

G.R. No. 243522 – REPRESENTATIVES EDCCEL C. LAGMAN, TOMASITO S. VILLARIN, TEDDY BRAWNER BAGUILAT JR., EDGAR R. ERICE, GARY C. ALEJANO, JOSE CHRISTOPHER Y. BELMONTE, AND ARLENE “KAKA” J. BAG-AO, *petitioners, versus* HON. SALVADOR C. MEDIALDEA, EXECUTIVE SECRETARY, HON. DELFIN N. LORENZANA, SECRETARY OF THE DEPARTMENT OF NATIONAL DEFENSE AND MARTIAL LAW ADMINISTRATOR, GEN. BENJAMIN MADRIGAL, JR., CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES, AND HON. BENJAMIN E. DIOKNO, SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT, AND CONGRESS OF THE PHILIPPINES, *respondents*.

G.R. No. 243677 – BAYAN MUNA PARTYLIST REPRESENTATIVE [C]ARLOS [I]SAGANI T. ZARATE, GABRIELA WOMENS PARTY REPRESENTATIVES EMERENCIANA A. DE JESUS AND ARLENE D. BROSAS, ANAKPAWIS REPRESENTATIVE ARIEL CASILAO, ACT TEACHERS PARTY REPRESENTATIVE ANTONIO L. TINIO AND FRANCE L. CASTRO, *petitioners, versus* PRESIDENT RODRIGO DUTERTE, CONGRESS OF THE PHILIPPINES, REPRESENTED BY SENATE PRESIDENT VICENTE C. SOTTO III AND SPEAKER GLORIA MACAPAGAL ARROYO, EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, DEFENSE SECRETARY DELFIN N. LORENZANA, ARMED FORCES CHIEF OF STAFF GENERAL BENJAMIN MADRIGAL, JR., PHILIPPINE NATIONAL POLICE DIRECTOR GENERAL OSCAR ALBAYALDE, *respondents*.

G.R. No. 243745 – CHRISTIAN S. MONSOD, RAY PAOLO J. SANTIAGO, NOLASCO RITZ LEE SANTOS III, MARIE HAZEL LAVITORIA, DOMINIC AMON LADEZA, XAMANTHA XOFIA A. SANTOS, *petitioners, versus* SENATE OF THE PHILIPPINES (REPRESENTED BY THE SENATE PRESIDENT), HOUSE OF REPRESENTATIVES (REPRESENTED BY THE SPEAKER OF THE HOUSE), EXECUTIVE SECRETARY SALVADOR MEDIALDEA, DEPARTMENT OF NATIONAL DEFENSE SECRETARY DELFIN LORENZANA, DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT SECRETARY EDUARDO M. AÑO, ARMED FORCES CHIEF OF STAFF GENERAL BENJAMIN MADRIGAL, JR., PHILIPPINE NATIONAL POLICE DIRECTOR GENERAL OSCAR ALBAYALDE, NATIONAL SECURITY ADVISER HERMOGENES C. ESPERON, *respondents*.

G.R. No. 243797 – RIUS VALLE, JHOSA MAE PALOMO, JEANY ROSE HAYAHAY, *petitioners, versus* THE SENATE OF THE PHILIPPINES, REPRESENTED BY THE SENATE PRESIDENT VICENTE C. SOTTO III, THE HOUSE OF REPRESENTATIVES,

REPRESENTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES GLORIA MACAPAGAL ARROYO, THE EXECUTIVE SECRETARY, THE SECRETARY OF NATIONAL DEFENSE, THE SECRETARY OF THE [DEPARTMENT OF THE] INTERIOR AND LOCAL GOVERNMENT, THE CHIEF OF STAFF, ARMED FORCES OF THE PHILIPPINES, THE DIRECTOR GENERAL, PHILIPPINE NATIONAL POLICE, AND ALL PERSONS ACTING UNDER THEIR CONTROL, DIRECTION, INSTRUCTION, AND/OR SUPERVISION, *respondents*.

Promulgated:

February 19, 2019

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SEPARATE CONCURRING OPINION

GESMUNDO, J.:

Again, before the Court are several petitions assailing the extension of the period of martial law and the suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao for one (1) more year, *i.e.* from January 1 to December 31, 2019 granted by Congress upon the request of the President.

As the Constitution remains supreme and ultimate, the Court will fervently abide by its duty to review the sufficiency of the factual basis for the extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus*. Time and again, the Court will serve as the penultimate safeguard on the powers of the two other co-equal branches of government.

For reasons discussed below, I vote to dismiss the petitions.

*The Constitutional power to
extend the period of martial
law and suspension of privilege
of writ of habeas corpus*

The 1987 Constitution grants the Congress of the Philippines (*Congress, for brevity*) the power to shorten or extend the President's proclamation of

martial law or suspension of the privilege of the writ of *habeas corpus*. Section 18, Article VII of the 1987 Constitution, in pertinent part, states:

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

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.¹ (emphasis supplied)

As discussed in *Lagman v. Pimentel III*,² Congress is given the constitutional authority to extend the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*. The provision does not specify the number of times Congress is allowed to approve an extension of such proclamation or suspension. Neither does the provision fix the period of the extension of the proclamation and suspension. It clearly gives Congress the authority to decide on its duration; thus, the provision stating that the extension shall be “for a period to be determined by the Congress.”³

Further, when approved by Congress, the extension of the proclamation or suspension, as described during the deliberations on the 1987 Constitution, becomes a “joint executive and legislative act” or a “collective judgment” of the President and Congress.⁴

Nevertheless, Sec. 18, Art. VII specifically establishes the limitations in the exercise of the congressional authority to extend such proclamation or suspension, to wit:

¹ 1987 CONSTITUTION, Art. VII, Sec. 18.

² G.R. Nos. 235935, 236061, 236145 & 236155, February 6, 2018.

³ Id.

⁴ Id.

1. That the extension should be upon the President's initiative;
2. That it should be grounded on the persistence of the invasion or rebellion and the demands of public safety; and
3. That it is subject to the Court's review of the sufficiency of its factual basis upon the petition of any citizen.⁵

Hence, these three (3) limitations must be present in any extension of the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*. Failure to comply with any of these limitations shall result to the invalidity and nullity of the extension of such proclamation and suspension.

The President initiated the extension

In this case, the extension of the proclamation and suspension was upon the initiative of the President. On December 4, 2018, Secretary Delfin Lorenzana of the Department of National Defense wrote a Letter⁶ addressed to President Rodrigo Duterte recommending the extension of Proclamation No. 216 from January 1, 2019 to December 31, 2019. Also, Armed Forces of the Philippines (AFP) Chief of Staff Carlito G. Galvez, Jr. (*Galvez*), wrote a similar Letter⁷ addressed to the President recommending the extension of said proclamation and suspension for another year.

In another Joint Letter⁸ issued by the AFP and the Philippine National Police (PNP), through AFP Chief Galvez and PNP Chief Oscar D. Albayalde, they recommended to the President another one-year extension of such proclamation and suspension citing compelling reasons based on the current security assessment.

Acting on those recommendation, on December 6, 2018, the President wrote a Letter⁹ addressed to both Houses of Congress, requesting that Congress initiate the further extension of such proclamation and suspension in Mindanao from January 1, 2019 to December 31, 2019. According to the President, "the security assessment submitted by the AFP and PNP highlights certain essential facts which indicate that rebellion still persists in Mindanao and that public safety requires the continuation of Martial Law in the whole

⁵ Id.

⁶ *Rollo*, G.R. No. 243522, Vol. 1, pp. 201-202.

⁷ Id. at 203-207.

⁸ Id. at 208-213.

⁹ Id. at 51-55.

of Mindanao.”¹⁰ It was also stated therein that several incidents support the assertion of the persisting and continuing rebellion in Mindanao.

The first limitation of the extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* has been complied with because the President initiated such extension when he wrote the December 6, 2018 letter to both Houses of Congress.

The extension of the proclamation and suspension is subject to the Court's review; probable cause as the quantum of proof

The third limitation is also complied with because the extension of such proclamation and suspension is currently the subject of the Court's review for the sufficiency of its factual basis.

Further, in *Lagman v. Medialdea*¹¹ it was explained that in determining the sufficiency of the factual basis in such petitions, the Court should consider whether the President is convinced that there is **probable cause** or evidence showing that, more likely than not, a rebellion was committed or is being committed, to wit:

In determining the existence of rebellion, the President only needs to convince himself that there is **probable cause or evidence showing that more likely than not a rebellion was committed or is being committed**. To require him to satisfy a higher standard of proof would restrict the exercise of his emergency powers. Along this line, Justice Carpio, in his Dissent in *Fortun v. President Macapagal-Arroyo*, concluded that the President needs only to satisfy probable cause as the standard of proof in determining the existence of either invasion or rebellion for purposes of declaring martial law, and that probable cause is the most reasonable, most practical and most expedient standard by which the President can fully ascertain the existence or non-existence of rebellion necessary for a declaration of martial law or suspension of the writ. This is because unlike other standards of proof, which, in order to be met, would require much from the President and therefore unduly restrain his exercise of emergency powers, the requirement of probable cause is much simpler. It merely necessitates an “average man [to weigh] the facts and circumstances without resorting to the calibration of the rules of evidence of which he has no technical knowledge. He [merely] relies on common sense [and] x x x needs only to rest on evidence showing that, more likely than not, a crime has been committed x x x by the accused.”¹² (emphasis supplied)

Verily, in reviewing the present petitions, the Court must always bear in mind that it must determine whether or not the President is convinced based

¹⁰ Id. at 53.

¹¹ G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1.

¹² Id. at 184.

on the quantum of proof of probable cause that, more likely than not, a rebellion was committed or is being committed.

Likewise, it was stated in *Lagman v. Medialdea* that while the Court's power is independent from Congress, its power is limited to the review of the sufficiency of factual basis.¹³ The Court considers only the information and data available to the President prior to or at the time of the declaration; it is not allowed to "undertake an independent investigation beyond the pleadings." On the other hand, Congress may take into consideration not only data available prior to, but likewise events supervening the declaration. Also, Congress could probe deeper and further; it can delve into the accuracy of the facts presented before it.¹⁴

In addition, the Court cannot require the absolute correctness of the facts relied on by the President due to the urgency of the situation, to wit:

In determining the sufficiency of the factual basis of the declaration and/or the suspension, the Court should look into the full complement or totality of the factual basis, and not piecemeal or individually. Neither should the Court expect absolute correctness of the facts stated in the proclamation and in the written Report as the President could not be expected to verify the accuracy and veracity of all facts reported to him due to the urgency of the situation. To require precision in the President's appreciation of facts would unduly burden him and therefore impede the process of his decision-making. Such a requirement will practically necessitate the President to be on the ground to confirm the correctness of the reports submitted to him within a period that only the circumstances obtaining would be able to dictate. Such a scenario, of course, would not only place the President in peril but would also defeat the very purpose of the grant of emergency powers upon him, that is, to borrow the words of Justice Antonio T. Carpio in *Fortun*, to "immediately put an end to the root cause of the emergency." Possibly, by the time the President is satisfied with the correctness of the facts in his possession, it would be too late in the day as the invasion or rebellion could have already escalated to a level that is hard, if not impossible, to curtail.¹⁵

In any case, the compliance with the second limitation under Sec. 18 of Art. VII – whether the extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* is grounded on the persistence of an invasion or rebellion and the demands of public safety – is the primordial issue that must be determined by the Court.

Concept of rebellion

Art. 134 of the Revised Penal Code (*RPC*) defines the crime of rebellion, *viz*:

¹³ Id. at 181-182.

¹⁴ Id. at 154-155.

¹⁵ Id. at 179-180.

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

Thus, the elements of the crime of rebellion are as follow:

1. That there be (a) public uprising, and (b) taking up arms against the Government; and
2. That the purpose of the uprising or movement is either: (a) to remove from the allegiance to said Government or its laws, the territory of the Philippines or any part thereof, or any body of land, naval or other armed forces or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers or prerogatives.¹⁶

On the other hand, Art. 135 of the RPC, as amended by Republic Act (R.A.) No. 6968,¹⁷ states the following means to commit the crime of rebellion and the penalties for different participations thereof:

Art. 135. *Penalty for rebellion, insurrection or coup d'etat.* — Any person who promotes, maintains, or heads rebellion or insurrection shall suffer the penalty of reclusion perpetua.

Any person merely participating or executing the commands of others in a rebellion shall suffer the penalty of reclusion temporal.

Any person who leads or in any manner directs or commands others to undertake a *coup d'etat* shall suffer the penalty of reclusion perpetua.

Any person in the government service who participates, or executes directions or commands of others in undertaking a *coup d'etat* shall suffer the penalty of prision mayor in its maximum period.

Any person not in the government service who participates, or in any manner supports, finances, abets or aids in undertaking a *coup d'etat* shall suffer the penalty of reclusion temporal in its maximum period.

When the rebellion, insurrection, or *coup d'etat* shall be under the command of unknown leaders, any person who in fact directed the others, spoke for them, signed receipts and other documents issued in their name, as performed similar acts, on behalf or the rebels shall be deemed a leader of such a rebellion, insurrection, or *coup d'etat*.

¹⁶ REVISED PENAL CODE, Art. 134.

¹⁷ An Act Punishing the Crime of Coup D'état by Amending Articles 134, 135 And 136 of Chapter One, Title Three of Act Numbered Thirty-Eight Hundred and Fifteen, Otherwise Known as the Revised Penal Code, and for Other Purposes, October 24, 1990.

In *People v. Hernandez, et al.*,¹⁸ the Court explained that in the crime of rebellion, there may be several acts committed such as: resort to arms, requisition of property and services, collection of taxes and contributions, restraint of liberty, damage to property, physical injuries and loss of life, in furtherance of the internal struggle. Nonetheless, there is only one crime of rebellion because said several acts were committed in furtherance of the purpose of rebellion, to wit:

One of the means by which rebellion may be committed, in the words of said Article 135, is by “engaging in war against the forces of the government” and “committing serious violence” in the prosecution of said “war”. These expressions imply everything that war connotes, namely; resort to arms, requisition of property and services, collection of taxes and contributions, restraint of liberty, damage to property, physical injuries and loss of life, and the hunger, illness and unhappiness that war leaves in its wake — except that, very often, it is worse than war in the international sense, for it involves internal struggle, a fight between brothers, with a bitterness and passion or ruthlessness seldom found in a contest between strangers. Being within the purview of “engaging in war” and “committing serious violence”, **said resort to arms, with the resulting impairment or destruction of life and property, constitutes not two or more offense, but only one crime — that of rebellion plain and simple.** Thus, for instance, it has been held that “the crime of treason may be committed ‘by executing *either a single or similar intentional overt acts*, different or similar but distinct, and *for that reason, it may be considered one single continuous offense.*”

Inasmuch as the acts specified in said Article 135 constitute, we repeat, one single crime, it follows necessarily that said acts offer no occasion for the application of Article 48, which requires therefor the commission of, at least, two crimes. Hence, this court has *never* in the past, convicted any person of the “complex crime of rebellion with murder”. What is more, it appears that in *every one* of the cases of rebellion published in the Philippine Reports, the defendants were convicted of *simple* rebellion, *although they had killed several persons*, sometimes peace officers.¹⁹ (emphases supplied and citations omitted)

Based on the purpose of the crime of rebellion — which is to remove from the allegiance to Government or its laws, the territory of the Philippines or any part thereof, or any body of land, naval or other armed forces — several acts may be committed necessarily in furtherance of the rebellion. But, even though several acts were committed, these acts still constitute as one crime of rebellion as long as they were committed in furtherance of their secessionist goal.

¹⁸ 99 Phil. 515 (1956).

¹⁹ Id. at 520-521.

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Further, in *Umil v. Ramos*,²⁰ the Court emphasized that rebellion is a continuing offense and all crimes committed in furtherance of the ideological bases are absorbed therein, to wit:

The Court's decision of 9 July 1990 rules that the arrest of *Rolando Dural* (G.R. No. 81567) without warrant is justified as it can be said that, within the contemplation of *Section 5(a), Rule 113*, he (Dural) was committing an offense, when arrested, because Dural was arrested for being a member of the New People's Army, an outlawed organization, where membership is penalized, and for subversion which, like rebellion is, under the doctrine of *Garcia vs. Enrile*, a continuing offense, thus:

“The crimes of insurrection or rebellion, subversion, conspiracy or proposal to commit such crimes, and other crimes and offenses committed in the furtherance (sic) on the occasion thereof, or incident thereto, or in connection therewith under Presidential Proclamation No. 2045, are all in the **nature of continuing offenses which set them apart from the common offenses, aside from their essentially involving a massive conspiracy of nationwide magnitude** x x x.”

Given the ideological content of membership in the CPP/NPA which includes armed struggle for the overthrow of organized government, Dural did not cease to be, or became less of a subversive, FOR PURPOSES OF ARREST, simply because he was, at the time of arrest, confined in the St. Agnes Hospital. Dural was identified as one of several persons who the day before his arrest, without warrant, at the St. Agnes Hospital, had shot two (2) CAPCOM policemen in their patrol car. That Dural had shot the two (2) policemen in Caloocan City as part of his mission as a “sparrow” (NPA member) did not end there and then. Dural, given another opportunity, would have shot or would shoot other policemen anywhere as agents or representatives of organized government. It is in this sense that subversion like rebellion (or insurrection) is perceived here as a *continuing offense*. **Unlike other so-called “common” offenses, i.e. adultery, murder, arson, etc., which generally end upon their commission, subversion and rebellion are anchored on an ideological base which compels the repetition of the same acts of lawlessness and violence until the overriding objective of overthrowing organized government is attained.**²¹ (emphases supplied)

Likewise, the rebellion contemplated under the Constitution for the declaration or extension of the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus* is not confined to the traditional concept of armed struggle or in the theater of war. As early as *United States v. Lagnason*,²² the Court ruled that there may be a state of rebellion not amounting to a state of war.

²⁰ 279 Phil. 266 (1991).

²¹ Id. at 294-295.

²² 3 Phil. 472 (1904).

More importantly, during the deliberations of the present Constitution, the framers discussed the possibility of modern tactics in rebellion or invasion, to wit:

MR. DE LOS REYES. I ask that question because I think **modern rebellion can be carried out nowadays in a more sophisticated manner because of the advance of technology, mass media and others.** Let us consider this for example: There is an obvious synchronized or orchestrated strike in all industrial firms, then there is a strike of drivers so that employees and students cannot attend school nor go to their places of work, practically paralyzing the government. Then in some remote barrios, there are ambushes by so-called subversives, so that the scene is that there is an orchestrated attempt to destabilize the government and ultimately supplant the constitutional government. Would the Committee call that an actual rebellion, or is it an imminent rebellion?

MR. REGALADO: At the early stages, where there was just an attempt to paralyze the government or some sporadic incidents in other areas but without armed public uprising, that would only amount to sedition under Article 138, or it can only be considered as a tumultuous disturbance.

MR. DE LOS REYES: The public uprising are not concentrated in one place, which used to be the concept of rebellion before.

MR. REGALADO: No.

MR. DE LOS REYES: But the public uprisings consists of isolated attacks in several places – for example in one camp here; another in the province of Quezon; then in another camp in Laguna; no attack in Malacañang – but there is complete paralysis of the industry of the whole country. If we place these things together, the impression is clear – there is an attempt to destabilize the government in order to supplant it with a new government.

MR. REGALADO: **It becomes a matter of factual appreciation and evaluation.** The magnitude is to be taken into account when we talk about tumultuous disturbance, to sedition, then graduating to rebellion. All these things are variances of magnitude and scope. **So, the President determines, based on the circumstances, if there is presence of rebellion.**²³ (emphases supplied)

The Constitutional framers had the astute foresight to consider the possibility that modern rebellion would involve a more sophisticated manner of execution with the use of advanced technology and even mass media. They discussed the possibility that rebels may conduct isolated attacks in different places orchestrated to paralyze the country and destabilize the government. **In such case, Justice Regalado suggested it would be a matter of factual appreciation and evaluation of the President, based on the circumstances, in determining if rebellion exists.** Thus, the traditional concept of rebellion,

²³ Record of the Constitutional Commission Proceedings and Debates, Vol. II, pp. 412-413.

where there is actual use of weapons concentrated in a single place, is not the sole concept of actual rebellion envisioned under the 1987 Constitution.

While there may be several acts committed separately in a particular region, these predicate acts would still be included in one crime of rebellion. These isolated attacks in different places must be examined on whether they were orchestrated to paralyze the country and destabilize the government. In other words, these attacks should not be considered in isolation in a particular area; rather, these must be considered in the totality of the armed struggle of the perpetrators. Also, the Court must consider a broader scope of rebellion, to include modern tactics which do not contemplate traditional armed struggle. With this complete picture of the concept of rebellion, the Court can judiciously determine the persistence of actual rebellion in Mindanao based on the probable cause or delivered by the President.

Actual rebellion in Mindanao persists

In *Lagman v. Medialdea* and *Lagman v. Pimentel III*, the Court ruled that in determining the existence or persistence of actual rebellion, the President may rely on a wide array of reports and documents that are available to him as the Commander-in-Chief, to wit:

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

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

It is beyond cavil that the President can rely on intelligence reports and classified documents. "It is for the President as [C]ommander-in-[C]hief of the Armed Forces to appraise these [classified evidence or documents] reports and be satisfied that the public safety demands the suspension of the writ." Significantly, respect to these so-called classified documents is accorded even "when [the] authors of or witnesses to these documents may not be revealed."

In fine, not only does the President have a wide array of information before him, he also has the right, prerogative, and the means to access vital, relevant, and confidential data, concomitant with his position as

Commander-in-Chief of the Armed Forces.²⁴ (emphases supplied)

In this case, the President relied on several military and classified reports and documents, particularly, the report provided by the Deputy Chief of Staff for Intelligence, OJ2, AFP. The detailed and extensive AFP report presents the violent incidents committed by Abu Sayyaf Group (*ASG*), the Bangsamoro Islamic Freedom Fighters (*BIFF*), and the Dawlah Islamiyah (*DI*), and other such violent incidents committed by threat groups. These violent acts cover the period between January 1 to December 31, 2018, to wit:

a. The ASG-Initiated Violent Incidents resulted to: (a) 17 soldiers and 19 civilians wounded in action; (b) 3 civilians missing; and (c) 9 soldiers, 22 civilians, and 2 ASG killed.²⁵ The following are the specific incidents divided by province:

- i. Basilan: 4 ambushes, 1 arson, 1 grenade throwing, 2 harassments, 3 IED land mining/explosions, 1 attempted kidnapping, 3 liquidations, and 3 murders.
- ii. Sulu: 1 ambush, 1 carnapping, 14 harassments, 5 IED landmining/explosions, 1 attempted kidnapping, 15 kidnappings, 3 liquidations, and 3 shootings.
- iii. Tawi-Tawi: 1 murder.
- iv. Zamboanga Peninsula: 1 kidnapping and 1 shooting.
- v. Other Provinces: 2 kidnappings.

b. The BIFF-Initiated Violent Incidents resulted in: (a) 21 soldiers, 2 CAA, 5 civilians, and 2 BIFF wounded in action; (b) 2 civilians missing; and (c) 4 soldiers, 3 CAA, 8 civilians, and 9 BIFF killed.²⁶ The following are the specific incidents divided between North Cotabato and Maguindanao:

- i. North Cotabato: 1 ambush, 1 fire/attack, 9 harassments, 2 IED land mining/roadside bombings, and 1 liquidation.
- ii. Maguindanao: 2 arsons, 3 fire/attacks, 3 grenade throwing, 31 harassments, 19 IED landmining/roadside bombings, 1 kidnapping, 1 murder, 1 shooting, and 1 liquidation.

c. The DI-Initiated Violent Incidents resulted in: (a) 2 soldiers and 91 civilians wounded in action; (b) 1 civilian missing; and (c) 7 civilians killed.²⁷ The following are the specific incidents for each DI faction:

- i. DI-Maute: 1 fire/attack, 1 kidnapping, 1 liquidation, 1 shooting, and 1 strafing.

²⁴ *Supra* note 2.

²⁵ *Rollo*, G.R. No. 243522, Vol. I, p. 215; *see* Table of ASG-Initiated Violent Incidents (01 January to 31 December 2018), attached as Annex "4" of the Comment of Respondents.

²⁶ *Id.* at 246; *see* Table of BIFF-Initiated Violent Incidents (01 January to 31 December 2018), attached as Annex "5" of the Comment of Respondents.

²⁷ *Id.* at 283; *see* Table of DI-Initiated Violent Incidents (01 January to 31 December 2018), attached as Annex "6" of the Comment of Respondents.

- ii. DI-Maguid: 1 IED landmining/explosion.
- iii. DI-Turaifie: 1 firefight/attack and 3 IED land mining/explosions.²⁸

The report shows that violent attacks still persist in Mindanao and these are committed by the very same groups that committed rebellion in *Lagman v. Medialdea* and *Lagman v. Pimentel III*. In its Letter²⁹ dated February 1, 2019, even the PNP confirmed that these groups continuously commit atrocities in Mindanao.

As stated in *Lagman v. Pimentel III*, the DI is the Daesh-affiliate organization in the Philippines responsible for the Marawi Siege. It is comprised of several local terrorist groups that pledged allegiance to Daesh leader Abu Bakr Al-Baghdadi. On the other hand, the ASG in Basilan, Sulu, Tawi-Tawi, and the Zamboanga Peninsula remain a serious security concern. Also, the BIFF continues to defy the government by perpetrating violent incidents during the martial law period. Further, the Court recognizes that these ISIS-linked rebel groups have formed an alliance for the unified mission of establishing a Daesh/ISIS territory in Mindanao. Verily, the purpose of these groups to create a separate Daesh/ISIS territory in Mindanao is an act of rebellion against the government.

In addition, the New People's Army continues to perpetrate violent attacks in Mindanao. The Court in numerous instances has recognized that the purpose of their group is to overthrow the organized government.³⁰

Evidently, in spite of the extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus*, the violent attacks of these groups persist in major areas of Mindanao. The DND enumerated the numerous attacks perpetrated by these rebels even though martial law had been in effect from January 1, 2018 to December 31, 2018, to wit:

Type of Incident	Number of Incidents
Ambuscade	6
Arson	2
Firefighting/Attack	4
Grenade Throwing	4
Harassment	54
IED/Landmining Explosion	31
Attempted Kidnapping	1
Kidnapping	19
Liquidation	9
Murder	4
Shooting	3
TOTAL	137 ³¹

²⁸ Id. at 165-167; Comment of the Respondents, pp. 15-17.

²⁹ *Rollo*, G.R. No. 243522, Vol. II, p. 860. Annex "2," Memorandum of the Respondents.

³⁰ Id. at 830; see Memorandum of the Respondents, pp. 36-37.

³¹ Id. at 826; Memorandum of the Respondents, p. 33.

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In the same reference material, the DND reports the following violent incidents for the period January 1 to November 30, 2018 relative to the continuing rebellion being conducted by the communist groups:

Type of Incident	Number of Incidents
Ambush	15
Raid	4
Nuisance Harassment	41
Harassment	29
Disarming	5
Landmining	8
SPARU Operations	18
Liquidation	23
Kidnapping	5
Robbery/Hold-Up	1
Bombing	1
Arson	27
TOTAL	177 ³²

The AFP explained how the violent attacks of these rebel groups were committed in furtherance of rebellion, as follows:

The word “harassment” is a military term for a type of armed attack where the perpetrators fire at stationary military personnel, auxiliaries, or installations for a relatively short period of time (as opposed to a full armed attack) for the purpose of inflicting casualties, as a diversionary effort to deflect attention from another tactical undertaking, or to project presence in the area. At times, like in the case of the November 10, 2018 incident in Marogong, Lanao del Sur, harassments or attacks are directed against the MILF or any group perceived to be an ally or is supportive to the government. Harassments are undertaken not in isolation but as part of a bigger military strategy. This is a common tactic employed by the Communist Terrorist Group, the ASG, DI, and BIFF. On the other hand, kidnapping is undertaken particularly by the ASG to finance its operational and administrative expenses in waging rebellion. As shown in the presentation during the oral arguments, the ASG has amassed an estimated Php41.9 million in ransom proceeds for 2018 alone. With regard to arson, the tactic is commonly used by the same rebel groups for various purposes such as intimidating people who are supportive of the government, as punitive action for those who refuse to give in to extortion demands, or simply to terrorize the populace into submission. **All these activities are undoubtedly undertaken in furtherance of rebellion.**³³ (emphasis supplied)

Indeed, harassment, kidnapping for ransom, extortion, and arson are contemporary tactics within the definition of the armed struggle in rebellion. As stated earlier, the Constitutional framers already envisioned that modern

³² Id. at 826-827; Memorandum of the Respondents.

³³ Id. at 853-854; Annex “1” of the Memorandum of the Respondents.

rebellion would involve a more sophisticated manner of execution and the possibility that rebels may conduct isolated attacks in different places orchestrated to paralyze the country and destabilize the government. These separate acts of violence should be woven and taken together in furtherance of the rebel groups' purpose of seceding from the State.

Reliability of the military information

During the oral arguments, the Court sought clarification as to the reliability of information received from the OJ2 to determine the sufficiency of the factual basis in extending such proclamation.³⁴ In its Letter,³⁵ the AFP Office of Deputy Chief of Staff for Intelligence explained the reliability and credibility of the reports they submitted to the President, as follows:

The office of the Deputy Chief of Staff for Intelligence, AFP (OJ2) is the depository of all information collected by various AFP units on the activities of groups that threaten national security. These AFP units obtain information through formal (reports of government agencies performing security and law enforcement functions) as well as informal channels (information networks in areas of interest and informants who are members of the threat groups). **The information through these sources are collected to gain situational awareness particularly on enemy intentions and capabilities that become the basis of military operations and policy making. x x x.**

Nevertheless, the information gathered by various AFP units are expected to have undergone validation before being forwarded to OJ2 although there are instances where reports come from a single source, i.e., they come from a single informant and there is no way to validate the accuracy and veracity of its contents. **It is for this reason that the AFP has a method of assessing the reliability of its informants based on their track record.**

When it comes to violent incidents as well as armed clashes or encounters with threat groups, AFP units are required to submit reports as soon as possible. Called "spot reports," they contain information that are only available at that given reporting time window. This practice is anchored on the theory that an incomplete information is better than a complete information that is too late to be used. Subsequent developments are communicated through "progress reports" and detailed "special reports."³⁶ (emphases supplied)

Manifestly, the information provided by the AFP is not merely raw data from their sources; rather, they are validated through different methods. Also, the OJ2 or the AFP Office of the Deputy Chief of Staff for Intelligence is tasked with the duty to ensure that these data are consolidated and verified. While there may be some minor discrepancies on these data, as some are

³⁴ Transcript of the Oral Arguments, January 29, 2019, pp. 61-64.

³⁵ *Supra* note 33.

³⁶ *Id.* at 847-848.

sourced from spot reports, these data are subsequently validated through progress reports and detailed special reports.

Thus, when these pieces of information were delivered to the President, he made a detailed and well-founded conclusion based on the **totality of evidence** that there is probable cause that actual rebellion persists in Mindanao. This is evident from his letter to both Houses of Congress dated December 6, 2018, *viz*:

[T]he security assessment submitted by the AFP and PNP highlights certain essential facts which indicate that rebellion still persists in Mindanao and that public safety requires the continuation of Martial Law in the whole of Mindanao.

The Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, Daulah Islamiyah (DI), and other terrorist groups (collectively labeled as LTG) which seek to promote global rebellion, continue to defy the government by perpetrating hostile activities during the extended period of Martial Law...

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

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

Apart from these, major Abu Sayyaf Group factions in Sulu continue to pursue kidnap for ransom activities to finance their operations...

The foregoing merely illustrates in general terms the continuing rebellion in Mindanao.³⁷

Likewise, as to the fact that there was no criminal case of rebellion filed in Mindanao from January 1 to December 31, 2018, suffice it to state that this does not diminish the existence of actual rebellion therein because: *first*, there is nothing in the constitutional provision that requires there be criminal cases filed in court to prove actual rebellion. As discussed in *Lagman v. Medialdea*, it is only required that the President has probable cause to believe that an actual rebellion persists. *Second*, even as there was no rebellion case filed during the existence of martial law and yet the armed conflict continues, this demonstrates that the rebellion had not ceased and the perpetrators were still

³⁷ *Rollo*, G.R. No. 243522, Vol. I, pp. 53-54; *see* Annex "A" of the Lagman Petition.

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on the loose. It was reported by the Office of the Solicitor General (*OSG*) that a total of 181 persons in the martial law arrest orders have remained at large.³⁸

Indeed, with these factual bases, the military needs to intensify their efforts against these terrorist groups through the continued imposition of martial law. Lifting martial law would remove the leverage of the military against these terror groups during their on-going operations and would weaken the rigorous campaign against them and allow them to continuously threaten the civilian population.³⁹

Public safety requires the extension

The overriding and paramount concern of martial law is the protection of the security of the nation and the good and safety of the public. Indeed, martial law and the suspension of the privilege of the writ of *habeas corpus* are necessary for the protection of the security of the nation; suspension of the privilege of the writ of *habeas corpus* is precautionary, and although it might curtail certain rights of individuals, it is for the purpose of defending and protecting the security of the state or the entire country and our sovereign people.⁴⁰

In this case, after determining that actual rebellion exists based on probable cause, the President also found that the extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* are necessary for ensuring the public safety of the people in Mindanao.

As discussed by the OSG, there are several circumstances which show that the persisting actual rebellion in Mindanao is a threat to the public's safety therein, *viz*:

- a. No less than 181 persons in the martial law Arrest Orders have remained at large.
- b. Despite the dwindling strength and capabilities of the local terrorist rebel groups, the recent bombings that transpired in Mindanao that collectively killed 16 people and injured 63 others in less than 2 months is a testament on how lethal and ingenious terrorist attacks have become.
- c. On October 5, 2018, agents from the Philippine Drug Enforcement Agency (PDEA) who conducted an anti-drug symposium in Tagoloan II, Lanao del Sur, were brutally ambushed, in which five (5) were killed and two (2) were wounded.
- d. The DI continues to conduct radicalization activities in vulnerable Muslim communities and recruitment of new members, targeting relatives and orphans of killed DI members. Its presence in these areas immensely disrupted the government's delivery of basic services and clearly needs military intervention.

³⁸ *Rollo*, G.R. No. 243522, Vol. II, p. 832; *Memorandum* of the Respondents.

³⁹ See concurring opinion of Justice Alexander G. Gesmundo in *Lagman v. Pimentel III*.

⁴⁰ *Supra* note 10.

- e. Major ASG factions in Sulu and Basilan have fully embraced the DAESH ideology and continue their express kidnappings. As of December 6, 2018, there are still seven (7) remaining kidnap victims under captivity.
- f. Despite the downward trend of insurgency parameters, Mindanao remains to be the hotbed of communist rebel insurgency in the country. Eight (8) out of the 14 active provinces in terms of communist rebel insurgency are in Mindanao...⁴¹

During the oral arguments, it was affirmed that rebellion persists in Mindanao and that the armed struggle of the rebel groups threatens public safety, to wit:

ASSOCIATE JUSTICE BERNABE:

Or based on current developments, can you say that the situation contemplated in Proclamation 216 has already changed?

SOLICITOR GENERAL CALIDA:

There is still a need, Your Honor, to extend the martial law because of the on-going threat to public safety, Your Honor, and the rebellion waged by the, not only by the communist terrorist groups but as well as the local terrorist groups, especially those groups that were DAESH-inspired, Your Honor.

ASSOCIATE JUSTICE BERNABE:

Except of course that the leadership of Hapilon and the Maute brothers have already changed?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

ASSOCIATE JUSTICE BERNABE:

Now, in the Comment, respondents reference that December 8, 2017 letter of the President which justified the second extension by saying that, I quote: "Despite the death of Hapilon and the Maute brothers, the remnants of their groups have continued to rebuild their organization." Are the activities of the Maute Hapilon group still a consideration now for the third extension?

SOLICITOR GENERAL CALIDA:

Well, because of their recruitment, Your Honor, their strength is again, they have recruited more members, Your Honor. In fact, the Jolo bombing incident yesterday is in Jolo, Your Honor, and this is the hotbed of ASG insurgency, Your Honor.

ASSOCIATE JUSTICE BERNABE:

All right. Now, can you give us specifics such as an estimate of how many of these remnants are left or report of what activities were recently conducted? You can probably just state this in the memorandum.

SOLICITOR GENERAL CALIDA:

Yes, Your Honor, we will do that.

⁴¹ Rollo, G.R. No. 243522, Vol. II, pp. 832-833; Memorandum of the Respondents, pp. 39-40.

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ASSOCIATE JUSTICE BERNABE:

Okay. Now, under the Revised Penal Code you have the purpose of the uprising or movement to be considered as a rebellion and you have to remove from the allegiance to the government the territory of the Philippines, or deprive the Chief Executive or Congress of any of their powers and prerogatives, is that correct?

SOLICITOR GENERAL CALIDA:

That's correct, Your Honor.

ASSOCIATE JUSTICE BERNABE:

Now, based on the long history of the CNT, ASG and BIFF in Mindanao, do you believe that their purpose is to remove allegiance from the government, or deprived the Chief Executive and Congress of their powers and prerogatives? Or are these activities based on social and political ideologies?

SOLICITOR GENERAL CALIDA:

You were correct in saying, Your Honor, that these atrocities deprived not only the President and Congress of their powers and prerogatives in the areas where they control, Your Honor. x x x.⁴² (emphasis supplied)

The magnitude of the atrocities continuously perpetrated by these rebel groups reveals their capacity to continue inflicting serious harm and injury, both to life and property. The sinister plans of attack, as uncovered by the AFP, confirm this real and imminent threat. The manpower and armaments these groups possess, the continued radicalization and recruitment of new rebels, the financial and logistical build-up cited by the President, and more importantly, the groups' manifest determination to overthrow the government through force, violence and terrorism, present a significant danger to public safety.⁴³

*Proper exercise of the joint
executive and legislative act;
coordinate powers of review*

Based on the foregoing, these facts and circumstances are sufficient for the Court to conclude that actual rebellion in Mindanao puts the public's safety in peril. The President and the Congress properly exercised their joint executive and legislative act in extending the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus*.

As discussed above, unlike the power of the Court, Congress has a broad power of review under Sec. 18, Art. VII. In *Lagman v. Medialdea*, it was explained that:

⁴² Transcript of the Oral Arguments, January 29, 2019, pp. 47-48.

⁴³ *Supra* note 2.

The Court may strike down the presidential proclamation in an appropriate proceeding filed by any citizen on the ground of lack of sufficient factual basis. On the other hand, Congress may revoke the proclamation or suspension, which revocation shall not be set aside by the President.

In reviewing the sufficiency of the factual basis of the proclamation or suspension, the Court considers only the information and data available to the President prior to or at the time of the declaration; it is not allowed to “undertake an independent investigation beyond the pleadings.” On the other hand, Congress may take into consideration not only data available prior to, but likewise events supervening the declaration. Unlike the Court which does not look into the absolute correctness of the factual basis as will be discussed below, Congress could probe deeper and further; it can delve into the accuracy of the facts presented before it.

In addition, the Court’s review power is passive; it is only initiated by the filing of a petition “in an appropriate proceeding” by a citizen. On the other hand, Congress’ review mechanism is automatic in the sense that it may be activated by Congress itself at any time after the proclamation or suspension was made.

Thus, the power to review by the Court and the power to revoke by Congress are not only totally different but likewise independent from each other although concededly, they have the same trajectory, which is, the nullification of the presidential proclamation. Needless to say, the power of the Court to review can be exercised independently from the power of revocation of Congress.⁴⁴

Consequently, when Congress approved the extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* initiated by the President, which resulted into a joint executive and legislative act, Congress exercised its broad power of review. It had the power to take into consideration not only data available prior to, but likewise events supervening the declaration, and it could delve into the accuracy of the facts presented before it. In spite of the rigorous review undertaken by the legislative branch, the President’s request for the extension of such proclamation and suspension was approved by Congress.

Nevertheless, while the Court and Congress’ powers of review are independent and distinct, these powers should, at the very least, be coordinate with each other in determining the validity of the extension of the such proclamation and suspension. As held in the landmark case of *Angara v. Electoral Commission*:⁴⁵

⁴⁴ Supra note 11 at 154-155.

⁴⁵ 63 Phil. 139 (1936).

The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. **But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government...** And the judiciary in turn, with the Supreme Court as the final arbiter, effectively checks the other departments in the exercise of its power to determine the law, and hence to declare executive and legislative acts void if violative of the Constitution.⁴⁶ (emphasis supplied)

Indeed, the three co-equal branches of the government, while acting independently, must give utmost respect to the findings of each other. When there is a clear insufficiency of factual basis, the Court must effectively nullify the extension of such proclamation or suspension for violating the Constitution; otherwise, the joint executive and legislative act must be upheld and recognized.

Pursuant to the Court's review of sufficiency of factual basis, the extension of such proclamation and suspension, which was approved by the overwhelming majority of Congress, passed the arduous requirements imposed by Sec. 18, Art. VII of the Constitution. Thus, the extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* is constitutionally justified.

Defanged Martial Law

While I vote to dismiss the petitions, I must emphasize my position in my Concurring Opinion in *Lagman v. Pimentel III* that martial law has been defanged under the 1987 Constitution. Martial law, while it has no precise definition, is employed to authorize the military to act vigorously for the maintenance of an orderly civil government and for the defense of the State against actual rebellion or invasion.⁴⁷

When the framers of the present Constitution discussed the power of the President to declare martial law and suspend the privilege of the writ of *habeas corpus*, they ensured that such abuses would not be repeated. Commissioner Monsod even noted that the martial law of then President Marcos was an aberration in history and that the grounds for the imposition of martial law and suspension of the privilege were reduced, and that **should**

⁴⁶ Id. at 156-157.

⁴⁷ See concurring opinion of Justice Alexander G. Gesmundo in *Lagman v. Pimentel III*.

a second Marcos arise, there would be enough safeguards in the new Constitution to take care of such eventuality. Accordingly, the following safeguards are now in place to limit the Chief Executive's power to declare martial law:

1. The initial declaration of martial law has a time limit of sixty (60) days;
2. The President is required to submit a report in person or in writing to the Congress to substantiate his declaration of martial law;
3. There is a process for its review and possible revocation of Congress;
4. There is also a review and possible nullification by the Supreme Court based on the sufficiency of factual basis;
5. The removal of the phrases "imminent danger thereof" and "insurrection" as grounds for declaring martial law;
6. A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function. Thus, during the martial law, the President can neither promulgate proclamations, orders and decrees when legislative assemblies are functioning nor create military courts to try civilians when the civil courts are open.
7. The declaration of martial law does not automatically suspend the privilege of the writ of *habeas corpus*;
8. During the suspension of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.
9. The extension of the declaration of martial law initiated by the President shall only take effect when approved by Congress for a period reasonably determined by it.

Hence, as long as the safeguards of the Constitution are observed and the Court diligently exercises its mandate to review any declaration or extension of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, then the citizenry of the State, particularly in Mindanao, can rest assured that their primordial constitutional rights shall be upheld and respected.

As there is sufficient factual basis to extend the proclamation of martial law and suspension of the privilege of the writ of *habeas corpus* in Mindanao, I vote to **DISMISS** the petitions.


ALEXANDER G. GESMUNDO
Associate Justice