EN BANC

G.R. No. 235935 – *Rep. Edcel C. Lagman, et al. v. Senate President Aquilino Pimentel III, et al.*

G.R. No. 236061 – *Eufemia Campos Cullamat, et al. v. President Rodrigo Duterte, et al.*

G.R. No. 236145 – *Loretta Ann P. Rosales v. President Rodrigo Duterte, et al.*

G.R. No. 236155 – *Christian S. Monsod, et al. v. Senate President Aquilino Pimentel III, et al.*

Promulgated:

February 6, 2018

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DISSENTING OPINION

CAGUIOA, *J.*:

"At first all of it appeared to be idiotic
in its impudent assertiveness.
Later on it was looked upon as disturbing,
but finally it was believed."[1]

Shorn of its legal niceties, martial law is an emergency governance response involving the imposition of military jurisdiction over civilian population, designed to complement the emergency armed force response to an actual armed uprising. Force is met with force. The might of the military is summoned and flexed to prevent the dismemberment of the Republic caused by an actual rebellion or invasion, with martial law suspending certain civil liberties to facilitate the armed response. But, when the rebellion is quelled, or the invasion is repelled, the normal state of affairs must return.

The declaration and extension of martial law in the absence of the exigencies justifying the same reduces such extraordinary power to a mere tool of convenience and expediency. Thus, the baseless imposition of martial law constitutes, in itself, a violation of substantive and procedural due process, as it effectively bypasses, if not renders totally nugatory, the conditions and limitations explicitly spelled out in the Constitution for the protection of individual citizens. **This violation merits consideration in the**

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[1] Hitler, A. & Murphy, J. V. (1981), *Mein Kampf.* Retrieved from <http://gutenberg.net.au/ebooks02/0200601.txt.>

resolution of this Petition, for it stands independent of the acts of abuse that may be, or have been perpetrated in furtherance thereof.

In these consolidated petitions, the Court reviews anew the sufficiency of the factual basis of the extension of martial law for one year in the entire Mindanao.

The power to extend is subject to constitutional conditions.

Article VII, Section 18 of the Constitution contains the standards with which all three coordinate branches of government must comply in relation to the declaration or extension of martial law, and its review.

It enshrines the extraordinary powers of the President as Commander-in-Chief of the Armed Forces of the Philippines (AFP) — (i) the power to call out the armed forces to prevent or suppress lawless violence, invasion or rebellion; (ii) the power to suspend the privilege of the writ of *habeas corpus*; and (iii) the power to proclaim martial law. In *Lagman v. Medialdea*[2] *(Lagman)* the Court characterized these powers as graduated in nature, such that each may only be resorted to under specified conditions. As for the declaration of martial law, the relevant portion reads:

> 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.[3]

The Court, in *Lagman*, stated that Section 18, Article VII sets the parameters for determining the sufficiency of the factual basis for the declaration of martial law and/or the suspension of the privilege of the writ of *habeas corpus*, "namely (1) actual invasion or rebellion, and (2) public safety requires the exercise of such power"[4] and thereupon proceeded with the analysis consistent with those standards. *Lagman* also instructs that the President is given the prerogative to determine which extraordinary power to wield in a given set of circumstances, *provided*, however, that **the conditions required by the Constitution for the use of these extraordinary powers exist**, for while the exercise of the calling-out power is primarily left to the President's discretion,[5] the power to suspend the privilege of the writ and declare martial law are not.

As for the extension by the Congress of the declaration of martial law, the same first paragraph of Section 18 provides:

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2 G.R. Nos. 231658, 231771 & 231774, July 4, 2017 [En Banc, Per J. Del Castillo].
3 Id. at 3.
4 Id. at 51.
5 *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 640 (2000) [En Banc, Per J. Kapunan].

> 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.

Staying faithful to the above text and consistent with *Lagman*, the parameters of determining the sufficiency of the factual basis of the extension requires the Court to examine whether (1) the invasion or rebellion persists, and (2) public safety requires the exercise of such power.

Several points become instantly clear from a plain reading of the above text: (1) the invasion or rebellion furnishing the first requirement for the extension indubitably refers to the invasion or rebellion that triggered the declaration sought to be extended, and (2) the requirement of public safety must require the extension. The mere fact of a persisting rebellion or existence of rebels, standing alone, cannot be basis for the extension.

The Court's power and duty to review under Section 18 contemplates the determination of the existence of the conditions upon which the President's extraordinary powers may be exercised. In the context of an extension of a prior proclamation or suspension, the Court's duty thus equates to the determination of whether the factual basis therefor, then "sufficient, truthful, accurate, or at the very least, credible,"[6] persists.

The Executive and Legislative Departments bear the burden of proof to show sufficient factual basis.

The question of burden of proof in the review of the declaration of martial law has been settled in *Lagman* — the Executive bears the burden of proof. For the same reasons I stated in my *Dissent* in that case, given the nature of a Section 18 proceeding as a neutral fact-checking mechanism, the Executive and Legislative departments continually bear the burden of proving sufficient factual basis for the extension.

The Court has recognized that martial law poses a severe threat to civil liberties;[7] fittingly, a review of its declaration or extension must require proof. Even the less stringent review in *Lansang v. Garcia*[8] required that minimum.

Consequently — and I reiterate to the point of being tedious — the presumptions of constitutionality or regularity do not apply to the Executive and Legislative departments in a Section 18 proceeding. These presumptions

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6 *J.* Caguioa, Dissenting Opinion, *Lagman v. Medialdea (Resolution)*, G.R. Nos. 231658, 231771 & 231774, December 5, 2017.

7 *David v. Macapagal-Arroyo*, 522 Phil. 705, 781 (2006) [En Banc, Per J. Sandoval-Gutierrez].

8 149 Phil. 547 (1971) [Per C.J. Concepcion].

cannot operate to require the petitioners to prove a lack or insufficiency of factual basis or to produce countervailing evidence because this amounts to an undue shifting of the burden of proof absent in the language of the provision, and clearly was not the intendment of the framers. As well, while the Executive and Legislative departments cannot be compelled to produce evidence to prove the sufficiency of factual basis, these presumptions cannot operate to gain judicial approbation in the face of the refusal to adduce evidence, or presentation of insufficient evidence. For otherwise, the ruling that fixes the burden of proof upon the Executive and Legislative departments becomes illusory, and logically inconsistent: the Court cannot rule on the one hand that respondents in a Section 18 proceeding bear the burden of proof, and then on the other, rule that the presumptions of constitutionality and regularity apply. In short, the Court cannot say that the respondents must present evidence showing sufficient factual basis, but if they do not or cannot, the Court will presume that sufficient factual basis exists. To insist otherwise is to argue the absurd.

Indeed, if the Court needs to rely upon presumptions during a Section 18 review, then it only goes to show that the Executive and Legislative departments failed to show sufficient factual basis for the declaration or extension. Attempts at validation on this ground is equivalent to the Court excusing the political departments from complying with the positive requirement of Section 18.

The requirements for the extension of Proclamation 216 have not been met.

Again, the parameters for determining the sufficiency of the factual basis are now well-settled. As stated in *Lagman,* they are: (i) the existence of an actual rebellion or invasion; and (ii) that public safety necessitates such declaration or suspension. I find that the extension fails the test of sufficiency of factual basis, **as <u>both</u> these requirements <u>do not exist</u> to justify the extension**.

The existence of an actual rebellion was not established with sufficient evidence.

A valid declaration of martial law presupposes the existence of rebellion as a matter of fact and law. As defined in the Revised Penal Code (RPC),[9] the following elements are necessary for the crime of rebellion to exist:

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

First, that there be (a) a public uprising and (b) taking arms against the government; and

Second, that the purpose of the uprising or movement is either (a) to remove from the allegiance to said 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 or prerogatives.

Simplified, the elements of rebellion are reducible to (i) an overt act of armed public uprising and (ii) a specific purpose. Both elements must concur and be proved independently of each other, as explained by the Court in *People v. Lovedioro*[10]:

> From the foregoing, it is plainly obvious that it is not enough that the overt acts of rebellion are duly proven. Both purpose and overt acts are essential components of the crimes. With either of these elements wanting, the crime of rebellion legally does not exist. In fact, even in cases where the act complained of were committed simultaneously with or in the course of the rebellion, if the killing, robbing, or etc., were accomplished for private purposes or profit, without any political motivation, it has been held that the crime would be separately punishable as a common crime and would not be absorbed by the crime rebellion.[11]

Based on the foregoing standards, the point of inquiry therefore is whether the Congress had sufficient factual basis to conclude that rebellion persists — that the concurrence of the elements of rebellion obtaining during the time of the declaration still exists — thus justifying the extension of the proclamation of martial law. Necessarily, the relevant window of time to be considered is shortly before the Congress' receipt of the President's Letter dated December 8, 2017.

i. The element of an armed public uprising no longer exists

My dissent is largely premised on a simple fact: there is no more armed public uprising — thus, it cannot be said that the rebellion necessitating the declaration persists. In this regard, a review of the key evidence is in order.

a. Letter dated December 8, 2017 (Subject Letter) and Resolution of Both Houses No. 4 dated December 13, 2017 (Joint Resolution)

In the Subject Letter that eventually formed the basis of the Joint Resolution, the narration of facts palpably demonstrates that the armed

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[10] 320 Phil. 481 (1995).
[11] Id. at 489.

public uprising which necessitated the issuance of Proclamation No. 216 **had already been subdued by government forces**:

> **I am pleased to inform the Congress that during the Martial Law period as extended in Mindanao, the Armed Forces of the Philippines (AFP) has achieved remarkable progress in putting the rebellion under control.** General Rey Leonardo Guerrero, AFP Chief of Staff and Martial Law Implementor, has reported that a total of nine hundred twenty (920) DAESH-inspired fighters, including their known leaders, have been neutralized. **Clearing of the main battle area in Marawi City was fast-tracked**, with at least one hundred thirty-nine (139) terrorists arrested, of which sixty-one (61) have been criminally charged. **All these hastened the liberation of Marawi City on 17 October 2017, and paved the way for the initiation of efforts for the rehabilitation and reconstruction of the city**.
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> On 04 December 2017 I received a letter from Secretary of National Defense Delfin N. Lorenzana, as Martial Law Administrator, stating that "based on current security assessment made by the Chief of Staff, Armed Forces of the Philippines, the undersigned recommends the extension of Martial Law for another twelve (12) months or one (1) year beginning January 1, 2018 until December 31, 2018 covering the whole island of Mindanao 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** x x x." A copy of Secretary Lorenzana's letter (together with a copy of the letter of AFP Chief Guerrero) is attached for your convenient reference.
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> The security assessment submitted by the AFP, supported by a similar assessment by the Philippine National Police (PNP), highlights certain essential facts that I, as Commander-in-Chief of all armed forces of the Philippines, have personal knowledge of.
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> 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-large and, in all probability, are **presently regrouping** and **consolidating their forces.**
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> 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.
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> 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 Southeast Asia.
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> Third, the Bangsamoro Islamic Freedom Fighters (BIFF) continue to defy the government by perpetrating at least fifteen (15) violent incidents during the Martial Law period in Maguindanao and North Cotabato. For this year, the BIFF has initiated at least eighty-nine (89) violent incidents, mostly harassments and roadside bombings against government troops.
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> 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.
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> 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 acts against innocent civilians and private entities, as well as guerilla 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. [12] (Emphasis supplied)

Based on the contents of the Subject Letter, its plain import is that: (i) the rebellion that spawned Proclamation No. 216 is already "under control" as over 1,000 DAESH-inspired fighters have either been killed in combat or arrested; (ii) Marawi has been liberated; (iii) reconstruction and rehabilitation of Marawi is already underway; and (iv) the rebel groups have not yet been "totally eradicated" as there are still "remnants" remaining.

These claims are made in the face of statements made a month or two prior to this request for extension by key military and government officials in the media that Marawi has been liberated;[13] that the Bangsamoro Islamic Freedom Fighters (BIFF) attacks had no connection to the Marawi siege;[14] and that military operations have ceased because there are no longer

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12 Letter dated December 8, 2017, Annex "C" of the Lagman Petition.

13 On October 17, 2017, President Duterte already declared that Marawi is free from "terrorist influence," as military operations continue to ensure that all terrorists have been flushed out. This declaration was made a day after Isnilon Hapilon and Omar Maute were killed. The military clarified that the war is not yet over but it will only take a "matter of days." Article retrieved from CNN Philippines: <http://cnnphilippines.com/news/2017/10/17/Marawi-liberation-Duterte.html.>

14 In June 2017, both Malacañang and AFP claimed that the BIFF attack in Pigkawayan, North Cotabato during that time had no connection to the rebellion in Marawi. Presidential spokesman Ernesto Abella dismissed the attack as a mere attempt to recover from more than two weeks of setbacks from ongoing military operations of the Army's 6th Infantry Division. Captain Arvin Encinas, Public Affairs Chief of the 6th Infantry Division said that they doubt the capability of the BIFF to proceed to areas far from central Mindanao to sow terror. Article retrieved from Philstar: <http://www.beta.philstar.com/headlines/2017/06/23/1713103/biff-attack-not-connected-marawi-siege-palace-military>.

militants in Marawi, and the remaining stragglers no longer affect the security in the area.[15] Interestingly, statements of military and government officials only took a turn and became consistent with the claims made in the Subject Letter at the start of 2018, after the filing of the consolidated petitions for review. Now there are warnings of a repeat of the siege,[16] and of a "continuing rebellion".[17]

Significantly, there is nothing in the Subject Letter that would show that the said rebellion has maintained or intensified in strength. On the contrary, the phrases "rebuild[ing] their organization," "presently regrouping and consolidating their forces," "radicalization/recruitment," "financial and logistical build-up," all connote that the armed public uprising had been quashed and that the rebel groups were recuperating or, at most, reduced to engaging in preparatory acts toward some unspecified end. As if removing all doubt, the Subject Letter is couched in the future tense as it states that the activities of the DAESH-inspired fighters "are geared towards the conduct of x x x armed public uprisings" and that the Turaifie Group is "planning to conduct bombings."

To state the obvious, to say that a rebel group is engaged in activities geared towards the conduct of an armed public uprising is to say that no armed public uprising is, as of yet, existing. As well, to claim, as the respondents do, that the commission of acts preparatory to an armed public uprising *a priori* constitutes an actual rebellion is an argument in a circle. It is illogical and completely fails to persuade.

While it is true that rebellion is characterized as a "continuing offense," which constitutes a series of repeated acts,[18] it is equally true that

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[15] On October 23, 2017, DND Secretary Lorenzana announced the termination of all combat operations against Daesh-inspired Maute-ISIS group in Marawi after the military killed the last remaining local and foreign terrorists in the city. He said that there are no more militants in Marawi City. Article retrieved from CNN Philippines: <http://cnnphilippines.com/news/2017/10/23/Marawi-crisis.html>.

On November 3, 2017, Major Gen. Restituto Padilla, AFP spokesperson, in a press briefing held in the Palace insisted that there was no premature declaration of Marawi City's liberation from terrorists despite the presence of a small number of stragglers in the war-torn city. He said that the declaration was made when the stragglers in Marawi no longer have bearing to the security in the area, "they are leaderless, they have no direction, they are merely fighting for survival." Article retrieved from Inquirer: <http://newsinfo.inquirer.net/942686/afp-no-premature-declaration-of-liberation-in-marawi-afp-marawi-padilla-stragglers>.

[16] On January 8, 2018, Secretary of National Defense (SND) Lorenzana ordered the troops to prepare for a repeat of the Marawi siege in "another city" in the Philippines. Article retrieved from Rappler: <https://www.rappler.com/nation/193155-lorenzana-warning-marawi-martial-law>.

SND Lorenzana said that rebellion remains in Mindanao and that martial law will be necessary to quell it. He also said that the main purpose of the extension is to eradicate the ISIS threat in the Philippines. Article retrieved from GMA: <http://www.gmanetwork.com/news/news/nation/638944/lorenzana-gov-t-verifying-report-on-presence-of-foreign-terrorists-in-mindanao/story/>.

[17] SND Lorenzana argued that there is a "continuing rebellion". He said that "[i]t is the belief of the armed forces and the police that there is a continuing reorganization of rebellious forces." Article retrieved from Rappler: <https://www.rappler.com/nation/193155-lorenzana-warning-marawi-martial-law>.

[18] Leonor D. Boado, NOTES AND CASES ON THE REVISED PENAL CODE 422 (2012).

these overt acts must be anchored on a common ideological base[19] and committed in furtherance thereof. In the context of a martial law extension, this unity in purpose must be clearly ascertainable from the acts in question. Stated differently, there must be a clear showing that the acts cited as basis for the extension are in fact done in furtherance of the rebellion subject of the initial proclamation. Again, I echo the warning of Justice Feliciano in *Lacson v. Perez*[20] on this point:

> My final submission, is that, the doctrine of "continuing crimes," which has its own legitimate function to serve in our criminal law jurisprudence, cannot be invoked for weakening and dissolving the constitutional guarantee against warrantless arrest. **Where no overt acts comprising all or some of the elements of the offense charged are shown to have been committed by the person arrested without warrant, the "continuing crime" doctrine should not be used to dress up the pretense that a crime, begun or committed elsewhere, continued to be committed by the person arrested in the presence of the arresting officer. The capacity for mischief of such a utilization of the "continuing crimes" doctrine, is infinitely increased where the crime charged does not consist of unambiguous criminal acts with a definite beginning and end in time and space (such as the killing or wounding of a person or kidnapping and illegal detention or arson) but rather of such problematic offenses as membership in or affiliation with or becoming a member of, a subversive association or organization**. For in such cases, the overt constitutive acts may be morally neutral in themselves, and the unlawfulness of the acts a function of the aims or objectives of the organization involved. Note, for instance, the following acts which constitute *prima facie* evidence of "membership in any subversive association[.]"[21] (Emphasis and underscoring supplied.)

Justice Feliciano's observations find particular relevance in this Petition, for unlike in *Lagman* where an armed public uprising was shown to have taken place in Marawi City, no such circumstance has been shown to **persist** in Marawi City or *any* part of Mindanao. As I had stated in my *Dissent* in *Lagman*, the concept of rebellion as a continuing crime does not thereby extend the existence of actual rebellion wherever these offenders may be found, or automatically extend the public necessity for martial law based only on their presence in a certain locality.[22] The requirement of actual rebellion serves to **localize** the scope of martial law to cover only the areas of armed public uprising. Necessarily, martial law is confined to the place where there is actual rebellion, meaning, concurrence of the normative act of armed public uprising and the specific purpose.

Nevertheless, in the Joint Resolution, the Congress resolved to extend the proclamation of martial law over the entire Mindanao for the second

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19 See *Umil v. Ramos*, 279 Phil. 266, 294-295 (1991) [En Banc, Per Curiam].

20 *Lacson v. Perez*, 410 Phil. 78 (2001) [En Banc, Per J. Melo].

21 *J.* Feliciano, Concurring and Dissenting Opinion, *Lacson v. Perez*, id. at 109.

22 *J.* Caguioa, Dissenting Opinion, *Lagman v. Medialdea*, G.R. Nos. 231658, 231771 & 231774, July 4, 2017, pp. 20-21.

time, based essentially on the same set of facts set forth in the Subject Letter. Thus:

> 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 guerilla 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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> x x x x
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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; x x x[23] (Emphasis supplied)

It is not unusual – as it is, in fact, expected – that a defeated army will have its own share of survivors. Our own colonial history bears witness to this fact. Hence, that some enemy fighters remain alive does not mean that a battle has not been won. In this case, to require first the "total eradication" of rebel groups before a rebellion can be considered quelled goes against plain logic and human experience. Meaning to say, the rebels' survival and the concomitant perpetuation of their ideology do not *ipso facto* mean that there is still an armed public uprising. And where there is no more armed public uprising, there can be no rebellion persisting as contemplated in the Constitution.

Respondents attempt to cover up this gaping hole by extending, through some legal fiction, the rebellion subject of *Lagman* to the present case. Using the Court's declaration in *Lagman* that actual rebellion existed in Mindanao, respondents claim that the issue of whether rebellion still

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[23] Resolution of Both Houses No. 4 dated December 13, 2017.

exists should have already been "laid to rest."[24] In effect, respondents are telling the Court that the armed public uprising then existing during the **first** declaration of martial law on May 23, 2017 still persists, purportedly on the basis of the principle of conclusiveness of judgment. This is egregious error.

As pointedly discussed in the *ponencia*, with which I fully agree, the issue in the earlier *Lagman* case refers to the existence of a state of rebellion that would call for the President's initial declaration of martial law, while in this case, the issue refers to the persistence of the same rebellion that would justify the extension of martial law by the Congress. Moreover, given the nature of an armed public uprising, it follows that the Court's judgment on the sufficiency of factual basis for the declaration of martial law is transitory[25] and relevant only to the state of affairs during that specific period in time.

b. Presentation of Respondents during the Oral Arguments held on January 17, 2018

Among the data presented by respondents are lists of violent incidents in Mindanao. It must be stressed, however, that most of the data presented are **irrelevant** for the simple reason that most of the attacks listed occurred during periods irrelevant to the controversy at hand. Evidence, to be admissible, must be relevant to the fact in issue, that is, it must have a relation to the fact in issue as to induce belief in its existence or non-existence.[26]

Again, the relevant window of time to be considered is shortly before the Congress' receipt of the President's letter dated December 8, 2017. Thus, events that took place: (i) prior to the declaration of martial law on May 23, 2017 being the set of facts that the President considered when he issued Proclamation No. 216; and (ii) the intervening period from May 23, 2017 to July 18, 2017, which is when the President requested a first extension from Congress and which in turn is the supposed set of facts that Congress considered when it extended Proclamation No. 216 until December 31, 2017 are irrelevant for the purpose of showing that rebellion persists from the time martial law was first declared and extended.

Synthesizing the data, therefore, from the time Marawi was declared liberated on October 17, 2017, only seven (7) BIFF-initiated violent incidents were reported, all occurring within the Province of Maguindanao. The same can be said of the "Abu Sayyaf Rebel Group List of Violent Activities," which reported all incidents beginning January 6, 2017 until December 24, 2017. Only five (5) ASG-related incidents were reported

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[24] Memorandum for Respondents, p. 38.

[25] Fr. Bernas, during the deliberations of the Constitutional Commission. II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 494 (1986).

[26] *Herrera v. Alba*, 499 Phil. 185, 202 (2005) [First Division, Per J. Carpio].

between October 17, 2017 (when Marawi was liberated) until December 13, 2017.

To my mind, what stands out from the foregoing data is the apparent pattern of violence in Mindanao **even before** the "Marawi Siege." **This glaring fact, in effect, dilutes respondents' claim that the incidents of violence following the declaration of martial law was in pursuance of the actual rebellion in *Lagman*.** Hence, without more, respondents' evidence remains ambiguous, to say the least.

Meanwhile, without delving into specifics, respondents also introduced a list of pending criminal cases for rebellion. However, a cursory reading of the list would reveal that the most recent development was the issuance of a Resolution dated **July 27, 2017**, or almost three (3) months before Marawi's liberation, finding probable cause to indict several respondents for the crime of rebellion. Clearly, this specie of evidence is irrelevant in the Congress' determination of whether there is sufficient factual basis to extend martial law from beyond its first extension of until December 31, 2017.

In the same vein, the list of "Arrested Personalities" provided by respondents is likewise of no consequence. As clearly stated in its heading, the said list only covers arrests "as of 23 October 2017," or a few days after Marawi's liberation, a date that is too far removed from the Congress' deliberation leading to the Joint Resolution.

All things considered, I am fully convinced that respondents have failed to establish the persistence of an actual rebellion as a constitutional requirement for the extension of martial law. While they argue that the rebellion in *Lagman* was still persisting at the time the Joint Resolution was issued, the evidence and their own admissions say otherwise — that is — that the armed public uprising has already ceased. Respondents can no longer resurrect what the law considers dead.

ii. *The specific purpose*

Following *Lovedioro*,[27] it must be proved that the armed public uprising was for any of the purposes enumerated in Article 134 of the RPC. Specific purpose is akin to intent, the existence of which, being a state of the mind, is proven by overt acts of the accused.[28]

Proceeding from the above discussion, the data in the presentation of respondents during the Oral Arguments held on January 17, 2018 failed to take into account the purpose for such violent incidents. By merely listing attacks made by certain armed groups, respondents cannot summarily

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[27] Supra note 10.

[28] See *Venturina v. Sandiganbayan*, 271 Phil. 33, 39 (1991) [En Banc, Per J. Fernan].

conclude that the same are geared towards the accomplishment of the purposes of rebellion under the RPC. Absent any more data indicating purpose, the Court cannot, without violating the standards of the Constitution, rely on surmises and hasty conclusions.

To illustrate, the incidents are described as "IED attack," "attack," "grenade explosion," "kidnapping," "harassment," which are all highly generic terms, making it impossible to determine intent. Even the targets of these attacks were not supplied. At most, only the data with respect to the pending criminal cases are competent to prove intent as there was already a finding of probable cause for the crime of rebellion. However, as already discussed above, the said information is inconsequential and could not have been used by Congress to determine the necessity of extending martial law.

Another point. The *ponencia* cites as basis for its conclusion that the rebellion persists is the reported increase in manpower of the "remnants" of the rebel groups. I submit, however, that respondents were unable to prove the component of specific purpose due to their own admissions to the contrary. As quoted at length in the *ponencia*:

> After the successful Marawi Operation, the Basilan-based ASG is left with 74 members; the Maute Group with 30 members; the Maguid Group has 11; and the Turaifie Group has 22 members with a total of 166 firearms.
>
> However, **manpower increased by more or less 400**, with almost the same strength that initially stormed Marawi City, through clandestine and decentralized recruitment of the Daesh-inspired groups at their respective areas of concentration.
>
> ASG Basilan-based recruited more or less **43** new members in Basilan; more or less **250** by the Maute Group in the Lanao provinces; **37** by the Maguid Group in Sarangani and Sultan Kudarat, and more or less **70** by the Turaifie Group in Maguindanao. **These newly recruited personalities were motivated by clannish culture as they are relatives of terrorist personalities; revenge for their killed relatives/parents during the Marawi operations; financial gain as new recruits were given an amount ranging from PhP15,000.00 to 50,000.00; and, as radicalized converts.**
>
> These newly recruited members are undergoing trainings in tactics, 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.[29] (Emphasis supplied)

As admitted by respondents themselves, the motivations of (i) clannish culture, (ii) revenge for their killed relatives, and (iii) financial gain, are **not** among the purposes contemplated in the RPC, which are, to repeat: (a) to remove from the allegiance to said 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 or prerogatives.

I also submit that the reliance of the *ponencia* on the atrocities committed by the New People's Army (NPA) in extending martial law stands on shaky ground. The Subject Letter reads in part:

> 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 acts 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 (KIA) 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.
>
> 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 ₱2.2 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 ₱1.85 billion and ₱109 million, respectively. (Emphasis supplied)

The Constitution cannot be any clearer: the Congress may extend the President's proclamation of martial law if **the same** rebellion necessitating such proclamation shall **persist**. However, despite the express parameters of

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[29] *Ponencia*, pp. 41-42, citing AFP's "briefing" Narrative (January 17, 2017 Oral Arguments), pp. 6-7.

Section 18, the *ponencia* finds no error in the inclusion of the NPA in the Subject Letter as basis for the extension. **Indeed, it is incredible how a "decades-long rebellion" can be used as basis for extending Martial Law triggered by a rebellion that took place only months ago, especially considering that both movements were mounted by different groups inspired by distinct ideologies.**

If there is indeed an actual rebellion by the NPA as contemplated in Section 18, it must be covered by a new declaration.

In this scenario espoused by the *ponencia*, violent attacks by different armed groups could easily form the basis of an endless chain of extensions, so long as there are "overlaps" in the attacks. To this end, the *ponencia* is accommodating practical concerns over the clear mandate of the country's fundamental law. This precedent dangerously supports the theoretical possibility of perpetual martial law. This precedent dangerously suggests a perpetual violation of people's Constitutional rights. As well, to anchor the Court's review to the fallback position that the "government can lift the state of martial law once actual rebellion no longer persists and that public safety is amply secured" is to abdicate the duty of the Court to determine for itself the sufficiency of factual basis for the extension.

Likewise, following the discussion above, the factual narration in the Subject Letter presented is highly ambiguous, if not amorphous.

First, the timeline of the violent incidents is unclear as the information merely reflects the total number of the atrocities for "this year," which is the entire 2017. Again, these figures do not present an accurate picture because they include incidents already relied upon for the initial declaration and the first extension, and for that reason, are far-removed from the question of persistence of rebellion when Congress was deliberating on the second extension of martial law.

Second, some details in the Subject Letter strongly negate rebellion as the attacks were described as "terrorist acts against innocent civilians and private entities," and "arson incidents x x x targeting businesses and private establishments." Needless to state, terrorist acts and destruction of property, no matter how grave, are for entirely different ends than that of rebellion under Article 134. In fact, these and analogous factual bases have been relied upon by the Executive when it called out the armed forces in Proclamation No. 55, s. 2016,[30] without any showing that there was an escalation of violence that necessitated the extension.

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[30] **WHEREAS**, Mindanao has had a long and complex history of lawless violence perpetrated by private armies and local warlords, bandits and criminal syndicates, terrorist groups, and religious extremists; **WHEREAS**, in recent months, there has been a spate of violent and lawless acts across many parts of Mindanao, including abductions, hostage-takings and murder of innocent civilians, bombing of power

Third, the claim of "intensified" rebellion of the NPA is vague in light of the "decades-long rebellion" already existing. Considering the known fact of protracted violence in different areas of Mindanao, the Subject Letter provides no standard by which Congress, and consequently, this Court, could determine whether indeed there is a considerable rise in violent incidents that make martial law a necessity. Without such standard, Congress will be left to guesswork and blind adherence to the word of the President.

All told, weighing the totality of evidence adduced by respondents, I find that there is insufficient factual basis to justify an extension of martial law.

iii. *The evidence suggests a mere threat of rebellion*

The foregoing discussion does not mean, however, that I am turning a blind eye to the situation in Mindanao. The facts, as they stand, while falling short of establishing an existing rebellion, indicate a threat thereof.

However, under the framework of our present Constitution, it is only in cases of an **actual** rebellion or insurrection that the President may, when public safety requires it, place the Philippines or any part thereof, under martial law. The threat of a rebellion, no matter how imminent, cannot be a ground to declare martial law.[31]

The intent of the framers of the Constitution to limit the President's otherwise plenary power only to cases of actual rebellion is discernible from the deliberations of the Constitutional Commission of 1986, as cited by the Court in *Lagman v. Medialdea*[32]:

> MR. NATIVIDAD. First and foremost, we agree with the Commissioner's thesis that in the first imposition of martial law there is no need for concurrence of the majority of the Members of Congress because the provision says "in case of actual invasion or rebellion." If there is

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transmission facilities, highway robberies and extortions, attacks on military outposts, assassinations of media people and mass jailbreaks;
WHEREAS, the valiant efforts of our police and armed forced to quell this armed lawlessness have been met with stiff resistance, resulting in several casualties on the part of government forces, the most recent of which was the death of 15 soldiers in a skirmish with the Abu Sayyaf Group in Patikul, Sulu on 29 August 2016;
WHEREAS, on the night of 2 September 2016, at least 14 people were killed and 67 others were seriously injured in a bombing incident in a night market in Davao City, perpetrated by still unidentified lawless elements;
WHEREAS, the foregoing acts of violence exhibit the audacity and propensity of these armed lawless groups to defy the rule of law, sow anarchy, and sabotage the government's economic development and peace efforts;
WHEREAS, based on government intelligence reports, there exist credible threats of further terror attacks and other similar acts of violence by lawless elements in other parts of the country, including the metropolitan areas;

31 *Lagman v. Medialdea*, supra note 2.

32 *Lagman v. Medialdea*, supra note 2, at 36-37, 52.

> actual invasion and rebellion, as Commissioner Crispino de Castro said, there is a need for immediate response because there is an attack. Second, the fact of securing a concurrence may be impractical because the roads might be blocked or barricaded. x x x So the requirement of an initial concurrence of the majority of all Members of the Congress in case of an invasion or rebellion might be impractical as I can see it.
>
> Second, Section 15 states that the Congress may revoke the declaration or lift the suspension.
>
> And third, the matter of declaring martial law is already a justiciable question and no longer a political one in that it is subject to judicial review at any point in time. So on that basis, I agree that there is no need for concurrence as a prerequisite to declare martial law or to suspend the privilege of the writ of *habeas corpus*.[33]
>
> x x x x
>
> MR. MONSOD. This situation arises in cases of invasion or rebellion. And in previous interpellations regarding this phrase, even during the discussions on the Bill of Rights, as I understand it, the interpretation is a situation of actual invasion or rebellion. In these situations, the President has to act quickly. Secondly, this declaration has a time fuse. It is only good for a maximum of 60 days. At the end of 60 days, it automatically terminates. Thirdly, the right of the judiciary to inquire into the sufficiency of the factual basis of the proclamation always exists, even during those first 60 days.[34]
>
> x x x x
>
> MR. DE LOS REYES. As I see it now, the Committee envisions actual rebellion and no longer imminent rebellion. Does the Committee mean that there should be actual shooting or actual attack on the legislature or Malacañang, for example? Let us take for example a contemporary event — this Manila Hotel incident, everybody knows what happened. Would the Committee consider that an actual act of rebellion?
>
> MR. REGALADO. If we consider the definition of rebellion under Articles 134 and 135 of the Revised Penal Code, that presupposes an actual assemblage of men in an armed public uprising for the purposes mentioned in Article 134 and by the means employed under Article 135. x x x[35]

Meanwhile, in *Integrated Bar of the Philippines v. Zamora,*[36] the Court cited the following exchange:

> FR. BERNAS. It will not make any difference. I may add that there is a graduated power of the President as Commander-in-Chief. First, he can call out such Armed Forces as may be necessary to suppress lawless violence; then he can suspend the privilege of the writ of *habeas corpus*, then he can impose martial law. This is a graduated sequence.

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33 II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 470 (1986).
34 Id. at 476-477.
35 Id. at 412.
36 Supra note 5, at 642-643.

When he judges that it is necessary to impose martial law or suspend the privilege of the writ of *habeas corpus*, his judgment is subject to review. We are making it subject to review by the Supreme Court and subject to concurrence by the National Assembly. But when he exercises this lesser power of calling on the Armed Forces, when he says it is necessary, it is my opinion that his judgment cannot be reviewed by anybody.

x x x x

FR. BERNAS. Let me just add that when we only have imminent danger, the matter can be handled by the first sentence: "The President . . . may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion." So we feel that that is sufficient for handling imminent danger.

MR. DE LOS REYES. So actually, if a President feels that there is imminent danger of invasion or rebellion, instead of imposing martial law or suspending the writ of *habeas corpus*, he must necessarily have to call the Armed Forces of the Philippines as their Commander-in-Chief. Is that the idea?

MR. REGALADO. That does not require any concurrence by the legislature nor is it subject to judicial review.[37]

x x x x

MR. CONCEPCION. **The elimination of the phrase "IN CASE OF IMMINENT DANGER THEREOF" is due to the fact that the President may call the Armed Forces to prevent or suppress invasion, rebellion or insurrection. That dispenses with the need of suspending the privilege of the writ of *habeas corpus*.** References have been made to the 1935 and 1973 Constitutions. The 1935 Constitution was based on the provisions of the Jones Law of 1916 and the Philippine Bill of 1902 which granted the American Governor General, as representative of the government of the United States, the right to avail of the suspension of the privilege of the writ of *habeas corpus* or the proclamation of martial law in the event of imminent danger. And President Quezon, when the 1935 Constitution was in the process of being drafted, claimed that he should not be denied a right given to the American Governor General as if he were less than the American Governor General. But he overlooked the fact that under the Jones Law and the Philippine Bill of 1902, we were colonies of the United States, so the Governor General was given an authority, on behalf of the sovereign, over the territory under the sovereignty of the United States. Now, there is no more reason for the inclusion of the phrase "OR IMMINENT DANGER THEREOF" in connection with the writ of *habeas corpus*. As a matter of fact, the very Constitution of the United States does not mention "imminent danger." **In lieu of that, there is a provision on the authority of the President as Commander-in-Chief to call the Armed Forces to prevent or suppress rebellion or invasion and, therefore, "imminent danger" is already included there.**[38] (Emphasis supplied)

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[37] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 409, 412 (1986).

[38] I RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 773-774 (1986).

The demonstrable capacity to launch a rebellion, absent an overt act in pursuance thereof, is **not** actual rebellion. As well, it is only if the actual rebellion or insurrection persists that the declaration of martial law may be extended. The evidence presented by the respondents do not sufficiently prove the existence or persistence of an actual rebellion. It is in this light that I register my dissent to the finding of sufficiency of factual basis as to the first requirement.

There is no evidence to show that the requirements of public safety necessitate the continued implementation of Proclamation No. 216 in any part of Mindanao.

Even assuming that the evidence presented by the respondents constitute sufficient proof of the existence of rebellion, I emphasize, as I did in my *Dissent* in *Lagman*,[39] that the existence of actual rebellion does not, on its own, justify the declaration of martial law or suspension of the privilege of the writ if there is no showing that it is necessary to ensure public safety.[40]

To pretend that the analysis of the question before the Court turns only upon the fact of the existence of the Maute group, the NPA, the BIFF, Islamic fundamentalists and other armed groups that are on the loose, and their on-going plans to regroup and perceived capacity to sow terror upon our people in the future, is to deceive.

As early as *Lansang*, the Court already recognized that the magnitude of the rebellion has a bearing on the second condition essential to the validity of the suspension of the privilege — in this case, in the extension of the declaration of martial law — namely, that it be required by public safety.[41]

On this score, I maintain that the President's exercise of extraordinary powers must be measured against the scale of necessity and calibrated accordingly. The Court's determination of insufficiency of factual basis carries with it the necessary implication that the conditions for the use of such extraordinary power do not exist. In making such a finding, the Court does not thereby assume to do the calibration in the President's stead, but only checks the said calibration in hindsight, as Section 18 empowers and mandates the Court to do.

As correctly observed by petitioner Rosales, necessity, in the context of martial law, is dictated not merely by the gravity of the rebellion sought to

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39 *J.* Caguioa, Dissenting Opinion, *Lagman v. Medialdea*, supra note 22.

40 Id. at 17.

41 *Lansang v. Garcia*, supra note 8, at 592.

be quelled, but also the necessity of martial law to address the exigencies of a given situation.[42]

The Constitutional deliberations elucidate:

> MR. DE LOS REYES. But is not the suspension of the privilege of the writ of *habeas corpus* and the imposition of martial law more of the preparatory steps before the President should call the Armed Forces of the Philippines as Commander-in-Chief? In other words, before calling the Armed Forces of the Philippines should he not take the preparatory step of suspending the privilege of the writ of *habeas corpus* or imposing martial law?
>
> MR. REGALADO. As a matter of fact, the former President outlined the steps and we have put them here as follows: (1) When it is only imminent danger, although, of course, he did not use that term, he can already call out the Armed Forces just to prevent or suppress violence; (2) if the situation has worsened and there is a need for stronger measures, then aside from merely calling out the Armed Forces he goes into the suspension of the privilege of the writ; (3) but if both measures calling out the Armed Forces and the suspension of the privilege of the writ still prove unavailing in the face of developments and exacerbated situation, this time he goes to the ultimate which would be martial law.
>
> MR. DE LOS REYES. **As I see it now, the Committee envisions actual rebellion and no longer imminent rebellion. Does the Committee mean that there should be actual shooting or actual attack on the legislature or Malacañang, for example?** Let us take for example a contemporary event — this Manila Hotel incident everybody knows what happened. Would the Committee consider that an actual act of rebellion?
>
> MR. REGALADO. **If we consider the definition of rebellion under Articles 134 and 135 of the Revised Penal Code, that presupposes an actual assemblage of men in an armed public uprising for the purposes mentioned in Article 134 and by the means employed under Article 135.** x x x
>
> Commissioner Bernas would like to add something.
>
> FR. BERNAS. Besides, it is not enough that there is actual rebellion. Even if we will suppose for instance that the Manila Hotel incident was an actual rebellion, that by itself would not justify the imposition of martial law or the suspension of the privilege of the writ because the Constitution further says: "when the public safety requires it." **So, even if there is a rebellion but the rebellion can be handled and public safety can be protected without imposing martial law or suspending the privilege of the writ, the President need not. Therefore, even if we consider that a rebellion, clearly, it was something which did not call for imposition of martial law.**[43] (Emphasis and underscoring supplied.)

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[42] Memorandum for Petitioner Rosales, p. 17.

[43] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 412 (1986).

Lagman instructs that "necessity" should be understood as a standard that proceeds from the traditional concept of martial law under American Jurisprudence, that is, **martial law in a theater of war.**[44] In turn, the conditions existing in a theater of war were clearly identified during the Constitutional deliberations, thus:

> MR. FOZ: x x x
>
> May I go to the next question? This is about the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* on page 7, on the second to the last paragraph of Section 15. Is it possible to delete the clause "where civil courts are able to function"? In the earlier portion of the same sentence, it says, "nor supplant the functioning of the civil courts . . ." I was just thinking that if this provision states the effects of the declaration of martial law — one of which is that it does not supplant the functioning of the civil courts — I cannot see how civil courts would be unable to function even in a state of martial law.
>
> x x x x
>
> FR. BERNAS. This phrase was precisely put here because we have clarified the meaning of martial law; meaning, limiting it to martial law as it has existed in the jurisprudence in international law, that it is a law for the theater of war. **In a theater of war, civil courts are unable to function. If in the actual theater of war civil courts, in fact, are unable to function, then the military commander is authorized to give jurisdiction even over civilians to military courts precisely because the civil courts are closed in that area.** But in the general area where the civil courts are opened then in no case can the military courts be given jurisdiction over civilians. **This is in reference to a theater of war where the civil courts, in fact, are unable to function.**
>
> MR. FOZ. **It is a state of things brought about by the realities of the situation in that specified critical area.**
>
> FR. BERNAS. That is correct.[45] (Emphasis supplied.)

During the Oral Arguments, Commissioner Monsod further clarified the concept of necessity as a fixed standard, thus:

> **CHIEF JUSTICE SERENO:**
> x x x Assuming there's rebellion or invasion done. The second part how do we interpret when the public safety requires it? Requires it means public safety requires the imposition of martial law, i.e. [martial law] is necessary?
>
> x x x x
>
> **CHIEF JUSTICE SERENO:**
> I'm just about the logical nexus.
>
> x x x x

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[44] *Lagman v. Medialdea*, supra note 2.

[45] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 401-402 (1986).

CHIEF JUSTICE SERENO:

Meaning it is not [that] rebellion always demands, always threatens public safety. Because in the example given by Justice Carpio, if only two people rebel how can public safety be endangered. So there can be rebellion without [the] public [being] endangered. So the proper breeding of the second requirement is not that rebellion, rebellion is not required to be present (sic). It must always be present but (sic) that public safety requires the imposition of martial law. **In other words, you will still go back to the idea of the need to calibrate the powers sought to be exercised by the President.**

x x x x

CHIEF JUSTICE SERENO:

x x x I was thinking that the proper interpretation is that rebellion is there, and therefore, public safety requires the imposition of martial law, rather the public safety requires the imposition of martial law in a situation where in the first place rebellion or invasion has been already established. You get me? **In other words, the calibration of the power is defined by the need to protect the public.**

x x x x

CHIEF JUSTICE SERENO:

x x x May I request Commissioner Monsod please?

Chairman, can you tell me whether the better interpretation is that public safety requires it, public safety requires the imposition of martial law to address the rebellion or the invasion?

ATTY. MONSOD:

Yes, Your Honor.

CHIEF JUSTICE SERENO:

Is that the correct interpretation?

ATTY. MONSOD:

Yes. It's part, there has to be [a] condition of public safety requires it. Now, that includes, in other words, the citizens are exposed to all the dangers to their health or safety or security. It even includes the absence of social services. It includes the police protection is no longer there, the military steps in. And that's the situation that is contemplated. It is a lack of government services whether protection of the police help (sic) and so on of the citizens and criminality and all that. That's when the military comes in.

x x x x

ATTY. MONSOD:

That's the standard.

CHIEF JUSTICE SERENO:

[Whenever you] talk about necessity, you always must x x x must always have a calibration exercise.

ATTY. MONSOD:

Yes.

CHIEF JUSTICE SERENO:
Because you are already talking of necessity, and of course, you measure.

ATTY. MONSOD:
Yes.

x x x x

CHIEF JUSTICE SERENO:
So, the quote in the doctrine, well in the part of the decision, quoting *[E]x-parte [M]illigan*, "is the martial law where the military has jurisdiction in a theater of war."

ATTY. MONSOD:
Yes.

CHIEF JUSTICE SERENO:
You still believe that still has a bit of relevance in the matter of necessity.

ATTY. MONSOD:
Yes.

CHIEF JUSTICE SERENO:
In other words, that *[E]x-parte [M]illigan* quotation was basically a definition of the necessity for the military presence and in fact, jurisdiction.

ATTY. MONSOD:
Yes, still necessity.[46]

The rationale behind the lofty standard of "necessity" is clear — the President is already equipped with sufficient powers to suppress acts of lawless violence, and even actual rebellion or invasion in a theater of war, through calling out the AFP to prevent or suppress such lawless violence. The necessity of martial law therefore requires a showing that it is necessary for the military to perform civilian governmental functions or acquire jurisdiction over civilians to ensure public safety.

This is consistent with my vote in *Lagman* wherein I found the existence of an actual rebellion but found that the requirement of public safety only necessitated the imposition of martial law over the areas of Lanao del Sur, Maguindanao, and Sulu, as areas intimately or inextricably connected to the armed uprising then existing in Marawi City.

Hence, I find as completely unfounded the assertion that the lifting of Proclamation No. 216 will render the Executive unable to meet the current situation in Mindanao.

As confirmed by Commissioner Bernas:

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[46] TSN, January 16, 2018, pp. 149-153.

> FR. BERNAS. **Let me just add that when we only have imminent danger, the matter can be handled by the first sentence: "The President . . . may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion." So we feel that that is sufficient for handling imminent danger**.
>
> MR. DE LOS REYES. So actually, if a President feels that there is imminent danger of invasion or rebellion, instead of imposing martial law or suspending the writ of *habeas corpus*, he must necessarily have to call the Armed Forces of the Philippines as their Commander-in-Chief. Is that the idea?
>
> MR. REGALADO. That does not require any concurrence by the legislature nor is it subject to judicial review.[47] (Emphasis and underscoring supplied)

The *ponencia* finds that the submissions of the respondents show that the continued implementation of martial law in Mindanao is necessary to protect public safety. As basis, the *ponencia* cites the following events and circumstances disclosed by the President and AFP:

> (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.
>
> (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, in Basilan, the Lanao Provinces, Sarangani, Sultan Kudarat and Maguindanao.
>
> (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.
>
> (d) 48 FTFs have joined said rebel groups and are acting as instructors to the recruits. 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.
>
> (e) In November 2017, 15 Indonesian and Malaysian DAESH-inspired FTFs entered Southern Philippines to augment the remnants of the Maguid group in Sarangani province. In December 2017, 16 Indonesian

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[47] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 412 (1986).

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.

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

(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." There were actually armed encounters with the remnants of said groups.

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

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

(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.

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

(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. Nine kidnap victims are still held in captivity.

(m) Hapilon's death fast-tracked the unification of the Sulu and Basilan-based ASG to achieve their 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.

(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 groups in vulnerable**

cities like Cagayan de Oro, Cotabato, Davao, General Santos, Iligan and Zamboanga.

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.

(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.

(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 guerilla fronts are in this region. Of the 14 provinces with active communist insurgency, 10 are in Mindanao. Furthermore, the communist rebels' Komisyon Mindanao (KOMMID) is now capable of sending augmentation forces, particularly "Party Cadres," in Northern Luzon.

(r) The hostilities initiated by the communist rebels have risen by 65% from 2016 to 2017 despite the peace talks. In 2017 alone, they perpetrated 422 atrocities in Mindanao, including ambush, raids, attacks, kidnapping, robbery, bombing, liquidation, landmine/IED attacks, arson and sabotage, that resulted in the death of 47 government forces and 31 civilians. An ambush in Bukidnon in November 2017 killed one PNP personnel, two civilians and a four-month old baby. 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.

(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.
>
> (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.[48] (Emphasis supplied.)

These events and circumstances, while worthy of severe condemnation, do not show the existence of an actual rebellion in a theater of war. **At most**, as I stressed earlier, these indicate the **threat** of imminent danger brought about by the reorganization, consolidation, recruitment and reinforcement activities, as well as isolated planned attacks undertaken by various armed groups.

Verily, **in the absence of an armed public uprising which imperils the operation of the civil government, a declaration of martial law or any extension thereof necessarily fails the test of sufficiency, as such absence negates not only the existence of an actual rebellion, but also refutes the respondents' assertion that said declaration or extension is necessitated by the requirements of public safety**. It is settled that the imminent danger of a rebellion, assuming one exists, cannot serve as sufficient basis for the proclamation of martial law; perforce, the threatened rebirth of a rebellion which the law considers dead cannot, with more reason, justify an extension thereof.

The continued implementation of martial law without sufficient basis constitutes a violation of due process.

There appears to be no right more fundamental in a modern democracy than the right to due process. In *White Light Corp. v. City of Manila*[49] *(White Light),* the Court explained how the concept of due process must be understood, thus:

> Due process evades a precise definition. **The purpose of the guaranty is to prevent arbitrary governmental encroachment against the life, liberty and property of individuals**. The due process guaranty serves as a protection against arbitrary regulation or seizure. Even corporations and partnerships are protected by the guaranty insofar as their property is concerned.
>
> The due process guaranty has traditionally been interpreted as imposing two related but distinct restrictions on government, "procedural

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48 *Ponencia,* pp. 50-54.

49 596 Phil. 444 (2009) [En Banc, Per J. Tinga].

> due process" and "substantive due process." Procedural due process refers to the procedures that the government must follow before it deprives a person of life, liberty, or property. Procedural due process concerns itself with government action adhering to the established process when it makes an intrusion into the private sphere. Examples range from the form of notice given to the level of formality of a hearing.
>
> If due process were confined solely to its procedural aspects, there would arise absurd situation of arbitrary government action, provided the proper formalities are followed. **Substantive due process completes the protection envisioned by the due process clause. It inquires whether the government has sufficient justification for depriving a person of life, liberty, or property**.
>
> The question of substantive due process, moreso than most other fields of law, has reflected dynamism in progressive legal thought tied with the expanded acceptance of fundamental freedoms. Police power, traditionally awesome as it may be, is now confronted with a more rigorous level of analysis before it can be upheld. The vitality though of constitutional due process has not been predicated on the frequency with which it has been utilized to achieve a liberal result for, after all, the libertarian ends should sometimes yield to the prerogatives of the State. Instead, the due process clause has acquired potency because of the sophisticated methodology that has emerged to determine the proper metes and bounds for its application.[50] (Emphasis supplied)

In essence, the right to due process had been specifically adopted by the framers of the Constitution to protect individual citizens from the abuses of government. The importance that the Constitution ascribes to the right to due process is clear. As well, the need to afford primacy to due process in the resolution of this Petition is evident, if not compelling.

To recall, martial law operates to grant the AFP jurisdiction over civilians when and where the civil government is unable to function as a consequence of an actual rebellion or invasion. As exhaustively discussed, the imposition of martial law operates as a matter of necessity.[51] The conditions necessary to authorize its imposition are not only fixed but also exacting, for the imposition of martial law constitutes an encroachment on the life, liberty and property of private individuals.

To me, this is the significance of this case: as earlier stated, the imposition of martial law in the absence of the exigencies justifying the same reduces such extraordinary power to a mere tool of convenience and expediency. The baseless imposition of martial law constitutes, in itself, a violation of substantive and procedural due process, as it effectively bypasses and renders nugatory the explicit conditions and limitations clearly spelled out in the Constitution for the protection of individual citizens.

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[50] Id. at 461-462.

[51] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 412 (1986).

The Court must disabuse itself of the notion that martial law is required to quell the rebellion, or to empower the military and the police to engage the lawless elements in Mindanao. The Executive is fully empowered to deploy the armed forces as necessary to suppress lawless violence, and even rebellion, whether actual or imminent, without martial law. Martial law is an emergency governance response that is directed **against the civilian population** — allowing the military to perform what are otherwise civilian government functions and vesting military jurisdiction over civilians.

It is through this lens that the Court should view the pressing question of whether or not there was sufficient basis to extend Martial Law.

To stress, the Court's function in a Section 18 review is to be an avenue for the restoration of the normal workings of government and the enjoyment of individual liberties should there be a showing of insufficient factual basis.[52] A ruling that sanctions the extension of martial law as a matter of expediency defeats this function and stands as a danger to public safety in itself, for it jeopardizes, for the sake of convenience, the fundamental freedoms guaranteed by the Bill of Rights — that from warrantless arrests and searches, without prior determination of probable cause.[53]

To be sure, what fans the flames of rebellion, whether a lasting peace is achievable in Mindanao, whether the military option is the way to address the violence in Mindanao — these are questions that can be debated *ad nauseum*. Who the so-called enemies of the Republic are and who and what their targets may be will certainly be the subject of endless speculation. At present, there are the Mautes, BIFFs, ASGs, NPAs, and other armed groups. There may be others which have not been identified by the military.

Without doubt, the threats to the country's internal and external peace and security are incessant and always present. Armed hostilities in all the islands of the country exist and will continue to exist. There is as well the specter of terrorism throughout the world.

And yet, in the face of all these, what should not be forgotten, overlooked or considered trivial is that the present Constitution has excised "imminent danger" from its martial law provision. What is required by the Constitution is actual rebellion or invasion for martial law to be declared or to persist. The respondents have not presented proof of actual rebellion, or any ongoing armed uprising between the government's armed forces and any of the so-called rebel groups, in any part of Mindanao. Even in Marawi City, the actual rebellion there no longer exists. To be sure, the

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[52] *J.* Caguioa, Dissenting Opinion, *Lagman v. Medialdea (Resolution),* supra note 6, at 8.
[53] *J.* Caguioa, Dissenting Opinion, *Lagman v. Medialdea*, supra note 22, at 22.

reconstruction and rehabilitation of Marawi is already underway. The respondents' proof, consisting of the presence of "remnants" of the Maute group that are carrying on recruitment and training of new forces, financial and logistical build-up, consolidation of forces, and isolated attacks, as well as the increase in the Basilan-based ASG's manpower with its newly recruited members undergoing trainings in tactics, marksmanships and bombing operations, may present an "imminent danger" situation — but they do not rise to meet the Constitution's conditions.

In the end, as the country grapples with all these conflicts, it cannot fall into the slippery slope of expediency as the standard with which to attempt to solve these problems. No matter how beneficial or preferable the psychic effects the state of martial law may have upon government officials and the population at large, it cannot be wielded in the absence of the conditions required by the Constitution for its imposition. In the end, the fundamental law that binds all citizens of this country is the Constitution — one that demands public safety and necessity as basis for curtailing fundamental Constitutional freedoms. That is what the Constitution mandates. That, in turn, points the Court to where its duty lies — to ensure that the true state of facts is made known, that is, that the rebellion has not persisted, and that public safety does not require the extension anymore.

ACCORDINGLY, I vote to **GRANT** the petitions in G.R. Nos. 235935, 236061, 236145, and 236155, and **DECLARE INVALID AND UNCONSTITUTIONAL** Joint Resolution No. 4 of the Senate and the House of Representatives dated December 13, 2017, for failure to comply with Section 18, Article VII of the 1987 Constitution.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice