countering that such claims are merely calculated to arouse sympathy and as propaganda against the Government and its institutions.

Upon the filing of the petition at bar on July 13, 1982, the Court, in issuing the writ of habeas corpus, Resolved "to allow counsel for petitioner to visit and confer with the detainee in an atmosphere of confidentiality, consistent with reasonable security measures which respondents may impose." At the hearing held on July 22, 1982, the Court granted petitioner's plea for reinvestigation of the charges and to "appoint the (Quezon) City Fiscal to act as Commissioner of the Court and receive evidence of the charges made by petitioners before this Court of alleged torture and violation of their constitutional rights, particularly the right to counsel." The City Fiscal in due time submitted his report on the reinvestigation, affirming the existence of prima facie case for rebellion against petitioner. In February this year, he submitted the voluminous transcript of the proceedings held before him and the evidence submitted to him without comment or recommendation on petitioner's charges of alleged torture and violation of constitutional rights. The "material and relevant" charges have not been taken up nor deliberated upon by the Court, but apparently will no longer be resolved by the Court, as was expected at the time, since the main opinion directs now that "they should be filed before the body which has jurisdiction over them."^[1] On my part, I believe that the Court should go over the transcript and make some authoritative pronouncements on the charges at least of violation of petitioners' right to counsel.

1. The vital problem is to assure the enjoyment of such constitutional and basic human rights of the persons arrested, detained or charged, be they mere dissenters, subversives or hardened criminals. As observed in the main opinion, this is what distinguishes our country as republican and democratic state from those arrested in totalitarian states who have no rights to speak of. This Court stands as the guarantor of the constitutional rights of all persons within its jurisdiction and must see to it that the rights are respected and not treated as paper rights.

These are the great rights guaranteed in the Bill of Rights (Article IV) of the Constitution:

The right against unreasonable searches and seizures and arbitrary arrest:

"Sec. 3. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized."

The right to due process and equal protection of law:

"Sec. 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

... ..

"Sec. 17. No person shall be held to answer for a criminal offense without due process of law."

The right of free association:

"Sec. 7. The right to form associations or societies for purposes not contrary to law shall not be abridged."

Freedom of speech and press and assembly and petition:

"Sec. 9. No law shall be passed abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances."

The great writ of liberty:

"Sec. 15. The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion, insurrection, rebellion, or imminent danger thereof, when the public safety requires it."

The right to bail:

"Sec. 18. All persons, except those charged with capital offenses when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties. Excessive bail shall not be required."

Presumption of innocence and Rights of speedy and impartial trial and confrontation:

"Sec. 19. In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustified."

The right to counsel and silence:

"Sec. 20. No person shall be compelled to be a witness against himself. Any person under investigation for the

commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence."

The main opinion deals with the scope and extent of these rights and a number of passages bears emphasis and reiteration, as follows:

The arresting officers, upon making the arrest, must inform the subject of the reason for the arrest and show him the warrant of arrest, if any. They must inform him of his constitutional rights to remain silent and to counsel. They must respect his right to communicate with his lawyer. No custodial investigation shall be conducted unless it be in the presence of his counsel. The right to counsel may be waived knowingly and intelligently and for such reason the waiver should be recognized only if made with the assistance of counsel. The detainee's right to confer with counsel at any hour of the day, alone and privately, should be respected.

"Care should be exercised in making an arrest without a warrant. Where there is no justification for the arrest, the public officer could be criminally liable for arbitrary detention (under Article 124, Revised Penal Code) or unlawful arrest (under Article 269, *idem*) or for some other offense.[2]

"Furthermore, we hold that under the judicial power of review and by constitutional mandate, in all petitions for habeas corpus the court must inquire into every phase and aspect of petitioner's detention - from the moment petitioner was taken into custody up to the moment the court passes upon the merits of the petition. Only after such a scrutiny can the court satisfy itself that the due process clause of our Constitution has in fact been satisfied.

"The submission that a person may be detained indefinitely without any charges and the courts cannot inquire into the legality of the restraint goes against the spirit and letter of the Constitution and is contrary to the basic precepts of human rights and a democratic society.[3]

"However, there is a difference between preventive and punitive imprisonment. Where the filing of charges in court or the trial of such charges already filed becomes protracted without any justifiable reason, the detention becomes punitive in character and the detainee regains his right to freedom."[4]

11. Respondents' return in these cases, in asserting that "the allegations that petitioners have been denied their right to counsel are not true. They simply did not ask for one," disregards the consistent injunction of the Court and of the law that the detainees need not bear the burden of asking for counsel but should be informed of their right to counsel. The return's assertion that "petitioners also waived the assistance of counsel during the investigation of their cases" also falls short of the requirement that such waiver be made with the assistance of counsel to assure the validity thereof.

The late Chief Justice Fred Ruiz Castro, in maintaining in his dissenting opinion in *Magtoto vs. Manguera*[5] that the 1973 constitutional ban on uncounselled confessions should operate retrospectively to June 15, 1954 when Republic Act 1083 (amending Article 125 of the Revised Penal Code) was enacted recognizing the right of a detained person to counsel in any custodial inquest, and not prospectively only as to such confessions obtained after the effectivity of the 1973 Constitution, stressed anew that it is "the obligation on the part of any detaining officer to inform the person detained of his right to counsel before the very inception of custodial inquest." He enjoined us eloquently that "(I) hold no brief against custodial interrogation per se. But I do entertain mortal fear that when a detained person is subjected, without the assistance of counsel, to custodial interrogation by peace officers, official lawlessness could be the rule and not the exception. Witness the innumerable cases in the annals of adjudication where this Court has set at naught and declared inadmissible confessions obtained from detained persons thru official lawlessness. It is a verity in the life of our nation that people without influence and without stature in society have, more often than not, been subjected to brutal and brutalizing third-degree methods, if not

actually framed, by many police agencies in this country. Instead of blinking our eyes shut to this reality, we must recognize it for what it is, (and) I am completely conscious of the need for a balancing of the interests of society with the rights and freedoms of the individual. I have advocated the balancing-of-interests rule in all situations which call for an appraisal of the interplay of conflicting interests of consequential dimensions. But I reject any proposition that would blindly uphold the interests of society at the sacrifice of the dignity of any human being," and echoed Justice Douglas' aphorism that the rights of none are safe unless the rights of all are protected.

In the recent case of *Sobremonte vs. Enrile*[6], the Court did not rule on the therein detailed assertions of maltreatment of the detainee, stating only that "redress for the alleged violation of Socorro's constitutional rights may be secured through appropriate civil, criminal or administrative charges." [7] The case was dismissed for having become moot with the detainee's release from detention upon her filing the recommended P1,000.-bail bond. But the Court decried that "all the effort, energy and manhours expended by the parties and their counsel, including this Court, . . . could have been avoided had the officers of the AVSECOM and the ISAFP responded promptly to the inquiries of petitioner instead of giving her the 'run-around' by referring her from one office to another."

III. I join Mr. Justice Abad Santos' stand that notwithstanding the suspension of the privilege of the writ of habeas corpus and the issuance on March 9, 1982 of Letter of Instruction No. 1211 that the Presidential Commitment Order (PCO) constitutes authority to keep the subject person under detention "until ordered released by the President or his duly authorized representative," the higher and superior mandate of the Constitution guarantees the right to bail and vests the courts with the jurisdiction and judicial power to grant bail which may not be removed nor diminished nor abdicated. We cannot but so hold, if we are to be true to the fundamental precept that "The Constitution is a law for rulers and for people equally in war and in peace and covers with the shield of its protection all classes of men at all times and under all circumstances."

The argument that otherwise the purpose of the suspension of the privilege would be defeated ignores the overwhelming capability of the State and its military and police forces to keep suspects under surveillance and the courts' imposition of reasonable conditions in granting bail, such as periodic reports to the authorities concerned, and prohibiting their going to certain critical areas.

In my dissenting opinion in *Buscayno vs. Military Commission*[8], I reiterated my adherence to the majority holding in the leading 1951 cases of *Nava vs. Gatmaitan* and *Hernandez vs. Montesa*[9] (although it failed one vote short of the required majority of six affirmative votes at the time) as expounded by then Chief Justice Ricardo Paras and Associate Justice (later Chief Justice) Cesar Bengzon and Associate Justices Pedro Tuason, Alex Reyes and Fernando Jugo that after formal indictment in court by the filing against them of an information charging rebellion with multiple murder, etc., accused persons covered by the proclamation of suspension of the privilege of the writ of habeas corpus are entitled to the right to bail. As stressed by then Chief Justice Ricardo Paras. "(T)he right to bail, along with right of an accused to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses in his behalf (Article III, Section 1, Paragraph 17 of the Constitution), tends to aid the accused to prove his innocence and obtain acquittal. If it be contended that the suspension of the privilege of the writ of habeas corpus includes the suspension of the distinct right to bail or to be provisionally at liberty, it would a fortiori imply the suspension of all his other rights (even the rights to be tried by a court) that may win for him ultimate acquittal and, hence, absolute freedom. The latter result is not insisted upon for being patently untenable."

Then Chief Justice Paras stressed that ". . . The privilege of the writ of habeas corpus and the right to bail guaranteed under the Bill of Rights are separate and co-equal. If the intention of the framers of the Constitution

was that the suspension of the privilege of the writ of habeas corpus carries or implies the suspension of the right to bail, they would have very easily provided that all persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong and except when the privilege of the writ of habeas corpus is suspended. As stated in the case of *Ex Parte Milligan*, 4 Wall. 2, 18 L. ed. 297, the Constitution limited the suspension to only one great right, leaving the rest to remain forever inviolable." [10] It is noteworthy and supportive of the prevailing stand since 1951 that the other great constitutional rights remain forever inviolable since the Constitution limited the suspension to only one great right (of the privilege of the writ of habeas corpus), that there has been no amendment of the Constitution to curtail the right to bail in case of such suspension notwithstanding the numerous constitutional amendments adopted after the 1973 Constitution.

The late Justice Pedro Tuason emphasized that "(T)o the plea that the security of the State would be jeopardized by the release of the defendants on bail, the answer is that the existence of danger is never a justification for courts to tamper with the fundamental rights expressly granted by the Constitution. These rights are immutable, inflexible, yielding to no pressure of convenience, expediency or the so-called 'judicial statesmanship.' The legislature itself cannot infringe them, and no court conscious of its responsibilities and limitations would do so. If the Bill of Rights are incompatible with stable government and a menace to the Nation, let the Constitution be amended, or abolished. It is trite to say that, while the Constitution stands, the courts of justice as the repository of civil liberty are bound to protect and maintain undiluted individual rights." [11]

And former Chief Justice Cesar Bengzon then made the same forceful plea echoed these days by men of goodwill that respect for constitutional and human rights and adherence to the rule of law would help in the fight against rebellion and movement for national reconciliation, thus: "And in my opinion, one of the surest means to ease the uprising is a sincere demonstration of this Government's adherence to the principles of the Constitution together with an impartial application thereof to all citizens, whether dissidents or not. Let the rebels have no reason to apprehend that their comrades now under custody are being railroaded into Muntinglupa, without benefit of those fundamental privileges which the experience of the ages has deemed essential for the protection of all persons accused of crime before the tribunal of justice. Give them the assurance that the judiciary, ever mindful of its sacred mission, will not, thru faulty or misplaced devotion, uphold any doubtful claims of Governmental power in diminution of individual rights, but will always cling to the principles uttered long ago by Chief Justice Marshall that when in doubt as to the construction of the Constitution, 'the Courts will favor personal liberty.'" [12]

IV. The most authoritative pronouncement in regard to the courts' judicial power to grant the constitutional right to bail is of course none other than the President's himself. In all the metropolitan newspapers of April 20, 1983, the President is reported to have "said that Pimentel has been charged with rebellion before the regional trial court of Cebu City and is therefore under the jurisdiction of the civil court and not only under the jurisdiction of the military by virtue of the PCO." In a telegram in reply to the appeal of Msgr. Patrick Cronin, Archbishop of Cagayan de Oro and Misamis Oriental, for lifting of the PCO on Mayor Aquilino Pimentel of Cagayan de Oro City, the President said that "(T)he disposal of the body of the accused, as any lawyer will inform you, is now within the powers of the regional trial court of Cebu City and not within the powers of the President."

The statement of the now Chief Justice in his separate opinion in *Gumaua vs. Espino* [13] referring to his earlier concurring and dissenting opinion in *Aquino vs. Military Commission No. 2*, [14] is most relevant, *mutatis mutandis*, thus: "'Were it not for the above mandate of the Transitory Provisions [Article XVII, Section 3, par. (2), 1973 Constitution], the submission of petitioner as to a military commission being devoid of jurisdiction over civilians elicits approval. The controlling principle, to my mind, is that supplied in the opinion of the United States Supreme Court in *Duncan v. Kahanamoku* [327 U.S. 304, 322 (1946)], a decision impressed with the greatest relevance inasmuch as it interpreted the specific section found in the Hawaiian Organic Act, which was

also a feature of the Philippine Autonomy Act, the source of the martial law provision in the 1935 Constitution.' As was pointed out in the Duncan opinion penned by Justice Black: 'Courts and their procedural safeguards are indispensable to our system of government. They were set up by our founders to protect the liberties they valued. Ex parte Quirin, supra, 317 U.S. at page 19, 63 S. Ct. at page 6, 87 L.Ed. 3. Our system of government clearly is the antithesis of total military rule and the founders of this country are not likely to have contemplated complete military dominance within the limits of a Territory made part of this country and not recently taken from an enemy. They were opposed to governments that placed in the hands of one man the power to make, interpret and enforce the laws. Their philosophy has been the people's throughout the history. For that reason we have maintained legislatures chosen by citizens or their representatives and courts and juries to try those who violate legislative enactments. We have always been especially concerned about the potential evils of summary criminal trials and have guarded against them by provisions embodied in the constitution itself.' . . . The phrase 'martial law' as employed in that Act, therefore, while intended to authorize the military to act vigorously for the maintenance of an orderly civil government and for the defense of the island against actual or threatened rebellion or invasion, [it] was not intended to authorize the supplanting of courts by military courts."

V. The courts, ultimately the Supreme Court, are therefore called upon to review all such cases and the accused's right to bail, pending trial and conviction or acquittal, on a case by case basis. The courts with their procedural safeguards are then called upon to apply the Constitution and the Law and to grant bail for clearly bailable (non-capital) offenses and in capital offenses to determine whether or not evidence of guilt is strong, in consonance with guidelines laid down by the Supreme Court, as in the leading case of *Montano vs. Ocampo*[15] (involving Senator Montano who was charged with multiple murders and frustrated murders), as follows:

"Brushing aside the charge that the preliminary investigation of this case by the aforesaid Judge was railroaded, the same having been conducted at midnight, a few hours after the complaint was filed, we are of the opinion that, upon the evidence adduced in the application for bail in the lower court, as such evidence is recited lengthily in the present petition and the answer thereto, and extensively analyzed and discussed in the oral argument, there is not such clear showing of guilt as would preclude all reasonable probability of any other conclusion.

"Exclusion from bail in capital offenses being an exception to the otherwise absolute right guaranteed by the constitution, the natural tendency of the courts has been toward a fair and liberal appreciation, rather than otherwise, of the evidence in the determination of the degree of proof and presumption of guilt necessary to warrant a deprivation of that right.

"Besides, to deny bail it is not enough that the evidence of guilt is strong; it must also appear that in case of conviction the defendant's criminal liability would probably call for a capital punishment. No clear or conclusive showing before this Court has been made.

"In the evaluation of the evidence the probability of flight is one other important factor to be taken into account. The sole purpose of confining accused in jail before conviction, it has been observed, is to assure his presence at the trial. In other words, if denial of bail is authorized in capital cases, it is only on the theory that the proof being strong, the defendant would flee, if he has the opportunity, rather than face the verdict of the jury. Hence the exception to the fundamental right to be bailed should be applied in direct ratio to the extent of the probability of evasion of prosecution.

"The possibility of escape in this case, bearing in mind the defendant's official and social standing and his other personal circumstances, seems remote if not nil."

As editorially commented in one daily,[16] "(T)he danger, however, lies in the possibility that such means (PCO's) may not always be employed judiciously. In issuing a PCO, the President in most cases must rely on field

reports and recommendations filed by his subordinates, usually the military and the intelligence community. No one can totally dismiss the possibility that the President may be fed with false information in some instances. The consequences of such an error can only aggravate further the country's security problems." When such cases occur and executive relief is not obtained, the courts provide the means of securing redress from erroneous or wrongful arrests and detentions, and at the very least, as shown from past experience, serve as the means for bringing the matter to the President's attention and securing the needed relief.

[1] Paragraphs 31-32, main opinion.

[2] Par. 14, main opinion.

[3] Pars. 22-23, main opinion.

[4] Par. 30, *idem*.

[5] 63 SCRA 4, 25-26 (1975).

[6] G.R. No. 60602, September 30, 1982, per Escolin, J.

[7] *Villabere vs. Diego, et al.*, 108 SCRA 468.

[8] G.R. No. 58284, Nov. 19, 1981.

[9] Jointly decided with *Angeles vs. Abaya* and reported in 90 Phil. 172 (1951).

[10] Italics supplied.

[11] *Idem*

[12] *Idem*

[13] 102 SCRA 7 (1981).

[14] 63 SCRA 546 (1975).

[15] G.R. L-6352, Resolution of Jan. 29, 1953, 49 O.G. 1855; italics supplied. See *Villaseñor vs. Abancio*, 21 SCRA 321.

[16] Times Journal issue of April 24, 1983; note in brackets supplied.

DISSENTING IN PART

MAKASIAR, J.:

I

I join Justices De Castro and Abad Santos in their opinion to abandon the *Lansang* doctrine and to adhere to the doctrine in the *Montenegro* and *Barcelon* cases that determination by the Chief Executive of the existence of invasion, rebellion, insurrection or imminent danger thereof and that public safety requires it, for the suspension of the privilege of writ of habeas corpus and for the proclamation of martial law, is a political question and therefore beyond the sphere of judicial inquiry. In addition to the reasons advanced by Justices De Castro and

Abad Santos, it should be stressed that the prime responsibility for the preservation of the territorial integrity and sovereignty of the Republic as well as its security, rests on the commander-in-chief and not on the Judiciary. It is a classic truism that there is no power under the sun that is not susceptible of abuse. Any abuse or any arbitrary exercise by the President as commander-in-chief of his constitutional power to proclaim martial law or to suspend the privilege of the writ of habeas corpus, can be repudiated or overruled by the people in the exercise of their sovereign right of suffrage at the next election, and, pending the holding of the next election, through their constitutional right of free expression to sway public opinion against such abuse of power.

To repeat, only the Chief Executive is well-equipped with the intelligence services as commander-in-chief to secure the desired information as to the existence of the requirements for the proclamation of martial law or for the suspension of the privilege of the writ of habeas corpus. The Supreme Court is bereft of such aids. This was clearly demonstrated at the executive session during one of the hearings in the Lansang case where the lawyers for the petitioners were present. Counsel for the petitioners had no means of rebutting the evidence and information gathered by the military organization presented in said Lansang case before this Court, which had to rely on such evidence and information submitted by the Armed Forces. It was clearly an exercise in futility.

II

Corollary to the doctrine in the case of *Aquino vs. Enrile* (59 SCRA 183), which was re-affirmed in *Gumaua vs. Espino* (96 SCRA 402, 412), that the proclamation of martial law automatically suspends the privilege of the writ of habeas corpus, the suspension of the privilege of the writ of habeas corpus must necessarily include the suspension of the right to bail for crime which are grounds for the suspension of the privilege. This should be the ruling principle because, as well-stated by Mr. Justice De Castro, to release on bail persons indicted for rebellion or insurrection would be to nullify the very purpose of the suspension of the privilege, which is precisely to prevent them from continuing with the rebellion or insurrection or abetting the same. The suspension of the privilege is precisely to restore tranquility and prevent the shedding of blood by our own people, more than just insuring the safety of public and private properties.

Executive process is as valid as judicial process. In the epigrammatic language of Mr. Justice Holmes:

"... when it comes to a decision involving its (state) life, the ordinary rights of individuals must yield to what he (the President) deems the necessities of the moment. Public danger warrants the substitution of executive process for judicial process. (See *Kelly vs. Sanders*, 99 U.S. 441, 446, 25 L. ed. 327, 328). This was admitted with regard to killing men in the actual clash of arms. And we think it is obvious, although it was disputed, that the same is true to temporary detention to prevent apprehended harm. (*Moyer vs. Peabody*, 212, U.S. 77.85. 53 L. ed., 411, 417)."

CONCURRING AND DISSENTING

ABAD SANTOS, J.:

I concur in the result, i.e. in the dismissal of the petitions. This is as far as I can go because I cannot give my assent to some of the statements made in the main opinion. My list is not exhaustive but among them are the following:

1. I reject the doctrine laid down in *Lansang vs. Garcia*, 42 SCRA 448 [1971] that this Court "has the authority to inquire into the existence of said factual bases [for the issuance of Proclamations Nos. 889 and 889-A which suspended the privilege of the writ of habeas corpus] in order to determine the constitutional sufficiency thereof."

(At p. 473.) In other words, this Court, on the urging of the petitioners, declared that it has the power to determine whether or not the President acted arbitrarily in suspending the writ. In so doing, this Court did a complete turnabout from *Barcelon vs. Baker*, 5 Phil. 87 [1905] and *Montenegro vs. Castañeda*, 91 Phil. 882 [1952] which enunciated the doctrine that the President's determination in suspending the privilege of the writ of habeas corpus is final and conclusive upon the courts.

I submit that *Barcelon* and *Montenegro* laid down the correct doctrine. The *Lansang* doctrine is based on naivete; it demonstrates a lack of contact with reality.

How can this Court determine the factual bases in order that it can ascertain whether or not the President acted arbitrarily in suspending the writ when, in the truthful words of *Montenegro*, "with its very limited machinery [it] cannot be in better position [than the Executive Branch] to ascertain or evaluate the conditions prevailing in the Archipelago?" (At p. 887.) The answer is obvious. It must rely on the Executive Branch which has the appropriate civil and military machinery for the facts. This was the method which had to be used in *Lansang*. This Court relied heavily on classified information supplied by the military. Accordingly, an incongruous situation obtained. For this Court relied on the very branch of the government whose act was in question to obtain the facts. And as should be expected the Executive Branch supplied information to support its position and this Court was in no situation to disprove them. It was a case of the defendant judging the suit. After all is said and done, the attempt by this Court to determine whether or not the President acted arbitrarily in suspending the writ was a useless and futile exercise.

There is still another reason why this Court should maintain a detached attitude and refrain from giving the seal of approval to the act of the Executive Branch. For it is possible that the suspension of the writ lacks popular support because of one reason or another. But when this Court declares that the suspension is not arbitrary (because it cannot do otherwise upon the facts given to it by the Executive Branch) it in effect participates in the decision-making process. It assumes a task which it is not equipped to handle; it lends its prestige and credibility to an unpopular act.

Lansang was an empty victory for the petitioners. They won a battle but lost the war. It could be that this Court also lost something in the process. It raised expectations which it could not fulfill.

2. I cannot accept the statement in paragraph 27 of the main opinion that "because the privilege of the writ of habeas corpus remains suspended 'with respect to persons at present detained as well as others who may hereafter be similarly detained for the crimes of insurrection or rebellion, subversion, conspiracy or proposal to commit such crimes, and for all other crimes and offenses committed by them in furtherance of or on the occasion thereof, or incident thereto, or in connection therewith,' the natural consequence is that the right to bail for the commission of the said offenses is also suspended."

In the instant case, the petitioners were arrested without warrant on April 21, 1982. However, a Presidential Commitment Order was issued against them on April 23, 1982 and on July 20, 1982 (after the petitions for the writ of habeas corpus had been filed) the petitioners were charged with rebellion before the Court of First Instance of Rizal in Criminal Case No. Q-21091.

Are they entitled to be released on bail if they so apply?

The ponente says that they have no right to bail because "To hold otherwise would defeat the very purpose of the suspension" of the writ of habeas corpus. Another reason given to deny bail is Letter of Instructions No. 1211 issued on March 9, 1982, which stipulates that "4. When issued, the Presidential Commitment Order shall constitute authority to arrest the subject person or persons and keep him or them under detention until ordered

released by the President or his duly authorized representative."

I submit that the petitioners are entitled to bail as a matter of right if they should apply for it.

The nature of LOI No. 1211 has been raised. Does it have the force of law or is it a mere directive to officers named therein, namely: The Minister of National Defense; The Chief of Staff, Armed Forces of the Philippines; The Chief, Philippine Constabulary; The Chief, Criminal Investigation Service; The Director-General, NISA; The Minister of Justice; The Director, National Bureau of Investigation; and The Solicitor General. To me the nature of LOI No. 1211 is irrelevant for the right to bail is guaranteed by a higher law - the Constitution.

The Constitution guarantees that "All persons, except those charged with capital offenses when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties. Excessive bail shall not be required." (Art. IV. Sec. 18.) The penalty for rebellion is reclusion temporal. Hence rebellion is a non-capital offense and the petitioners should be granted bail by the court where their case is pending if they ask for it.

The suspension of the writ of habeas corpus and the fact that they are covered by a Presidential Commitment Order are of no consequence. Since the respondents have elected to bring the case of the petitioners to court, the court acquired complete jurisdiction over them. To say that the court cannot grant them bail is to diminish the court's jurisdiction.

The eloquent words of Mr. Justice Pedro Tuason are completely relevant:

"Under constitutional guaranty bail is a matter of right which no court or judge could properly refuse in all cases beyond the exceptions specified in the Constitution. The meaning of this fundamental provision is that a party accused of any and every bailable offense shall have the inestimable privilege of giving security for his attendance at court and shall not be imprisoned. (6 C.J. 893.)

"The Constitution will be searched in vain for any provision that abridges this right. Any argument in support of the contention that the suspension of the writ of habeas corpus carries with it the suspension of the right to bail is, and has to be, based on inference. I do not believe that the curtailment of the right to bail is a normal, legal, or logical outcome of the suspension of the writ. The error, I am inclined to believe, arises from a confusion of terms and misapprehension of the principles underlying the suspension of the writ.

"The purpose of the suspension of the writ is to enable the executive, as a precautionary measure, to detain without interference persons suspected of harboring designs harmful to public safety. (Ex Parte Simmerman, 132 F. 2nd, 442, 446.) The Constitution goes no further. (Ex parte Milligan, 4 Wallace 2, 18 Law. Ed. 281, 297.) If this is the purpose, the suspension, can contemplate only cases which, without the suspension, are open to interference; such cases are arrests and detentions by the executive department. Since the suspension of the writ is designed to prevent the issuance of this extraordinary remedy, and since the writ issues from the courts but never to the courts, it necessarily follows that arrests and detentions by order of the courts are outside the purview of the constitutional scheme.

"As stated, the theory of the prosecution stems from a misconception of the ends pursued by the suspension of the writ. If it is to have any color of validity, this theory must assume that the Constitution directs positive action to be taken, orders arrests and detentions to be made. Unfortunately or fortunately, the Constitution does not do so. The intent of the Constitution in authorizing the suspension of the writ of habeas corpus is no other than to give the authorities a free hand in dealing with persons bent on overthrowing the Government. The effects of the suspension are negative, not positive; permissive, not mandatory nor even directory. By the suspension, arrests and detentions beyond the period allowed under normal circumstances are tolerated or legalized. The Constitution is not in the least concerned with the disposition of persons accused of rebellion or insurrection, whether or how long they should be kept in confinement, or whether they should be set at large. In the nature of the governmental set-up under the Constitution, their immediate fate is left to the discretion,

within reasonable and legal limits, of the proper department.

"With these distinctions in mind, the query is, on what department of Government is entrusted the prerogative of deciding what is to be done with the prisoners charged with or suspected of rebellion or insurrection? The answer, as I shall endeavor presently to explain, is either the executive or the Court, depending on who has jurisdiction over them.

"All persons detained for investigation by the executive department are under executive control. It is here where the Constitution tells the courts to keep their hands off -- unless the cause of the detention be for an offense other than rebellion or insurrection, which is another matter.

"By the same token, if and when formal complaint is presented, the court steps in and the executive steps out. The detention ceases to be an executive and becomes a judicial concern. Thereupon the corresponding court assumes its role and the judicial process takes its course to the exclusion of the executive or the legislative departments. Henceforward, the accused is entitled to demand all the constitutional safeguards and privileges essential to due process. 'The Constitution does not say that he shall be tried otherwise than by the course of common law.' (Ex parte Milligan, ante, 297.) The Bill of Rights, including the right to bail and the right to a fair trial, are unaffected by the suspension of the privilege of the writ of habeas corpus. The Constitution 'suspended one great right and left the rest to remain forever inviolable.' (Ex parte Milligan, ante 297.)" (Nava, et al. vs. Gatmaitan, 90 Phil. 172, 202-205 [1951].)

It should be stated that Chief Justice Ricardo Paras and Justices Cesar Bengzon, Alex Reyes and Fernando Jugo shared the above opinion of Justice Tuason. Incumbent Chief Justice Enrique M. Fernando expressed the same opinion in Lansang.

It is also said that the view "if and when a formal complaint is presented, the court steps in and the executive steps out," will tend to induce the executive to refrain from filing formal charges as long as it may be possible. (See opinion of Chief Justice Concepcion in Lansang, op. cit. on p. 494.) The answer has long been given by this Court in Teehankee vs. Rovira, 75 Phil. 634 (1954) as follows:

"This constitutional mandate [on the right to bail] refers to all persons, not only to persons against whom a complaint or information has already been formally filed. It lays down the rule that all persons shall before conviction be bailable except those charged with capital offenses when evidence of guilt is strong. According to this provision, the general rule is that any person, before being convicted of any criminal offense, shall be bailable, except when he is charged with a capital offense and the evidence of his guilt is strong. Of course, only those persons who have been either arrested, detained or otherwise deprived of their liberty will ever have occasion to seek the benefits of said provision. But in order that a person can invoke this constitutional precept, it is not necessary that he should wait until a formal complaint or information is filed against him. From the moment he is placed under arrest, detention or restraint by the officers of the law, he can claim this guarantee of the Bill of Rights, and this right he retains unless and until he is charged with a capital offense and evidence of his guilt is strong. Indeed if, as admitted on all sides, the precept protects those already charged under a formal complaint or information, there seems to be no legal or just reason for denying its benefits to one as against whom the proper authorities may even yet conclude that there exists no sufficient evidence of guilt. To place the former in a more favored position than the latter would be, to say the least, anomalous and absurd. If there is a presumption of innocence in favor of one already formally charged with criminal offense (Constitution, Article III, Section 1[17], a fortiori, this presumption should be indulged in favor of one not yet so charged, although already arrested or detained." (At pp. 640-641.)

What I have said above about the right of an accused to bail in non-capital cases applies mutatis mutandis to a person accused of a capital offense if the evidence of his guilt is not strong to be determined after a hearing as provided in the Rules of Court: "Sec. 7. - Capital offense - Burden of proof.- On the hearing of an application for admission to bail made by any person in custody for the commission of a capital offense, the burden of showing

that evidence of guilt is strong is on the prosecution. . . ." (Rule 114.)

ADDENDUM TO CONCURRING AND DISSENTING OPINION

ABAD SANTOS, J:

Long after I had written my separate opinion in the above-entitled cases, the newspapers reported the arrest of Mayor Aquilino Pimentel of Cagayan de Oro City on grounds of national security. It was said that the arrest of Mayor Pimentel was effected pursuant to a Presidential Commitment Order (PCO).

It was also reported that Msgr. Patrick Cronin, Archbishop of Cagayan de Oro City, requested President Ferdinand E. Marcos to lift the PCO because Pimentel was innocent of any wrongdoing.

The issues dated April 20, 1983, of Bulletin Today, Daily Express and Times Journal all report that President Marcos denied the request of Archbishop Cronin because he had no power to release Pimentel who was arrested and charged before a Regional Trial Court in Cebu City on very strong evidence that he provided arms, funds, and sanctuary to subversives.

President Marcos is reported to have told Msgr. Cronin:

"The disposal of the body of the accused, as any lawyer will inform you, is now within the powers of the regional trial court of Cebu City, and not within the powers of the President."

It should be recalled the main opinion holds that the petitioners herein cannot be granted bail by the court where they stand charged with the crime of rebellion because to hold otherwise would defeat the very purpose of the suspension of the writ of habeas corpus and also because under LOI No. 1211, the release of persons arrested pursuant to a PCO can be effected only by order of the President or his duly authorized representative. And it should be noted that every PCO has the following operative last paragraph:

"I, therefore, hereby order the arrest and detention of the above-named persons until the final disposition/termination of their cases unless sooner ordered released by me or by my duly authorized representative."

And yet in the case of Mayor Pimentel who was arrested by virtue of a PCO, the President no less said that the power to release Pimentel "as any lawyer will inform you," is not his but of the Regional Trial Court of Cebu City.

I am happy to be counted among the "any lawyer" mentioned by President Marcos for I believe, as I have stated in my separate opinion, that the petitioners herein are entitled to bail after they were charged in court with rebellion because "the court steps in and the executive steps out."

CONCURRING AND DISSENTING

DE CASTRO, J.:

I concur in the dismissal of the petition. It is my considered opinion, as I have set forth in my ponencia in the case for Habeas Corpus-Josefina Garcia, petitioner, G.R. No. 61388, hereafter referred to as the Parong case, that when a person is arrested by virtue of a PCO, or a PCO is issued after his arrest effected without warrant or with one issued by court, his detention becomes one without right to bail, even after charges have been filed against him in court. This is so because, under the circumstance that the rebellion is still continuing, perhaps with greater

intensity, a captured or arrested rebel, or one in conspiracy with the rebels by acts in pursuance or in furtherance of the rebellion, is not arrested and detained with a view to his immediate prosecution. It is more for the purpose of detaining him as a military measure to suppress the rebellion. The suspension of the privilege of the writ of habeas corpus has the effect of deferring trial for certain specified crimes during the existence of the emergency, as I stated, citing legal writers and publicists,[1] in the aforecited case of Parong, et al.

The reason is that a person cannot be prosecuted for a crime the commission of which has not yet come to an end as in the case of the existing rebellion. A person who kills another can and should immediately be prosecuted, because the killing itself constitutes the termination of the commission of the crime, as is generally true with the common statutory offenses. But a rebel, even when already captured or arrested and placed under detention, by reason of conspiracy with the rebels and their co-conspirators who are free, continues in a state of committing the crime of rebellion which is a continuing offense. If immediately prosecuted and by virtue thereof, allowed to be released on bail, the crime of rebellion being bailable, the detainee would certainly join his comrades in the field to the jeopardy of government efforts to suppress the rebellion, which is the rationale for the President being constitutionally empowered to suspend the privilege of the writ of habeas corpus in case of invasion, rebellion or insurrection, even mere imminent danger thereof, when public safety so requires. The President, however, may order the filing of charges in court and trial thereof forthwith held, or even release on bail, as his best judgment will dictate to him. But this is for the President alone to decide, without interference from the courts, he being in the exercise of his military power.

It is for this reason that I dissent from the majority opinion insofar as it would reiterate the doctrine of the Lansang case, being of the view that the earlier doctrine in the case of *Barcelon vs. Baker* and *Montenegro vs. Castañeda* which was superseded by the Lansang doctrine should be reverted to, as the more practical and realistic ruling, and more in consonance with the grant by the Constitution to the President of the power to suspend the privilege of the writ of habeas corpus in the case of the contingencies mentioned in the Constitution. Such power could be easily rendered nugatory if interference by the Supreme Court were allowed as when it is given the power of judicial review over the exercise of this particular presidential power. The doctrine of "political question" comes in to make it improper for the power of judicial review to be exercised by the said Court, which doctrine renders the exercise of the presidential power referred to non-justiciable. Justiciability of the controversy is the basic requirement for the exercise of the power of judicial review.

Moreover, the Lansang doctrine could easily be viewed as discriminatory against our incumbent President whose proclamation suspending the privilege of the writ of habeas corpus was held subject to judicial review, where similar proclamations of former Chiefs Executive, Governor General Wright and President Quirino, were held binding and conclusive upon the courts and all other persons. If this is so, as it can be safely surmised that the incumbent President cannot but feel discriminated against with the pronouncement of the Lansang doctrine, rectification is called for. Needless to state, I am one with Justice Abad Santos in his vigorous dissent against the reiteration of the Lansang doctrine as proposed in the majority opinion in the instant case.

In the Parong case (G.R. No. 61388), I stated, inter alia, the following:

"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."

Indeed, while the Supreme Court is said to be the Guardian of the Constitution, not all questions arising therefrom may be brought to it for judicial review as to whether a constitutional violation has been committed. The power of the President as the defender of the State has to be granted by the constitution, for how else could such power be granted except by the instrument which is the repository of the sovereign will of the people. But certainly, the exercise of such power of defending the Nation is not to be subordinated to that of the Supreme Court acting as Guardian of the Constitution, for of what use is it to preserve the Constitution if We lose the Nation?

[1] Encyclopedia of the Social Sciences, Volume III, p. 236, 1950 ed.

CONCURRING IN THE RESULT

MELENCIO-HERRERA, J.:

I concur with paragraph 1 of the Decision, dismissing the petitions filed in these cases. The term petitioner as used herein shall refer not only to Horacio R. Morales, Jr., but will also include Antonio C. Moncupa, Jr. insofar as legal statements may be applicable to the latter.

Petitioner was detained on April 21, 1982 by the Armed Forces of the Philippines under a Presidential Commitment Order approved on April 23, 1982. On July 9, 1982, he filed the petition for habeas corpus alleging that he was being illegally detained by respondents Minister of National Defense, Chief of Staff of the Armed Forces of the Philippines, and, specifically, by Colonel Galileo Kintanar, Commanding Officer of the 15th Military Intelligence Group. Petitioner's prayer was for the issuance of the Writ directing respondents "to show the cause of his imprisonment or restraint, and after hearing, to order his release forthwith." The Court issued the Writ on July 13, 1982.

In a Supplemental Return to the Writ, respondents informed the Court that petitioner, on July 20, 1982, had been charged with Rebellion in Criminal Case No. Q-21091 of the Court of First Instance of Rizal, and they asked that the petition for habeas corpus be denied for the reason that "with the pendency of the case against petitioner before the Court below for trial and before the City Fiscal for reinvestigation, there is all the more reason to dismiss the petition."

Under the foregoing facts, it is my opinion that these cases have become moot. There is no longer any cause of action against respondents who must be deemed to have lost custody of petitioner (*In re Lasam vs. Enrile*, 67 SCRA 43 [1975]). I do not agree with the view that petitioner is still not within the jurisdiction of the Court below. If that were a correct proposition, the Court below would be without jurisdiction to try the rebellion case. In criminal law, "the Court must also have jurisdiction over the subject matter, that is, jurisdiction of the offense, and must have jurisdiction of the person of the accused" (*U.S. v. Simon*, D.C. Pa., 248, cited in 22 C.J.S. 300). Even if there has been no warrant of arrest issued by the Court below, the person of petitioner, who is now being tried, must be deemed as already within its jurisdiction (*Carrington vs. Peterson*, 4 Phil. 134 [1905]).

As petitioner is now within the jurisdiction of the Court below, the question in regards to the suspension of the Writ of habeas corpus has become irrelevant. Considering that the Writ is never issuable to a Court (*Nava v.*

Gatmaitan, 90 Phil. 172 [1951]), there should be no justification in these cases to assail whatever has been said or resolved in *Lansang v. Garcia*, 42 SCRA 448 (1971). That particular matter could have been raised, procedurally, if petitioner had not been charged with Rebellion before the Court below. Of course, it would then be for this Court to give or not to give due course to the question. After all, habeas corpus is a discretionary Writ (*Engels vs. Amrine*, 155 Kan 385, 125 P2d 379, cited in 39 Am. Jur. 2d, 269). Or, that would be the occasion for the Court to express its present views in regards to *Lansang-Garcia*. The Constitution is a living institution, and its interpretation and construction lives with changing times and circumstances.

On the other hand, in reference to whether or not petitioner is entitled to bail in the rebellion case, I believe that the proper procedure should be for petitioner to apply for bail before the Court below, and after his motion is granted or denied, the matter can thereafter be elevated to appellate consideration.

Once prosecuted in Court the position should not be taken that petitioner cannot be bailed, the right to bail being a fundamental right except for those charged with capital offenses when evidence of guilt is strong. The Constitution limited the suspension of the privilege of the writ of habeas corpus to only one great right leaving the rest to remain forever inviolable (*Ex parte Milligan*, 18 U.S. Law ed., 281, 297). The power of the Courts to grant bail cannot be curtailed if the supremacy of the Judiciary within its own sphere is to be preserved (*Angara vs. Electoral Commission*, 63 Phil. 139 [1936]; *Fernandez-Subido vs. Lacson*, 2 SCRA 1054 [1961]).

The reason for the objection to bail poses the same risk should the Court acquit petitioner. The risk need not be taken by continuing the detention under the Presidential Commitment Order, for a reasonable period, in the exercise of executive discretion by way of precaution essential for the public safety. "Public danger warrants the substitution of executive process for judicial process" (*Moyer vs. Peabody*, 53 Law, Ed., US 211-214, p. 411).

CONCURRING OPINION

GUTIERREZ, JR., J.:

I concur in the sharply perceptive and heartfelt main opinion penned by Mr. Justice Hermogenes Concepcion, Jr. especially in the reminders about rights of the accused, the cry of our people for material necessities to give them a better life, and the proper administration of justice. However, I would like to add some qualifying observations to a few points discussed by the ponente.

I agree, that the issuance of a presidential arrest and commitment order (PCO) must comply with the requirements of the Constitution. However, until the issue is placed squarely before us in a more appropriate case, I hesitate to concur in a categorical statement that a PCO may be equated with a warrant of arrest issued by a judge under Section 3, Article IV of the Constitution. An examination of Letters of Instructions Nos. 1125-A and 1211 indicates that the PCO is issued by the President, not as "such other responsible officer as may be authorized by law" under Section 3 of the Bill of Rights but as Commander-in-Chief exercising exclusively executive powers under the Constitution to meet problems of invasion, insurrection, or rebellion or imminent danger thereof, when the public safety requires it. Precisely, the letters of instructions call for preliminary examination or investigation by a judge as the regular procedure. Only when resort to judicial process is not possible or expedient without endangering public order and safety and when the release on bail of the person or persons already under arrest by virtue of a judicial warrant would endanger said public order and safety may the military commander or the head of the law enforcement agency apply to the President, through the Minister of National Defense, for a presidential commitment order. The fact that the stated procedure in the issuance of a PCO is an exception to and differs from the regular procedure before a judge for the issuance of a warrant of arrest shows that a PCO may not be equated

completely with a warrant of arrest.

In *Qua Chee Gan v. Deportation Board*, 9 SCRA 27, the issue was raised that the President, having been given the power to deport undesirable aliens, may not be denied power which is essential to carry into effect the deportation. This Court did not categorically rule that the President himself may order the arrest of an alien for deportation purposes, but neither did it rule that he may not do so. The fact is the President has on various occasions, such as those involving among others, Mr. Harry Stonehill and some associates and perhaps the Yuyiteng brothers, ordered the arrest of aliens without having to secure a warrant of arrest from a judge at a time when under the Constitution only a judge could issue such a warrant. The commander-in-chief's power in a situation where the writ of habeas corpus has been suspended or martial law has been proclaimed is certainly broader and less subject to constitutional restrictions than the power of deportation. I may also add that the President does not personally examine the complainant and the witnesses the latter may produce as the multifarious affairs of state prevent him from doing so. But as in the case of judges relying on investigations conducted by the fiscal, the President may rely on his Minister of National Defense or the recommending military commander or the head of the law enforcement agency to conduct what would be the equivalent of the judicial examination for probable cause. Of course, the rules in *Amarga v. Abbas* (98 Phil. 739) which impose on the judge issuing the warrant of arrest the legal duty to first satisfy himself that there is probable cause without relying completely or ministerially upon the findings of the fiscal, should also apply and I believe are in fact applied to PCO's.

I also hesitate to give concurrence to an unqualified reiteration of the *Lansang v. Garcia* (42 SCRA 448) doctrine on the Court's inquiring into the existence of factual bases for the suspension of the privilege of the writ of habeas corpus or the proclamation of martial law to determine their constitutional sufficiency. While the Court has not been very receptive lately to the invocation of the political question doctrine by State lawyers, I believe that the doctrine does apply in cases where a political department— either the President or the Batasang Pambansa—exercises powers expressly granted in an exclusive manner by the Constitution and which are of a clearly political nature not proper for judicial determination. If the proclamation of martial law or the suspension of the privilege of the writ is so patently arbitrary and as Justice Abad Santos says, lacking in popular support, there will always be constitutional foundation for Supreme Court action to rule against arbitrariness. However, as a general principle whenever the President exercises his powers under the Constitution to meet the supreme dangers of invasion, insurrection, or rebellion or imminent danger thereof when the public safety requires it, we should not assume a power, upon the mere filing of a petition, to render a judicial interpretation of an exclusively constitutionally granted power of the President. Paraphrasing *Coleman v. Miller* (307 US 433, 83 L. Ed. 1385), the question of the sufficiency of factual bases for the suspension of the privilege of the writ or the proclamation of martial law would involve an appraisal of a great variety of relevant conditions involving national security which can hardly be said to be within the appropriate range of evidence receivable in a court of justice and as to which it would be an extravagant extension of judicial authority to assert judicial notice, which after all is what we would be asserting in most cases involving the exercise of this extraordinary presidential power.

Relova, J., separate opinion; I vote with Mr. Justice Hugo E. Gutierrez, Jr

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