EN BANC

G.R. No. 231658 – *Rep. Edcel C. Lagman, et al. v. Hon. Executive Secretary Salvador Medialdea, et al.*

G.R. No. 231771 – *Eufemia Campos Cullamat, et al. v. President Rodrigo Roa Duterte, et al.*

G.R. No. 231774 – *Norkaya S. Mohamad, et al. v. Hon. Executive Secretary Salvador Medialdea, et al.*

Promulgated:

December 5, 2017

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DISSENTING OPINION

CAGUIOA, *J.*:

I maintain my dissent.

I maintain that no sufficient factual basis was shown for the declaration of martial law and suspension of the writ of *habeas corpus* over the entire Mindanao. As well, I maintain that the Court's review under Section 18 to determine the sufficiency of factual basis necessarily requires an examination of the veracity and accuracy of the factual basis offered by the Executive.

To reiterate, Section 18, being a neutral and straightforward fact-checking mechanism, serves the functions of *(1)* preventing the concentration in one person — the Executive — of the power to put in place a rule that significantly implicates civil liberties, *(2)* providing the sovereign people a forum to be informed of the factual basis of the Executive's decision, and *(3)* at the very least, assuring the people that a separate department independent of the Executive may be called upon to determine for itself the propriety of the declaration of martial law and suspension of the privilege of the writ.[1]

This is what is owed to the sovereign people in this case.

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[1] *J.* Caguioa, Dissenting Opinion, *Lagman v. Medialdea*, G.R. Nos. 231658, 231771 & 231774, p. 5.

The petition for the review of the sufficiency of factual basis of Proclamation No. 216 is not mooted by its expiration.

In *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Phils.)*,[2] the Court explained:

> An action is considered 'moot' when it no longer presents a justiciable controversy because the issues involved have become academic or dead, or when the matter in dispute has already been resolved and hence, one is not entitled to judicial intervention unless the issue is likely to be raised again between the parties. Time and again, courts have refrained from even expressing an opinion in a case where the issues have become moot and academic, there being no more justiciable controversy to speak of, so that a determination thereof would be of no practical use or value.
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> Nonetheless, courts will decide cases, otherwise moot and academic if: *first*, there is a grave violation of the Constitution; *second,* the exceptional character of the situation and the paramount public interest is involved; *third,* when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar and the public; and *fourth*, the case is capable of repetition yet evading review." x x x[3]

Guided by these exceptions, the Court had ruled on the case and ultimately enjoined the field testing of *Bt talong* despite its termination. Similarly, the Court ruled on the constitutionality of the Memorandum of Agreement on the Ancestral Domain Aspect (MOA-AD) of the GRP-MILF Tripoli Agreement on Peace of 2001 despite the government's claim of satisfaction of the reliefs prayed for in *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*,[4] certain provisions in the national budget despite the end of the fiscal year for which the law was passed in *Belgica v. Ochoa*,[5] and a declaration of a state of emergency and the corresponding implementing General Order despite their having been lifted in *David v. Macapagal-Arroyo*,[6] among the catena of cases where the issue of mootness was raised.

This case falls within the second, third, and fourth exceptions. *First*, the state of martial law and suspension of the writ of *habeas corpus* is an exception to the normal workings of our system of government and involves paramount public interest in view of the attendant curtailment of civil liberties. *Second*, the issues raised by the petitions require formulation of

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2 774 Phil. 508 (2015) [En Banc, Per J. Villarama, Jr.].
3 Id. at 577-578.
4 589 Phil. 387 (2008) [En Banc, Per J. Carpio Morales].
5 721 Phil. 416 (2013) [En Banc, Per J. Perlas-Bernabe].
6 522 Phil. 705 (2006) [En Banc, Per J. Sandoval-Gutierrez].

controlling principles to guide the bench, the bar and the public, more specifically, the agents of the Executive department, the police, and the military, with respect to the nature and threshold of evidence required in a Section 18 petition, and the scope of and standards in the implementation of martial law, among others. *Lastly*, the events (*e.g.,* skirmishes, kidnappings, explosions) that led to the issuance of Proclamation No. 216 are neither rare nor exceptional so as to foreclose the possibility of repetition.

The first exception is irrelevant in a Section 18 review because its function is not to determine a grave violation of the Constitution. In this regard, I had summarized in my Dissent to the July 4, 2017 Decision the essence of the Court's duty to review under Section 18 is, thus:

> x x x to embrace and actively participate in the neutral, straightforward, apolitical fact-checking mechanism that is mandated by Section 18, Article VII of the Constitution, and accordingly determine the sufficiency of the factual basis of the declaration of martial law or suspension of the privilege of the writ of *habeas corpus*. The Court, under Section 18, steps in, receives the submissions relating to the factual basis of the declaration of martial law or suspension of the privilege of the writ, and then renders a decision on the question of whether there is sufficient factual basis for the declaration of martial law or suspension of the privilege of the writ. Nothing more.
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> To be sure, the Court will even ascribe good faith to the Executive in its decision to declare martial law or suspend the privilege of the writ of *habeas corpus*. But that does not diminish the Court's duty to say, if it so finds, that there is insufficient factual basis for the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*. That is the essence of the Court's duty under Section 18.
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> **In discharging this duty, the Court does not assign blame, ascribe grave abuse or determine that there was a culpable violation of the Constitution.** It is in the courageous and faithful discharge of this duty that the Court fulfills the most important task of achieving a proper balance between freedom and order in our society. It is in this way that the Court honors the sacrifice of lives of the country's brave soldiers — that they gave their last breath not just to suppress lawless violence, but in defense of freedom and the Constitution that they too swore to uphold.[7] (Emphasis supplied)

And:

> Since Section 18 is a neutral straightforward fact-checking mechanism, any nullification necessarily does not ascribe any grave abuse or attribute any culpable violation of the Constitution to the Executive. Meaning, the fact that Section 18 checks for sufficiency and not mere arbitrariness does not, as it was not intended to, denigrate the power of the Executive to act swiftly and decisively to ensure public safety in the face of emergency. Thus, **the Executive will not be exposed to any kind of**

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7 *J.* Caguioa, Dissenting Opinion, *Lagman v. Medialdea*, supra note 1, at 24.

> **liability should the Court, in fulfilling its mandate under Section 18, make a finding that there were no sufficient facts for the declaration of martial law or the suspension of the privilege of the writ.**[8] (Emphasis supplied)

The veracity and accuracy of the factual basis offered by the Executive is inextricably linked to the review of its sufficiency.

This appears to be the where the case turns. The *ponencia*, in drawing distinctions between a review of sufficiency and accuracy, adverts to Justice Velasco's Dissenting Opinion in *Fortun v. Macapagal-Arroyo*[9]:

> **President Arroyo cannot be blamed for relying upon the information given to her** by the Armed Forces of the Philippines and the Philippine National Police, considering that the matter of the supposed armed uprising was within their realm of competence, and that a state of emergency has also been declared in Central Mindanao to prevent lawless violence similar to the "Maguindanao massacre," which may be an indication that there is a threat to public safety warranting a declaration of martial law or suspension of the writ.
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> Certainly, **the President cannot be expected to risk being too late before declaring martial law or suspending the writ of *habeas corpus*. The Constitution, as couched, does not require precision** in establishing the fact of rebellion. The President is called to act as public safety requires.[10] (Emphasis supplied)

This justification misses the mark. Since the function of the Court's Section 18 review is NOT to ascribe fault to the Executive in declaring martial law or suspending the writ of *habeas corpus*, but to determine the sufficiency of the factual basis for the proclamation of martial law — an anomalous situation that directly affects the operations of government and the enjoyment of the people of their civil liberties within the scope of its implementation — with a view of either upholding or nullifying the same, a finding of sufficient factual basis should necessarily mean **sufficient truthful, accurate, or at the very least, credible, factual basis.** This is because the Court's judgment is not temporally-bound to the time the proclamation was issued — the ultimate question not being the liability of the Executive for the proclamation or suspension, but whether the abnormal state of affairs should continue. The transitory nature of the actions of the legislative and judicial branches was discussed by the framers, thus:

> MR. BENGZON: And if the Supreme Court promulgates its decision ahead of Congress, Congress is foreclosed because the Supreme

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8 Id. at 11.

9 684 Phil. 526, 620-631 (2012) [En Banc, Per J. Abad].

10 Id. at 629.

> Court has 30 days within which to look into the factual basis. If the Supreme Court comes out with the decision one way or the other without Congress having acted on the matter, is Congress foreclosed?
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> FR. BERNAS: **The decision of the Supreme Court will be based on its assessment of the factual situation. Necessarily, therefore, the judgment of the Supreme Court on that is a transitory judgment because the factual situation can change.** So, while the decision of the Supreme Court may be valid at that certain point of time, the situation may change so that Congress should be authorized to do something about it.
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> MR. BENGZON: Does the Gentleman mean the decision of the Supreme Court then would just be something transitory?
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> FR. BERNAS: Precisely.
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> MR. BENGZON: It does not mean that if the Supreme Court revokes or decides against the declaration of martial law, the Congress can no longer say, "no, we want martial law to continue" because the circumstances can change.
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> FR. BERNAS: The Congress can still come in because the factual situation can change.
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> MR. BENGZON: Thank you, Madam President.[11] (Emphasis supplied)

In the same manner that the Congress has the latitude to extend martial law in the event that factual circumstances change despite a theoretical antecedent contrary judgment on the part of the Court, the latter, in parity of reasoning, can and should declare the proclamation as having been issued without sufficient basis if the facts relied upon by the Executive in the proclamation have been shown to be false or inaccurate during the pendency of the Court's review. As a consequence, the proclamation or suspension is nullified, and the normal workings of government shall be restored. This is the only reasonable interpretation.

Therefore, I harken back to my previous discussion on this point:

> As well, in the same manner that the Court is not limited to the four corners of Proclamation No. 216 or the President's report to Congress, it is similarly not temporally bound to the time of proclamation to determine the sufficiency of the factual basis for both the existence of rebellion **and** the requirements of public safety. In other words, if enough of the factual basis relied upon for the existence of rebellion or requirements of public safety are shown to have been inaccurate or no longer obtaining at the time of the review to the extent that the factual basis is no longer sufficient for the declaration of martial law or suspension of the privilege of the writ, then there is nothing that prevents the Court from nullifying the proclamation.

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[11] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 494 (1986).

> In the same manner, if the circumstances had changed enough to furnish sufficient factual basis at the time of the review, then the proclamation could be upheld though there might have been insufficient factual basis at the outset. A contrary interpretation will defeat and render illusory the purpose of review.
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> To illustrate, say a citizen files a Section 18 petition on day 1 of the proclamation, and during the review it was shown that while sufficient factual basis existed at the outset (for both rebellion and public necessity) such no longer existed at the time the Court promulgates its decision at say, day 30 — then it makes no sense to uphold the proclamation and allow the declaration of martial law or suspension of the privilege of the writ to continue for another thirty days, assuming it is not lifted earlier.
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> Conversely, if it was shown that while there was insufficient factual basis at the outset, circumstances had changed during the period of review resulting in a finding that there is now sufficient factual basis for the declaration of martial law or suspension of the privilege of the writ, then the Court is called upon to uphold the proclamation.[12]

The *ponencia* pushes a false dichotomy of "accuracy" versus "sufficiency" that reeks of avoidance. In a court of law, the judge deals with evidence. As defined, evidence is the means of ascertaining in a judicial proceeding the truth respecting a matter of fact.[13] Inescapably, therefore, **truth, veracity, and accuracy are indispensable qualities of the evidence that the Court shall accept to support a finding of a certain fact** — in this case, the existence of the twin requirements for the declaration and suspension.

Otherwise, if any fact offered by a party is acceptable despite being false or inaccurate, the laying down of the nature and quantum of evidence required in a Section 18 review becomes illusory. Furthermore, a finding of sufficiency of factual basis from the Court that does not carry with it what would otherwise be the silent premise in every other judicial proceeding that the **evidence relied upon is true, accurate, or at the very least "credible"**[14] falls short of its duty under Section 18 — which is, again, to

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12 *J.* Caguioa, Dissenting Opinion, *Lagman v. Medialdea*, supra note 1, at 12.

13 Rule 128, Section 1. *Evidence defined.* — Evidence is the means, sanctioned by these Rules, of ascertaining in a judicial proceeding the truth respecting a matter of fact.

14 MR. NATIVIDAD. And the Commissioner said that in case of subversion, sedition or imminent danger of rebellion or invasion, that would be the *causus beli* for the suspension of the privilege of the writ of *habeas corpus*. **But I wonder whether or not the Commissioner would consider intelligence reports of military officers as evidence of imminent danger of rebellion or invasion because this is usually the evidence presented.**

MR. PADILLA. **Yes, as credible evidence, especially if they are based on actual reports and investigation of facts that might soon happen.**

MR. NATIVIDAD. Then the difficulty here is, of course, that the authors and the witnesses in intelligence reports may not be forthcoming under the rule of classified evidence or documents. Does the Commissioner still accept that as evidence?

MR. PADILLA. It is for the President as commander-in-chief of the Armed Forces to appraise these reports and be satisfied that the public safety demands the suspension of the writ. After

determine not whether the Executive committed error in issuing the declaration or suspension but whether there is sufficient factual basis to warrant the continuation of the abnormal state of affairs that such declaration or suspension brings about. I reiterate my discussion on this point:

> The use of the word "sufficiency," signals that the Court's role in the neutral straightforward fact-checking mechanism of Section 18 is precisely to check *post facto*, and with the full benefit of hindsight, the validity of the declaration of martial law or suspension of the privilege of the writ, based upon the presentation by the Executive of the sufficient factual basis therefor (*i.e.*, evidence tending to show the requirements of the declaration of martial law or suspension of the privilege of the writ: actual rebellion or invasion, and requirements of public safety). This means that the Court is also called upon to investigate the accuracy of the facts forming the basis of the proclamation — whether there is actual rebellion and whether the declaration of martial law and the suspension of the privilege of the writ are necessary to ensure public safety.

For truly, without ascertaining the accuracy of the factual basis offered for the proclamation, the Court is sending a perverse message that the Executive, in this case and in future Section 18 reviews that may come before it, may offer any and all kinds of "factual" bases, without regard to accuracy. It is truly baffling how the majority's concession of the Executive's superior "competence," "logistical machinery," and "superior data gathering apparatus" does not equate to the Court imposing upon the Executive the obligation to produce before the Court sufficient evidence that is **true, accurate, or at the very least, credible.** This superiority must lead the Court to raise the bar instead of lower it. Else, it leads precisely to a nugatory Court finding I already adverted to:

> x x x The Executive needs to reveal so much of its factual basis for the declaration of martial law and suspension of the privilege of the writ so that it produces in the mind of the Court the conclusion that the declaration and suspension meets the requirements of the Constitution. **Otherwise, the Court's finding of sufficiency becomes anchored upon bare allegations, or silence. In any proceeding, mere allegation or claim is not evidence; neither is it equivalent to proof.**[15] (Emphasis supplied)

The holding that the review of sufficiency of factual basis does not involve an examination of the accuracy of factual basis is but one degree removed from allowing the use of presumptions of constitutionality and regularity in a Section 18 review, which, as well, I have already described as incompatible to the nature of the exercise:

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all, this can also be raised before the Supreme Court as in the declaration of martial law because it will no longer be, as the former Solicitor General always contended, a political issue. It becomes now a justiciable issue. The Supreme Court may even investigate the factual background in support of the suspension of the writ or the declaration of martial law. (Emphasis supplied) II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 470 (1986).

[15] *J.* Caguioa, Dissenting Opinion, *Lagman v. Medialdea*, supra note 1, at 8.

> x x x The presumption disposes of the need to present evidence — which is totally opposite to the fact-checking exercise of Section 18; to be sure, reliance on the presumption in the face of an express constitutional requirement amounts to a **failure by the Executive to show sufficient factual basis, and judicial rubberstamping on the part of the Court.**[16] (Emphasis supplied)

Again, and in fine, a Section 18 review functions not to fix blame, but to be an avenue for the restoration of the normal workings of government and the enjoyment of individual liberties should there be showing of insufficient factual basis.[17] In a democracy like ours, a ruling that directly affects these terminal values requires no less than accuracy and truth. The Court must uphold this standard.

Therefore, I vote to grant the Motions for Reconsideration and to declare the proclamation of martial law over the entire Mindanao as having been issued without sufficient factual basis, and the proclamation can be justified only in Lanao del Sur, Maguindanao, and Sulu.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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16 *J.* Caguioa, Dissenting Opinion, *Lagman v. Medialdea*, supra note 1, at 8.

17 "[I]f the Executive satisfies the requirement of showing sufficient factual basis, then the proclamation is upheld, and the sovereign people are either informed of the factual basis or assured that such has been reviewed by the Court. If the Executive fails to show sufficient factual basis, then the proclamation is nullified and the people are restored to full enjoyment of their civil liberties." *J.* Caguioa, Dissenting Opinion, *Lagman v. Medialdea*, supra note 1, at 11.