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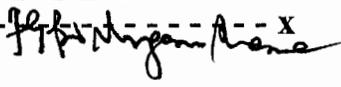
G.R. No. 231658 – REP. EDCEL C. LAGMAN, *et al.*, *Petitioners*, v. EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, *et al.*, *Respondents*.

G.R. No. 231771 – EUFEMIA C. CULLAMAT, *et al.*, *Petitioners*, v. PRESIDENT RODRIGO DUTERTE, *et al.*, *Respondents*.

G.R. No. 231774 – NORKAYA S. MOHAMAD, *et al.*, *Petitioners*, v. EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, *et al.*, *Respondents*.

Promulgated:

December 5, 2017

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DISSENTING OPINION

CARPIO, J.:

The Motion for Reconsideration seeks to review the 4 July 2017 Decision of this Court declaring valid Presidential Proclamation No. 216 dated 23 May 2017 which declared a state of martial law and suspended the privilege of the writ of *habeas corpus* (writ) in the whole Mindanao group of islands. Exercising this Court’s power to review the sufficiency of the factual basis of the proclamation of martial law and suspension of the privilege of the writ under the third paragraph of Section 18, Article VII of the 1987 Constitution, this Court sustained the validity of the territorial application of martial law in Marawi City and the whole Mindanao group of islands.

In the 4 July 2017 Decision, the *ponente* held that there is “no constitutional edict that martial law should be confined only in the particular place where the armed public uprising actually transpired.”¹ The *ponente* gave two reasons for this: (1) as a crime, rebellion has a unique character of absorbing other crimes punishable under the Revised Penal Code and other special laws which may be committed outside the particular place where the

¹ Decision, p. 73.



actual rebellion transpired; and (2) the prerogative to declare martial law lies with the President, meaning he has a wide leeway and flexibility in determining the territorial scope of martial law.

I disagree with the *ponente* that the 1987 Constitution does not provide the exact territorial scope or coverage of martial law and that the proclamation of martial law throughout the whole of Mindanao including areas outside of Marawi City is valid. The *ponente* states:

[M]artial law is a flexible concept; that the “precise extent or range of the rebellion [cannot] be measured by exact metes and bounds;” that public safety requirement cannot be quantified or measured by metes and bounds; that the Constitution does not provide that the territorial scope or coverage of martial law should be confined only to those areas where the armed public uprising actually transpired; that it will be impractical to expand the territorial application of martial law each time the coverage of actual rebellion expands and in direct proportion therewith; and, that there is always a possibility that the rebellion and other accompanying hostilities will spill over.²

The *ponente* is wrong in holding that the 1987 Constitution **does not** provide for the exact territorial scope of martial law and that the President has the latitude to determine the territorial scope of martial law and the suspension of the privilege of the writ. Section 18, Article VII of the 1987 Constitution provides:

Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* **or place the Philippines or any part thereof under martial law.** (Emphasis supplied)

Before the President can declare martial law or suspend the privilege of the writ, the 1987 Constitution requires that the President establish the following: **(1) the existence of actual rebellion or invasion; and (2) public safety requires the declaration of martial law or suspension of the privilege of the writ to suppress the rebellion or invasion.** Needless to say, the presence of an **actual rebellion** is necessary before the President is authorized by the Constitution to declare martial law in any part of the country.

According to the Revised Penal Code, actual rebellion exists when the following elements concur: (1) there is (a) a public uprising and (b) taking up of arms against the Government; and (2) the purpose of the uprising is either (a) to remove from the allegiance to the Government or its laws: (i) the territory of the Philippines or any part thereof; or (ii) any body of

² Resolution, p. 7.

land, naval, or other armed forces; or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives.³

The letter and intent of the 1987 Constitution is that the territorial scope of the President's proclamation of martial law and the suspension of the privilege of the writ must be confined only to the territory where actual rebellion exists. The absence of an actual rebellion as defined by the Revised Penal Code prohibits the President, acting as Commander-in-Chief, from declaring martial law or suspending the privilege of the writ in any territory of the Philippines. **In short, actual rebellion must exist in a particular territory in the Philippines before the President is authorized by the Constitution to declare martial law or suspend the privilege of the writ in a particular territory.**

Proclamation No. 216 and the President's Report to Congress do not show the existence of actual rebellion outside of Marawi City. In fact, the Proclamation itself states that the Maute-Hapilon armed fighters in Marawi City intended to remove "**this part of Mindanao,**" referring to Marawi City, from Philippine sovereignty. The Proclamation itself admits that only "this part of Mindanao," referring to Marawi City, is the subject of separation from Philippine sovereignty by the rebels. The President's Report did not mention any other city, province, or territory in Mindanao, other than Marawi City, that had a similar public uprising by a rebel group, an element of actual rebellion. Thus, the President's Report concludes that "based on various verified intelligence reports from the AFP and the PNP, there exists a strategic mass action of lawless armed groups *in Marawi City.*"⁴ **To extend the territorial scope of martial law to areas outside of Marawi City where there is no actual rebellion would uphold a clear violation of the letter and intent of the 1987 Constitution.**

By way of background, the concept of martial law was first introduced into the organic law of the Philippines through the Philippine Autonomy Act of 1916 or the Jones Law.⁵ Under the law, the Governor-General of the Philippine Islands may place the Islands or any part thereof under martial law in case of rebellion or imminent danger thereof and public safety requires it:

Section 21.

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[The Governor-General of the Philippine Islands] shall be responsible for the faithful execution of the laws of the Philippine Islands and of the United States operative within the Philippine Islands, and whenever it becomes necessary he may call upon the commanders of the military and

³ *Ladlad v. Velasco*, 551 Phil. 313, 329 (2007).

⁴ Decision, p. 7.

⁵ See Justice Leonen's Concurring and Dissenting Opinion in *Padilla v. Congress of the Philippines*, G.R. Nos. 231671 and 231694, 25 July 2017.



naval forces of the United States in the Islands, or summon the *posse comitatus*, or call out the militia or other locally created armed forces, to prevent or suppress lawless violence, invasion, insurrection, or rebellion; and he **may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it**, suspend the privileges of the writ of *habeas corpus*, or **place the Islands, or any part thereof, under martial law**: Provided, That whenever the Governor-General shall exercise this authority, he shall at once notify the President of the United States thereof, together with the attending facts and circumstances, and the President shall have power to modify or vacate the action of the Governor-General. (Emphasis supplied)

With the passage of the Tydings-McDuffie Act or the Philippine Independence Act, the 1935 Constitution was subsequently enacted. Section 10(2), Article VII of the 1935 Constitution, as amended, provided for the power of the President to place the country or any part thereof under martial law in case of rebellion or imminent danger thereof and public safety requires it:

ARTICLE VII
Executive Department

Section 10. x x x x

(2) The President shall be commander-in-chief of all armed forces of the Philippines, and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. **In case of invasion, insurrection, or rebellion or imminent danger thereof, when the public safety requires it, he may suspend the privilege of the writ of habeas corpus, or place the Philippines or any part thereof under Martial Law.** (Boldfacing and underscoring supplied)

The text of paragraph 2, Section 10, Article VII of the 1935 Constitution was reproduced in Section 9, Article VII of the 1973 Constitution:

ARTICLE VII
The President and Vice-President

Section 9. The President shall be commander-in-chief of all armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. **In case of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it**, he may suspend the privilege of the writ of habeas corpus, or **place the Philippines or any part thereof under martial law.** (Emphasis supplied)

As I stated in my Dissenting Opinion to the 4 July 2017 Decision, the 1987 Constitution gives the President the discretion and prerogative to decide how to deal with an actual rebellion. The President may either call out the armed forces to suppress the rebellion or he may declare martial law,

with or without the suspension of the privilege of the writ.⁶ However, he does not have a wide leeway in determining the territorial scope of martial law. Section 18, Article VII of the 1987 Constitution is clear that martial law must be founded on two factual bases: (1) the existence of actual rebellion or invasion; and (2) public safety requires the declaration of martial law or suspension of the privilege of the writ to suppress rebellion or invasion. These two factual bases cannot be stretched to mean that martial law can be proclaimed or the privilege of the writ may be suspended in those areas outside of Marawi City where “there is [a] possibility that the rebellion and other accompanying hostilities will spill over”⁷ (as held by the *ponente*). The President cannot proclaim martial law or suspend the privilege of the writ in areas outside of Marawi City simply because of the possibility that the rebels might escape to areas outside of Marawi City.

Indeed, the Jones Law,⁸ the 1935 Constitution, and the 1973 Constitution seemed to have conferred to the President the absolute prerogative to determine the territorial scope of martial law because of the phrase “the Philippines or any part thereof.” However, this seeming absolute discretion must also be interpreted in relation to the legal reality then that the “imminent danger” of rebellion was a valid ground to declare martial law. In other words, the three organic laws expressly empowered the President to place the entire country under martial law, even if the rebellion was limited to a particular locality, because of the “imminent danger” that it would spread or spill over outside the place of actual rebellion.

This no longer holds true under the 1987 Constitution. With the intentional removal of “imminent danger” as a ground to declare martial law, the President cannot proclaim martial law or suspend the privilege of the writ because of a possibility of a “spill-over of hostilities” outside the place of actual rebellion. As I stated in my Dissenting Opinion:

Moreover, imminent danger or threat of rebellion or invasion is not sufficient. The 1987 Constitution requires the existence of **actual rebellion or actual invasion**. “Imminent danger” as a ground to declare martial law or suspend the privilege of the writ, which was present in both the 1935 and 1973 Constitutions, was intentionally removed in the 1987 Constitution. By the intentional deletion of the words “imminent danger” in the 1987 Constitution, the President can no longer use imminent danger of rebellion or invasion as a ground to declare martial law or suspend the privilege of the writ. Thus, the President cannot proclaim martial law or suspend the privilege of the writ absent an **actual rebellion or actual invasion**. This is the clear, indisputable letter and intent of the 1987 Constitution.⁹

⁶ Justice Antonio T. Carpio’s Dissenting Opinion, p. 14.

⁷ Resolution, p. 7.

⁸ Under the Jones Law, it is the Governor-General who may place the Philippines or any part thereof under martial law. The President of the United States shall have the power to modify or vacate the action of the Governor-General.

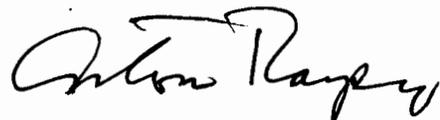
⁹ Justice Antonio T. Carpio’s Dissenting Opinion, p. 19.

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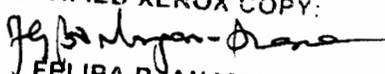
x x x. The fear that the rebellion in Marawi City will spread to other areas in Mindanao is a **mere danger or threat** and may not even amount to an imminent danger or threat. In any event, to allow martial law outside Marawi City on the basis of an imminent danger or threat would unlawfully reinstate the ground of “imminent danger” of rebellion or invasion, a ground that was intentionally removed from the 1987 Constitution.¹⁰ (Emphasis supplied)

To validate the President’s action of declaring martial law outside of Marawi City on the basis of a “spill-over of hostilities” would unlawfully reinstate “imminent danger,” a ground not present in the 1987 Constitution, as a ground to declare martial law or suspend the privilege of the writ. **To reiterate, the President must be confined strictly to the existence of the two elements under Section 18, Article VII of the 1987 Constitution of actual rebellion or invasion and the satisfaction of the public safety requirement for the declaration of martial law and the suspension of the privilege of the writ in any part of the Philippines. The two elements under the Constitution are only present in Marawi City and are absent in geographic areas of Mindanao outside of Marawi City.**

ACCORDINGLY, I vote to **PARTIALLY GRANT** the Motion for Reconsideration in G.R. Nos. 231658, 231771, and 231774, and **DECLARE** Proclamation No. 216 **UNCONSTITUTIONAL as to geographic areas of Mindanao outside of Marawi City**, for failure to comply with Section 18, Article VII of the 1987 Constitution. Proclamation No. 216 is valid, effective, and **CONSTITUTIONAL** only within Marawi City.



ANTONIO T. CARPIO
Associate Justice

CERTIFIED XEROX COPY:

FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT

¹⁰ Id. at 23.