Republic of the Philippines
Supreme Court
Manila

EN BANC

REPRESENTATIVES EDCEL C. LAGMAN, TOMASITO S. VILLARIN, EDGAR R. ERICE, TEDDY BRAWNER BAGUILAT, JR., GARY C. ALEJANO, AND EMMANUEL A. BILLONES,
Petitioners,

G.R. No. 235935

- versus -

SENATE PRESIDENT AQUILINO PIMENTEL III, SPEAKER PANTALEON D. ALVAREZ, EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, DEFENSE SECRETARY DELFIN N. LORENZANA, BUDGET SECRETARY BENJAMIN E. DIOKNO AND ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF GENERAL REY LEONARDO GUERRERO,
Respondents.

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EUFEMIA CAMPOS CULLAMAT, NOLI VILLANUEVA, RIUS VALLE, ATTY. NERI JAVIER COLMENARES, DR. MARIA CAROLINA P. ARAULLO, RENATO M. REYES, JR.,

G.R. No. 236061

CRISTINA E. PALABAY, BAYAN MUNA PARTYLIST REPRESENTATIVE CARLOS ISAGANI T. ZARATE, GABRIELA WOMEN'S PARTY REPRESENTATIVES EMERENCIANA A. DE JESUS AND ARLENE D. BROSAS, ANAKPAWIS REPRESENTATIVE ARIEL B. CASILAO, ACT TEACHERS' REPRESENTATIVES ANTONIO L. TINIO, AND FRANCISCA L. CASTRO, AND KABATAAN PARTYLIST REPRESENTATIVE SARAH JANE I. ELAGO,
Petitioners,

- versus -

PRESIDENT RODRIGO DUTERTE, SENATE PRESIDENT AQUILINO PIMENTEL III, HOUSE SPEAKER PANTALEON ALVAREZ, EXECUTIVE SECRETARY SALVADOR MEDIALDEA, DEFENSE SECRETARY DELFIN LORENZANA, ARMED FORCES OF THE PHILIPPINES CHIEF-OF-STAFF GEN. REY LEONARDO GUERRERO, PHILIPPINE NATIONAL POLICE DIRECTOR-GENERAL RONALDO DELA ROSA,
Respondents.

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LORETTA ANN P. ROSALES, **G.R. No. 236145**
Petitioner,

- versus -

PRESIDENT RODRIGO R. DUTERTE, REPRESENTED BY EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, MARTIAL LAW ADMINISTRATOR SECRETARY DELFIN N. LORENZANA, MARTIAL LAW IMPLEMENTER GENERAL REY L. GUERRERO, AND PHILIPPINE NATIONAL POLICE DIRECTOR GENERAL RONALDO M. DELA ROSA, AND THE CONGRESS OF THE PHILIPPINES, CONSISTING OF THE SENATE OF THE PHILIPPINES REPRESENTED BY SENATE PRESIDENT AQUILINO Q. PIMENTEL III, AND THE HOUSE OF REPRESENTATIVES, REPRESENTED BY HOUSE SPEAKER PANTALEON D. ALVAREZ,
Respondents.

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CHRISTIAN S. MONSOD, DINAGAT ISLANDS REPRESENTATIVE ARLENE J. BAG-AO, RAY PAOLO J. SANTIAGO, NOLASCO RITZ LEE B. SANTOS III, MARIE HAZEL E. LAVITORIA, NICOLENE S. ARCAINA, AND JOSE RYAN S. PELONGCO, **G.R. No. 236155**
Petitioners,

Present:

- versus -

SENATE PRESIDENT AQUILINO PIMENTEL III, SPEAKER PANTALEON D. ALVAREZ, EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, DEPARTMENT OF NATIONAL DEFENSE (DND) SECRETARY DELFIN N. LORENZANA, DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT (DILG) SECRETARY (OFFICER-IN-CHARGE) EDUARDO M. AÑO, ARMED FORCES OF THE PHILIPPINES (AFP) CHIEF OF STAFF GENERAL REY LEONARDO GUERRERO, PHILIPPINE NATIONAL POLICE (PNP) CHIEF DIRECTOR GENERAL RONALD M. DELA ROSA, NATIONAL SECURITY ADVISER HERMOGENES C. ESPERON, JR.,

Respondents.

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
PERALTA,
BERSAMIN,
DEL CASTILLO,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,
CAGUIOA,
MARTIRES,
TIJAM,
REYES, JR., and
GESMUNDO, *JJ.*

Promulgated:

February 6, 2018

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DECISION

TIJAM, *J.*:

> ***Safety from external danger is the most powerful director of national conduct. Even the ardent love of liberty will, after a time, give way to its dictates.*** **– Alexander Hamilton**

There is an ongoing rebellion in the Philippines. NPA rebels, Maute rebels, ASG rebels, BIFF rebels, Islamic fundamentalists and other armed groups are on the loose. They are engaged in armed conflict with government forces; they seek to topple the government; and they sow terror and panic in the community. ***To ignore this reality and to claim that these are non-existent is to court consequences that endanger public safety.***

A state of martial law is not the normative state. Neither does it take a perpetual form. It is an extraordinary power premised on necessity meant to protect the Republic from its enemies. Territorial and temporal limitations germane to the Constitutional prerequisites of the existence or persistence of actual rebellion or invasion and the needs of public safety severely restrict the declaration of martial law, or its extensions. The government can lift the state of martial law once actual rebellion no longer persists and that public safety is amply ensured. Should the government, through its elected President and the Congress, fail in their positive duties prescribed by the Constitution or transgress any of its safeguards, any citizen is empowered to question such acts before the Court. When its jurisdiction is invoked, the Court is not acting as an institution superior to that of the Executive or the Congress, but as the champion of the Constitution ordained by the sovereign Filipino people. For, after all, a state of martial law, awesome as it is perceived to be, does not suspend the operations of the Constitution which defines and limits the powers of the government and guarantees the bill of rights to every person.

The Case

These are consolidated petitions,[1] filed under the third paragraph, Section 18 of Article VII of the Constitution, assailing the constitutionality of the extension of the proclamation of martial law and suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao for one year from January 1 to December 31, 2018. Petitioners in G.R. No. 235935 alternatively, but not mandatorily, invoke the Court's expanded jurisdiction under Section 1 of Article VIII of the Constitution. Petitioners in G.R. Nos. 235935, 236061 and 236155 pray for a temporary restraining order (TRO) and/or writ of preliminary injunction to enjoin respondents from implementing the one-year extension.

The Antecedents

On May 23, 2017, President Rodrigo Roa Duterte issued Proclamation No. 216,[2] declaring a state of martial law and suspending the privilege of the writ of *habeas corpus* in the whole of Mindanao for a period not exceeding

[1] *Rollo* (G.R. No. 235935), pp. 3-31; *rollo* (G.R. No. 236061), pp. 3-52; *rollo* (G.R. No. 236145), pp. 9-41; *rollo* (G.R. No. 236155), pp. 3-46.

[2] *Rollo* (G.R. No. 235935), pp. 123-124.

sixty (60) days, to address the rebellion mounted by members of the Maute Group and Abu Sayyaf Group (ASG).

On May 25, 2017, within the 48-hour period set in Section 18, Article VII of the Constitution, the President submitted to the Senate and the House of Representatives his written Report, citing the events and reasons that impelled him to issue Proclamation No. 216. Thereafter, the Senate adopted P.S. Resolution No. 388[3] while the House of Representatives issued House Resolution No. 1050,[4] both expressing full support to the Proclamation and finding no cause to revoke the same.

Three separate petitions[5] were subsequently filed before the Court, challenging the sufficiency of the factual basis of Proclamation No. 216. In a Decision rendered on July 4, 2017, the Court found sufficient factual bases for the Proclamation and declared it constitutional.

On July 18, 2017, the President requested the Congress to extend the effectivity of Proclamation No. 216. In a Special Joint Session on July 22, 2017, the Congress adopted Resolution of Both Houses No. 2[6] extending Proclamation No. 216 until December 31, 2017.

In a letter[7] to the President, through Defense Secretary Delfin N. Lorenzana (Secretary Lorenzana), the Armed Forces of the Philippines (AFP) Chief of Staff, General Rey Leonardo Guerrero (General Guerrero), recommended the further extension of martial law and suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao for one year beginning January 1, 2018 "for compelling reasons based on current security assessment." On the basis of this security assessment, Secretary Lorenzana wrote a similar recommendation to the President "primarily to ensure total eradication of DAESH-inspired Da'awatul Islamiyah Waliyatul Masriq (DIWM), other like-minded Local/Foreign Terrorist Groups (L/FTGs) and Armed Lawless Groups (ALGs), and the communist terrorists (CTs) and their coddlers, supporters and financiers, and to ensure speedy rehabilitation, recovery and reconstruction efforts in Marawi, and the attainment of lasting peace, stability, economic development and prosperity in Mindanao."[8]

Acting on said recommendations, the President, in a letter[9] dated December 8, 2017, asked both the Senate and the House of Representatives to further extend the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao for one year,

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[3] Id. at 125-126.
[4] Id. at 130-131.
[5] G.R. Nos. 231658, 231771 and 231774.
[6] *Rollo* (G.R. No. 235935), pp. 34-35.
[7] Id. at 42-45.
[8] Id. at 42.
[9] Id. at 36-40.

from January 1, 2018 to December 31, 2018, or for such period as the Congress may determine. Urging the Congress to grant the extension based on the "essential facts" he cited, the President wrote:

> A further extension of the implementation of Martial Law and suspension of the privilege of the writ of *habeas corpus* in Mindanao will help the AFP, the Philippine National Police (PNP), and all other law enforcement agencies to quell completely and put an end to the on-going rebellion in Mindanao and prevent the same from escalating to other parts of the country. Public safety indubitably requires such further extension, not only for the sake of security and public order, but more importantly to enable the government and the people of Mindanao to pursue the bigger task of rehabilitation and the promotion of a stable socio-economic growth and development.[10]

Attached to the President's written request were the letters of Secretary Lorenzana[11] and General Guerrero[12] recommending the one-year extension.

On December 13, 2017, the Senate and the House of Representatives, in a joint session, adopted Resolution of Both Houses No. 4[13] further extending the period of martial law and suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao for one year, from January 1, 2018 to December 31, 2018. In granting the President's request, the Congress stated:

> WHEREAS, the President informed the Congress of the Philippines of the remarkable progress made during the period of Martial Law, but nevertheless reported the following essential facts, which as Commander-in-Chief of all armed forces of the Philippines, he has personal knowledge of: First, despite the death of Hapilon and the Maute brothers, the remnants of their groups have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion; Second, the Turaifie Group has likewise been monitored to be planning to conduct bombings, notably targeting the Cotabato area; Third, the Bangsamoro Islamic Freedom Fighters continue to defy the government by perpetrating at least fifteen (15) violent incidents during the Martial Law period in Maguindanao and North Cotabato; Fourth, the remnants of the Abu Sayyaf Group in Basilan, Sulu, Tawi-tawi, and Zamboanga Peninsula remain a serious security concern; and last, the New People's Army took advantage of the situation and intensified their decades-long rebellion against the government and stepped up terrorist acts against innocent civilians and private entities, as well as guerrilla warfare against the security sector and public and government infrastructure, purposely to seize political power through violent means and supplant the country's democratic form of government with Communist rule.

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[10] Id. at 40.
[11] Id. at 41.
[12] Id. at 42-45.
[13] Id. at 467-468.

> WHEREAS, Section 18, Article VII of the 1987 Constitution authorizes the Congress of the Philippines to extend, at the initiative of the President, such proclamation or suspension for a period to be determined by the Congress of the Philippines, if the invasion or rebellion shall persist and public safety requires it;
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> WHEREAS, on December 13, 2017, after thorough discussion and extensive debate, the Congress of the Philippines in a Joint Session by two hundred forty (240) affirmative votes comprising the majority of all its Members, has determined that rebellion persists, and that public safety indubitably requires the further extension of the Proclamation of Martial Law and the Suspension of the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao; Now, therefore, be it
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> *Resolved by the Senate and the House of Representatives in a Joint Session Assembled,* To further extend Proclamation No. 216, Series of 2017, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao" for a period of one (1) year from January 1, 2018 to December 31, 2018.[14]

The Parties' Arguments

A. Petitioners' case

Based on their respective petitions and memoranda and their oral arguments before this Court on January 16, 2018 and January 17, 2018, petitioners' arguments are summarized as follows:

(a) The petitioners' failure to attach the Congress' Joint Resolution approving the extension is not fatal to the consolidated petitions. Such failure is justified by the non-availability of the Resolution at the time the petition was filed. In any case, the Rules on Evidence allow the Court to take judicial notice of the Resolution as an official act of the legislative.[15]

(b) The doctrine of presidential immunity does not apply in a *sui generis* proceeding under Section 18, Article VII as such immunity pertains only to civil and criminal liability.[16] In this proceeding, the President is not being held personally liable for damages, or threatened with any punishment. If at all, he is being held to account for non-compliance with a constitutional requirement.[17]

(c) The principle of conclusiveness of judgment is not a bar to raising the issue of the sufficiency of the factual basis of the extension, being different from the factual and legal issues raised in the earlier case of

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[14] Id. at 468.

[15] Id. at 616-617; *rollo* (G.R. No. 236061), pp. 597-598; *rollo* (G.R. No. 236061), pp. 779-781.

[16] *Rollo* (G.R. No. 236061), pp. 593-594.

[17] *Rollo* (G.R. No. 236145), pp. 780-782.

Lagman v. Medialdea.[18] At any rate, the Court's decision in *Lagman* is transitory considering the volatile factual circumstances.[19] Commissioner Joaquin G. Bernas (Fr. Bernas) emphasized during the deliberations on the 1987 Constitution that the evaluation of the Supreme Court in a petition which assails such factual situation would be "transitory if proven wrong by subsequent changes in the factual situation."[20]

(d) As to the scope and standards of judicial review, petitioners in G.R. No. 236145 assert that the standard for scrutiny for the present petitions is sufficiency of factual basis, not grave abuse of discretion. The former is, by constitutional design, a stricter scrutiny as opposed to the latter. Moreover, the Court is allowed to look into facts presented before it during the pendency of the litigation. This includes, for example, admissions made by the Solicitor General and the military during oral arguments, as they attempted to show compliance with the constitutional requirements.[21]

In contrast, petitioners in G.R. No. 235935 argue that the standard to be used in determining the sufficiency of the factual basis for the extension is limited to the sufficiency of the facts and information contained in the President's letter dated December 8, 2017 requesting for the extension and its annexes.[22]

(e) As to the quantum of proof, petitioners in G.R. No. 236061 insist that clear and convincing evidence is necessary to establish sufficient factual basis for the extension of martial law instead of the "probable cause" standard set in *Lagman*. In comparison to the initial exercise of the extraordinary powers of proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus*, their extension must have had the benefit of sufficient time to gather additional information not only on the factual situation of an actual rebellion, but also the initial exercise of the Executive during its initial implementation.[23] Petitioners further argue that given its critical role in the system of checks and balance, the Court should review not only the sufficiency of the factual basis of the re-extension but also its accuracy.[24]

(f) As to the *onus* of showing sufficiency of the factual bases for extending martial law, petitioners in G.R. Nos. 235935 and 236145 contend that the President bears the same. Petitioners in G.R. No. 236155, however, argues that both the President and the Congress bear the burden of proof.

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[18] G.R. No. 231658, July 4, 2017; *rollo* (G.R. No. 236061), pp. 595-597.
[19] *Rollo* (G.R. No. 235935), pp. 624-625.
[20] *Rollo* (G.R. No. 236155), pp. 26-27; *rollo* (G.R. No. 236061), p. 812-813.
[21] *Rollo* (G.R. No. 236145), pp. 778-779.
[22] *Rollo* (G.R. No. 235935), pp. 631-636.
[23] *Rollo* (G.R. No. 236061), pp. 791-794.
[24] *Rollo* (G.R. No. 236155), pp. 26-28.

(g) In relation to the Court's power to review the sufficiency of the factual basis for the proclamation of martial law or any extension thereof, the military cannot withhold information from the Court on the basis of national security especially since it is the military itself that classifies what is "secret" and what is not. The Court's power to review in this case is a specific and extraordinary mandate of the Constitution that cannot be defeated and limited by merely invoking that the information sought is "classified."[25]

(h) The Congress committed grave abuse of discretion for precipitately and perfunctorily approving the extension of martial law despite the absence of sufficient factual basis.[26] In G.R. No. 235935, petitioners impute grave abuse of discretion specifically against the "leadership and supermajority" of both Chambers of Congress, arguing that the extension was approved with inordinate haste as the Congress' deliberation was unduly constricted to an indecent 3 hours and 35 minutes. The three-minute period of interpellation (excluding the answer) under the Rules of the Joint Session of Congress was inordinately short compared to the consideration of ordinary legislation on second reading. Further, a member of Congress was only allowed a minute to explain his/her vote, and although a member who did not want to explain could yield his/her allotted time, the explanation could not exceed three minutes.[27] Petitioners in G.R. No. 236061 highlighted the limited time given to the legislators to interpellate the AFP Chief, the Defense Secretary and other resource persons and criticized the Congress' Joint Resolution for not specifying its findings and justifications for the re-extension.[28]

(i) The Constitution allows only a one-time extension of martial law and/or suspension of the privilege of the writ of *habeas corpus*, not a series of extensions amounting to perpetuity. As regards the Congress' discretion to determine the period of the extension, the intent of the Constitution is for such to be of short duration given that the original declaration of martial law was limited to only sixty (60) days.[29] In addition, the period of extension of martial law should satisfy the standards of necessity and reasonableness. Congress must exercise its discretion in a stringent manner considering that martial law is an extraordinary power of last resort.[30]

(j) The one-year extension of the proclamation of martial law and suspension of the privilege of the writ of *habeas corpus* lacked sufficient factual basis because there is no actual rebellion in Mindanao. The Marawi siege and the other grounds under Proclamation No. 216 that were used as the alleged bases to justify the extension have already been resolved and no

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[25] *Rollo* (G.R. No. 236145), p. 779; *rollo* (G.R. No. 236061), pp. 785-788.
[26] *Rollo* (G.R. No. 236061), pp. 30-32; *rollo* (G.R. No. 236061), pp. 616-618.
[27] *Rollo* (G.R. No. 235935), pp. 19-20, 26-27; *rollo* (G.R. No. 235935), pp. 552-556.
[28] *Rollo* (G.R. No. 236155), pp. 33-34.
[29] *Rollo* (G.R. No. 235935), pp. 22-26; *rollo* (G.R. No. 235935), pp. 628-630.
[30] *Rollo* (G.R. No. 236061), pp. 813-816.

longer persist.[31] In his letter of request for further extension, the President admits that the Maute rebellion has already been quelled and the extension is to prevent the scattered rebels from gathering and consolidating their strength.[32] Moreover, the President himself had announced the liberation of Marawi and the cessation of armed combat.[33]

(k) The President and his advisers' justifications, which were principally based on "threats of violence and terrorism," "security concerns" and "imminent danger to public safety," do not amount to actual invasion or rebellion as to justify the extension of martial law. They merely constitute "imminent danger." Since the framers of the 1987 Constitution removed the phrase "imminent danger" as one of the grounds for declaring martial law, the President can no longer declare or extend martial law on the basis of mere threats of an impending rebellion.[34]

(l) The extension should not be allowed on the basis of alleged NPA attacks because this reason was not cited in the President's original declaration.[35]

(m) The alleged rebellion in Mindanao does not endanger public safety. The threat to public safety contemplated under Section 18, Article VII of the Constitution is one where the government cannot sufficiently or effectively govern, as when the courts or government offices cannot operate or perform their functions.[36]

(n) Martial law should be operative only in a "theater of war" as intended by the drafters of the Constitution. For a "theater of war" to exist, there must be an area where actual armed conflict occurs which necessitate military authorities to take over the functions of government due to the breakdown, inability or difficulty of the latter to function. The insurrection must have assumed the status of a public and territorial war, and the conditions must show that government agencies within the local territory can no longer function.[37] Without any of the four objectives that comprise the second element of rebellion,[38] the acts of "regrouping", "consolidation of forces", "recruitment" and "planning" stages, or the continuing commission

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[31] *Rollo* (G.R. No. 235935), pp. 12-17; *rollo* (G.R. No. 235935), pp. 540-544; *rollo* (G.R. No. 236061), pp. 10-13; *rollo* (G.R. No. 236061), pp. 540-543.

[32] *Rollo* (G.R. No. 236145), pp. 31-37.

[33] *Rollo* (G.R. No. 236155), pp. 32-35.

[34] *Rollo* (G.R. No. 235935), pp. 20-22; *rollo* (G.R. No. 236145), p. 38; *rollo* (G.R. No. 236155), pp. 32-35.

[35] *Rollo* (G.R. No. 236061), p. 20; *rollo* (G.R. No. 236145), p. 39; *rollo* (G.R. No. 236145), p. 791; *rollo* (G.R. No. 236061), pp. 34-35.

[36] *Rollo* (G.R. No. 235935), pp. 625-628; *rollo* (G.R. No. 236061), pp. 13-21; *rollo* (G.R. No. 236061), pp. 601-609; *rollo* (G.R. No. 236155), p. 33.

[37] *Rollo* (G.R. No. 236155), pp. 21-24; *rollo* (G.R. No. 236061), pp. 795-807.

[38] Either (a) to remove from the allegiance to the Government or its laws: (i) the territory of the Philippines or any part thereof; or (ii) any body of land, naval, or other armed forces; or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives.

of the crimes of terrorism, robbery, murder, extortion, as cited by the President in his December 8, 2017 letter, cannot be said to be the "theater of war" referred to by the framers of the Constitution.[39]

(o) There is no need to extend martial law to suppress or defeat remnants of vanquished terrorist groups, as these may be quelled and addressed using lesser extraordinary powers (*i.e.*, calling out powers) of the President. Moreover, respondent General Guerrero failed to state during the oral arguments what additional powers are granted to the military by virtue of the proclamation and suspension and instead limited himself to the "effects" of martial law. Respondents simply failed to demonstrate how martial law powers were used. In short, there is no necessity for martial law.[40]

In their Memorandum, petitioners in G.R. No. 236145 propounded two tests (*i.e.*, proportionality and suitability) in determining whether the declaration or extension of martial law is required or necessitated by public safety. The *Proportionality Test* requires that the situation is of such gravity or scale as to demand resort to the most extreme measures. Petitioners cited AFP's own admission that there are only 537 out of 8,813 barangays or 6.09% that are currently being controlled by rebel groups in Mindanao. On the other hand, the *Suitability Test* requires that the situation is such that the declaration of martial law is the correct tool to address the public safety problem. Considering that the AFP Chief of Staff could not cite what martial law powers they used in the past, and what martial law powers they intend to use moving forward, the present circumstances fail both tests.[41]

(p) Petitioners in G.R. No. 235935 allege that martial law and the suspension of the writ trigger the commission of human rights violations and suppression of civil liberties. In fact, the implementation of the same resulted to intensified human rights violations in Mindanao.[42] In support of the same allegations, petitioners in G.R. No. 236061 attached a letter-report from *Salinlahi* on human rights violations committed as a consequence of martial law in Mindanao. They emphasize that martial law is a scare tactic, one that is not intended for the armed groups mentioned but actually against the dissenters of the government's policies.[43]

(q) Finally, in support of their prayer for a TRO or a writ of preliminary injunction, petitioners in G.R. No. 235935 allege that they are Representatives to Congress, sworn to defend the Constitution, with the right to challenge the constitutionality of the subject re-extension. They claim that

[39] *Rollo* (G.R. No. 236145), pp. 24-26, 32-37; *rollo* (G.R. No. 236145), pp. 784-787.

[40] *Rollo* (G.R. No. 235935), pp. 28-29; *rollo* (G.R. No. 235935), pp. 636-638; *rollo* (G.R. No. 236145), pp. 39-40; *rollo* (G.R. No. 236155), p. 33; *rollo* (G.R. No. 236061), p. 808.

[41] *Rollo* (G.R. No. 236145), pp. 787-791.

[42] *Rollo* (G.R. No. 235935), pp. 27-28; *rollo* (G.R. No. 235935), pp. 630-631.

[43] *Rollo* (G.R. No. 236061), pp. 21-30; *rollo* (G.R. No. 236061), pp. 610-616.

petitioner Villarin, who is a resident of Davao City, is personally affected and gravely prejudiced by the re-extension as it would spawn violations of civil liberties of Mindanaoans like him, a steadfast critic of the Duterte administration. They also assert that the injunctive relief will foreclose further commission of human rights violations and the derogation of the rule of law in Mindanao.[44] Petitioners in G.R. No. 236061 likewise prays for a TRO or writ of preliminary injunction in order to protect their substantive rights and interests while the case is pending before this Court.[45]

B. Respondents' case

Respondents, through the Office of the Solicitor General, argue that:

a) Petitioners' failure to submit the written Joint Resolution extending the martial law and suspension of the privilege of the writ of *habeas corpus* is fatal since it is indispensable to the Court's exercise of its review power.[46]

b) The Cullamat and Rosales Petitions were filed against the President in violation of the doctrine of presidential immunity from suit.[47]

c) The Court already ruled in *Lagman* that there is actual rebellion in Mindanao. Thus, the principle of conclusiveness of judgment pursuant to Section 47(c),[48] Rule 39 of the Rules of Court bars the petitioners from re-litigating the same issue.[49]

d) Given that the Court had already declared in *Lagman* that there is rebellion in Mindanao, the *onus* lies on the petitioners to show that the rebellion has been completely quelled.[50]

e) The invocation of this Court's expanded jurisdiction under Section 1, Article VIII of the Constitution is misplaced. As held in *Lagman*,[51] the "appropriate proceeding" in Section 18, Article VII does not refer to a petition for *certiorari* filed under Section 1 or 5 of Article VIII, as

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[44] *Rollo* (G.R. No. 235935), pp. 29-30.

[45] *Rollo* (G.R. No. 236061), pp. 32-33.

[46] *Rollo* (G.R. No. 235935), pp. 747-748.

[47] Id. at 745-747.

[48] Section 47. *Effect of judgments or final orders.* — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

x x x x

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

[49] *Rollo* (G.R. No. 235935), pp. 772-774.

[50] Id. at 753-755.

[51] *Lagman v. Medialdea,* supra note 18.

it is not the proper tool to review the sufficiency of the factual basis of the proclamation or extension.[52]

f) Petitioners failed to allege that rebellion in Mindanao no longer exists, which is a condition precedent for the filing of the instant petition. They only pointed out the President's announcement regarding the liberation of Marawi from "terrorist influence." They did not mention the rebellion being waged by DAESH-inspired Da'awatul Islamahiyah Waliyatul Masriq (DIWM), other like-minded Local/Foreign Terrorist Groups (L/FTGs) and Armed Lawless Groups (ALGs), remnants of the groups of Hapilon and Maute, the Turaifie Group, the Bangsamoro Islamic Freedom Fighters (BIFF), the ASG, and the New People's Army (NPA), as cited in the President's December 8, 2017 letter to Congress.[53]

g) The determination of the sufficiency of the factual basis to justify the extension of martial law became the duty of Congress after the President's request was transmitted. The question raised had assumed a political nature that can only be resolved by Congress.[54]

h) The manner in which Congress approved the extension is a political question, outside the Court's judicial authority to review. Congress has full discretion on how to go about the debates and the voting. The Constitution itself allows the Congress to determine the rules of its proceedings. The Court does not concern itself with parliamentary rules, which may be waived or disregarded by the legislature.[55]

i) Proclamation No. 216 and the subsequent extensions granted by Congress enjoy the presumption of constitutionality, which petitioners failed to overcome by proving that the extension is without basis. The presumption cannot be ignored, especially since the Court held in *Lagman*, that it considers only the information and data available to the President prior to or at the time of the declaration and will not undertake an independent investigation beyond the pleadings.[56]

j) Even if the Court were to entertain the allegation of grave abuse of discretion on the part of Congress in approving the one-year extension, the same is without merit. Both houses of Congress gave due consideration to the facts relayed by the President which showed that rebellion persists in Mindanao and that public safety requires the extension. The extension was approved because of the stepped-up terrorist attacks against innocent civilians and private entities.[57]

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[52] *Rollo* (G.R. No. 235935), pp. 748-753.
[53] Id. at 259-265.
[54] Id. at 256.
[55] Id. at 797-801.
[56] Id. at 254-257.
[57] Id. at 248-254.

k) The period for deliberation on the President's request for further extension was not unduly constricted. The extension or revocation of martial law cannot be equated with the process of ordinary legislation. Given the time-sensitive nature of martial law or its extension, the time cap was necessary in the interest of expediency. Furthermore, an explanation of one's vote in the deliberation process is not a constitutional requirement.[58]

l) The Constitution does not limit the period for which Congress can extend the proclamation and the suspension, nor does it prohibit Congress from granting further extension. The 60-day period imposed on the President's initial proclamation of martial law does not similarly apply to the period of extension. The clause "in the same manner" must be understood as referring to the manner by which Congress may revoke the proclamation or suspension, *i.e.*, Congress must also observe the same manner of voting: "voting jointly, by a vote of at least a majority of all its Members in regular or special session." Furthermore, in the absence of any express or implied prohibition in the Constitution, the Court cannot prevent Congress from granting further extensions.[59]

m) The burden to show sufficiency of the factual basis for the extension of martial law is not with the President. Section 18, Article VII of the Constitution states that the extension of martial law falls within the prerogative of Congress.[60]

n) Even assuming that the burden of proof is on the President or Congress, such burden has been overcome. Although the leadership of the Mautes was decimated in Marawi, the rebellion in Mindanao persists as the surviving members of the militant group have not laid down their arms. The remnants remain a formidable force to be reckoned with, especially since they have established linkage with other rebel groups. With the persistence of rebellion in the region, the extension of martial law is, therefore, not just for preventive reasons. The extension is premised on the existence of an ongoing rebellion. That the rebellion is ongoing is beyond doubt.[61]

o) In the context of the Revised Penal Code, even those who are merely participating or executing the commands of others in a rebellion, as coddlers, supporters and financiers, are guilty of the crime of rebellion.[62]

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[58] Id. at 793-797.
[59] Id. at 771-780.
[60] Id. at 759.
[61] Id. at 259-265.
[62] Id. at 280.

p) As a crime without predetermined boundaries, the rebellion in various parts of Mindanao justified the extension of martial law, as well as the suspension of the privilege of the writ of *habeas corpus*.[63]

q) Under the Constitution, the extension of martial law and the suspension of the privilege of the writ of *habeas corpus* are justified as long as there is rebellion and public safety requires it. The provision does not require that the group that started the rebellion should be the same group that should continue the uprising. Thus, the violence committed by other groups, such as the BIFF, AKP, ASG, DI Maguid, and DI Toraype (Turaifie) should be taken into consideration in determining whether the rebellion has been completely quelled, as they are part of the rebellion.[64]

r) The President has the sole prerogative to choose which of the extraordinary commander-in-chief powers to use against the rebellion plaguing Mindanao. Thus, petitioners cannot insist that the Court impose upon the President the proper measure to defeat a rebellion. In light of the wide array of information in the hands of the President, as well as the extensive coordination between him and the armed forces regarding the situation in Mindanao, it would be an overreach for the Court to encroach on the President's discretion.[65]

s) Among the differences between the calling out power of the President and the imposition of martial law is that, during the latter, the President may ask the armed forces to assist in the execution of civilian functions, exercise police power through the issuance of General or Special Orders, and facilitate the mobilization of the reserve force, among others.[66]

t) While the Anti-Terrorism Council (ATC) has powers that can be used to fight terrorism, the ATC, however, becomes relevant only in cases of terrorism. Thus, for the purpose of involving itself during a state of martial law, the ATC must first associate an act of rebellion with terrorism, as rebellion is only one of the means to commit terrorism.[67]

u) The phrase "theater of war" in relation to martial law should be understood in a traditional Groatian sense, which connotes that "war" is "an idea of multitude" and not limited to the concept between two nations in armed disagreement.[68] Nevertheless, the Constitution does not require the existence of a "theater of war" for a valid proclamation or extension of martial law.[69]

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[63] Id. at 765.
[64] Id. at 763-768.
[65] Id. at 769-770.
[66] Id. at 806-807.
[67] Id. at 808-811.
[68] Id. at 815.
[69] Id. at 820-822.

v) There is no need to show the magnitude of rebellion, as placing the requirement of public safety on a scale will prevent the application of laws and undermine the Constitution.[70]

w) The alleged human rights violations are irrelevant in the determination of whether Congress had sufficient factual basis to further extend martial law and suspend the privilege of the writ of *habeas corpus*. As ruled in *Lagman*, petitioners' claim of alleged human rights violations should be resolved in a separate proceeding and should not be taken cognizance of by the Court.[71] Moreover, the alleged human rights violations are unsubstantiated and contradicted by facts. According to the AFP Human Rights Office, no formal complaints were filed in their office against any member or personnel of the AFP for human rights violations during the implementation of martial law in Mindanao. The online news articles cited in the Cullamat Petition have no probative value, as settled in *Lagman*.

x) Martial law does not automatically equate to curtailment and suppression of civil liberties and individual freedom. A state of martial law does not suspend the operation of the Constitution, including the Bill of Rights. The Constitution lays down safeguards to protect human rights during martial law. Civil courts are not supplanted. The suspension of the writ of *habeas corpus* applies only to persons judicially charged for rebellion or offenses inherent or directly connected with the invasion. Any person arrested or detained shall be judicially charged within three days. Various statutes also exist to protect human rights during martial law, such as, but not limited to, Republic Act (R.A.) No. 7483 on persons under custodial investigation, R.A. No. 9372 on persons detained for the crime of terrorism, and R.A. No. 9745 on the non-employment of physical or mental torture on an arrested individual.[72]

y) A temporary restraining order (TRO) or a writ of preliminary injunction to restrain the implementation or the extension of martial law is not provided in the Constitution. Although there are remedies anchored on equity, a TRO and an injunctive relief cannot override, prevent, or diminish an express power granted to the President by no less than the Constitution. If a TRO or injunctive writ were to be issued, it would constitute an amendment of the Charter tantamount to judicial legislation, as it would fashion a shortcut remedy other than the power of review established in the Constitution.[73]

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[70] Id. at 823-825.
[71] Id. at 281-282.
[72] Id. at 282-284.
[73] Id. at 827, 831-832.

z) Petitioners' allegations do not meet the standard proof required for the issuance of injunctive relief. Neither can the application for injunctive relief be supported by the claim that an injunction will foreclose further violations of human rights, as injunction is not designed to protect contingent or future rights. Petitioners also failed to show that the alleged human rights violations are directly attributable to the President's imposition of martial law and suspension of the privilege of the writ of *habeas corpus*.[74]

Ruling of the Court

Procedural Issues:

Failure to attach Resolution of Both Houses No. 4 is not fatal to the petitions.

Section 1,[75] Rule 129 of the Rules of Court provides that a court can take judicial notice of the official acts of the legislative department without the introduction of evidence.

"Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them; it is the duty of the court to assume something as matters of fact without need of further evidentiary support."[76]

Resolution of Both Houses No. 4 is an official act of Congress, thus, this Court can take judicial notice thereof. The Court also notes that respondents annexed a copy of the Resolution to their Consolidated Comment.[77] Hence, We see no reason to consider petitioners' failure to submit a certified copy of the Resolution as a fatal defect that forecloses this Court's review of the petitions.

The President should be dropped as party respondent

Presidential privilege of immunity from suit is a well-settled doctrine in our jurisprudence. The President may not be sued during his tenure or actual incumbency, and there is no need to expressly grant such privilege in

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[74] Id. at 825-830.

[75] **Section 1.** *Judicial notice, when mandatory.* — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

[76] *CLT Realty Development Corp. v. Hi-grade Feeds Corp., et. al.*, 768 Phil. 149, 163 (2015).

[77] *Rollo* (G.R. No. 235935), pp. 308-309.

the Constitution or law.[78] This privilege stems from the recognition of the President's vast and significant functions which can be disrupted by court litigations. As the Court explained in *Rubrico v. Macapagal-Arroyo, et al.*:[79]

> It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government.[80]

Accordingly, in *David*, the Court ruled that it was improper to implead former President Gloria Macapagal-Arroyo in the petitions assailing the constitutionality of Presidential Proclamation No. 1017, where she declared a state of national emergency, and General Order No. 5, where she called upon the AFP and the Philippine National Police (PNP) to prevent and suppress acts of terrorism and lawless violence in the country.

It is, thus, clear that petitioners in G.R. Nos. 236061 and 236145 committed a procedural misstep in including the President as a respondent in their petitions.

The Congress is an indispensable party to the consolidated petitions.

Of the four petitions before the Court, only G.R. No. 236145 impleaded the Congress as party-respondent.

Section 7, Rule 3 of the Rules of Court requires that "parties in interest without whom no final determination can be had of an action shall be joined as plaintiffs or defendants." In *Marmo, et al. v. Anacay*,[81] the Court explained that:

> [A] party is indispensable, not only if he has an interest in the subject matter of the controversy, but also if his interest is such that a final decree cannot be made without affecting this interest or without placing the controversy in a situation where the final determination may be wholly inconsistent with equity and good conscience. He is a person whose absence disallows the court from making an effective, complete, or equitable determination of the controversy between or among the contending parties.[82] (Citation omitted)

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[78] *Rubrico et al. v. Macapagal Arroyo et al*, 627 Phil. 37, 62 (2010).
[79] 627 Phil. 37 (2010).
[80] Id. at 62-63, citing *Prof. David v. Pres. Macapagal-Arroyo*, 522 Phil. 705, 764 (2006).
[81] 621 Phil. 212 (2009).
[82] Id. at 221-222.

In these consolidated petitions, petitioners are questioning the constitutionality of a congressional act, specifically the approval of the President's request to extend martial law in Mindanao. Petitioners in G.R. No. 235935 and 236155 have also put in issue the manner in which the Congress deliberated upon the President's request for extension. Clearly, therefore, it is the Congress as a body, and not just its leadership, which has interest in the subject matter of these cases. Consequently, it was procedurally incorrect for petitioners in G.R. Nos. 235935, 236061 and 236155 to implead only the Senate President and the House Speaker among the respondents.

Arguably, Senator Aquilino Pimentel III and House Speaker Pantaleon Alvarez can be said to have an interest in these cases, as representatives of the Senate and the House of Representatives, respectively. However, considering that one of their main contentions is that the "supermajority" of the Congress gravely abused their discretion when they allegedly railroaded the adoption of Resolution of Both Houses No. 4, it stands to reason and the requirements of due process that petitioners in G.R. Nos. 235935 and 236061 should have impleaded the Congress as a whole.[83] Needless to say, the entire body of Congress, and not merely the respective leaders of its two Houses, will be directly affected should We strike down the extension of martial law. Thus, We hold that in cases impugning the extension of martial law for lack of sufficient factual basis, the entire body of the Congress, composed of the Senate and the House of Representatives, must be impleaded, being an indispensable party thereto.

It is true that a party's failure to implead an indispensable party is not *per se* a ground for the dismissal of the action, as said party may be added, by order of the court on motion of the party or *motu propio,* at any stage of the action or at such times as are just. However, it remains essential – as it is jurisdictional – that an indispensable party be impleaded before judgment is rendered by the court, as the absence of such indispensable party renders all subsequent acts of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.[84] Joining indispensable parties into an action is mandatory, being a requirement of due process. In their absence, the judgment cannot attain real finality.[85]

We are, thus, unprepared to trivialize the necessity to implead the entire Congress as party-respondent in this proceeding, especially considering that the factual scenario and the concomitant issues raised herein are novel and unprecedented.

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[83] *See Pimentel, Jr., et al. v. Senate Committee of the Whole*, 660 Phil. 202 (2011).
[84] *People v. Go, et al.*, 744 Phil. 194, 199 (2014).
[85] *Valdez-Tallorin v. Heirs of Juanito Tarona*, 620 Phil. 268, 274 (2009).

Nevertheless, inasmuch as the Congress was impleaded as a respondent in G.R. No. 236145 and the OSG has entered its appearance and argued for all the respondents named in the four consolidated petitions, the Court finds that the "essential" and "jurisdictional" requirement of impleading an indispensable party has been substantially complied with.

The Court is not barred by the doctrine of conclusiveness of judgment from examining the persistence of rebellion in Mindanao

Citing the doctrine of conclusiveness of judgment, respondents contend that petitioners could no longer raise the issue of the existence of rebellion in Mindanao, in light of this Court's ruling in *Lagman*[86] and *Padilla v. Congress.*[87]

Reliance on the doctrine of conclusiveness of judgment is misplaced.

Conclusiveness of judgment, a species of the principle of *res judicata*, bars the re-litigation of any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits.[88] In order to successfully apply in a succeeding litigation the doctrine of conclusiveness of judgment, mere identities of parties and issues is required.

In this case, despite the addition of new petitioners, We find that there is substantial identity of parties between the present petitions and the earlier *Lagman* case given their privity or shared interest in either protesting or supporting martial law in Mindanao. It is settled that for purposes of *res judicata*, only substantial identity of parties is required and not absolute identity. There is substantial identity of parties when there is community of interest between a party in the first case and a party in the second case even if the latter was not impleaded in the first case.[89]

As to the second requirement, We do not find that there is identity of issues between the *Lagman*[90] and *Padilla*[91] cases, on one hand, and the case at bar.

In *Padilla*, petitioners sought to require the Congress to convene in a joint session to deliberate whether to affirm or revoke Presidential Proclamation No. 216, and to vote thereon. After consideration of the

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[86] *Lagman v. Medialdea*, supra note 18.
[87] G.R No. 231671, July 25, 2017.
[88] *See Spouses Antonio v. Sayman Vda. De Monje*, 646 Phil. 90 (2010).
[89] *See Sps. Layos v. Fil-Estate Golf and Devt., Inc., et al.*, 683 Phil. 72, 106 (2008).
[90] *Lagman v. Medialdea*, supra note 18.
[91] *Padilla v. Congress*, supra note 87.

arguments of the parties, We ruled that under Section 18, Article VII of the 1987 Constitution, the Congress is only required to vote jointly to revoke the President's proclamation of martial law and/or suspension of the privilege of the *writ of habeas corpus*. We clarified that there is no constitutional requirement that Congress must conduct a joint session for the purpose of concurring with the President's declaration of martial law.

In *Lagman*, the constitutionality of Proclamation No. 216 was the primary issue raised before Us. We held that the Proclamation was constitutional as the President had sufficient factual basis in declaring martial law and suspending the privilege of the writ of *habeas corpus* in Mindanao. We found that based on the facts known to the President and the events that transpired before and at the time he issued the Proclamation, he had probable cause to believe that a rebellion was or is being committed, and reasonable basis to conclude that public safety was endangered by the widespread atrocities perpetrated by the rebel groups.

In contrast, the consolidated petitions at hand essentially assail the Congress' act of approving the President's December 8, 2017 request and extending the declaration of martial law in Mindanao from January 1 to December 31, 2018. In support of their case, petitioners argue that rebellion no longer persists in Mindanao and that public safety is not endangered by the existence of mere "remnants" of the Maute group, ASG, DAESH-inspired DIWM members.

Although there are similarities in the arguments of petitioners in the earlier *Lagman* case and the petitions at bar, We do not find that petitioners are seeking to re-litigate a matter already settled in the *Lagman* case with respect to the existence of rebellion. A reading of the consolidated petitions reveals that petitioners do not contest the existence of violence committed by various armed groups in Mindanao, to wit:

> LAGMAN PETITION (G. R. No. 235935)
>
> > 43. It is very unfortunate that in their contrived efforts to justify the extension of martial law in Mindanao, President Duterte and his military and police advisers with the support of partisans in the Congress have molded the so-called remnants or residue, miniscule as they are, into apparent menacing ogres.
> >
> > x x x x
> >
> > 53. A litany of alleged "skirmishes" does not necessarily constitute armed public uprising against the government.
> >
> > 54. They may only indicate banditry, lawless violence and terroristic acts of remnants or residure of vanquished combatants.

CULLAMAT PETITION (G.R. No. 236061)

58. The question now therefore is, the instant case, does the actual rebellion being perpetrated by the armed groups enumerated in the 08 December 2017 letter of President Duterte to the House of Representatives and the Senate, compromise public safety that would warrant the imposition of martial law?

ROSALES PETITION (G.R. No. 236145)

67. In short, the bases (for the extension of martial law in Mindanao) were: first, the supposed continuous rebuilding of the remaining members of the Daesh-inspired DIWM, who are "in all probability,...presently regrouping and consolidating their forces" or are, at the very least, continuing their efforts and activities 'geared towards the conduct of intensified atrocities and armed public uprisings"; *second*, the supposed "plan" by members of the Turaifie group to conduct bombings; *third*, the supposed continuing acts of violence of the Bangsamoro Islamic Freedom Fighters; *fourth,* the continuous commission of acts of terrorism by members of the Abu Sayaff Group; and *fifth,* the intensification of the "decades-long rebellion" by the New People's Army (NPA).

68. With all due respect, and without diminishing the threat posed by any of the foregoing, none of these constitute *actual* rebellion or *actual* invasion. Moreover, it mistakes the distinction between the need for military force which is effected through the use of the calling out powers of the President, on one hand, and the need for imposing martial law on the civilian population, on the other.

69. Since the five (5) identified groups were/are in the "regrouping", "[consolidation] of forces", "recruitment", "planning" stages, or are continuing the commission of crimes (terrorism, robbery, murder, extortion) without any of the four (4) objectives that comprise the second element of rebellion, there cannot be said to be a "theatre of war" already contemplated by the framers of the Constitution as would cripple the normal operation of civilian law.'

MONSOD PETITION (G.R. No. 236155)

72. There is no indication that "public safety requires" the further imposition of martial law. The instances cited as justification for the extension requested do not demonstrate gravity such that ordinary powers and resources of the government cannot address these. What Marawi needs at this point is effective and responsive rehabilitation in an atmosphere of freedom and cooperation. It does not need martial law to rise from the ashes of war and turmoil.

73. At most, these incidents show several protracted incidents of violence and lawlessness that is well within the powers and

> authority of the government armed forces and police force to suppress without resort to extraordinary powers, which the government has been continuously doing for decades as well. Martial law is neither a commensurate measure to address these incidents, nor preventive measure to thwart the spread of lawless violence in the country. The mere invocation, therefore, of rebellion or invasion, will not be the sufficient factual basis for the declaration of martial law or the suspension of the privilege of the writ of habeas corpus if it cannot be factually demonstrated that it is actually happening and necessitated by the requirements of public safety in a theater of war.

From the foregoing, it appears that petitioners merely question the gravity and extent of these occurrences as to necessitate the continued implementation of martial law in Mindanao. In other words, the issue put forth by petitioners in the earlier *Lagman* case, which this Court already settled, refers to the existence of a state of rebellion which would trigger the President's initial declaration of martial law, whereas the factual issue in the case at bar refers to the persistence of the same rebellion in Mindanao which would justify the extension of martial law.

That petitioners are not barred from questioning the alleged persistence of the rebellion in these consolidated petitions is also supported by the transitory nature of the Court's judgment on the sufficiency of the factual basis for a declaration of martial law. The following exchange during the deliberations of the 1986 Constitutional Commission is instructive:

> MR. BENGZON. I would like to ask for clarification from the Committee, and I would like to address this to Commissioner Bernas.
>
> Suppose there is a variance of decision between the Supreme Court and Congress, whose decision shall prevail?
>
> FR. BERNAS. The Supreme Court's decision prevails.
>
> MR. BENGZON. If Congress, decides to recall before the Supreme Court issues its decision, does the case become moot?
>
> FR. BERNAS. Yes, Madam President.
>
> MR. BENGZON. And if the Supreme Court promulgates its decision ahead of Congress, Congress is foreclosed because the Supreme 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?
>
> 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.
>
> MR. BENGZON. Does the Gentleman mean the decision of the Supreme Court then would just be something transitory?
>
> FR. BERNAS. Precisely.
>
> 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.**
>
> FR. BERNAS. The Congress can still come in because the factual situation can change.

Verily, the Court's review in martial law cases is largely dependent on the existing factual scenario used as basis for its imposition or extension. The gravity and scope of rebellion or invasion, as the case may be, should necessarily be re-examined, in order to make a justiciable determination on whether rebellion persists in Mindanao as to justify an extension of a state of martial law.

The Court's power to review the extension of martial law is limited solely to the determination of the sufficiency of the factual basis thereof.

Section 1, Article VIII of the Constitution pertains to the Court's judicial power to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. The first part is to be known as the traditional concept of judicial power while the latter part, an innovation of the 1987 Constitution, became known as the court's expanded jurisdiction. Under its expanded jurisdiction, courts can now delve into acts of any branch or instrumentality of the Government traditionally considered as political if such act was tainted with grave abuse of discretion.

In seeking the Court's review of the extension of Proclamation No. 216 on the strength of the third paragraph of Section 18, Article VII of the Constitution, petitioners in G.R. No. 235935 alternately invoke the Court's expanded *(certiorari)* jurisdiction under Section 1, Article VIII.

In *Lagman*,[92] We emphasized that this Court's jurisdiction under the third paragraph of Section 18, Article VII is special and specific, different from those enumerated in Sections 1[93] and 5[94] of Article VIII. It was further stressed therein that the standard of review in a petition for *certiorari* is whether the respondent has committed any grave abuse of discretion amounting to lack or excess of jurisdiction in the performance of his or her functions, whereas under Section 18, Article VII, the Court is tasked to review the sufficiency of the factual basis of the President's exercise of emergency powers. Hence, the Court concluded that a petition for *certiorari* pursuant to Section 1 or Section 5 of Article VIII is not the proper tool to review the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*. We held that to apply the standard of review in a petition for *certiorari* will emasculate the Court's constitutional task under Section 18, Article VII, which was precisely meant to provide an additional safeguard against possible martial law abuse and limit the extent of the powers of the Commander-in-Chief.

With regard to the extension of the proclamation of martial law or the suspension of the privilege of the writ, the same special and specific jurisdiction is vested in the Court to review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis thereof. Necessarily, and by parity of reasoning, a *certiorari* petition invoking the Court's expanded jurisdiction is not the proper remedy to review the sufficiency of

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[92] *Lagman v. Medialdea*, supra note 18.

[93] SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[94] SECTION 5. The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, mandamus, *quo warranto*, and *habeas corpus*.

(2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

(b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.

(c) All cases in which the jurisdiction of any lower court is in issue.

(d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.

(e) All cases in which only an error or question of law is involved.

(3) Assign temporarily judges of lower courts to other stations as public interest may require. Such temporary assignment shall not exceed six months without the consent of the judge concerned.

(4) Order a change of venue or place of trial to avoid a miscarriage of justice.

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

(6) Appoint all officials and employees of the Judiciary in accordance with the Civil Service Law.

the factual basis of the Congress' extension of the proclamation of martial law or suspension of the privilege of the writ.

Furthermore, as in the case of the Court's review of the President's proclamation of martial law or suspension of the privilege of the writ, the Court's judicial review of the Congress' extension of such proclamation or suspension is limited only to a determination of the sufficiency of the factual basis thereof. By its plain language, the Constitution provides such scope of review in the exercise of the Court's *sui generis* authority under Section 18, Article VII, which is principally aimed at balancing (or curtailing) the power vested by the Constitution in the Congress to determine whether to extend such proclamation or suspension.

Substantive Issues

Congressional check on the exercise of martial law and suspension powers

Under the 1935[95] and 1973[96] Constitutions, the Congress had no power to review or limit the Executive's exercise of the authority to declare martial law or to suspend the privilege of the writ of *habeas corpus*. Borne of the country's martial law experience under the Marcos regime, such power was subsequently established in the 1987 Constitution as part of a system of checks and balance designed to forestall any potential abuse of an extraordinary power lodged in the President as Commander-in-Chief of the country's armed forces.

The 1987 Constitution grants the Congress the power to shorten or extend the President's proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*. Section 18, Article VII of the 1987 Constitution, in pertinent part, states:

> Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public

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[95] Section 10, Article VII (Executive Department) of the 1935 Constitution states: "The President shall be commander-in-chief of all armed forces of the Philippines, and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of invasion, insurrection, or rebellion or imminent danger thereof, when the public safety requires it, he may suspend the privilege of the writ of habeas corpus, or place the Philippines or any part thereof under Martial Law."

[96] Section 12, Article IX (The Prime Minister and the Cabinet) of the 1973 Constitution reads: "The Prime Minister shall be commander-in-chief of all armed forces of the Philippines, and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of invasion, or rebellion, or imminent danger thereof when the public safety requires, it he may suspend the privilege of the writ of habeas corpus, or place the Philippines or any part thereof under martial law."

> safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus,* the President shall submit a report in person or in writing to the Congress. **The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.**
>
> The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call. (Emphasis ours)

Congressional check on the President's martial law and suspension powers thus consists of:

> **First.** The power to review the President's proclamation of martial law or suspension of the privilege of the writ of habeas corpus, and to revoke such proclamation or suspension. The review is "automatic in the sense that it may be activated by Congress itself at any time after the proclamation or suspension is made."[97] The Congress' decision to revoke the proclamation or suspension cannot be set aside by the President.
>
> **Second.** The power to approve any extension of the proclamation or suspension, upon the President's initiative, for such period as it may determine, if the invasion or rebellion persists and public safety requires it.

Joint executive and legislative act

When approved by the Congress, the extension of the proclamation or suspension, as described during the deliberations on the 1987 Constitution, becomes a "joint executive and legislative act" or a "collective judgment" between the President and the Congress:

> THE PRESIDENT. Commissioner Azcuna is recognized.
>
> MR. AZCUNA. Thank you, Madam President.
>
> I would like to offer an amendment to Section 15, line 7 of page 7. After the word "or," insert a comma (,) and add the phrase: AT THE INSTANCE OF THE PRESIDENT, so that the amended portion will read:

[97] *Lagman v. Medialdea*, supra note 18.

"may revoke such proclamation or suspension which revocation shall not be set aside by the President, or AT THE INSTANCE OF THE PRESIDENT extend the same if the invasion or rebellion shall persist and public safety requires it.

May we know the reaction of the Committee? The reason for this Madam President, is that the extension should not merely be an act of Congress but should be requested by the President. Any extension of martial law or suspension of the privilege of the writ of *habeas corpus* should have the concurrence of both the President and Congress. Does the Committee accept my amendment?

MR. REGALADO. The Committee accepts that amendment because it will, at the same time solve the concern of Commissioner Suarez, aside from the fact that this will now be a **joint executive and legislative act.**

x x x x

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

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

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

FR. BERNAS. Yes, the participation of the President is there but by giving the final decision to Congress, we are also preserving the idea that the President may not revoke what Congress has decided upon.[98] (Emphasis ours)

At the core of the instant petitions is a challenge to the "joint executive and legislative act," embodied in the President's December 8, 2017 initiative and in the latter's Resolution of Both Houses No. 4, which further extended the implementation of martial law and the suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao for one year, from January 1 to December 31, 2018. Petitioners assail not only the sufficiency of the factual basis of this extension, but also the manner in which it was approved.

The manner in which Congress deliberated on the President's request for extension is not subject

[98]Record of the Constitutional Commission (1986), Vol. II, pp. 508-509.

to judicial review

Petitioners question the manner that the Congress approved the extension of martial law in Mindanao and characterized the same as done with undue haste. Petitioners premised their argument on the fact that the Joint Rules adopted by both Houses, in regard to the President's request for further extension, provided for an inordinately short period for interpellation of resource persons and for explanation by each Member after the voting is concluded.

The assailed provisions refer to Section 7 of Rule V and Section 14 of Rule VIII of the Rules of the Joint Session of Congress on the Call of the President to Further Extend the Period of Proclamation No. 216, Series of 2017, which provide:

> **Rule V (CONSIDERATION OF THE LETTER OF THE PRESIDENT DATED DECEMBER 9, 2017 CALLING UPON THE CONGRESS OF THE PHILIPPINES TO "FURTHER EXTEND THE PROCLAMATION OF MARTIAL LAW AND THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS IN THE WHOLE OF MINDANAO FOR A PERIOD OF ONE YEAR, FROM 01 JANUARY 2018 TO 31 DECEMBER 2018, OR FOR SUCH OTHER PERIOD OF TIME AS THE CONGRESS MAY DETERMINE, IN ACCORDANCE WITH SECTION 18, ARTICLE VII OF THE 1987 CONSTITUTION)**
>
> Section 7. Any Member of the Congress may interpellate the resource persons for not more than three minutes excluding the time of the answer of the resource persons.
>
> x x x x
>
> **Rule VIII (VOTING ON THE MOTION TO FURTHER EXTEND THE PERIOD OF THE PROCLAMATION OF MARTIAL LAW AND THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS)**
>
> Section 14. After the conclusion of voting, the Senate President and the Speaker of the House shall forthwith announce the results of the voting. Thereafter, any Member of the Congress who wishes to explain his/her vote may consume a maximum of one (1) minute: *Provided*, that a Member who does not want to explain may yield his/her allotted time to another Member of the same House: *Provided, further,* that any Member of the Congress shall be allowed a maximum of three (3) minutes.

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

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

In *Pimentel, Jr., et. al. v. Senate Committee of the Whole*,[99] this constitutionally-vested authority is recognized as a grant of full discretionary authority to each House of Congress in the formulation, adoption and promulgation of its own rules. As such, the exercise of this power is generally exempt from judicial supervision and interference, except on a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process.

This freedom from judicial interference was explained in the 1997 case of *Arroyo v. De Venecia*,[100] wherein the Court declared that:

> But the cases, both here and abroad, in varying forms of expression, all deny to the courts the power to inquire into allegations that, in enacting a law, a House of Congress failed to comply with its own rules, in the absence of showing that there was a violation of a constitutional provision or the rights of private individuals.[101]

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

Construing the full discretionary power granted to the Congress in promulgating its rules, the Court, in the case of Spouses *Dela Paz (Ret.) v. Senate Committee on Foreign Relations, et al.*[102] explained that the limitation of this unrestricted power deals only with the imperatives of quorum, voting and publication. It should be added that there must be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained.[103]

The rules in question do not pertain to quorum, voting or publication. Furthermore, deliberations on extending martial law certainly cannot be

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[99] 660 Phil. 202 (2011).

[100] 343 Phil. 42 (1997).

[101] Id. at 61.

[102] 598 Phil. 981 (2009).

[103] *See* Dissenting Opinion of Chief Justice Reynato Puno in *Neri v. Senate Committee on Accountability of Public Officers & Investigations*, 586 Phil. 135, 286 (2008).

equated to the consideration of regular or ordinary legislation. The Congress may consider such matter as urgent as to necessitate swift action, or it may take its time investigating the factual situation. This Court cannot engage in undue speculation that members of Congress did not review and study the President's request based on a bare allegation that the time allotted for deliberation was too short.[104]

Legislative rules, unlike statutory laws, do not have the imprints of permanence and obligatoriness during their effectivity. In fact, they may be revoked, modified or waived at the pleasure of the body adopting them. Being merely matters of procedure, their observance are of no concern to the courts.[105] Absent a showing of "violation of a constitutional provision or the rights of private individuals," the Court will not intrude into this legislative realm. Constitutional respect and a becoming regard for the sovereign acts of a coequal branch prevents the Court from prying into the internal workings of the Congress.[106]

Furthermore, it has not escaped this Court's attention that the rules that governed the Joint Session were in fact adopted, without objection, by both Houses of Congress on December 13, 2017.[107] So also, the Transcript of the Plenary Proceedings of the Joint Session showed that Members of Congress were, upon request, granted extension of their time to interpellate.

Congress has the power to extend and determine the period of martial law and the suspension of the privilege of the writ of habeas corpus

Section 18, Article VII of the 1987 Constitution provides:

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

[104] *See Malonzo, et al. v. Hon. Zamora et al.*, 380 Phil. 845 (2000).

[105] *Representative Teddy Brawner Baguilat, Jr., et al. v. Speaker Pantaleon D. Alvarez, et al.*, G.R. No. 227757, July 25, 2017.

[106] Id.

[107] Transcript of the Plenary Proceedings of the Joint Session of the Congress of the Philippines, December 13, 2017, pp. 13-14.

> President. **Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension *for a period to be determined by the Congress*, if the invasion or rebellion shall persist and public safety requires it.**
>
> The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without any need of a call.
>
> The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.
>
> A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.
>
> The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with the invasion.
>
> During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released. (Emphasis ours)

The provision is indisputably silent as to how many times the Congress, upon the initiative of the President, may extend the proclamation of martial law or the suspension of the privilege of *habeas corpus*. Such silence, however, should not be construed as a vacuum, flaw or deficiency in the provision. While it does not specify the number of times that the Congress is allowed to approve an extension of martial law or the suspension of the privilege of the writ of *habeas corpus*, Section 18, Article VII is clear that the only limitations to the exercise of the congressional authority to extend such proclamation or suspension are that the extension should be upon the President's initiative; that it should be grounded on the persistence of the invasion or rebellion and the demands of public safety; and that it is subject to the Court's review of the sufficiency of its factual basis upon the petition of any citizen.

A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation, but only for application.[108] Thus, whenever there is a determination that the invasion or rebellion persists and public safety requires the extension of martial law or of the suspension of the privilege of the writ, the Congress may exercise its authority to grant such extension as

[108] *Bolos v. Bolos*, G.R. No. 186400, October 20, 2010.

may be requested by the President, even if it be subsequent to the initial extension.

Section 18, Article VII did not also fix the period of the extension of the proclamation and suspension. However, it clearly gave the Congress the authority to decide on its duration; thus, the provision states that that the extension shall be "***for a period to be determined by the Congress***." If it were the intention of the framers of the Constitution to limit the extension to sixty (60) days, as petitioners in G.R. No. 235935 theorize, they would not have expressly vested in the Congress the power to fix its duration.

The Court cannot accept said petitioners' argument that the 60-day limit can be deduced from the following clause in Section 18, Article VII: *"the Congress may,* ***in the same manner****, extend such proclamation or suspension."* The word "manner" means a way a thing is done[109] or a mode of procedure;[110] it does not refer to a period or length of time. Thus, the clause should be understood to mean that the Congress must observe the same manner of voting required for the revocation of the initial proclamation or suspension, as mentioned in the sentence preceding it, i.e. *"voting jointly, by a vote of at least a majority of all its Members in regular or special session."* This is clear from the records of the 1986 Constitutional Commission:

> MR. REGALADO. xxx
>
> So I will repeat from line 26: "The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, CONGRESS MAY extend SUCH PROCLAMATION for a period to be determined by Congress . . ."
>
> MR. AZCUNA. Madam President.
>
> THE PRESIDENT. Commissioner Azcuna is recognized.
>
> MR. AZCUNA. May I suggest the insertion of the words CONGRESS MAY **IN THE SAME MANNER**, so as **to emphasize that will also be Congress voting jointly and there would also be a need of at least majority vote of all its Members for extension**.
>
> THE PRESIDENT. Does the Committee accept the amendment?
>
> MR. REGALADO. Yes, the amendment is accepted it makes the provision clearer.[111] (Emphasis ours)

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[109] <https://en.oxforddictionaries.com> (visited February 4, 2018)
[110] <https://www.merriam-webster.com> (visited February 4, 2018)
[111] Records of the Constitutional Commission (1986), Vol. II, p. 732.

United States Supreme Court Justice Antonin Scalia, in his book entitled *"Reading the Law: The Interpretation of Legal Texts,"*[112] succinctly explained the dangers of construction that departs from the text of a statute, particularly as to the allocation of powers among the branches of government. He stated:

> Some judges, however, refuse to yield the ancient judicial prerogative of making the law, improvising on the text to produce what they deem socially desirable results-usually at the behest of an advocate for one party to a dispute. The judges are also prodded by interpretative theorists who avow that courts are "better able to discern and articulate basic national ideals than are the people's politically responsible representatives". On this view, judges are to improvise "basic national ideals of individual liberty and fair treatment, even when the content of these ideals is not expressed as a matter of positive law in the written Constitution."
>
> To the extent that people give this view any credence, the notion that judges may (even should) improvise on constitutional and statutory text enfeebles the democratic polity. As Justice John Marshall Harlan warned in the 1960s, an invitation to judicial lawmaking results inevitably in "a **lessening, on the one hand, of judicial independence and, on the other, of legislative responsibility, thus polluting the bloodstream of our system of government."** Why these alarming outcomes? *First,* when judges fashion law rather than fairly derive it from governing texts, they subject themselves to intensified political pressures – in the appointment process, in their retention, and in the arguments made to them. *Second,* every time a court constitutionalizes a new sliver of law – as by finding a "new constitutional right" to do this, that, or the other – that sliver becomes thenceforth untouchable by the political branches. In the American system, a legislature has no power to abridge a right that has been authoritatively held to be part of the Constitution – even if that newfound right does not appear in the text. Over the past 50 years especially, we have seen the judiciary incrementally take control of larger and larger swaths of territory that ought to be settled legislatively.
>
> It used to be said that judges do not "make" law – they simply apply it. In the 20th century, the legal realists convinced everyone that judges do indeed make law. To the extent that this was true, it was knowledge that the wise already possessed and the foolish could not be trusted with. It was true, that is, that judges did not really "find" the common law but invented it over time. Yet this notion has been stretched into a belief that judges "make" law through judicial interpretation of democratically enacted statutes. Consider the following statement by John P. Dawson, intended to apply to statutory law:
>
> > It seems to us inescapable that judges should have a part in creating law – creating it as they apply it. In deciding the multifarious disputes that are brought before them, we believe that judges in any legal system invariably adapt

[112] Co-authored with Bryan Bryan A. Garner, pp. 4-6.

> legal doctrines to new situations and thus give them new content.
>
> Now it is true that in a system such as ours, in which judicial decisions have a *stare decisis* effect, a court's application of a statute to a "new situation" can be said to establish the law applicable to that situation – that is, to pronounce definitively whether and how the statute applies to that situation. But establishing this retail application of the statute is probably not what Dawson meant by "creating law," "adapting legal doctrines," and "giving them new content." Yet beyond that retail application, good judges dealing with statutes do not make law. They do not "give new content" to the statute, but merely apply the content that has been there all along, awaiting application to myriad factual scenarios. To say that they "make law" without this necessary qualification is to invite the taffy-like stretching of words – or the ignoring of words altogether." (Emphasis ours)

Even on the assumption that there is a gap in our Constitution anent the frequency and period of the Congress' extension, and there is a need for this Court to exercise its power to interpret the law, We undertake the same in such a way as to reflect the will of the drafters of the Constitution. "While We may not read *into* the law a purpose that is not there, We nevertheless have the right to read *out of it* the reason for its enactment."[113] We refer thus to the Constitutional Commission's deliberations on the matter, *viz*:

> MR. SUAREZ. Thank you, Madam President. I concur with the proposal of Commissioner Azcuna but **may I suggest that we fix a period for the duration of the extension**, because it could very well happen that the initial period may be shorter than the extended period and it could extend indefinitely. **So if Commissioner Azcuna could put a certain limit to the extended period**, I would certainly appreciate that, Madam President.
>
> x x x x
>
> MR. SUAREZ. Thank you Madam President. **May we suggest that on line 7, between the words "same" and "if", we insert the phrase FOR A PERIOD OF NOT MORE THAN SIXTY DAYS, which would equal the initial period for the first declaration** just so it will keep going.
>
> THE PRESIDENT. What does the Committee say?
>
> MR. REGALADO. May we request a clarification from Commissioner Suarez on this proposed amendment? This extension is already a joint act upon the initiative of the President and with the concurrence of the Congress. It is assumed that they have already agreed not only on the fact of extension but on the period of extension. **If we put it at 60 days only, then thereafter, they have to meet again to agree jointly on a further extension.**

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[113] *People v. Lacson*, 459 Phil. 330, 348-349 (2003).

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

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

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

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

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

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

x x x x

THE PRESIDENT. Is that accepted by Commissioner Suarez?

MR. SUAREZ. Yes, Madam President.

MR. OPLE. May I just pose a question to the Committee in connection with the Suarez amendment? Earlier Commissioner Regalado said that that point was going to be a collective judgment between the

President and the Congress. Are we departing from that now in favor of giving Congress the plenipotentiary power to determine the period?

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

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

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

Thank you, Madam President.

MR. SUAREZ. We will accept the committee suggestion, subject to style later on.

x x x x

MR. PADILLA. According to Commissioner Concepcion, our former Chief Justice, the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* is essentially an executive act. If that be so, and especially under the following clause: "if the invasion or rebellion shall persist and public safety requires it," I do not see why the period must be determined by the Congress. We are turning a purely executive act to a legislative act.

FR. BERNAS. I would believe what the former Chief Justice said about the initiation being essentially an executive act, but what follows after the initiation is something that is participated in by Congress.

MR. CONCEPCION. If I may add a word. The one who will do the fighting is the executive but, of course, it is expected that if the Congress wants to extend, it will extend for the duration of the fighting. If the fighting goes on, I do not think it is fair to assume that the Congress will refuse to extend the period, especially since in this matter the Congress must act at the instance of the executive. He is the one who is supposed to know how long it will take him to fight. **Congress may reduce it, but that is without prejudice to his asking for another extension, if necessary.**[114] (Emphasis ours)

[114] Record of the Constitutional Commission (1986), pp. 508-512.

Commissioner Jose E. Suarez's proposal to limit the extension to 60 days was not adopted by the majority of the Commission's members. The framers evidently gave enough flexibility on the part of the Congress to determine the duration of the extension. Plain textual reading of Section 18, Article VII and the records of the deliberation of the Constitutional Commission buttress the view that as regards the frequency and duration of the extension, the determinative factor is as long as "the invasion or rebellion persists and public safety requires" such extension.

The President and the Congress had sufficient factual basis to extend Proclamation No. 216

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

A. Rebellion persists

Rebellion, as applied to the exercise of the President's martial law and suspension powers, is as defined under Article 134 of the Revised Penal Code,[115] *viz*:

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

Rebellion thus exists when "(1) there is a (a) public uprising and (b) taking arms against the Government; and (2) the purpose of the uprising or movement is either (a) to remove from the allegiance to the Government or its laws: (i) the territory of the Philippines or any part thereof; or (ii) any body of land, naval, or other armed forces; or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives."[116]

The President issued Proclamation No. 216 in response to the series of attacks launched by the Maute Group and other rebel groups in Marawi City. The President reported to the Congress that these groups had publicly taken up arms for the purpose of removing Mindanao from its allegiance to the

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[115] *See Lagman v. Medialdea*, supra note 18.

[116] *Lagman v. Medialdea*, supra note 18.

Government and its laws and establishing a DAESH/ISIS *wilayat* or province in Mindanao.

In *Lagman*,[117] the Court sustained the constitutionality of Proclamation No. 216, holding that the President had probable cause to believe that actual rebellion exists and public safety required the Proclamation. The Court held:

> A review of the aforesaid facts similarly leads the Court to conclude that the President, in issuing Proclamation No. 216, had sufficient factual bases tending to show that actual rebellion exists. The President's conclusion, that there was an armed public uprising, the culpable purpose of which was the removal from the allegiance of the Philippine Government a portion of its territory and the deprivation of the President from performing his powers and prerogatives, was reached after a tactical consideration of the facts. In fine, the President satisfactorily discharged his burden of proof.
>
> After all, what the President needs to satisfy is only the standard of probable cause for a valid declaration of martial law and suspension of the privilege of the writ of *habeas corpus*. x x x

On July 22, 2017, upon the President's initiative, Congress extended Proclamation No. 216 until December 31, 2017.

The ensuing question, therefore, is whether the rebellion persists as to satisfy the first condition for the extension of martial law or of the suspension of the privilege of the writ of *habeas corpus*.

The word "persist" means "to continue to exist," "to go on resolutely or stubbornly in spite of opposition, importunity or warning," or to "carry on."[118] It is the opposite of the words "cease," "discontinue," "end," "expire," "finish," "quit," "stop" and "terminate."[119]

The reasons cited by the President in his request for further extension indicate that the rebellion, which caused him to issue Proclamation No. 216, continues to exist and its "remnants" have been resolute in establishing a DAESH/ISIS territory in Mindanao, carrying on through the recruitment and training of new members, financial and logistical build-up, consolidation of forces and continued attacks. Thus, in his December 8, 2017 letter to Congress, the President stated:

> First, despite the death of Hapilon and the Maute brothers, the remnants of their Groups have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion. You will please note that at least one hundred eighty-five (185) persons listed in the Martial Law Arrest Orders have remained at-

[117] Supra note 18.

[118] <https://www.merriam-webster.com> (visited January 22, 2018)

[119] Id.

large and, in all probability, are presently regrouping and consolidating their forces.

More specifically, the remnants of DAESH-inspired DIWM members and their allies, together with their protectors, supporters and sympathizers, have been monitored in their continued efforts towards radicalization/recruitment, financial and logistical build-up, as well as in their consolidation/reorganization in Central Mindanao, particularly in the provinces of Maguindanao and North Cotabato and also in Sulu and Basilan. **These activities are geared towards the conduct of intensified atrocities and armed public uprisings in support of their objective of establishing the foundation of a global Islamic caliphate and of a *Wilayat* not only in the Philippines but also in the whole of Southeast Asia.**

x x x x

Fourth, the remnants of the Abu Sayyaf Group (ASG) in Basilan, Sulu, Tawi-Tawi and Zamboanga Peninsula remain as a serious security concern. Reports indicate that this year they have conducted at least forty-three (43) acts of terrorism, including attacks using Improvised Explosive Devices (IEDs), harassments, and kidnappings which have resulted in the killing of eight (8) civilians, three (3) of whom were mercilessly beheaded.[120] (Emphasis ours)

In recommending the one-year extension of Proclamation No. 216 to the President, AFP General Guerrero cited, among others, the continued armed resistance of the DAESH-inspired DIWM and their allies, thus:

1. The DAESH-Inspired DIWM groups and allies **continue to visibly offer armed resistance** in other parts of Central, Western and Eastern Mindanao in spite of the neutralization of their key leaders and destruction of their forces in Marawi City;[121] (Emphasis ours)

The data presented by the AFP during the oral arguments bolstered the President's cause for extension and clarified what the government remains up against in the aftermath of the Marawi crisis. According to the AFP:

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

x x x x

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

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[120] *Rollo* (G.R. No. 235935), pp. 37-38.

[121] Id. at 44.

> However, manpower increased by more or less **400**, with almost the same strength that initially stormed Marawi City, through clandestine and decentralized recruitment of the Daesh-inspired groups at their respective areas of concentration.
>
> ASG Basilan-based recruited more or less **43** new members in Basilan; more or less **250** by the Maute Group in the Lanao provinces; **37** by the Maguid Group in Sarangani and Sultan Kudarat, and more or less **70** by the Turaifie Group in Maguindanao. These newly recruited personalities were motivated by clannish culture as they are relatives of terrorist personalities; revenge for their killed relatives/parents during the Marawi operations; financial gain as new recruits were given an amount ranging from **PhP15,000.00** to **50,000.00**; and, as radicalized converts.
>
> These newly recruited members are undergoing trainings in tactics, marksmanships and bombing operations at the different areas of Mount Cararao Complex, Butig, and Piagapo all of Lanao Del Sur. Recruits with high potentials [sic] were given instruction on IED-making and urban operations.
>
> Furthermore, the situation has become complicated with the influx of Foreign Terrorist Fighters (FTFs), capitalizing on the porous maritime boundaries in Southern Philippines, in the guise as tourists and business men. As of this period, **48** FTFs were monitored joining the Daesh-inspired groups, particularly the Maute Group in Lanao and Turaifie Group in Central Mindanao. The closeness of these two groups is predominant with **@Abu DAR** who has historically established link with **Turaifie.**
>
> On Dawlah Islamiyah-initiated violent incidents, these have increased to **100%** for the 2nd Semester.[122] (Emphasis ours)

The AFP's data also showed that Foreign Terrorist Fighters (FTFs) are now acting as instructors to the new members of the Dawlah Islamiyah.[123]

These accounts ineluctably show that the rebellion that spawned the Marawi crisis persists, and that its remaining members have regrouped, substantially increased in number, and are no less determined to turn Mindanao into a DAESH/ISIS territory.

Petitioners in G.R. No. 235935 argue that "remnants" or a residue of a rebel group cannot possibly mount a rebellion. The argument, however, fails to take into account the 185 persons identified in the Martial Law Arrest Orders who are still at large; the 400 new members whom said remnants were able to recruit; the influx of 48 FTFs who are training the new recruits in their ways of terrorism; and the financial and logistical build-up which the group is currently undertaking with their sympathizers and protectors. It likewise fails to consider that the new Dawlah Islamiyah members number nearly the same as the group that initially stormed Marawi City, and while

[122] AFP's "Briefing" Narrative (January 17, 2017 Oral Arguments), pp. 6-7.
[123] Id. at 8.

the government succeeded in vanquishing 1,010 rebels following the siege,[124] it took several months to accomplish this even under martial law. Thus, it will be imprudent nay reckless to downplay or dismiss the capacity of said remnants to relentlessly pursue their objective of establishing a seat of DAESH/ISIS power in Mindanao.

Petitioners in G.R. Nos. 236061 and 236155 have asserted that the rebellion no longer persists as the President himself had announced the liberation of Marawi City, and armed combat has ceased therein. Petitioners in G.R. No. 236061 added that Col. Romeo Brawner, Deputy Commander of the Joint Task Force Ranao, was also quoted as saying that the Maute-ISIS problem was about to be over. The statements, however, were admittedly made on October 17, 2017,[125] nearly two months before the President's request for extension in December 2017. Such declaration does not preclude the occurrence of supervening events as the AFP discovered through their monitoring[126] efforts. It is not inconceivable that remnants of the Dawlah Islamiyah would indeed regroup, recruit new members and build up its arsenal during the intervening period. The termination of a rebellion is a matter of fact. Rebellion does not cease to exist by estoppel on account of the President's or the AFP's previous pronouncements. Furthermore, it is settled that rebellion is in the nature of a continuing crime.[127] Thus, members of the Dawlah Islamiyah who evaded capture did not cease to be rebels.

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

> **Senator Drilon.** Meaning, the question that we raised, Mr. President, are the declarations of the President, His Excellency, and the secretary of national defense changed since the time that the situation was described on October 23 of this year? Has the situation changed or is it the same situation today that the Marawi City has been liberated from terrorists [sic] influence that there has been a termination of combat operations in Marawi City?
>
> **Hon. Lorenzana.** May I answer that, Mr. President. Mr. President, the situation in Marawi has substantially changed from the time that our troops were fighting the ISIS-inspired Maute Group and that's the reason why there is now this post-conflict need assessment as being conducted in Marawi. However, as situations developed later on, the ISIS-

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[124] Id. at 3. Transcript of the Oral Argument, December 13, 2017, p. 54.

[125] *Rollo* (G.R. No. 236061), p. 12; *rollo* (G.R. No. 236145), p. 13.

[126] *Rollo* (G.R. No. 235935), p. 38.

[127] *In the Matter of the Petition for Habeas Corpus of Roberto Umil v. Ramos*, 265 Phil. 325, 336 (1990).

inspired other groups in Mindanao are also active like the BIFF in Central Mindanao and also in some other parts of the BaSulTa islands.

Now, the reports now, Mr. President, is that they are **actively recruiting again**, recruiting actively, recruiting some of the Muslim youths in the area and that is what we are saying that **the rebellion has not stopped. It just moved to another place.**

x x x x

Representative Tinio. x x x

Mr. Speaker, *hindi po ba sinabi ni Presidente sa kanyang sulat* that the AFP has achieved remarkable progress in putting the rebellion under control at *hindi po ba sinabi ni* Executive Secretary *na* substantially neutralized *na raw and* Maute-Daesh? *Pwede po bang ipaliwanag ito ng mga* resource persons?

The Speaker. The panel may respond.

Hon. Lorenzana. Mr. President, *ang sagot po doon sa G.* Congressman *ay ganito – ang sinasabi po naming* substantially reduced *na iyong* strength or clear na *iyong* Marawi of any terrorists *ay **Marawi lang po iyon.*** **It does not include the whole of, the other parts of Mindanao that are also subject to the influence of these terroristic groups**. *Sabi nga ng* Supreme Court *ay, ang nangyayari sa* Marawi *ay nag*-spill over *na rin sa ibang lugar doon sa* Mindanao k*aya nga sinustain nila iyong* declaration *ng* Martial Law.

x x x x[128] (Emphasis ours)

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

In a similar vein, the termination of armed combat in Marawi does not conclusively indicate that the rebellion has ceased to exist. It will be a tenuous proposition to confine rebellion simply to a resounding clash of arms with government forces. As noted in *Aquino, Jr. v. Enrile*,[129] modern day rebellion has other facets than just the taking up of arms, including financing,

[128] Transcript of the Plenary Proceedings of the Joint Session of the Congress of the Philippines, December 13, 2017, pp. 26 and 43.

[129] 158-A Phil. 1 (1974).

recruitment and propaganda, that may not necessarily be found or occurring in the place of the armed conflict, thus:

> x x x The argument that while armed hostilities go on in several provinces in Mindanao there are none in other regions except in isolated pockets in Luzon, and that therefore there is no need to maintain martial law all over the country, ignores the sophisticated nature and ramifications of rebellion in a modern setting. It does not consist simply of armed clashes between organized and identifiable groups on fields of their own choosing. It includes subversion of the most subtle kind, necessarily clandestine and operating precisely where there is no actual fighting. Underground propaganda, through printed news sheets or rumors disseminated in whispers; recruitment of armed and ideological adherents, raising of funds, procurement of arms and material, fifth-column activities including sabotage and intelligence — all these are part of the rebellion which by their nature are usually conducted far from the battle fronts. x x x.[130]

Furthermore, as We explained in *Lagman*, "(t)he crime of rebellion consists of many acts. It is a vast movement of men and a complex net of intrigues and plots." Thus:

> Acts committed in furtherance of rebellion[,] though crimes in themselves[,] are deemed absorbed in one single crime of rebellion. Rebellion *absorbs* "other acts committed in its pursuance." Direct assault, murder, homicide, arson, robbery, kidnapping just to name a few, are absorbed in the crime of rebellion if committed in furtherance of rebellion; "[i]t cannot be made a basis of a separate charge." Jurisprudence also teaches that not only common crimes may be absorbed in rebellion but also "offenses under special laws [such as Presidential Decree No. 1829] which are perpetrated in furtherance of the political offense". "All crimes, whether punishable under a special law or general law, which are mere components or ingredients, or committed in furtherance thereof, become absorbed in the crime of rebellion and cannot be isolated and charged as separate crimes in themselves." (Citations omitted)

In any case, Secretary Lorenzana has stressed that notwithstanding the termination of armed combat in Marawi, clashes between the rebels and government forces continue to take place in other parts of Mindanao. Thus, during an interpellation at the December 13, 2017 Joint Session in Congress, he stated:

> **Senator Pangilinan.** x x x
>
> It would have been a very different situation altogether if the fighting was still ongoing. If there is still that siege, then we can see that the situation is extreme and therefore, we can proceed with an extension.
>
> x x x x

[130] Id. at 48-49.

> **Hon. Lorenzana.** Mr. President, may I reply to the good senator.
>
> **Sir, maybe your perception here is not as bad as what is happening on the ground, but the troops report otherwise.**
>
> **You know, *wala na sigurong bakbakan diyan sa* Marawi, but there are still clashes almost everyday in other parts of Mindanao.** The clash with the BIFF in Central Mindanao continues almost everyday. *Iyong mga engkwentro din sa mga ibang lugar sa* Eastern Mindanao with the CPP-NPA *ay nandoon pa rin.* Basilan, Jolo *ay ongoing pa rin iyan.*
>
> x x x x[131] (Emphasis ours)

During the oral arguments, AFP General Guerrero also confirmed that there were actually armed encounters with the remnants of the DAESH/ISIS-inspired DIWM.[132]

Accordingly, it would be error to conclude that the rebellion ceased to exist upon the termination of hostilities in Marawi.

Other rebel groups

The extension has also been challenged on the ground that it did not refer to the same rebellion under Proclamation No. 216.

It is true that the Bangsamoro Islamic Freedom Fighters (BIFF), the Turaifie Group and the New People's Army (NPA) were not expressly mentioned either in Proclamation No. 216 or in the President's Report to Congress after he issued the Proclamation. However, in *Lagman*, the government clearly identified the BIFF, based in the Liguasan Marsh, Maguindanao, as one of the four ISIS-linked rebel groups that had formed an alliance for the unified mission of establishing an ISIS territory in Mindanao, led by ASG-Basilan leader, Isnilon Hapilon, who had been appointed *emir* of all ISIS forces in the Philippines. The other three rebel groups were the ASG from Basilan, Ansarul Khilafah Philippines (AKP), also known as the Maguid Group, from Saranggani and Sultan Kudarat, and the Maute Group from Lanao del Sur.

Furthermore, while it named only the Maute Group and the ASG, the President's Report made express reference to "lawless armed groups" as perpetrators of the Marawi siege resolved to unseat the duly-constituted government and make Mindanao a DAESH/ISIS province. The Report also indicated, as additional reasons for the Proclamation, the "extensive networks or linkages of the Maute Group with foreign and local armed groups" and the "network and alliance-building activities among terrorist

[131] Transcript of the Plenary Proceedings of the Joint Session of the Congress of the Philippines, December 13, 2017, pp. 50-51.

[132] Transcript of the Oral Arguments, January 17, 2018, p. 117-118.

groups, local criminals, and lawless armed men" in Mindanao.[133] Thus, though not specifically identified in the Proclamation or the President's Report, the BIFF and the Turaifie Group are deemed to have been similarly alluded to.

Indeed, absolute precision cannot be expected from the President who would have to act quickly given the urgency of the situation. Under the circumstances, the actual rebellion and attack, more than the exact identity of all its perpetrators, would be his utmost concern. The following pronouncement in *Lagman,* thus, finds relevance:

> Neither should the Court expect absolute correctness of the facts stated in the proclamation and in the written Report as the President could not be expected to verify the accuracy and veracity of all facts reported to him due to the urgency of the situation. To require precision in the President's appreciation of facts would unduly burden him and therefore impede the process of his decision-making. Such a requirement will practically necessitate the President to be on the ground to confirm the correctness of the reports submitted to him within a period that only the circumstances obtaining would be able to dictate. Such a scenario, of course, would not only place the President in peril but would also defeat the very purpose of the grant of emergency powers upon him, that is, to borrow the words of Justice Antonio T. Carpio in *Fortun,* to "immediately put an end to the root cause of the emergency". Possibly, by the time the President is satisfied with the correctness of the facts in his possession, it would be too late in the day as the invasion or rebellion could have already escalated to a level that is hard, if not impossible, to curtail.

In the same vein, to require the President to render a meticulous and comprehensive account in his Proclamation or Report will be most tedious and will unduly encumber his efforts to immediately quell the rebellion.

The efforts of the Turaifie Group and its allies[134] in the ISIS-inspired[135] BIFF to wrest control of Mindanao continued even as the government was able to put the Marawi crisis under control.

In his December 8, 2017 letter to the Congress, the President stated:

> Second, the Turaifie Group has likewise been monitored to be planning to conduct bombings, notably targeting the Cotabato area. Turaifie is said to be Hapilon's potential successor as Amir of DAESH Wilayat in the Philippines and the Southeast Asia.[136]

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[133] *Lagman v. Medialdea,* supra note 18, citing the President's Report to Congress.

[134] Transcript of the Oral Argument, January 17, 2018, p. 56.

[135] Transcript of the December 13, 2017 Plenary Proceedings of the Joint Session of the Congress of the Philippines, p. 26.

[136] *Rollo* (G.R. No. 235935), p. 38.

Furthermore, as the AFP reported during the oral arguments, the BIFF "continues to inflict violence and sow terror in central Mindanao," and as one of the AFP's primary targets for disbandment, "the group will likely continue its hostile operations in a bid to retaliate, fight for its relevance and demonstrate its resiliency."[137]

The AFP has likewise confirmed that the Turaifie Group is one of several terrorist groups responsible for the Marawi siege, and that it has so far successfully recruited 70 new members in its unwavering pursuit of a DAESH/ISIS *wilayat* in Mindanao.

The Court, thus, finds that the government has sufficiently established the persistence of the DAESH/ISIS rebellion.

The inclusion of the rebellion of the New People's Army (NPA) as basis for the further extension of martial law in Mindanao will not render it void. Undeniably, the NPA aims to establish communist rule in the country while the DAESH/ISIS-inspired rebels intend to make Mindanao the seat of ISIS power in Southeast Asia. It is obvious, however, that even as they differ in ideology, they have the shared purpose of overthrowing the duly constituted government. The violence the NPA has continued to commit in Mindanao, as revealed by the Executive, hardly distinguish its rebels from the architects of the Marawi siege. Both have needlessly and violently caused the death of military forces and civilians, and the destruction of public and private property alike. Thus, in his request for the further extension of Proclamation No 216, the President informed the Congress that:

> Last, but certainly not the least, while the government was preoccupied with addressing the challenges posed by the DAESH-inspired DIWM and other Local Terrorist Groups (LTGs), the New People's Army (NPA) took advantage of the situation and intensified their decades-long rebellion against the government and stepped up terrorist attacks against innocent civilians and private entities, as well as guerilla warfare against the security sector and public government infrastructure, **purposely to seize political power through violent means and supplant the country's democratic form of government with Communist rule.**
>
> This year, the NPA has perpetrated a total of at least three hundred eight-five (385) atrocities (both terrorism and guerilla warfare) in Mindanao, which resulted in forty-one (41) Killed-in-Action and sixty-two (62) Wounded-in-Action (WIA) on the part of government forces. On the part of the civilians, these atrocities resulted in the killing of twenty-three (23) and the wounding of six (6) persons. The most recent was the ambush in Talakag, Bukidnon on 09 November 2017, resulting in the killing of one (1) PNP personnel and the wounding of three (3) others, as well as the killing of a four (4)-month-old infant and the wounding of two (2) civilians.

[137] Transcript of the Oral Argument, January 17, 2018, p. 56.

> Apart from these, at least fifty-nine (59) arson incidents have been carried out by the NPA in Mindanao this year, targeting businesses and private establishments and destroying an estimated P2.2 billion-worth of properties. Of these, the most significant were the attack on Lapanday Food Corporation in Davao City on 09 April 2017 and the burning of facilities and equipment of Mil-Oro Mining and Frasec Ventures Corporation in Mati City, Davao Oriental on 06 May 2017, which resulted in the destruction of properties valued at P1.85 billion and P109 million, respectively. [138] (Emphasis ours)

Given the scale of the attacks perpetrated by the communist rebels, it is far from unreasonable for the President to include their rebellion in his request for the further extension of martial law in Mindanao. The NPA's "intensified" insurgence clearly bears a significant impact on the security of Mindanao and the safety of its people, which were the very reasons for the martial law proclamation and its initial extension.

It will also be noted that when Proclamation No. 216 was issued, the Government and the NPA were undergoing peace negotiations. Thus, the President could not have included the NPA's rebellion in the Proclamation even granting he had cause to do so. The Office of the Solicitor General declared during the oral arguments that because of the peace negotiations, the NPA was "not explicitly included" as a matter of comity.[139] The Executive's data showed that despite the peace talks, the NPA continued its hostilities and intensified its tactical offensives, prompting the President to terminate the peace negotiations on November 23, 2017. In his December 8, 2017 letter to Congress, the President wrote:

> As a direct result of these atrocities on the part of the NPA, I was constrained to issue Proclamation No. 360 on 23 November 2017 declaring the termination of peace negotiations with the National Democratic Front-Communist Party of the Philippines-New People's Army (NDF-CPP-NPA) effective immediately. I followed this up with Proclamation No. 374 on 05 December 2017, where I declared the CPP-NPA as a designated/identified terrorist organization under the Terrorism Financing Prevention and Suppression Act of 2012, and the issuance of a directive to the Secretary of Justice to file a petition in the appropriate court praying to proscribe the NDF-CPP-NPA as a terrorist organization under the Human Security Act of 2007.[140]

It is readily apparent that the inclusion of the NPA's rebellion in the President's request for extension was precipitated by these turn of events, as well as the magnitude of the atrocities attributed to the communist rebels. It would make no sense to exclude or separate the communist rebellion from the continued operation of martial law in Mindanao when it also persists in the same region. Thus, the Court finds that the President's decision to add

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[138] *Rollo* (G.R. No. 235935), p. 38-39.

[139] Transcript of the Oral Argument, January 17, 2018, p. 177.

[140] *Rollo* (G.R. No. 235935), p. 39-40.

the NPA's "intensified" insurgence to the DAESH/ISIS rebellion, as further basis to request for the extension, was not uncalled for.

In any event, seeking the concurrence of the Congress to use martial law to quell the NPA's rebellion, instead of issuing a new martial law proclamation for the same purpose, appears to be more in keeping with the Constitution's aim of preventing the concentration of the martial law power in the President. The extension granted by the Congress upon the President's request has become a joint action or a "collective judgment"[141] between the Executive and the Legislature, thereby satisfying one of the fundamental safeguards established under Section 18, Article VII of the 1987 Constitution.

B. Public safety requires the extension

In *Lagman*, the Court defined "public safety" as follows:

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

The question, therefore, is whether the acts, circumstances and events upon which the extension was based posed a significant danger, injury or harm to the general public. The Court answers in the affirmative.

The following events and circumstances, as disclosed by the President, the Defense Secretary and the AFP, strongly indicate that the continued implementation of martial law in Mindanao is necessary to protect public safety:

(a) No less than 185 persons in the Martial Law Arrest Orders have remained at large. Remnants of the Hapilon and Maute groups have been monitored by the AFP to be reorganizing and consolidating their forces in Central Mindanao, particularly in Maguindanao, North Cotabato, Sulu and Basilan, and strengthening their financial and logistical capability.[142]

(b) After the military operation in Marawi City, the Basilan-based ASG, the Maute Group, the Maguid Group and the Turaifie Group, comprising the DAESH-affiliate Dawlah Islamiyah that was responsible for the Marawi siege, was left with 137 members and a total of 166 firearms. These rebels, however, were able to recruit 400 new members, more or less,

[141] Records of Constitutional Commission (1986), Vol. II, p. 509.
[142] *Rollo* (G.R. No. 235935), pp. 37-38, 43.

in Basilan, the Lanao Provinces, Sarangani, Sultan Kudarat and Maguindanao.[143]

(c) The new recruits have since been trained in marksmanship, bombing and tactics in different areas in Lanao del Sur. Recruits with great potential are trained in producing Improvised Explosive Devices (IEDs) and urban operations. These new members are motivated by their clannish culture, being relatives of terrorists, by revenge for relatives who perished in the Marawi operations, by money as they are paid ₱15,000.00 to ₱50,000.00, and by radical ideology.[144]

(d) 48 FTFs have joined said rebel groups and are acting as instructors to the recruits.[145] Foreign terrorists from Southeast Asian countries, particularly from Indonesia and Malaysia, will continue to take advantage of the porous borders of the Philippines and enter the country illegally to join the remnants of the DAESH/ISIS-inspired rebel groups.[146]

(e) In November 2017, 15 Indonesian and Malaysian DAESH-inspired FTFs entered Southern Philippines to augment the remnants of the Maguid group in Saragani province. In December 2017, 16 Indonesian DAESH-inspired FTFs entered the Southern Philippines to augment the ASG-Basilan and Maute groups in the Lanao province. In January 2018, an unidentified Egyptian DAESH figure was monitored in the Philippines.[147]

(f) At least 32 FTFs were killed in the Marawi operations.[148] Other FTFs attempted to enter the main battle area in Marawi, but failed because of checkpoints set up by government forces.[149]

(g) "The DAESH-inspired DIWM groups and their allies continue to visibly offer armed resistance in other parts of Central, Western and Eastern Mindanao in spite of the neutralization of their key leaders and destruction of their forces in Marawi City."[150] There were actually armed encounters with the remnants of said groups.[151]

(h) "Other DAESH-inspired and like-minded threat groups such as the BIFF, AKP, DI-Maguid, DI-Toraype, and the ASG remain capable of staging similar atrocities and violent attacks against vulnerable targets in Mindanao,

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[143] Transcript of the Oral Argument, January 17, 2018, p. 59.
[144] Id.
[145] Id. at 60.
[146] Id. at 62.
[147] Id. at 60-61.
[148] Id. at 54.
[149] Id. at 60
[150] *Rollo* (G.R. No. 235935), p. 44.
[151] Transcript of the Oral Argument, January 17, 2018, p. 118.

including the cities of Davao, Cagayan de Oro, General Santos, Zamboanga and Cotabato."[152]

(i) The Turaifie group conducts roadside bombings and attacks against government forces, civilians and populated areas in Mindanao.[153] The group plans to set off bombings in Cotabato.[154]

(j) The Maute Group, along with foreign terrorists, were reported to be planning to bomb the cities of Zamboanga, Iligan, Cagayan de Oro and Davao.[155]

(k) The remaining members of the ASG-Basilan have initiated five violent attacks that killed two civilians.[156]

(l) In 2017, the remnants of the ASG in Basilan, Sulu, Tawi-Tawi and Zamboanga Peninsula, conducted 43 acts of violence, including IED attacks and kidnapping which resulted in the killing of eight innocent civilians, three of whom were mercilessly beheaded.[157] Nine kidnap victims are still held in captivity.[158]

(m) Hapilon's death fast-tracked the unification of the Sulu and Basilan-based ASG to achieve the common goal of establishing a DAESH-ISIS *wilayat* in Mindanao. This likely merger may spawn retaliatory attacks such as IED bombings, in urban areas, particularly in the cities of Zamboanga, Isabela and Lamitan.[159]

(n) By AFP's assessment, the ISIS' regional leadership may remain in the Southern Philippines and with the defeat of ISIS in many parts of Syria and Iraq, some hardened fighters from the ASEAN may return to this region to continue their fight. The AFP also identified four potential leaders who may replace Hapilon as *emir* or leader of the ISIS forces in the Philippines. It warned that the Dawlah Islamiyah will attempt to replicate the Marawi siege in other cities of Mindanao and may conduct terrorist attacks in Metro Manila and Davao City as the seat of power of the Philippine Government. With the spotlight on terrorism shifting from the Middle East to Southeast Asia following the Marawi siege, the AFP likewise indicated that the influx of FTFs in the Southern Philippines will persist. The AFP further referred to possible lone-wolf attacks and atrocities from other DAESH-inspired rebel

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[152] Id.
[153] Id.
[154] *Rollo* (G.R. No. 235935), pp. 38, 43.
[155] Transcript of the Oral Argument, January 17, 2018, p. 65.
[156] Id.
[157] *Rollo* (G.R. No. 235935), p. 38;Transcript of the Oral Argument, January 17, 2018, p. 65.
[158] Id. at 43.
[159] Transcript of the Oral Argument, January 17, 2018, p. 58.

groups in vulnerable cities like Cagayan de Oro, Cotabato, Davao, General Santos, Iligan and Zamboanga.[160]

The rising number of these rebel groups, their training in and predilection to terrorism, and their resoluteness in wresting control of Mindanao from the government, pose a serious danger to Mindanao. The country had been witness to these groups' capacity and resolve to engage in combat with the government forces, resulting in severe casualties among both soldiers and civilians, the displacement of thousands of Marawi residents, and considerable damage to their City. In a short period after the Marawi crisis was put under control, said rebel groups have managed to increase their number by 400, almost the same strength as the group that initially stormed Marawi. Their current number is now more than half the 1,010 rebels in Marawi which had taken the AFP five months to neutralize. To wait until a new battleground is chosen by these rebel groups before We consider them a significant threat to public safety is neither sound nor prudent.

(o) Furthermore, in 2017 alone, the BIFF initiated 116 hostile acts in North Cotabato, Sultan Kudarat and Maguindanao, consisting of ambuscade, firing, arson, IED attacks and grenade explosions. 66 of these violent incidents were committed during the martial law period and by the AFP's assessment, the group will continue to inflict violence and sow terror in central Mindanao.[161]

(p) In 2017, the ASG, which is the predominant local terrorist group in the Southern Philippines based in Tawi-Tawi, Sulu, Basilan and Zamboanga, with its 519 members, 503 firearms, 66 controlled barangays and 345 watch-listed personalities, had perpetrated a total of 13 acts of kidnapping against 37 individuals, 11 of whom (including 7 foreigners) remain in captivity. Their kidnap-for-ransom activities for last year alone have amassed a total of ₱61.2 million.[162]

(q) Mindanao remains the hotbed of communist rebellion considering that 47% of its manpower, 48% of its firearms, 51% of its controlled barangays and 45% of its guerrilla fronts are in this region.[163] Of the 14 provinces with active communist insurgency, 10 are in Mindanao. Furthermore, the communist rebels' Komisyon Mindanao (KOMMID) is now capable of sending augmentation forces, particularly "Party Cadres," in Northern Luzon.[164]

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[160] Id. at 52, 61-63.
[161] Transcript of the Oral Argument, January 17, 2018, pp. 55, 66.
[162] Id. at 56-58.
[163] *Rollo* (G.R. No. 235935), p. 43.
[164] Id. at 43.

(r) The hostilities initiated by the communist rebels have risen by 65% from 2016 to 2017 despite the peace talks.[165] In 2017 alone, they perpetrated 422 atrocities in Mindanao, including ambush, raids, attacks, kidnapping, robbery, bombing, liquidation, landmine/IED attacks, arson and sabotage, that resulted in the death of 47 government forces and 31 civilians.[166] An ambush in Bukidnon in November 2017 killed one PNP personnel, two civilians and a four-month old baby. 59 incidents of arson committed by the Communist rebels against business establishments in Mindanao last year alone destroyed ₱2.378 billion worth of properties. Moreover, the amount they extorted from private individuals and business establishments from 2015 to the first semester of 2017 has been estimated at ₱2.6 billion.[167]

(s) Among the most significant attacks by the communist rebels on business establishments took place in April and May 2017 when they burned the facilities of Lapanday Food Corporation in Davao City and those of Mil-Oro Mining and Frasec Ventures Corporation in Mati City, Davao Oriental, which resulted in losses amounting to ₱1.85 billion and ₱109 million, respectively. According to the AFP, business establishments in the area may be forced to shut down due to persistent NPA attacks just like in Surigao del Sur.[168]

(t) By AFP's calculation, the aforesaid rebel groups (excluding the 400 newly recruited members of the Dawlah Islamiyah) are nearly 2,781-men strong, equipped with 3,211 firearms and control 537 barangays in Mindanao.

The magnitude of the atrocities already perpetrated by these rebel groups reveals their capacity to continue inflicting serious harm and injury, both to life and property. The sinister plans of attack, as uncovered by the AFP, confirm this real and imminent threat. The manpower and armaments these groups possess, the continued radicalization and recruitment of new rebels, the financial and logistical build-up cited by the President, and more importantly, the groups' manifest determination to overthrow the government through force, violence and terrorism, present a significant danger to public safety.

In *Lagman,* the Court recognized that the President, as Commander-in-Chief, has possession of intelligence reports, classified documents and other vital information which he can rely on to properly assess the actual conditions on the ground, thus:

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[165] Transcript of the Oral Argument, January 17, 2018, p. 63.
[166] Id. at 66-67.
[167] Id. at 67.
[168] Id.

> It is beyond cavil that the President can rely on intelligence reports and classified documents. "It is for the President as [C]ommander-in-[C]hief of the Armed Forces to appraise these [classified evidence or documents/]reports and be satisfied that the public safety demands the suspension of the writ." Significantly, respect to these so-called classified documents is accorded even "when [the] authors of or witnesses to these documents may not be revealed."
>
> In fine, not only does the President have a wide array of information before him, he also has the right, prerogative, and the means to access vital, relevant, and confidential data, concomitant with his position as Commander-in-Chief of the Armed Forces.

As his December 8, 2017 letter to the Congress would show, the President's request for further extension had been based on the security assessment of the AFP and the PNP. Notably, the President also acknowledged that the grounds or "essential facts" cited in his letter were of his "personal knowledge" as Commander-in-Chief of the armed forces. The President's request to Congress also referred to the monitoring activities that led to the Executive's findings, which the AFP confirmed during the January 17, 2018 oral argument.

According to Executive Secretary Salvador Medialdea, the President made his request to the Congress after "a careful personal evaluation" of the reports from the Martial Law Administrator, Martial Law Implementor, the PNP, the National Security Adviser and the National Intelligence Coordinating Agency (NICA), as well as information gathered from local government officials and residents of Mindanao.[169]

On December 12, 2017, the AFP separately gave the Senate and the House of Representatives a briefing on the Executive Department's basis for requesting the further extension of Proclamation No. 216.[170]

At the Joint Session, of the Congress held on December 13, 2017 Executive Secretary Salvador Medialdea, Defense Secretary Delfin Lorenzana, AFP General Guerrero, PNP Chief Ronald Dela Rosa, the head of the NICA, the National Security Adviser, as well as the Secretaries of the Department of Justice, the Department of Public Works and Highways, Department of Labor and Employment, Transportation and Communication, and the Chairman of the Task Force Bangon Marawi, were present and sworn in as resource persons.[171] Secretary Medialdea highlighted to the Congress the reasons cited by the President in his request, and during the course of the session, he, Secretary Lorenzana, AFP General Guerrero and Senior Deputy

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[169] Transcript of the Plenary Proceedings of the Joint Session of the Congress of the Philippines, December 13, 2017, p. 20.

[170] Transcript of the Oral Argument, January 17, 2018, p. 99.

[171] Transcript of the Plenary Proceedings of the Joint Session of the Congress of the Philippines, December 13, 2017, pp. 23-24.

Executive Secretary Menardo Guevarra responded to interpellations from a number of Senators and Representatives on the propriety and necessity of further extending martial law in Mindanao.

The Joint Session also provided an occasion for the Representative from the Second District of Lanao del Sur to confirm the recruitment activities of the "remnants" of the Maute and Hapilon groups, thus:

> **Representative Papandayan**. x x x
>
> *Kami po sa* Lanao del Sur, *ako ay umuwi* last week, *aking kinausap ang aking mga* barangay *at mga* barangay chairman *sa aming distrito. Pinahanap ko kung mayroon pang natitirang* remnants *o mga kasamahan ng* Maute *at saka* Hapilon. *Ang mga* barangay chairman *po ay nag*-report *sa akin na mayroon po at sila po ay nagre*-recruit *ngayon, na nag-aalok din sila ng pera sa mga nare*-recruit *nila.*[172]

Following its deliberation on the request for further extension, the Congress, in joint session, resolved to further extend Proclamation No. 216 for one year, with 240 members voting for, and 27 against,[173] the President's initiative. In approving the extension, Congress agreed with the factual considerations of the Executive, as can be gleamed from the 4th and 6th *Whereas* clauses of Resolution of Both Houses No. 4.

The information upon which the extension of martial law or of the suspension of the privilege of the writ of *habeas corpus* shall be based principally emanate from and are in the possession of the Executive Department. Thus, "the Court will have to rely on the fact-finding capabilities of the [E]xecutive [D]epartment; in turn, the Executive Department will have to open its findings to the scrutiny of the Court."[174]

The Executive Department did open its findings to the Court when the AFP gave its "briefing" or "presentation" during the oral arguments, presenting data, which had been vetted by the NICA, "based on intelligence reports gathered on the ground," from personalities they were able to capture and residents in affected areas, declassified official documents, and intelligence obtained by the PNP.[175] According to the AFP, the same presentation, save for updates, was given to the Congress.[176] As it stands, the information thus presented has not been challenged or questioned as regards its reliability.

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[172] Id. at 55.
[173] Id. at 131.
[174] *See Lagman v. Medialdea*, supra note 18.
[175] Transcript of the Oral Argument, January 17, 2018, pp. 95, 97, 100, 102, 108-109 and 116.
[176] Id. at 103.

The facts as provided by the Executive and considered by Congress amply establish that rebellion persists in Mindanao and public safety is significantly endangered by it. The Court, thus, holds that there exists sufficient factual basis for the further extension sought by the President and approved by the Congress in its Resolution of Both Houses No. 4.

Necessarily, We do not see the merit to the petitioners' theory in the Cullamat petition that the extent of threat to public safety as would justify the declaration or extension of the proclamation of martial law and the suspension of the privilege of the writ must be of such level that the government cannot sufficiently govern, nor assure public safety or deliver government services. Petitioners posit that only in this scenario may martial law be constitutionally permissible.

Restrained caution must be exercised in adopting petitioners' theory for several reasons. To begin with, a hasty adoption of the suggested scale, level or extent of threat to public safety is to supplant into the plain text of the Constitution. An interpretation of the Constitution precedes from the fundamental postulate that the Constitution is the basic and paramount law to which all other laws must conform and to which all persons, including the highest officials of the land, must defer.[177] The consequent duty of the judiciary then is to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them.[178] This must be so considering that the Constitution is the mother of all laws, sufficient and complete in itself. For the Court to categorically pronounce which kind of threat to public safety justifies the declaration or extension of martial law and which ones do not, is to improvise on the text of the Constitution ideals even when these ideals are not expressed as a matter of positive law in the written Constitution.[179] Such judicial improvisation finds no justification.

For another, if the Court were to be successful in disposing of its bounden duty to allocate constitutional boundaries, the Constitutional doctrines the Court produces must necessarily remain steadfast no matter what may be the tides of time.[180] The adoption of the extreme scenario as the measure of threat to public safety as suggested by petitioners is to invite doubt as to whether the proclamation of martial law would be at all effective in such case considering that enemies of the State raise unconventional methods which change over time. It may happen that by the time government loses all capability to dispose of its functions, the enemies of the government might have already been successful in removing allegiance therefrom. Any

[177] Bernas, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES; A COMMENTARY, 1996 ed., p. XXXIV, citing *Miller*, Lectures on the Constitution of the United States 64 (1893); 1 Schwartz, The Powers of Government 1 (1963).

[178] *Angara v. The Electoral Commission*, 63 Phil. 139, 158 (1936).

[179] Justice Scalia, READING THE LAW: THE INTERPRETATION OF LEGAL TEXTS.

[180] Cruz, PHILIPPINE POLITICAL LAW, 2002 ed., p. 12.

declaration then of martial law would be of no useful purpose and such could not be the intent of the Constitution. Instead, the requirement of public safety as it presently appears in the Constitution admits of flexibility and discretion on the part of the Congress.

So too, when the President and the Congress ascertain whether public safety requires the declaration and extension of martial law, respectively, they do so by calibrating not only the present state of public safety but the further repercussions of the actual rebellion to public safety in the future as well. Thus, as persuasively submitted by Fr. Bernas in his *Amicus Curiae* Brief[181] in *Fortun v. Gloria Macapagal-Arroyo*:[182]

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

The requirement of the Constitution is therefore adequately met when there is sufficient factual basis to hold that the present and past acts constituting the actual rebellion are of such character that endanger and will endanger public safety. This permissive approach is sanctioned not only by an acknowledgment that the Congress is and should be allowed flexibility but also because the Court is without the luxury of time to determine accuracy and precision.

No necessity to impose tests on the choice and manner of the President's exercise of military powers

We refuse to be tempted by petitioner Rosales' prodding that We set two tests in reviewing the constitutionality of a declaration or extension of martial law. In her memorandum,[183] she clarifies the two tests, as follows:

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[181] *See* Justice Presbitero Velasco's Dissenting Opinion in *Fortun v. Macapagal-Arroyo.*

[182] 684 Phil. 526 (2012).

[183] *Rollo* (G.R. No. 236145), pp. 788-789.

> 1. Proportionality Test requires that a situation is of such gravity or scale as to demand resort to the most extreme of measures, *i.e.* a situation where the ordinary police powers of the State are no longer sufficient to restore, secure or preserve public safety; and
>
> 2. Suitability Test requires that a situation is such that the declaration of martial law is the correct tool to address safety problem.

It is sufficient to state that this Court already addressed the same argument in Our decision in *Lagman*. The determination of which among the Constitutionally given military powers should be exercised in a given set of factual circumstances is a prerogative of the President. The Court's power of review, as provided under Section 18, Article VII do not empower the Court to advise, nor dictate its own judgment upon the President, as to which and how these military powers should be exercised.

Safeguards against abuse

Martial law is a law of necessity. "Necessity creates the conditions for martial law and at the same time limits the scope of martial law."[184] Thus, when the need for which Proclamation No. 216 was further extended no longer exists, the President can lift the martial law imposition even before the end of the one-year period. Under the same circumstances, the Congress itself may pass a resolution pre-terminating the extension. This power emanates from the Congress' authority, granted under the Constitution, to approve the extension and to fix its duration. The power to determine the period of the extension necessarily includes the power to shorten it. Furthermore, considering that this Court's judgment on the constitutionality of an extension is "transitory," or "valid at that certain point of time," any citizen may petition the Court to review the sufficiency of the factual basis for its continued implementation should the President and the Congress fail or refuse to lift the imposition of martial law. During the deliberations on the 1987 Constitution, it was explained:

> 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.**[185] (Emphasis ours)

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[184] Bernas, THE 1987 CONSTITUTION OF THE PHILIPPINES, A COMMENTARY, 2009 ed., p. 903.
[185] Records of the Constitutional Commission (1986), Vol. II, p. 494.

Petitioners fear that the one-year extension of martial law will only intensify the human rights violations committed by government forces against civilians. To place a territory under martial law is undeniably an immense power, and like all other powers, it may be abused.[186] However, the possibility of abuse and even the country's martial law experience under the Marcos regime did not prevent the framers of the 1987 Constitution from including it among the Commander-in-Chief powers of the President. This is in recognition of the fact that during critical times when the security or survival of the state is greatly imperiled, an equally vast and extraordinary measure should be available for the President to protect and defend it.

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

> (a) The President may declare martial law or suspend of the privilege of the writ of the privilege of *habeas corpus* only when there is an invasion or rebellion and public safety requires such declaration or suspension.
>
> (b) The President's proclamation or suspension shall be for a period not exceeding 60 days.
>
> (c) Within 48 hours from the proclamation or suspension, the President must submit a Report in person or in writing to Congress.
>
> (d) The Congress, voting jointly and by a vote of at least a majority of all its Members, can revoke the proclamation or suspension.
>
> (e) The President cannot set aside the Congress' revocation of his proclamation or suspension.
>
> (f) The President cannot, by himself, extend his proclamation or suspension. He should ask the Congress' approval.
>
> (g) Upon such initiative or request from the President, the Congress, voting jointly and by a vote of at least a majority of all its Members, can extend the proclamation or suspension for such period as it may determine.

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[186] *See Republic v. Roque*, 718 Phil. 294 (2013).

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

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

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

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

Accordingly, the Bill of Rights[187] remains effective under a state of martial law. Its implementers must adhere to the principle that civilian authority is supreme over the military and the armed forces is the protector of the people.[188] They must also abide by the State's policy to value the dignity of every human person and guarantee full respect for human rights.[189]

(m) Martial law does not supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function.

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

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

As Commissioner De Los Reyes explained during the deliberations on the 1987 Constitution:

MR. DE LOS REYES. May I explain my vote, Madam President.

My vote is yes. The power of the President to impose martial law is doubtless of a very high and delicate nature. A free people are naturally jealous of the exercise of military power, and the power to impose martial law is certainly felt to be one of no ordinary magnitude. But as presented by the Committee, there are many safeguards: 1) it is limited to 60 days; 2)

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[187] 1987 Constitution, Article III.
[188] 1987 Constitution, Section 3, Article II.
[189] 1987 Constitution, Section 11, Article II.

> Congress can revoke it; 3) the Supreme Court can still review as to the sufficiency of the actual basis; and 4) it does not suspend the operation of the Constitution. To repeat what I have quoted when I interpellated Commissioner Monsod, **it is said that the power to impose martial law is dangerous to liberty and may be abused. All powers may be abused if placed in unworthy hands. But it would be difficult, we think, to point out any other hands in which this power will be more safe [sic] and at the same time equally effectual.** When citizens of the State are in arms against each other and the constituted authorities are unable to execute the laws, the action of the President must be prompt or it is of little value. I vote yes.[190] (Emphasis ours)

Human rights violations and abuses in the implementation of martial law and suspension powers cannot by any measure be condoned. The Court lauds petitioners' vigilance to make sure that the abuses of the past are not repeated and perceived abuses of the present will not go unnoticed. However, as the Court settled in *Lagman,* alleged human rights violations committed during the implementation of martial law or the suspension of the privilege of the writ of *habeas corpus* should be resolved in a separate proceeding. It, thus, bears noting some of the remedies, requirements and penalties imposed under existing laws, meant to address abuses by arresting or investigating public officers.

In *Lacson v. Perez*,[191] the Court had occasion to rule:

> Moreover, petitioners' contention in G.R. No. 147780 (*Lacson Petition*), 147781 (*Defensor-Santiago Petition*), and 147799 (*Lumbao Petition*) that they are under imminent danger of being arrested without warrant do not justify their resort to the extraordinary remedies of *mandamus* and prohibition, since an individual subject to warrantless arrest is not without adequate remedies in the ordinary course of law. Such an individual may ask for a preliminary investigation under Rule 112 of the Rules of Court, where he may adduce evidence in his defense, or he may submit himself to inquest proceedings to determine whether or not he should remain under custody and correspondingly be charged in court. x x x Should the detention be without legal ground, the person arrested can charge the arresting officer with arbitrary detention. All this is without prejudice to his filing an action for damages against the arresting officer under Article 32 of the Civil Code. Verily, petitioners have a surfeit of other remedies which they can avail themselves of, thereby making the prayer for prohibition and *mandamus* improper at this time (Sections 2 and 3, Rule 65, Rules of Court).[192]

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[190] Id. at 485.
[191] G.R. No. 147780, May 10, 2001, 357 SCRA 756.
[192] Id. at 763-764.

R.A. No. 7438,[193] which defines the rights of persons arrested, detained or under custodial investigation, imposes the following penalties on errant arresting or investigating officers:

> **Section 4.** ***Penalty Clause.*** -- (a) Any arresting public officer or employee, or any investigating officer, who fails to inform any person arrested, detained or under custodial investigation of his right to remain silent and to have competent and independent counsel preferably of his own choice, shall suffer a fine of six thousand pesos (P6,000.00) or a penalty of imprisonment of not less than eight (8) years but not more than ten (10) years, or both. The penalty of perpetual absolute disqualification shall also be imposed upon the investigating officer who has been previously convicted of a similar offense.
>
> The same penalties shall be imposed upon a public officer or employee, or anyone acting upon orders of such investigating officer or in his place, who fails to provide a competent and independent counsel to a person arrested, detained or under custodial investigation for the commission of an offense if the latter cannot afford the services of his own counsel.
>
> (b) Any person who obstructs, prevents or prohibits any lawyer, any member of the immediate family of a person arrested, detained or under custodial investigation, or any medical doctor or priest or religious minister chosen by him or by any member of his immediate family or by his counsel, from visiting and conferring privately with him, or from examining and treating him, or from ministering to his spiritual needs, at any hour of the day or, in urgent cases, of the night shall suffer the penalty of imprisonment of not less than four (4) years nor more than six (6) years, and a fine of four thousand pesos (P4,000.00).

Under R.A. No. 9372 or the Human Security Act of 2007, rebellion may be subsumed in the crime of terrorism; it is one of the means by which terrorism can be committed.[194] R.A. No. 9372 imposes specific penalties for failure of the law enforcement personnel to deliver the suspect to the proper judicial authority within the prescribed period, for violating the rights of the detainee, and for using torture in the interrogation or investigation of a detainee, *viz*:

> **SEC. 20.** ***Penalty for Failure to Deliver Suspect to the Proper Judicial Authority within Three Days.*** - The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon any police or law enforcement personnel who has apprehended or arrested, detained and taken custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism and fails to deliver

[193] AN ACT DEFINING CERTAIN RIGHTS OF PERSONS ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING AND INVESTIGATING OFFICERS, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF.

[194] *Lagman v. Medialdea*, supra note 18.

such charged or suspected person to the proper judicial authority within the period of three days.

x x x x

SEC. 22. ***Penalty for Violation of the Rights of a Detainee.*** - Any police or law enforcement personnel, or any personnel of the police or other law enforcement custodial unit that violates any of the aforesaid rights of a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism shall be guilty of an offense and shall suffer the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

Unless the police or law enforcement personnel who violated the rights of a detainee or detainees as stated above is duly identified, the same penalty shall be imposed on the police officer or hear or leader of the law enforcement unit having custody of the detainee at the time the violation was done.

x x x x

SEC. 25. ***Penalty for Threat, Intimidation, Coercion, or Torture in the Investigation and Interrogation of a Detained Person.*** - Any person or persons who use threat, intimidation, or coercion, or who inflict physical pain or torment, or mental, moral, or psychological pressure, which shall vitiate the free-will of a charged or suspected person under investigation and interrogation for the crime of terrorism or the crime of conspiracy to commit terrorism shall be guilty of an offense and shall suffer the penalty of twelve (12) years and one day to twenty (20) years of imprisonment.

When death or serious permanent disability of said detained person occurs as a consequence of the use of such threat, intimidation, or coercion, or as a consequence of the infliction on him of such physical pain or torment, or as a consequence of the infliction on him of such mental, moral, or psychological pressure, the penalty shall be twelve (12) years and one day to twenty (20) years of imprisonment.

R.A. No. 9372 also gave the Commission on Human Rights the following authority and duty:

SEC. 55. ***Role of the Commission on Human Rights.*** - The Commission on Human Rights shall give the highest priority to the investigation and prosecution of violations of civil and political rights of persons in relation to the implementation of this Act; and for this purpose, the Commission shall have the concurrent jurisdiction to prosecute public officials, law enforcers, and other persons who may have violated the civil and political rights of persons suspected of, or detained for the crime of terrorism or conspiracy to commit terrorism.

R.A. No. 9745 or the Anti-Torture Act of 2009 provides that: "Torture and other cruel, inhuman and degrading treatment or punishment as criminal acts shall apply to all circumstances. A state of war or a threat of war, internal political instability, or any other public emergency, or a document or any determination comprising an 'order of battle' shall not and can never be invoked as a justification for torture and other cruel, inhuman and degrading treatment or punishment."[195]

The same law also expressly prohibits secret detention places, solitary confinement, *incommunicado* or other similar forms of detention, where torture may be carried out with impunity. For this purpose, it requires the Philippine National Police (PNP), the Armed Forces of the Philippines (AFP) and other law enforcement agencies concerned to make an updated list of all detention centers and facilities under their respective jurisdictions with the corresponding data on the prisoners or detainees incarcerated or detained therein such as, among others, names, date of arrest and incarceration, and the crime or offense committed. The list is to be made available to the public at all times.[196]

R.A. No. 9745 likewise defined the following rights of a torture victim in the institution of a criminal complaint for torture:

> (a) To have a prompt and an impartial investigation by the CHR and by agencies of government concerned such as the Department of Justice (DOJ), the Public Attorney's Office (PAO), the PNP, the National Bureau of Investigation (NBI) and the AFP. A prompt investigation shall mean a maximum period of sixty (60) working days from the time a complaint for torture is filed within which an investigation report and/or resolution shall be completed and made available. An appeal whenever available shall be resolved within the same period prescribed herein,
>
> (b) To have sufficient government protection against all forms of harassment; threat and/or intimidation as a consequence of the filing of said complaint or the presentation of evidence therefor. In which case, the State through its appropriate agencies shall afford security in order to ensure his/her safety and all other persons involved in the investigation and prosecution such as, but not limited to, his/her lawyer, witnesses and relatives; and
>
> (c) To be accorded sufficient protection in the manner by which he/she testifies and presents evidence in any fora in order to avoid further trauma.

It further imposes the following penalties on perpetrators of torture as defined therein:

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[195] Section 6.
[196] Section 7.

Section 14. *Penalties.* - (a) The penalty of *reclusion perpetua* shall be imposed upon the perpetrators of the following acts:

(1) Torture resulting in the death of any person;
(2) Torture resulting in mutilation;
(3) Torture with rape;
(4) Torture with other forms of sexual abuse and, in consequence of torture, the victim shall have become insane, imbecile, impotent, blind or maimed for life; and
(5) Torture committed against children.

(b) The penalty of *reclusion temporal* shall be imposed on those who commit any act of mental/psychological torture resulting in insanity, complete or partial amnesia, fear of becoming insane or suicidal tendencies of the victim due to guilt, worthlessness or shame.

(c) The penalty of *prision correccional* shall be imposed on those who commit any act of torture resulting in psychological, mental and emotional harm other than those described 1n paragraph (b) of this section.

(d) The penalty of *prision mayor* in its medium and maximum periods shall be imposed if, in consequence of torture, the victim shall have lost the power of speech or the power to hear or to smell; or shall have lost an eye, a hand, a foot, an arm or a leg; or shall have lost the use of any such member; Or shall have become permanently incapacitated for labor.

(e) The penalty of *prision mayor* in its minimum and medium periods shall be imposed if, in consequence of torture, the victim shall have become deformed or shall have lost any part of his/her body other than those aforecited, or shall have lost the use thereof, or shall have been ill or incapacitated for labor for a period of more than ninety (90) days.

(f) The penalty of *prision correccional* in its maximum period to prision mayor in its minimum period shall be imposed if, in consequence of torture, the victim shall have been ill or incapacitated for labor for mare than thirty (30) days but not more than ninety (90) days.

(g) The penalty of *prision correccional* in its minimum and medium period shall be imposed if, in consequence of torture, the victim shall have been ill or incapacitated for labor for thirty (30) days or less.

(h) The penalty of *arresto mayor* shall be imposed for acts constituting cruel, inhuman or degrading treatment or punishment as defined in Section 5 of this Act.

(i) The penalty of *prision correccional* shall be imposed upon those who establish, operate and maintain secret detention places and/or effect or cause to effect solitary confinement, incommunicado or other similar forms of prohibited detention as provided in Section 7 of this Act where torture may be carried out with impunity.

> (j) The penalty of *arresto mayor* shall be imposed upon the responsible officers or personnel of the AFP, the PNP and other law enforcement agencies for failure to perform his/her duty to maintain, submit or make available to the public an updated list of detention centers and facilities with the corresponding data on the prisoners or detainees incarcerated or detained therein, pursuant to Section 7 of this Act.

This Court has likewise promulgated rules aimed at enforcing human rights. In A.M. No. 07-9-12-SC,[197] this Court made available the remedy of a writ of *amparo* to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. Similarly, in A. M. No. 08-1-16-SC,[198] this Court also crafted the rule on the writ of *habeas data* to provide a remedy for any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party.

It also bears to note that the Philippines, is a signatory to the Universal Declaration of Human Rights (UDHR),[199] which is embodied in the International Bill of Human Rights.[200] As such, it recognizes that everyone has the right to liberty and security of one's person.[201] That no one shall be subjected to arbitrary arrest or detention; or that no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law, are just among the thirty (30) articles, mentioned in the UDHR setting forth the human rights and fundamental freedoms to which all men and women, everywhere in the world, are entitled, without any discrimination.

Significantly, during the Congress' December 13, 2017 Joint Session, the Executive Department, through Secretary Lorenzana, made an express commitment to submit a monthly report to the Congress regarding the extended implementation of martial law in Mindanao.[202] Although not required under Section 18, Article VII of the 1987 Constitution, the submission of such report is an ideal complement to the system of checks and balance instituted therein. It will clearly assist the Congress in evaluating the need to maintain or shorten the period of extension of martial law in Mindanao; it will also serve as an additional measure to check on

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[197] THE RULE ON THE WRIT OF AMPARO.

[198] THE RULE ON THE WRIT OF HABEAS DATA.

[199] The United Nations General Assembly as adopted on December 10, 1948.

[200] <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf> (visited January 31, 2018.)

[201] *Barbieto v. CA, et.al.*, 619 Phil. 819, 840 (2009).

[202] Transcript of the Plenary Proceedings of the Joint Session of the Congress of the Philippines, December 13, 2017, p. 67.

possible abuses or human rights violations in the Executive's enforcement of martial law.

Petitioners failed to comply with the requisites for the issuance of an injunctive writ

The purpose of a preliminary injunction under Section 3, Rule 58 of the Rules of Court,[203] is to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated.[204] Its sole aim is to preserve the *status quo* until the merits of the case can be heard fully.[205] *Status quo* is the last actual, peaceable and uncontested situation which precedes a controversy.[206] By jurisprudence, to be entitled to an injunctive writ, petitioners have the burden to establish the following requisites: (1) a right *in esse* or a clear and unmistakable right to be protected; (2) a violation of that right; (3) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage;[207] and (4) no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.[208]

Petitioners anchored their prayer for the issuance of an injunctive writ on respondents' gross transgressions of the Constitution when they extended the martial law in Mindanao for one year. The Lagman petition likewise alleges that petitioner Villarin, a Davao City resident, is personally prejudiced by the extension or martial law in Mindanao "*which would spawn violations of civil liberties of Mindanaoans like petitioner Villarin who is a steadfast critic of the Duterte administration and of the brutalities committed by police and military forces*".

These grounds, however, cannot carry the day for the petitioners. Basic is the rule that mere allegation is not evidence and is not equivalent to proof.[209] These allegations cannot constitute a right *in esse,* as understood in jurisprudence. A right *in esse* is a clear and unmistakable right to be

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[203] SEC. 3. *Grounds for issuance of preliminary injunction.* — A preliminary injunction may be granted when it is established: (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually; (b) That the commission, continuance or nonperformance of the act or acts complained of during the litigation would probably work injustice to the applicant; or (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

[204] *Bank of the Philippine Islands v. Santiago*, 548 Phil. 314, 329 (2007).

[205] *First Global Realty and Development Corporation v. San Agustin,* 427 Phil. 593, 601 (2002).

[206] *Preysler, Jr. v. Court of Appeals*, 527 Phil. 129,136 (2006).

[207] *Medina v. Greenfield Development Corporation,* 485 Phil. 533 (2004).

[208] *St. James College of Parañaque v. Equitable PCI Bank*, 641 Phil. 452 (2010).

[209] *ECE Realty and Development Inc. v. Mandap*, 742 Phil. 164, 171 (2014).

protected,[210] one clearly founded on or granted by law or is enforceable as a matter of law.[211] The existence of a right to be protected, and the acts against which the writ is to be directed are violative of said right must be established.[212]

The alleged violations of the petitioners' civil liberties do not justify the grant of injunctive relief. The petitioners failed to prove that the alleged violations are directly attributable to the imposition of martial law. They likewise failed to establish the nexus between the President's exercise of his martial law powers and their unfounded apprehension that the imposition "*will target civilians who have no participation at all in any armed uprising or struggle*". Incidentally, petitioners failed to state what the "*civil liberties*" specifically refer to, and how the extension of martial law in Mindanao would threaten these "*civil liberties*" in derogation of the rule of law. Evidently, petitioners' right is doubtful or disputed, and can hardly be considered a clear legal right, sufficient for the grant of an injunctive writ.

In *Dynamic Builders & Construction Co. (PHIL.), Inc. v. Hon. Ricardo P. Presbitero, Jr., et. al.*,[213] this Court held that no automatic issuance of an injunctive relief will result by the mere allegation of a constitutionally protected right. We explained, thus:

> Mere allegation or invocation that constitutionally protected rights were violated will not automatically result in the issuance of injunctive relief. The plaintiff or the petitioner should discharge the burden to show a clear and compelling breach of a constitutional provision. Violations of constitutional provisions are easily alleged, but trial courts should scrutinize diligently and deliberately the evidence showing the existence of facts that should support the conclusion that a constitutional provision is clearly and convincingly breached. In case of doubt, no injunctive relief should issue. In the proper cases, the aggrieved party may then avail itself of special civil actions and elevate the matter.[214]

Indeed, this Court cannot rely on speculations, conjectures or guesswork, but must depend upon competent proof and on the basis of the best evidence obtainable under the circumstances.[215] We emphasize that the grant or denial of an injunctive writ cannot be properly resolved by suppositions, deductions, or even presumptions, with no basis in evidence, for the truth must have to be determined by the procedural rules of admissibility and proof. In *The Executive Secretary v. Court of Appeals*,[216]

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[210] *Tecnogas Philippines Manufacturing Corporation v. Philippine National Bank*, 574 Phil. 340, 346 (2008).

[211] *Tomawis v. Tabao-Caudang*, 559 Phil. 498, 500 (2007).

[212] *Duvaz Corporation v. Export and Industry Bank*, 551 Phil. 382, 391 (2007).

[213] 757 Phil. 454 (2015).

[214] Id. at 473.

[215] *Consolidated Industrial Gases, Inc. v. Alabang Medical Center*, 721 Phil. 155, 180 (2013).

[216] 473 Phil. 27 (2004).

this Court stressed the indispensability of establishing the requirements for injunctive writ:

> To be entitled to a preliminary injunction to enjoin the enforcement of a law assailed to be unconstitutional, the party must establish that it will suffer irreparable harm in the absence of injunctive relief and must demonstrate that *it is likely to succeed on the merits, or that there are sufficiently serious questions going to the merits and the balance of hardships tips decidedly in its favor.* The higher standard reflects judicial deference toward "legislation or regulations developed through presumptively reasoned democratic processes." Moreover, an injunction will alter, rather than maintain, the *status quo*, or will provide the movant with substantially all the relief sought and that relief cannot be undone even if the defendant prevails at a trial on the merits. Considering that injunction is an exercise of equitable relief and authority, in assessing whether to issue a preliminary injunction, *the courts must sensitively assess all the equities of the situation, including the public interest*. In litigations between governmental and private parties, courts go much further both to give and withhold relief in furtherance of public interest than they are accustomed to go when only private interests are involved. Before the plaintiff may be entitled to injunction. against future enforcement, he is burdened to show some substantial hardship.[217] (Citations omitted and italics in the original)

Incidentally, there is nothing in the Constitution, nor in any law which supports petitioners' theory. Such purported human right violations cannot be utilized as ground either to enjoin the President from exercising the power to declare martial law, or the Congress in extending the same. To sanction petitioners' plea would result into judicial activism, thereby going against the principle of separation of powers.

As discussed above, petitioners are not left without any recourse. Such trangressions can be addressed in a separate and independent court action.[218] Recall that the imposition of martial law does not result in suspending the operation of the Constitution, nor supplant the functioning of the civil courts nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function. Hence, petitioners can lodge a complaint-affidavit before the prosecutor's office or file a direct complaint before the appropriate courts against erring parties.

A Final Word

The imperative necessity of Martial Law as a tool of the government for self-preservation is enshrined in the 1935, 1973 and 1987 Constitutions. It earned a bad reputation during the Marcos era and apprehensions still linger in the minds of doubtful and suspicious individuals. Mindful of its importance and necessity, the Constitution has provided for safeguards against its abuses.

[217] Id. at 57-58.

[218] *Lagman v. Medialdea,* supra note 18.

Martial law is a constitutional weapon against enemies of the State. Thus, Martial law is not designed to oppress or abuse law abiding citizens of this country.

Unfortunately, the enemies of the State have employed devious, cunning and calculating means to destabilize the government. They are engaged in an unconventional, clandestine and protracted war to topple the government. The enemies of the State are not always quantifiable, not always identifiable and not visible at all times. They have mingled with ordinary citizens in the community and have unwittingly utilized them in the recruitement, surveillance and attack against government forces. Inevitably, government forces have arrested, injured and even killed these ordinary citizens complicit with the enemies.

Admittedly, innocent civilians have also been victimized in the cross fire as unintended casualties of this continuing war.

These incidents, however, should not weaken our resolve to defeat the enemies of the State. In these exigencies, We cannot afford to emasculate, dilute or diminish the powers of government if in the end it would lead to the destruction of the State and place the safety of our citizens in peril and their interest in harm's way.

WHEREFORE, the Court **FINDS** sufficient factual bases for the issuance of Resolution of Both Houses No. 4 and **DECLARES** it as **CONSTITUTIONAL.** Accordingly, the consolidated Petitions are hereby **DISMISSED.**

SO ORDERED.

NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:

See Dissenting Opinion

MARIA LOURDES P. A. SERENO
Chief Justice

See Dissenting Opinion

ANTONIO T. CARPIO
Associate Justice

Please see Concurring Opinion

PRESBITERO J. VELASCO, JR.
Associate Justice

Please see Separate Concurring Opinion

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

Please see Separate Opinion

LUCAS P. BERSAMIN
Associate Justice

p/o see concurring opinion

MARIANO C. DEL CASTILLO
Associate Justice

Please see Separate Concurring Opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

I dissent. See separate opinion

MARVIC M.V.F. LEONEN
Associate Justice

I dissent. See separate opinion

FRANCIS H. JARDELEZA
Associate Justice

I dissent. See separate opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

I certify that J. Martires left his Separate Opinion voting to dismiss all petitions

SAMUEL R. MARTIRES
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice