

EN BANC

**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:

July 4, 2017

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**DISSENTING OPINION**

**CARPIO, J.:**

**The Case**

These consolidated petitions are filed under the 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 of *habeas corpus* (writ) under paragraph 3, Section 18, Article VII of the 1987 Constitution. These petitions challenge the constitutionality of Presidential Proclamation No. 216 dated 23 May 2017 (Proclamation No. 216),<sup>1</sup> which declared a state of martial law and suspended the privilege of the writ in the whole Mindanao group of islands.

**The Antecedent Facts**

In its Consolidated Comment dated 12 June 2017, the Office of the Solicitor General (OSG), representing public respondents, narrated the events that unfolded prior to the issuance of Proclamation No. 216:

<sup>1</sup> Annex "A" of Lagman Petition; Annex "A" of Cullamat Petition; Annex "A" of Mohamad Petition; Annex "10" of OSG Consolidated Comment.

*[Handwritten mark]*

11. On April 2016, the [Islamic State of Iraq and Syria's] weekly newsletter, *Al Naba*, announced the appointment of Abu Sayyaf leader [Isnilon] Hapilon as the *emir* or leader of all ISIS forces in the Philippines.  
x x x.

x x x x

20. On 22 to 25 April 2017, the rebel group, led by Hapilon, engaged in armed offensives against the military in Piagapo, Lanao del Sur. The government offensives, which involved a combination of ground assaults and airstrikes, forced the rebel group to flee to Marawi City.

21. Military forces spotted Hapilon in Marawi City sometime in early May 2017. Specifically, on 18 May 2017, intelligence reports revealed that the ISIS-inspired local rebel groups were planning to raise the ISIS flag at the provincial capitol. x x x.

22. On 23 May 2017, Hapilon was seen at the safe house of the ISIS-inspired local rebel groups in Barangay Basak Malulut, Marawi City. A joint military and police operation to serve a warrant of arrest and to capture Hapilon and the Maute Group operational leaders for kidnapping for ransom was initiated. The focused military operation started with an encounter at about 1:30 in the afternoon between government forces and ISIS-inspired local rebel group members. This was followed by a series of encounters throughout the day in different parts of Marawi City.

x x x x

24. The rebel groups launched an overwhelming and unexpected offensive against government troops. Multitudes numbering about five hundred (500) armed men marched along the main streets of Marawi and swiftly occupied strategic positions throughout the city. Snipers positioned themselves atop buildings and began shooting at government troops. The ISIS-inspired local rebel groups were also equipped with rocket-propelled grenades ("RPG") and ammunition for high-powered assault rifles.

25. The ISIS-inspired local rebel groups occupied the Philhealth Office and Salam Hospital in Barangay Lilod. They burned three (3) buildings: the Marawi City Jail, Landbank Moncado Branch, and Senator Ninoy Aquino Foundation College. They also kidnapped and killed innocent civilians. In their rampage, the rebel groups brandished the black ISIS flag and hoisted it in the locations that they occupied.<sup>2</sup>

On the night of 23 May 2017, President Rodrigo Roa Duterte (President Duterte) issued Proclamation No. 216, declaring a state of martial law and suspending the privilege of the writ in the whole of Mindanao. The full text of Proclamation No. 216, signed by President Duterte and attested by Executive Secretary Salvador C. Medialdea reads:

<sup>2</sup> OSG Consolidated Comment, pp. 6, 9-10; citations omitted.

## PROCLAMATION NO. 216

DECLARING A STATE OF MARTIAL LAW AND  
SUSPENDING THE PRIVILEGE OF THE WRIT OF  
HABEAS CORPUS IN THE WHOLE OF MINDANAO

WHEREAS, Proclamation No. 55, series of 2016, was issued on 04 September 2016 declaring a state of national emergency on account of lawless violence in Mindanao;

WHEREAS, Section 18 Article VII of the Constitution provides that “x x x In case of invasion or rebellion, when the public safety requires it, he (the President) 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 x x x”;

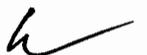
WHEREAS, Article 134 of the Revised Penal Code, as amended by R.A. No. 6968, provides that “the crime of rebellion or insurrection is committed by rising and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic 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”;

WHEREAS, part of the reasons for the issuance of Proclamation No. 55 was the series of violent acts committed by the Maute terrorist group such as the attack on the military outpost in Butig, Lanao del Sur in February 2016, killing and wounding several soldiers, and the mass jailbreak in Marawi City in August 2016, freeing their arrested comrades and other detainees;

WHEREAS, today, 23 May 2017, the same Maute terrorist group has taken over a hospital in Marawi City, Lanao del Sur, established several checkpoints within the City, burned down certain government and private facilities and inflicted casualties on the part of Government forces, and started flying the flag of the Islamic State of Iraq and Syria (ISIS) in several areas, thereby openly attempting to remove from the allegiance to the Philippine Government this part of Mindanao and deprive the Chief Executive of his powers and prerogatives to enforce the laws of the land and to maintain public order and safety in Mindanao, constituting the crime of rebellion; and

WHEREAS, this recent attack shows the capability of the Maute group and other rebel groups to sow terror, and cause death and damage to property not only in Lanao del Sur but also in other parts of Mindanao.

NOW, THEREFORE, I, RODRIGO ROA DUTERTE, President of the Republic of the Philippines by virtue of the powers vested in me by the Constitution and by law, do hereby proclaim as follows:



SECTION 1. There is hereby declared a state of martial law in the Mindanao group of islands for a period not exceeding sixty days, effective as of the date hereof.

SECTION 2. The privilege of the writ of *habeas corpus* shall likewise be suspended in the aforesaid area for the duration of the state of martial law.

DONE, in the Russian Federation, this 23<sup>rd</sup> day of May in the year of our Lord[,] Two Thousand and Seventeen.<sup>3</sup>

On 25 May 2017, President Duterte submitted his Report to Congress in accordance with Section 18, Article VII of the 1987 Constitution, which states in part that “[w]ithin 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.” In his Report, President Duterte presented the following justifications for imposing martial law and suspending the privilege of the writ in the whole of Mindanao:

Pursuant to Section 18, Article VII of the 1987 Constitution, I am submitting hereunder the Report relative to Proclamation No. 216 dated 23 May 2017 entitled, “*Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao*,” after finding that lawless armed groups have taken up arms and committed public uprising against the duly constituted government and against the people of Mindanao, for the purpose of removing Mindanao – starting with the City of Marawi, Lanao del Sur – from its allegiance to the Government and its laws and depriving the Chief Executive of his powers and prerogatives to enforce the laws of the land and to maintain public order and safety in Mindanao, to the great damage, prejudice, and detriment of the people therein and the nation as a whole. The text of Proclamation No. 216 reads:

x x x x

Mindanao has been the hotbed of violent extremism and a brewing rebellion for decades. In more recent years, we have witnessed the perpetration of numerous acts of violence challenging the authority of the duly constituted authorities, i.e., the Zamboanga siege, the Davao bombing, the Mamasapano carnage, and the bombings in Cotabato, Sultan Kudarat, Sulu, and Basilan, among others. Two armed groups have figured prominently in all these, namely, the Abu Sayyaf Group (ASG) and the ISIS-backed Maute Group.

On 23 May 2017, a government operation to capture Isnilon Hapilon, senior leader of the ASG, and Maute Group operational leaders, Abdullah and Omarkhayam Maute, was confronted with armed resistance which escalated into open hostility against the government. Through these groups’ armed siege and acts of violence directed towards civilians and

<sup>3</sup> Annex “A” of Lagman Petition; Annex “A” of Cullamat Petition; Annex “A” of Mohamad Petition; Annex “10” of OSG Consolidated Comment.

government authorities, institutions and establishments, they were able to take control of major social, economic, and political foundations of Marawi City which led to its paralysis. This sudden taking of control was intended to lay the groundwork for the eventual establishment of a DAESH<sup>4</sup> *wilayat* or province in Mindanao.

Based on verified intelligence reports, the Maute Group, as of the end of 2016, consisted of around two hundred sixty-three (263) members, fully armed and prepared to wage combat in furtherance of its aims. The group chiefly operates in the province of Lanao del Sur, but has extensive networks and linkages with foreign and local armed groups such as the Jemaah Islamiyah, Mujahidin Indonesia Timur and the ASG. It adheres to the ideals being espoused by DAESH, as evidenced by, among others, its publication of a video footage declaring its allegiance to the DAESH. Reports abound that foreign-based terrorist groups, the ISIS (Islamic State of Iraq and Syria) in particular, as well as illegal drug money, provide financial and logistical support to the Maute Group.

The events commencing on 23 May 2017 put on public display the groups' clear intention to establish an Islamic State and their capability to deprive the duly constituted authorities – the President, foremost – of their powers and prerogatives.

- At 1400H members of the Maute Group and ASG, along with their sympathizers, commenced their attack on various facilities – government and privately owned – in the City of Marawi.
- At 1600H around fifty (50) armed criminals assaulted Marawi City Jail being managed by the Bureau of Jail Management and Penology (BJMP).
- The Maute Group forcibly entered the jail facilities, destroyed its main gate, and assaulted on-duty personnel. BJMP personnel were disarmed, tied, and/or locked inside the cells.
- The group took cellphones, personnel-issued firearms, and vehicles (i.e., two [2] prisoner vans and private vehicles).
- By 1630H, the supply of power into Marawi City had been interrupted, and sporadic gunfights were heard and felt everywhere. By evening, the power outage had spread citywide. (As of 24 May 2017, Marawi City's electric supply was still cut off, plunging the city into total black-out.)
- From 1800 to 1900H, the same members of the Maute Group ambushed and burned the Marawi Police Station. A patrol car of the Police Station was also taken.
- A member of the Provincial Drug Enforcement Unit was killed during the takeover of the Marawi City Jail. The Maute Group

<sup>4</sup> Acronym of a group's full Arabic name, *al-Dawla al-Islamiya fi al-Iraq wa al-Sham*, translated as "Islamic State in Iraq and Syria."



facilitated the escape of at least sixty-eight (68) inmates of the City Jail.

- The BJMP directed its personnel at the Marawi City and other affected areas to evacuate.
- By evening of 23 May 2017, at least three (3) bridges in Lanao del Sur, namely, Lilod, Bangulo, and Sauiaran, fell under the control of these groups. They threatened to bomb the bridges to pre-empt military reinforcement.
- As of 2222H, persons connected with the Maute group had occupied several areas in Marawi City, including Naga Street, Bangolo Street, Mapandi, and Camp Keithly, as well as the following barangays: Basak Malutlot, Mapandi, Saduc, Lilod Maday, Bangon, Saber, Bubong, Marantao, Calocan, Bangolo, Barionaga, and Abubakar.
- These lawless armed groups had likewise set up road blockades and checkpoints at the Iligan City-Marawi City junction.
- Later in the evening, the Maute Group burned Dansalan College Foundation, Cathedral of Maria Auxiliadora, the nun's quarters in the church, and the Shia Masjid Moncado Colony. Hostages were taken from the church.
- About five (5) faculty members of Dansalan College Foundation had been reportedly killed by the lawless groups.
- Other educational institutions were also burned, namely, Senator Ninoy Aquino College Foundation and the Marawi Central Elementary Pilot School.
- The Maute Group also attacked Amai Pakpak Hospital and hoisted the DAESH flag there, among other several locations. As of 0600H of 24 May 2017, members of the Maute Group were seen guarding the entry gates of the Amai Pakpak Hospital. They held hostage the employees of the Hospital and took over the Phil-Health office located thereat.
- The groups likewise laid siege to another hospital, Filipino-Libyan Friendship Hospital, which they later set ablaze.
- Lawless armed groups likewise ransacked the Landbank of the Philippines and commandeered one its armored vehicles.
- Latest information indicated that about seventy-five percent (75%) of Marawi City has been infiltrated by lawless armed groups composed of members of the Maute Group and the ASG. As of the time of this Report, eleven (11) members of the Armed Forces and the Philippine National Police have been killed in action, while thirty-five (35) others have been seriously wounded.



- There are reports that these lawless armed groups are searching for Christian communities in Marawi City to execute Christians. They are also preventing Maranaos from leaving their homes and forcing young male Muslims to join their groups.
- 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, seizing public and private facilities, perpetrating killings of government personnel, and committing armed uprising against and open defiance of the government.

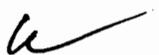
These activities constitute not simply a display of force, but a clear attempt to establish the groups' seat of power in Marawi City for their planned establishment of a DAESH *wilayat* or province covering the entire Mindanao.

The cutting of vital lines for transportation and power; the recruitment of young Muslims to further expand their ranks and strengthen their force; the armed consolidation of their members throughout Marawi City; the decimation of a segment of the city population who resist; and the brazen display of DAESH flags constitute a clear, pronounced, and unmistakable intent to remove Marawi City, and eventually the rest of Mindanao, from its allegiance to the Government.

There exists no doubt that lawless armed groups are attempting to deprive the President of his power, authority, and prerogatives within Marawi City as a precedent to spreading their control over the entire Mindanao, in an attempt to undermine his control over executive departments, bureaus, and offices in said area; defeat his mandate to ensure that all laws are faithfully executed; and remove his supervisory powers over local governments.

Law enforcement and other government agencies now face pronounced difficulty sending their reports to the Chief Executive due to the city-wide power outages. Personnel from the BJMP have been prevented from performing their functions. Through the attack and occupation of several hospitals, medical services in Marawi City have been adversely affected. The bridge and road blockades set up by the groups effectively deprive the government of its ability to deliver basic services to its citizens. Troop reinforcements have been hampered, preventing the government from restoring peace and order in the area. Movement by both civilians and government personnel to and from the city is likewise hindered.

The taking up of arms by lawless armed groups in the area, with support being provided by foreign-based terrorists and illegal drug money, and their blatant acts of defiance which embolden other armed groups in Mindanao, have resulted in the deterioration of public order and safety in Marawi City; they have likewise compromised the security of the entire island of Mindanao.



The groups' occupation of Marawi City fulfills a strategic objective because of its terrain and the easy access it provides to other parts of Mindanao. Lawless armed groups have historically used provinces adjoining Marawi City as escape routes, supply lines, and backdoor passages.

Considering the network and alliance-building activities among terrorist groups, local criminals, and lawless armed men, the siege of Marawi City is a vital cog in attaining their long-standing goal: absolute control over the entirety of Mindanao. These circumstances demand swift and decisive action to ensure the safety and security of the Filipino people and preserve our national integrity

While the government is presently conducting legitimate operations to address the on-going rebellion, if not the seeds of invasion, public safety necessitates the continued implementation of martial law and the suspension of the privilege of the writ of habeas corpus in the whole of Mindanao until such time that the rebellion is completely quelled.<sup>5</sup>

These petitions impugn the constitutionality of Proclamation No. 216.

### The Issue

The threshold issue before the Court is whether there is sufficient factual basis for the issuance of Proclamation No. 216 based on the stringent requirements set forth in Section 18, Article VII of the 1987 Constitution.

### Discussion

Before proceeding to the substantive issues, I shall first discuss the procedural issues in this case.

***The “appropriate proceeding” under paragraph 3, Section 18, Article VII of the 1987 Constitution is a sui generis petition not falling under any of the actions or proceedings under the Rules of Court.***

According to the OSG, Section 18, Article VII of the 1987 Constitution must be construed in conjunction with the power of judicial review, and the original jurisdiction in petitions for *certiorari*, of the Court as defined under Sections 1 and 5, respectively, of Article VIII of the 1987 Constitution. For this reason, the OSG concludes that the “appropriate proceeding” referred to in Section 18, Article VII of the 1987 Constitution is

<sup>5</sup> Annex “B” of Lagman Petition; Annex “B” of Mohamad Petition; Annex “11” of OSG Consolidated Comment.

a special civil action for *certiorari* under Rule 65 of the Rules of Court.<sup>6</sup>

I disagree.

Paragraph 3, Section 18, Article VII of the 1987 Constitution reads:

Sec. 18. x x x.

x x x x

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 of *habeas corpus* or the extension thereof, and must promulgate its decision thereon within thirty days from its filing. (Emphasis supplied)

Based on this constitutional provision, the “appropriate proceeding” referred to is a *sui generis* petition not falling under any of the actions or proceedings in the Rules of Court for the following three reasons.

*First*, any citizen can be a petitioner. As discussed in the deliberations of the Constitutional Commission, the “citizen” who can challenge the declaration of martial law need not be a taxpayer,<sup>7</sup> or a resident of the locality where martial law is declared, or even directly or personally prejudiced by the declaration. This was deliberately designed to arrest, without further delay, the grave effects of an illegal declaration of martial law or suspension of the privilege of the writ wherever it may be imposed, and to provide immediate relief to the entire nation.

*Second*, the Court is vested by the 1987 Constitution with the power to determine the “sufficiency of the factual basis” of the declaration of martial law or suspension of the privilege of the writ. Indeed, the Court is expressly authorized and tasked under paragraph 3, Section 18, Article VII of the 1987 Constitution to be a **trier of facts** in the review petition. Moreover, the standard of “sufficiency of factual basis” is a unique standard applicable only to a review of the constitutionality of the declaration of martial law or suspension of the privilege of the writ.

*Third*, the Court must decide the case within 30 days from the date of filing of the petition. In contrast, all other cases brought to the Court shall be resolved within 24 months, which period shall be reckoned from the date of submission for resolution rather than the date of filing.<sup>8</sup>

<sup>6</sup> OSG Consolidated Comment, pp. 20-22.

<sup>7</sup> II RECORD, CONSTITUTIONAL COMMISSION 392 (July 29, 1986).

<sup>8</sup> The first paragraph of Section 15, Article VIII of the 1987 Constitution reads:

Sec. 15. (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved **within twenty-four months** from the date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower

Contrary to the position of the OSG, the proceeding under paragraph 3, Section 18, Article VII of the 1987 Constitution cannot possibly refer to a petition for *certiorari*. Section 1, Rule 65 of the Rules of Court defines a petition for *certiorari* in this wise:

Sec. 1. *Petition for certiorari.* – When any tribunal, board or officer exercising **judicial or quasi-judicial functions** has acted **without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction**, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. (Emphasis supplied)

What is assailed in a petition for *certiorari* under Rule 65 of the Rules of Court are acts of government officials or tribunals exercising **judicial or quasi-judicial functions**. In contrast, what is assailed in a proceeding under paragraph 3, Section 18, Article VII of the 1987 Constitution is an **executive act of the President not involving judicial or quasi-judicial functions**.

More importantly, *certiorari* is an extraordinary remedy designed for the correction of errors of jurisdiction.<sup>9</sup> What is at issue in the present petitions, however, is not the jurisdiction of the President to declare martial law or suspend the privilege of the writ for the 1987 Constitution expressly grants him these powers. Rather, what is at issue is the sufficiency of his factual basis when he exercised these powers. **Simply put, the petition under paragraph 3, Section 18, Article VII of the 1987 Constitution does not involve jurisdictional but factual issues.**

Under paragraph 2, Section 1, Article VIII of the Constitution, the Court exercises its expanded *certiorari* jurisdiction to review acts constituting “grave abuse of discretion amounting to lack or excess of jurisdiction” by any branch or instrumentality of Government. However, this expanded *certiorari* power is not applicable to the declaration of martial law or suspension of the privilege of the writ. Grave abuse of discretion generally refers to “capricious or whimsical exercise of judgment that is equivalent to lack or absence of jurisdiction.”<sup>10</sup> The abuse of discretion must be so patent and so gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.<sup>11</sup>

collegiate courts, and three months for all lower courts. (Emphasis supplied)

<sup>9</sup> *Julie's Franchise Corp. v. Ruiz*, 614 Phil. 108, 117 (2009), citing *Soriano v. Ombudsman*, 610 Phil. 75 (2009) & *Castro v. People*, 581 Phil. 639 (2008).

<sup>10</sup> *De Vera v. De Vera*, 602 Phil. 886, 877 (2009).

<sup>11</sup> *Id.*

However, paragraph 3, Section 18, Article VII of the 1987 Constitution uses the phrase “**sufficiency** of the factual basis,” which means that the declaration must not only have factual basis, but the factual basis must also be **sufficient**. This rules out the “grave abuse of discretion amounting to lack or excess of jurisdiction” standard as the latter requires absence of factual basis. Under the “sufficiency of the factual basis” standard, there may be factual basis, but the same may not be sufficient to justify the imposition of martial law or the suspension of the privilege of the writ. Under the “grave abuse of discretion” standard, there must be no factual basis whatsoever, which is clearly not the letter and intent of paragraph 3, Section 18, Article VII of the 1987 Constitution prescribing the review of the declaration of martial law or suspension of the privilege of the writ. Thus, the “sufficiency of the factual basis” standard, which applies **exclusively** to the review of the imposition of martial law or suspension of the privilege of the writ, is separate and distinct from the “grave abuse of discretion” standard.

The cases cited by the OSG<sup>12</sup> are also not in point.

*Integrated Bar of the Philippines (IBP) v. Zamora*,<sup>13</sup> which employed arbitrariness as the standard of review, involved the calling out power of the President, which is not subject to the “sufficiency of the factual basis” standard. As the Court explained in *IBP*, the “sufficiency of the factual basis” standard is applicable only to the declaration of martial law or the suspension of the privilege of the writ:

x x x Congress may revoke such proclamation or suspension and the Court may review the sufficiency of the factual basis thereof. However, there is no such equivalent provision dealing with the revocation or review of the President’s action to call out the armed forces. **The distinction places the calling out power in a different category from the power to declare martial law and the power to suspend the privilege of the writ of *habeas corpus***, otherwise, the framers of the Constitution would have simply lumped together the three powers and provided for their revocation and review without any qualification. x x x.<sup>14</sup> (Emphasis supplied)

Neither is the case of *Lansang v. Garcia*<sup>15</sup> applicable because it was decided under the 1935 Constitution, which had no provision similar to the “sufficiency of the factual basis” standard under the 1987 Constitution. Section 11 (2), Article VII of the 1935 Constitution reads:

Sec. 11. (1) x x x.

<sup>12</sup> OSG Consolidated Comment, pp. 23-26.

<sup>13</sup> 392 Phil. 618 (2000).

<sup>14</sup> Id. at 642.

<sup>15</sup> 149 Phil. 547 (1971).

(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, or imminent danger thereof, when the public safety requires it, he may suspend the privileges of the writ of *habeas corpus*, or place the Philippines or any part thereof under martial law.

Nowhere in the 1935 Constitution did it state that any citizen could ask the Court to review the “sufficiency of the factual basis” of the President’s suspension of the privilege of the writ. In *Lansang*,<sup>16</sup> the Court used its ordinary *certiorari* power to review the constitutionality of the suspension of the privilege of the writ as the 1935 Constitution neither contained the expanded *certiorari* power of the Court nor the “sufficiency of the factual basis” standard now found in the 1987 Constitution. This is not the situation in the present case. **Applying the ordinary *certiorari* power the Court used in *Lansang* to the present petitions is to erase from the 1987 Constitution the “sufficiency of the factual basis” standard expressly written in paragraph 3, Section 18, Article VII of the 1987 Constitution, a standard specifically applicable to the review of the imposition of martial law or the suspension of the privilege of the writ.** Applying the ordinary *certiorari* review power in *Lansang* to the present petitions is to drastically revise paragraph 3, Section 18, Article VII of the 1987 Constitution, an act obviously beyond the power of the Court to do.

***The burden of proof to show the sufficiency of the factual basis of the declaration of martial law is on the government.***

As to who bears the burden of proof, the OSG argues that petitioners must show proof of the sufficiency of the factual basis, being the parties who allege.<sup>17</sup> Moreover, the OSG argues that the presumption of regularity accorded to acts of the President<sup>18</sup> likewise puts the burden of proof on petitioners.

I disagree.

Being a *sui generis* petition intended as a checking mechanism against the abusive imposition of martial law or suspension of the privilege of the writ, the proceeding under paragraph 3, Section 18, Article VII of the 1987 Constitution places the burden of proof on the Government. It is the Government that must justify the resort to extraordinary powers that are subject to the extraordinary review mechanisms under the Constitution. This is only logical because it is the Government that is in possession of facts and

<sup>16</sup> Id. at 592-594.

<sup>17</sup> OSG Consolidated Comment, p. 27; OSG Memorandum, p. 45.

<sup>18</sup> Id.

intelligence reports justifying the declaration of martial law or suspension of the privilege of the writ. Ordinary citizens are not expected to be in possession of such facts and reports. **Hence, to place the burden of proof on petitioners pursuant to the doctrine of "he who alleges must prove" is to make this Constitutional checking mechanism a futile and empty exercise. The Court cannot interpret or apply a provision of the Constitution as to make the provision inutile or meaningless.** This is especially true to a constitutional provision designed to check the abusive use of emergency powers that could lead to the curtailment of the cherished Bill of Rights of the people.

The Court, in reviewing the sufficiency of the factual basis of the declaration of martial law or suspension of the privilege of the writ, can rely on evidence from the Government such as the Proclamation and Report issued by the President himself, General Orders and Implementing Orders issued pursuant to the Proclamation, the Comment of the Solicitor General in defense of the Proclamation, and briefings made by defense and military officials before the Court.

Similarly, in *Lansang*,<sup>19</sup> the Court relied on the pleadings, oral arguments and memoranda of respondents in ruling that the suspension of the privilege of the writ was justified. Other documents relied on were the Letter of the President to the Secretary of National Defense, Communications of the Chief Constabulary to all units of his command, a memorandum of the Department of National Defense, and other intelligence findings, all of which were in the possession of the Government.

The Court cannot simply trust blindly the President when he declares martial law or suspends the privilege of the writ. While the 1987 Constitution vests the totality of executive power in one person only, the same Constitution also specifically empowers the Court to "review" the "sufficiency of the factual basis" of the President's declaration of martial law or suspension of the privilege of the writ if it is subsequently questioned by any citizen. To "review" the "sufficiency of the factual basis" for the declaration of martial law or suspension of the privilege of the writ means: (1) to make a finding of fact that there is or there is no actual rebellion or invasion, and if there is, (2) to determine whether public safety requires the declaration of martial law or suspension of the privilege of the writ to suppress the rebellion or invasion.

Applying these two elements, the Court's review power is to determine whether there are sufficient facts establishing rebellion and requiring, for the protection of public safety, the imposition of martial law or the suspension of the privilege of the writ. The Court is tasked by the 1987 Constitution to review an executive act of the President, an act that involves

<sup>19</sup> *Supra.*

discretion because the President has the prerogative to decide how to deal with the rebellion – whether only to call out the armed forces to suppress the rebellion, or to declare martial law – with or without the suspension of the privilege of the writ. If the President decides only to call out the armed forces, the review power of the Court under the “sufficiency of the factual basis” standard does **not** apply because this standard, as paragraph 3, Section 18, Article VII of the 1987 Constitution itself states, applies only in case martial law is imposed or the privilege of the writ is suspended.

However, the expanded *certiorari* review power of the Court under the “grave abuse of discretion” standard will apply in the exercise of the President’s calling out power to suppress rebellion. This standard requires total absence of factual basis of rebellion for the Court to invalidate the President’s exercise of the calling out power.

Thus, for the constitutional exercise by the President of his power to impose martial law or suspend the privilege of the writ, a more stringent review by the Court is required by the 1987 Constitution as embodied in the “sufficiency of the factual basis” standard. For the constitutional exercise of the calling out power by the President, a less stringent review by the Court is required by the 1987 Constitution as embodied in the “grave abuse of discretion” standard under the expanded *certiorari* power of the Court.

That the intent of the 1987 Constitution is exactly what its letter says is explained in the deliberations of the Constitutional Commission, to wit:

FR. BERNAS. x x x. When he (the President) 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. x x x.<sup>20</sup> (Emphasis supplied)

Justices of the Court took an oath to preserve and defend the Constitution. Their oath of office does not state that they must trust the President when he declares martial law or suspends the privilege of the writ. On the contrary, paragraph 3, Section 18, Article VII of the 1987 Constitution expressly authorizes and specifically tasks the Court to review the judgment of the President as one of the two checking mechanisms on the President’s power to declare martial law or suspend the privilege of the writ. The 1987 Constitution would not have entrusted this specific review power to the Court if it intended the Justices to simply trust the judgment or wisdom of the President. Such obeisance to the President by the Court is an abject abdication of a solemn duty imposed by the Constitution.

Similarly, the power of the Court to review under paragraph 3, Section 18, Article VII of the 1987 Constitution is separate and independent of any

<sup>20</sup> II RECORD, supra note 7, at 409.



action taken by Congress. In case of conflict, the decision of the Court, being the ultimate arbiter of constitutional issues, prevails over the decision of Congress.

***The quantum of evidence required is probable cause.***<sup>21</sup>

While the 1987 Constitution expressly provides strict safeguards against any potential abuse of the President's emergency powers, the 1987 Constitution does not compel the President to examine or produce such amount of proof as to unduly burden and effectively incapacitate him from exercising such powers.

The President need not gather proof beyond reasonable doubt, the highest quantum of evidence, which is the standard required for convicting an accused charged with a criminal offense under Section 2, Rule 133 of the Rules of Court.<sup>22</sup> To require the President to establish the existence of rebellion or invasion with such amount of proof before declaring martial law or suspending the privilege of the writ constitutes an excessive restriction on "the President's power to act as to practically tie (his) hands and disable (him) from effectively protecting the nation against threats to public safety."<sup>23</sup>

The standard of clear and convincing evidence, which is employed in either criminal or civil cases, is also not required for a lawful declaration of martial law or suspension of the privilege of the writ. This amount of proof likewise unduly restrains the President in exercising his emergency powers, as it requires proof greater than preponderance of evidence although not beyond reasonable doubt.<sup>24</sup>

<sup>21</sup> The following discussion on the quantum of evidence is taken from the *Dissenting Opinion* of Justice Antonio T. Carpio in *Fortun v. Macapagal-Arroyo*, 684 Phil. 526, 595-598 (2012).

<sup>22</sup> Section 2, Rule 133 of the Rules of Court reads in its entirety:

Sec. 2. *Proof beyond reasonable doubt.* — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

<sup>23</sup> *Fortun*, supra, at 596, quoting from the Brief of *Amicus Curiae* Father Joaquin Bernas, S.J.

<sup>24</sup> In *Manalo v. Roldan-Confesor*, 290 Phil 311, 323 (1992), the Court held:

Clear and convincing proof is "x x x more than mere preponderance, but not to the extent of such certainty as is required beyond reasonable doubt as in criminal cases xxx" while substantial evidence "x x x consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance x x x." Consequently, in the hierarchy of evidentiary values, We find proof beyond reasonable doubt at the highest level, followed by clear and convincing evidence, preponderance of evidence, and substantial evidence, in that order. (Citations omitted)



Not even preponderance of evidence under Section 1, Rule 133 of the Rules of Court,<sup>25</sup> which is the degree of proof necessary in civil cases, is demanded for a lawful declaration of martial law or suspension of the privilege of the writ. Preponderance of evidence is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.<sup>26</sup> This quantum of evidence likewise curtails the President's emergency powers because he has to weigh the superiority of the evidence on hand, from at least two opposing sides, before he can act and impose martial law or suspend the privilege of the writ.

Similarly, substantial evidence constitutes an unnecessary restriction on the President's use of his emergency powers. Substantial evidence is the amount of proof required in administrative or quasi-judicial cases, or that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion.<sup>27</sup>

Probable cause of the existence of either rebellion or invasion suffices and satisfies the standard of proof for a valid declaration of martial law or suspension of the privilege of the writ.

Probable cause is the same amount of proof required for the filing of a criminal information by the prosecutor and for the issuance of an arrest warrant by a judge. Probable cause has been defined as a "set of facts and circumstances as would lead a reasonably discreet and prudent man to believe that the offense charged in the Information or any offense included therein has been committed by the person sought to be arrested."<sup>28</sup> In *Viudez II v. Court of Appeals*,<sup>29</sup> the Court explained:

**x x x. In determining probable cause, the average man weighs the facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge.** He relies on common sense. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it

<sup>25</sup> Section 1, Rule 133 of the Rules of Court reads in its entirety:

Sec. 1. *Preponderance of evidence, how determined.* — In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of the evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

<sup>26</sup> *Raymundo v. Lunaria*, 590 Phil 546, 553 (2008).

<sup>27</sup> Section 5, Rule 133 of the Rules of Court provides:

Sec. 5. *Substantial evidence.* — In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

<sup>28</sup> *Santos v. Orda, Jr.*, 634 Phil 452, 461 (2010).

<sup>29</sup> *Viudez II v. Court of Appeals*, 606 Phil. 337 (2009).

was committed by the accused. x x x.<sup>30</sup> (Emphasis supplied)

The requirement of probable cause is consistent with Section 18, Article VII of the 1987 Constitution. It is only upon the existence of probable cause that a person can be “judicially charged” under the last two paragraphs of Section 18, Article VII of the 1987 Constitution, to wit:

Sec. 18. x x x.

x x x x

The suspension of the privilege of the writ of *habeas corpus* shall apply only to persons **judicially charged** for rebellion or offenses inherent in, or directly connected with, invasion.

During the suspension of the privilege of the writ of *habeas corpus*, any person thus arrested or detained shall be **judicially charged** within three days, otherwise he shall be released. (Emphasis supplied)

The standard of “reasonable belief” advanced by the OSG<sup>31</sup> is essentially the same as probable cause. The Court has held in several cases that probable cause does not mean “actual and positive cause” nor does it import absolute certainty. Rather, probable cause is merely based on opinion and **reasonable belief** that the act or omission complained of constitutes the offense charged.<sup>32</sup> The facts and circumstances surrounding the case must be such as to excite **reasonable belief** in the mind of the person charging.<sup>33</sup>

Probable cause, basically premised on common sense, 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 privilege of the writ. Lacking probable cause of the existence of rebellion, a declaration of martial law or suspension of the privilege of the writ is without any basis and thus, unconstitutional.

However, the sufficiency of the factual basis of martial law must be determined at the time of its proclamation. Immediately preceding or contemporaneous events must establish probable cause for the existence of the factual basis. Subsequent events that immediately take place, however, can be considered to confirm the existence of the factual basis.

Having addressed the procedural aspects of this case, I shall now proceed to the substantive issues raised by the parties.

<sup>30</sup> Id. at 349.

<sup>31</sup> OSG Memorandum, pp. 49-51; TSN, 14 June 2017, pp. 210-211.

<sup>32</sup> *Aguilar v. Department of Justice*, 717 Phil 789, 800 (2013).

<sup>33</sup> *People v. Court of Appeals*, 361 Phil 401, 410-413 (1999).

***Under the 1987 Constitution, the declaration of martial law or suspension of the privilege of the writ requires the concurrence of two elements: (1) the existence of actual rebellion or invasion; and (2) public safety requires the declaration.***

The power of the President to declare martial law or to suspend the privilege of the writ is anchored on Section 18, Article VII of the 1987 Constitution, to wit:

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.

In exercising his Commander-in-Chief power to 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 absence of either element will not authorize the President, who is sworn to defend the Constitution, from exercising his Commander-in-Chief power to declare martial law or suspend the privilege of the writ.

The term “rebellion” in Section 18, Article VII of the 1987 Constitution refers to the crime of rebellion as defined by the Revised Penal Code.<sup>34</sup> In fact, when President Duterte issued Proclamation No. 216, he expressly cited the definition of rebellion under the Revised Penal Code.<sup>35</sup>

Article 134 of the Revised Penal Code, as amended by Republic Act No. 6968,<sup>36</sup> defines the crime of rebellion:

<sup>34</sup> The definition of rebellion under the Revised Penal Code is the only legal definition of rebellion known and understood by the Filipino people when they ratified the 1987 Constitution.

<sup>35</sup> Proclamation No. 216 states in part:

“WHEREAS, Article 134 of the Revised Penal Code, as amended by R.A. No. 6968, provides that “the crime of rebellion or insurrection is committed by rising 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”

<sup>36</sup> An Act Punishing the Crime of Coup D’etat 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.

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 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.

Based on its statutory definition, the crime of rebellion has the following elements: (1) there is a (a) public uprising and (b) taking 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: (1) the territory of the Philippines or any part thereof; or (2) any body of land, naval, or other armed forces; or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives.<sup>37</sup>

To clarify, **mass or crowd action is *not* a requisite for rebellion.** Nowhere in the Revised Penal Code does it say that rebellion can be committed only by mass action, or that masses or multitudes of people are a requirement to constitute the crime of rebellion. Therefore, a single armed fighter could on his own commit the crime of rebellion.

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.<sup>38</sup> 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.

However, the existence of actual rebellion or invasion **alone** would not justify the declaration of martial law or suspension of the privilege of the writ. Another requisite must be satisfied, that is, **public safety requires the declaration of martial law or suspension of the privilege of the writ to suppress rebellion or invasion.** The 1987 Constitution mandates that the President must establish that the gravity of the rebellion or invasion is such that public safety requires the imposition of martial law or suspension of the

<sup>37</sup> *Ladlad v. Velasco*, 551 Phil. 313, 329 (2007).

<sup>38</sup> During the deliberations of the Constitutional Commission, Fr. Bernas clarified:

FR. BERNAS. Let me just say that when the Committee decided to remove that, it was for the reason that the phrase “OR IMMINENT DANGER THEREOF” could cover a multitude of sins and could be a tremendous amount of irresistible temptation. And so, to better protect the liberties of the people, we preferred to eliminate that. x x x (I RECORDS, CONSTITUTIONAL COMMISSION 773 (July 18, 1986).



privilege of the writ to suppress the rebellion or invasion. If a single armed fighter takes up arms against the Government for the purpose of removing a part of the Philippines from allegiance to the Government, public safety would not justify the President's imposition of martial law or suspension of the privilege of the writ. Although a single armed fighter can commit rebellion, public safety is certainly not endangered to require the imposition of martial law or suspension of the privilege of the writ in suppressing such rebellion.

In sum, the twin requirements of actual rebellion or actual invasion, and public safety, must both be complied with before the President, acting as Commander-in-Chief, is authorized by the 1987 Constitution to impose martial law or suspend the privilege of the writ in any part, or in the entirety, of the Philippines.

Consequently, in exercising its constitutional duty to "review" the "sufficiency of the factual basis" for the declaration of martial law or suspension of the privilege of the writ, the Court has a two-fold duty: (1) to make a finding of fact that there is or there is no actual rebellion or invasion, and if there is, (2) to determine whether public safety requires the declaration of martial law or suspension of the privilege of the writ to suppress the rebellion or invasion. If there is actual rebellion or invasion, and the declaration of martial law or suspension of the privilege of the writ is necessary to suppress the rebellion or invasion, then the Court must validate the declaration as constitutional. On the other hand, if there is no actual rebellion or invasion, or even if there is, but the declaration of martial law or suspension of the privilege of the writ is not necessary to suppress the rebellion or invasion, then the Court must strike down the proclamation for being unconstitutional.

This is the specific review power that the framers of the 1987 Constitution and the people who ratified the 1987 Constitution expressly tasked the Court as a checking mechanism to any abusive use by the President of his Commander-in-Chief power to declare martial law or suspend the privilege of the writ. Needless to say, the Court has no option but to perform its solemn constitutional duty in the present petitions.

***Probable cause exists that there is actual rebellion and that public safety requires the declaration of martial law and suspension of the privilege of the writ in Marawi City, but not elsewhere.***

Applying the evidentiary threshold required in a proceeding challenging the sufficiency of the factual basis of a declaration of martial



law and suspension of the privilege of the writ, I find that probable cause exists that there is actual rebellion in Marawi City and that public safety requires the declaration of martial law and suspension of the privilege of the writ in Marawi City to suppress the rebellion.

The armed and public uprising in Marawi City by 400 to 500 Maute-Hapilon armed fighters, with the announced intention to impose Shariah Law in Marawi City and make it an Islamic State, is concrete and indisputable evidence of actual rebellion. The OSG cites *People v. Geronimo*,<sup>39</sup> *People v. Lovedioro*,<sup>40</sup> and *Ladlad v. Velasco*<sup>41</sup> in support of its position that rebellion is a crime of masses and multitudes. However, the Maute-Hapilon armed fighters in Marawi City, numbering no more than 500, do not constitute masses or multitudes. Neither do they command masses or multitudes of followers in Marawi City. Nevertheless, rebellion may be committed even by a single armed fighter who publicly takes up arms against the government to remove a certain territory from allegiance to the Government. Rebellion is not necessarily a crime of masses or multitudes.

Proclamation No. 216 likewise enumerates the belligerent acts of the Maute-Hapilon armed fighters **within Marawi City** on 23 May 2017. Among these are the following: (1) hostile takeover of a hospital; (2) establishment of several checkpoints around the city; (3) burning down of certain government and private facilities; (4) inflicting of casualties on Government forces; and (5) waving of the ISIS flag in several areas. In addition, President Duterte in his Report to Congress disclosed the following hostile acts committed by the Maute-Hapilon armed fighters: (1) ambushed and burned the Marawi Police Station; (2) cut off vital lines for transportation and electricity; (3) burned several educational institutions; (4) displayed DAESH flags, and (5) killed the segment of the population of Marawi City who resisted the Maute-Hapilon group.

Without question, the widespread killing of both government forces and innocent civilians, coupled with the destruction of government and private facilities, thereby depriving the whole population in Marawi City of basic necessities and services, endangered the public safety in the whole of Marawi City. Hence, with the concurrence of an actual rebellion and requirement of public safety, the President lawfully exercised his Commander-in-Chief powers to declare martial law and suspend the privilege of the writ in Marawi City.

However, the same does not apply to the rest of Mindanao. Proclamation No. 216 and the President's Report to Congress **do not contain any evidence whatsoever of actual rebellion outside of Marawi**

<sup>39</sup> 100 Phil. 90 (1956).

<sup>40</sup> 320 Phil. 481 (1995).

<sup>41</sup> Supra note 37, at 329.

**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**” 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.**”

The President’s Report expressly states that the **Maute-Hapilon armed fighters were waging rebellion first in Marawi City as a prelude or “precedent” to waging rebellion in the rest of Mindanao.** This is a clear admission that the rebellion was only in Marawi City and had yet to spread to the rest of Mindanao. The President’s Report declares:

**There exists no doubt that lawless armed groups are attempting to deprive the President of his power, authority, and prerogatives within Marawi City as a precedent to spreading their control over the entire Mindanao,** in an attempt to undermine his control over executive departments, bureaus and offices in said area; defeat his mandate to ensure that all laws are faithfully executed; and remove his supervisory powers over local governments. (Emphasis supplied)

Neither did the OSG present any evidence of a Maute-Hapilon-led rebellion in Camiguin Province, Dinagat Province, Bukidnon Province, the Misamis, Agusan, Davao, Zamboanga, Pagadian, Cotabato, Surigao, General Santos, and the other islands and parts of Mindanao.

Likewise, in an interview, the Maute-Hapilon group’s spokesperson, Abu Hafs, himself announced publicly over a radio station in Marawi City that the rebels intended to implement Shariah Law in “Marawi City.” Other areas of Mindanao, outside of Marawi City, were not mentioned. Abu Hafs said that the Maute-Hapilon group wanted the people of Marawi to sacrifice lives and property for “the total implementation of Shariah Law.”<sup>42</sup> It is clear from the interview that other areas of Mindanao outside of Marawi City would not be subjected to the imposition of Shariah Law. Clearly, the scope of the actual rebellion is only in Marawi City.

Proclamation No. 216 also attempts to justify the declaration of martial law and suspension of the privilege of the writ in the whole of Mindanao by citing the **capability** of the Maute-Hapilon group and other

<sup>42</sup> Jeffrey Maitem, *Broadcaster tells of encounter with Omar Maute*, <<http://newsinfo.inquirer.net/906440/broadcaster-tells-of-encounter-with-omar-maute>> [last accessed June 22, 2017].



rebel groups to sow terror, and cause death and damage to property, not only in Marawi City but also in other parts of Mindanao. Of the same tenor, the President's Report considers the siege of Marawi City as a precedent or starting point to the spread of control by the Maute-Hapilon group over the entire Mindanao.

This clearly violates the 1987 Constitution.

**Capability to rebel, absent an actual rebellion or invasion**, is not a ground to declare martial law or suspend the privilege of the writ under the 1987 Constitution. Respondents cannot rely on the Maute-Hapilon group's *intention* to establish an Islamic State in the whole of Mindanao or even on its *capability* to deprive duly constituted authorities of their powers as a justification to the imposition of martial law or suspension of the writ in the other areas of Mindanao where there is in fact no actual rebellion. 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. Allowing a state of martial law or suspension of the privilege of the writ in the rest of Mindanao where there is no actual rebellion is a gross violation of the clear letter and intent of the 1987 Constitution as gleaned from the following deliberations of the Constitutional Commission:

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 Malacanang, 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 in Article 135.** x x x.<sup>43</sup> (Emphasis supplied)

The argument that martial law is justified in the whole of Mindanao since the rebels in Marawi City could easily flee or escape to other areas of Mindanao is also wrong.

<sup>43</sup> II RECORD, supra note 7, at 412.

When the Court ruled in *People v. Geronimo*<sup>44</sup> and *People v. Lovedioro*<sup>45</sup> that rebellion “cannot be confined *a priori* within predetermined bounds,” the Court was referring to the crimes that may or may not be absorbed in rebellion depending on the absence or presence of political motive for the commission of the crimes attending the commission of rebellion. **In other words, the reference to non-confinement to “predetermined bounds” does not refer to geographical boundaries, but to the scope of the attending crimes and circumstances.** The Court in *Lovedioro* explained:

The gravamen of the crime of rebellion is an armed public uprising against the government. By its very nature, **rebellion** is essentially a crime of masses or multitudes involving crowd action, which **cannot be confined a priori within predetermined bounds. One aspect noteworthy in the commission of rebellion is that other acts committed in its pursuance are, by law, absorbed in the crime itself because they acquire a political character.** This peculiarity was underscored in the case of *People v. Hernandez*, thus:

In short, political crimes are those directly aimed against the political order, as well as such common crimes as may be committed to achieve a political purpose. The decisive factor is the intent or motive. If a crime usually regarded as common, like homicide, is perpetrated for the purpose of removing from the allegiance to the Government the territory of the Philippine Islands or any part thereof, then it becomes stripped of its “common” complexion, inasmuch as, being part and parcel of the crime of rebellion, the former acquires the political character of the latter.

Divested of its common complexion therefore, any ordinary act, however grave, assumes a different color by being absorbed in the crime of rebellion, which carries a lighter penalty than the crime of murder. In deciding if the crime committed is rebellion, not murder, it becomes imperative for our courts to ascertain whether or not the act was done in furtherance of a political end. The political motive of the act should be conclusively demonstrated. (Emphasis supplied)

**To repeat, *Lovedioro* never declared that rebellion cannot be confined to geographical boundaries.** *Lovedioro* referred to the many crimes that are absorbed in rebellion when it stated that that “rebellion x x x cannot be confined *a priori* within predetermined bounds.”

The rebels who escape Marawi City may be issued a warrant of arrest anywhere within the Philippines without the need to declare martial law or suspend the privilege of the writ outside of Marawi City. The rebels may even be arrested by a civilian pursuant to the provision on warrantless arrests

<sup>44</sup> Supra note 39, at 96.

<sup>45</sup> Supra note 40, at 488.

under the Rules of Court. To allow martial law in the whole of Mindanao on the sole basis of securing the arrest of rebels who escape Marawi City would not only violate the 1987 Constitution, but also render useless the provisions of the Revised Penal Code and the Rules of Court. The act of the rebels in fleeing or escaping to other territories outside of the place of rebellion will certainly not constitute armed public uprising for the purpose of removing from allegiance to the Philippines the territory where the rebels flee or escape to.

Moreover, sporadic bombings in other areas of Mindanao outside of Marawi City, **in the absence of an armed public uprising against the Government and sans an intent to remove from allegiance to the Government the areas where the bombings take place, cannot constitute actual rebellion.** Such bombings constitute terrorism,<sup>46</sup> but certainly not rebellion as understood in the 1987 Constitution and as defined in the Revised Penal Code. Otherwise, a few bombings in Metro Manila, even without any armed public uprising in Metro Manila, would justify the imposition of martial law in Metro Manila.

Proclamation No. 216, having been issued by the President in the absence of an actual rebellion outside of Marawi City, was issued without sufficient factual basis, contrary to the express requirement under Section 18, Article VII of the 1987 Constitution, **with respect to areas outside of Marawi City.**

<sup>46</sup> Section 3 of R.A. No. 9372, otherwise known as the *Human Security Act of 2007*, defines terrorism in this wise:

Sec. 3. *Terrorism.* – Any person who commits an act punishable under any of the following provisions of the Revised Penal Code:

a. x x x.

x x x x

d. Article 248 (Murder);

e. Article 267 (Kidnapping and Serious Illegal Detention);

f. Article 324 (Crimes Involving Destruction), or under

1. Presidential Decree No. 1613 (The Law on Arson);

2. Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990);

x x x x

6. Presidential Decree No. 1866, as amended (Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunitions or Explosives)

thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand shall be guilty of the crime of terrorism and shall suffer the penalty of forty (40) years of imprisonment, without the benefit of parole as provided for under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

Sec. 4. *Conspiracy to Commit Terrorism.* – Persons who conspire to commit the crime of terrorism shall suffer the penalty of forty (40) years of imprisonment.

***Consequences of a proclamation of a state of martial law.***

Counsel for petitioners and the OSG share the view that martial law under the 1987 Constitution does not significantly give the President additional powers.

Indeed, there are only incremental accretions of power that **automatically** attach under a state of martial law. The significant additional powers that the President can exercise under a state of martial law **require laws to be enacted by Congress.**

*First*, a state of martial law facilitates the speedy apprehension of suspected rebels, and when the privilege of the writ is likewise suspended, allows a longer detention of suspected rebels under arrest before they are judicially charged.

Under Philippine law, rebellion is a continuing crime. In *Umil v. Ramos*,<sup>47</sup> the Court explained that rebellion constitutes a direct assault against the State for which reason it is considered a continuing crime, to wit:

However, Rolando Dural was arrested for being a member of the New People's Army (NPA), an outlawed subversive organization. Subversion, being a continuing offense, the arrest of Rolando Dural without warrant is justified as it can be said that he was committing an offense when arrested. The crimes of **rebellion**, subversion, conspiracy or proposal to commit such crimes, and crimes or offenses committed in furtherance thereof or in connection therewith constitute direct assaults against the State and are **in the nature of continuing crimes.** x x x<sup>48</sup>  
(Emphasis supplied)

Considering that rebellion is a continuing crime in our jurisdiction, any suspected rebel can be the subject of a warrantless arrest within Philippine territory wherever he or she goes. Under the Rules of Criminal Procedure, any person who has committed, is actually committing, or is attempting to commit an offense in the presence of the arresting officer can be arrested without warrant; or if it be an offense which had just been committed, that the police officer making the arrest has personal knowledge of facts or circumstances that the person to be arrested has committed it.<sup>49</sup> Once there is a rebellion, any rebel is deemed to be **continuously committing the crime of rebellion wherever he or she may be in the Philippines, even if the rebel has hidden his or her firearm to avoid arrest.** In short, with or without a state of martial law, a suspected rebel of a **known** rebellion such as the present communist CCP-NPA rebellion, can be

<sup>47</sup> 265 Phil. 325 (1990).

<sup>48</sup> Id. at 336.

<sup>49</sup> RULES OF COURT, Rule 113, Sec. 5.

arrested anywhere in the Philippines, with or without a warrant. Trial courts can take judicial notice of the ongoing communist rebellion in the country.

The difference lies, however, when there is actual rebellion by a **new** rebel group in a specific locality. The rebels can still be arrested anywhere. However, in a state of martial law, trial courts can take judicial notice of the rebellion for the purpose of applying the continuing crime doctrine under *Umil v. Ramos*. In contrast, without a declaration of martial law, the prosecution will have to prove the fact of rebellion to justify the arrest on the ground of continuing rebellion; trial courts cannot take judicial notice of the new rebellion for the purpose of **automatically** applying the continuing rebellion doctrine.

Another difference is the period of detention. In a state of martial law where the privilege of the writ is suspended, those arrested of rebellion must be judicially charged within three days from arrest. In other words, they can be lawfully detained for three days without need to file an Information before the court. In contrast, absent a declaration of martial law, the rebel arrested must be charged judicially within 36 hours as prescribed under Article 125 of the Revised Penal Code. Without martial law, the suspected rebel, absent any criminal charge, can only be lawfully detained for 36 hours.

*Second*, with the declaration of martial law or suspension of the privilege of the writ, the right to privacy of communication and the freedom to travel can be legitimately restricted on the ground of public safety, **provided there is a law enacted by Congress specifically authorizing such restriction.**

Under Section 18, Article VII of the 1987 Constitution, “[a] state of martial law does not suspend the operation of the Constitution,” including Article III on the Bill of Rights. However, these rights are not absolute and their continued enjoyment is subject to certain limitations, **as may be prescribed by law.** Among these are the right to privacy of communication and the freedom to travel, both of which can be restricted through a law when public safety requires it. Article III, or the Bill of Rights, of the 1987 Constitution provides:

Sec. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when **public safety or order requires otherwise as prescribed by law.**

x x x x

Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest



of national security, **public safety**, or public health, **as may be provided by law**. (Emphasis supplied)

The existence of the twin requirements for the imposition of martial law – actual rebellion or invasion and the need to protect public safety – may lead to a valid restriction on the privacy of communication and correspondence as well as on the freedom to travel, **provided there is an existing law specifically authorizing such restrictions**.

Republic Act No. 4200, otherwise known as the *Anti-Wiretapping Act*, allows any peace officer, upon court authorization in cases involving **rebellion**, “to tap any wire or cable, or by using any other device or arrangement, to secretly overhear, intercept, or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or dictaphone or walkie-talkie or tape recorder, or however otherwise described.”<sup>50</sup> Similarly, Republic Act No. 10173, or the *Data Privacy Act of 2012*, sanctions the “collection, recording, x x x [and] use”<sup>51</sup> of one’s personal information, even without the consent of the data subject, whenever “necessary in order to respond to **national emergency**, to comply with the requirements of **public order and safety**, or to fulfill functions of public authority which necessarily includes the processing of personal data for the fulfillment of (the National Privacy Commission’s) mandate.”<sup>52</sup> Further, Section 4 of Republic Act No. 8239, or the *Philippine Passport Act of 1996*, authorizes the Secretary of Foreign Affairs to cancel the passport of a citizen for cause after due hearing in the interest of **national security** or **public safety**.<sup>53</sup>

<sup>50</sup> Section 3, R.A. No. 4200 reads in pertinent part:

Sec. 3. Nothing contained in this Act, however, shall render it unlawful or punishable for any peace officer, who is authorized by a written order of the Court, to execute any of the acts declared to be unlawful in the two preceding sections **in cases involving** the crimes of treason, espionage, provoking war and disloyalty in case of war, piracy, mutiny in the high seas, **rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion**, sedition, conspiracy to commit sedition, inciting to sedition, kidnapping as defined by the Revised Penal Code, and violations of Commonwealth Act No. 616, punishing espionage and other offenses against national security: *Provided*, That such written order shall only be issued or granted upon written application and the examination under oath or affirmation of the applicant and the witnesses he may produce and a showing: (1) that there are reasonable grounds to believe that any of the crimes enumerated hereinabove has been committed or is being committed or is about to be committed: *Provided, however*, That in cases involving the offenses of rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, and inciting to sedition, such authority shall be granted only upon prior proof that a rebellion or acts of sedition, as the case may be, have actually been or are being committed; (2) that there are reasonable grounds to believe that evidence will be obtained essential to the conviction of any person for, or to the solution of, or to the prevention of, any of such crimes; and (3) that there are no other means readily available for obtaining such evidence. (Emphasis supplied)

<sup>51</sup> Sec. 3 (j), R.A. No. 10173.

<sup>52</sup> Sec. 12 (e), R.A. No. 10173.

<sup>53</sup> Section 4 of R.A. No. 8239 reads in pertinent part:

Sec. 4. *Authority to Issue, Deny, Restrict or Cancel*. — x x x.  
x x x x

**In the interest of national security, public safety** and public health, the Secretary



*Third*, with the declaration of martial law, Congress may **by law** delegate to the President emergency powers such as the takeover of privately-owned public utilities or businesses affected with public interest.

Section 23, Article VI of the 1987 Constitution authorizes Congress to delegate **by law** powers to the President in times of “national emergency”:

Sec. 23. (1) x x x.

(2) In times of war or other national emergency, the Congress may, **by law**, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof. (Emphasis supplied)

Of course, such time-bound delegation of emergency powers to the President must be embodied in a law enacted by Congress.

In *David v. Macapagal-Arroyo*,<sup>54</sup> this Court held that the term “**emergency**” in the above-quoted constitutional provision includes **rebellion**, to wit:

Emergency, as a generic term, connotes the existence of conditions suddenly intensifying the degree of existing danger to life or well-being beyond that which is accepted as normal. Implicit in the definition are the elements of intensity, variety, and perception. Emergencies, as perceived by legislature or executive in the United States since 1933, have been occasioned by a wide range of situations, classifiable under three (3) principal heads: a) economic, b) natural disaster, and c) **national security**.

“Emergency,” as contemplated in our Constitution, is of the same breadth. **It may include rebellion**, economic crisis, pestilence or epidemic, typhoon, flood, or other similar catastrophe of nationwide proportions or effect. This is evident in the Records of the Constitutional Commission, thus:

MR. GASCON. Yes. What is the Committee's definition of ‘national emergency’ which appears in Section 13, page 5? It reads:

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or any of the authorized consular officers may, after due hearing and in their proper discretion, refuse to issue a passport, or restrict its use or withdraw or cancel a passport: Provided, however, That such act shall not mean a loss or doubt on the person's citizenship: Provided, further, That the issuance of a passport may not be denied if the safety and interest of the Filipino citizen is at stake: Provided, finally, That refusal or cancellation of a passport would not prevent the issuance of a Travel Document to allow for a safe return journey by a Filipino to the Philippines.

<sup>54</sup> 522 Phil. 705 (2006).

When the common good so requires, the State may temporarily take over or direct the operation of any privately owned public utility or business affected with public interest.

MR. VILLEGAS. What I mean is threat from external aggression, for example, calamities or natural disasters.

MR. GASCON. There is a question by Commissioner de los Reyes. What about strikes and riots?

MR. VILLEGAS. Strikes, no; those would not be covered by the term 'national emergency.'

MR. BENGZON. Unless they are of such proportions such that they would paralyze government service.

xxx                    xxx                    xxx

MR. TINGSON. May I ask the committee if 'national emergency' refers to **military national emergency** or could this be economic emergency?'

MR. VILLEGAS. Yes, it could refer to **both military or economic** dislocations.

MR. TINGSON. Thank you very much.<sup>55</sup>  
(Emphasis supplied)

As to what emergency powers can **by law** be delegated by Congress to the President, Section 17, Article XII of the 1987 Constitution reads:

Sec. 17. In times of national emergency, when the public interest so requires, the State may, during the emergency and under reasonable terms prescribed by it, **temporarily take over or direct the operation of any privately owned public utility or business affected with public interest.** (Emphasis supplied)

In *David v. Macapagal-Arroyo*, the Court expressly held<sup>55</sup> that the takeover of privately owned public utilities or businesses affected with public interest is one of the emergency powers that Congress can **validly delegate by law** to the President, thus:

Generally, Congress is the repository of emergency powers. This is evident in the tenor of Section 23 (2), Article VI authorizing it to delegate such powers to the President. Certainly, a body cannot delegate a power not reposed upon it. However, knowing that during grave emergencies, it may not be possible or practicable for Congress to meet and exercise its

<sup>55</sup> Id. at 790-792.



powers, the Framers of our Constitution deemed it wise to allow Congress to grant emergency powers to the President, subject to certain conditions, thus: x x x

Section 17, Article XII must be understood as an aspect of the emergency powers clause. The taking over of private business affected with public interest is just another facet of the emergency powers generally reposed upon Congress. Thus, when Section 17 states that the "the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately owned public utility or business affected with public interest," it refers to Congress, not the President. Now, whether or not the President may exercise such power **is dependent on whether Congress may delegate it to him pursuant to a law prescribing the reasonable terms thereof.** x x x.

x x x x

Let it be emphasized that while the President alone can declare a state of national emergency, however, without legislation, he has no power to take over privately-owned public utility or business affected with public interest. The President cannot decide whether exceptional circumstances exist warranting the take over of privately-owned public utility or business affected with public interest. Nor can he determine when such exceptional circumstances have ceased. Likewise, **without legislation**, the President has no power to point out the types of businesses affected with public interest that should be taken over. In short, the President has no absolute authority to exercise all the powers of the State under Section 17, Article VII **in the absence of an emergency powers act passed by Congress.**<sup>56</sup> (Emphasis supplied)

To illustrate, in 1989, Congress enacted Republic Act No. 6826 delegating emergency powers to former President Corazon C. Aquino on account of "**a rebellion committed by certain elements of the Armed Forces of the Philippines** aided and abetted by civilians (giving) rise to an emergency of national proportions."<sup>57</sup> Among the emergency powers granted to former President Corazon C. Aquino was the takeover of privately-owned public utilities or businesses affected with public interest, thus:

*Sec. 3. Authorized Powers.* — Pursuant to Article VI, Section 23 (2) of the Constitution, and to implement the declared national policy, the President is hereby authorized to issue such rules and regulations as may be necessary to carry out any or all of the following powers:

x x x x

(3) To temporarily take over or direct the operation of any privately-owned public utility or business affected with public interest that violates the herein declared national policy: Provided, however, That to the extent feasible, management shall be retained, under the direction and supervision of the President or her duly designated representative who

<sup>56</sup> Id. at 788-789, 793-794.

<sup>57</sup> R.A. No. 6826, Sec. 1.

shall render a full accounting to the President of the operations of the utility or business taken over: Provided, further, That whenever the President shall determine that the further use or operation by the Government of any such public service or enterprise is no longer necessary under existing conditions, the same shall be restored to the person entitled to the possession thereof;

Notably, a perusal of the congressional franchises granted to radio and television operators, such as ABS-CBN Broadcasting Corporation and GMA Network, Inc., shows the following provision:

*Sec. 5. Right of the Government.* — A **special right is hereby reserved to the President of the Philippines, in times of war, rebellion, public peril, calamity, emergency, disaster or serious disturbance of peace and order; to temporarily take over and operate the stations or facilities of the grantee;** to temporarily suspend the operation of any station or facility in the interest of public safety, security and public welfare; or to authorize the temporary use and operation thereof by any agency of the government, upon due compensation to the grantee, for the use of the stations or facilities of the grantee during the period when these shall be so operated.<sup>58</sup>

The grant of franchise to the National Grid Corporation of the Philippines, a privately-owned corporation in charge of operating, maintaining and developing the country's state-owned power grid, is also subject to the takeover emergency power of the President in times of rebellion. Republic Act No. 9511 thus reads in pertinent part:

*Sec. 5. Right of the Government.* — A **special right is hereby reserved to the President of the Philippines, in times of war, rebellion, public peril, calamity, emergency, disaster, or disturbance of peace and order, to temporarily take over and operate the transmission system,**

<sup>58</sup> Sec. 5 of R.A. No. 7966, entitled An Act Granting the ABS-CBN Broadcasting Corporation a Franchise to Construct, Install, Operate and Maintain Television and Radio Broadcasting Stations in the Philippines, and for Other Purposes, effective March 30, 1995; Sec. 1 of R.A. No. 10925, entitled An Act Renewing for Another Twenty-Five (25) Years the Franchise Granted to Republic Broadcasting System, Inc., Presently Known as GMA Network, Inc., Amending for the Purpose Republic Act No. 7252, Entitled "An Act Granting the Republic Broadcasting System, Inc. a Franchise to Construct, Install, Operate and Maintain Radio and Television Broadcasting Stations in the Philippines," effective April 21, 2017; Sec. 5 of R.A. No. 10818, entitled An Act Renewing the Franchise Granted to the Radio Mindanao Network, Inc. for Another Twenty-Five (25) Years or a Term that Shall Take Effect on April 18, 2016, effective May 18, 2016; Sec. 5 of R.A. No. 10753, entitled An Act Renewing the Franchise Granted to the Interactive Broadcast Media, Inc. to Another Twenty-Five (25) Years that Shall Take Effect on September 5, 2021, effective March 7, 2016; Sec. 1 of R.A. No. 10790, entitled An Act Amending the Franchise of Aliw Broadcasting Corporation and Renewing/Extending the Term Thereof to Another Twenty-Five (25) Years that Shall Take Effect on April 13, 2017, effective May 3, 2016; Sec. 5 of R.A. No. 10794, entitled An Act Renewing for Another Twenty-Five (25) Years and Expanding to Radio/Television Broadcasting, National in Scope, Throughout the Philippines, the Franchise Granted to Mabuhay Broadcasting System, Inc. under Republic Act No. 7395, Entitled "An Act Granting the Mabuhay Broadcasting System, Inc., a Franchise to Construct, Install, Operate and Maintain Radio Broadcasting Stations in the Island of Luzon and for Other Purposes," effective May 10, 2016; Sec. 1 of R.A. No. 10887, entitled An Act Amending the Franchise Granted to Byers Communications, Inc. under Republic Act No. 8107, Expanding Its Scope into National Coverage, and Renewing Its Term for Another Twenty-Five (25) Years, effective July 17, 2016.



**and/or the sub-transmission systems operated and maintained by the Grantee**, to temporarily suspend the operation of any portion thereof, or the facility in the interest of public safety, security and public welfare, or to authorize the temporary use and operation thereof by any agency of the government upon due compensation to the Grantee for the use of the said transmission system, and sub transmission systems and any portion thereof during the period when they shall be so operated. (Emphasis supplied)

Similarly, Section 14 of Republic Act No. 8479, or the *Downstream Oil Industry Deregulation Act of 1998*, vests the Secretary of the Department of Energy, in times of national emergency and when the public interest so requires, with the power to take over or direct the operation of any business of importing, exporting, re-exporting, shipping, transporting, processing, refining, storing, distributing, marketing and/or selling crude oil, gasoline, diesel, liquefied petroleum gas, kerosene, and other petroleum products.<sup>59</sup>

The grant of transport service franchise to Cebu Air, Inc. is likewise subject to the takeover emergency power of the President. Republic Act No. 7151 thus reads:

Sec. 8. *Right of Government.* — **In case of war, insurrection, domestic trouble, public calamity or national emergency, the Philippine Government, upon the order of the President, shall have the right to take over and operate the equipment of the grantee** paying for its use or damages. (Emphasis supplied)

The franchise of Philippine Long Distance Telephone Company also authorizes the President to take over in times of **“rebellion, x x x emergency, x x x or disturbance of peace and order.”** Act No. 3436, as amended by Republic Act No. 7082, thus reads:

Sec. 10. A special right is hereby reserved to the President of the Philippines in times of war, **rebellion**, public peril, calamity, emergency, disaster, or disturbance of peace and order to take over and operate the transmitting, receiving, and switching stations or to authorize the temporary use and operation thereof by any department of the Government upon due compensation to the grantee of said stations during the period when they shall be so operated. (Emphasis supplied)

*Fourth*, under paragraph 2, Section 18, Article VII of the Constitution, a state of martial law may “authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are not able to function.”<sup>60</sup> However, this also needs a law to be enacted by Congress since

<sup>59</sup> Section 14 of R.A. No. 8479 reads in pertinent part:

Sec. 14. *Monitoring.* — a) x x x  
x x x x

e) In times of national emergency, when the public interest so requires, the DOE may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any person or entity engaged in the Industry.

<sup>60</sup> Section 18, Article VII of the 1987 Constitution reads in pertinent part:

a state of martial law does not suspend the operation of the 1987 Constitution and it is Congress that is empowered by law “to define, prescribe, and apportion the jurisdiction of various courts.”<sup>61</sup> To date, no statute confers jurisdiction on military courts and agencies over civilians where civil courts are unable to function. On the contrary, Republic Act No. 7055<sup>62</sup> even strengthened civilian supremacy over the military by returning to the civil courts the jurisdiction over certain offenses involving members of the Armed Forces of the Philippines, other persons subject to military law, and the members of the Philippine National Police, repealing for the purpose certain presidential decrees promulgated during the Marcos dictatorship.

In short, the 1987 Constitution **does not automatically** vest significant additional powers to the President under a state of martial law or suspension of the privilege of the writ. However, a declaration of martial law or suspension of the privilege of the writ has a built-in trigger mechanism for the applicability of other constitutional provisions that may lawfully restrict the enjoyment of constitutional rights, **provided there are existing laws specifically authorizing such restrictions.**

### *A Final Word*

Immediately after issuing Proclamation No. 216, President Duterte announced to the entire nation and to the world that his martial law “**will not be any different from what Marcos did.**”<sup>63</sup> The Court must take this

Sec. 18. x x x.

x x x x

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.

<sup>61</sup> CONSTITUTION, Art. VIII, Sec. 2.

<sup>62</sup> Entitled “An Act Strengthening Civilian Supremacy over the Military Returning to the Civil Courts the Jurisdiction over Certain Offenses Involving Members of the Armed Forces of the Philippines, Other Persons Subject to Military Law, and the Members of the Philippine National Police, Repealing for the Purpose Certain Presidential Decrees,” effective June 20, 1991.

<sup>63</sup> See InterAksyon, *Duterte praises Marcos’ iron-fisted rule, eyes declaring martial law nationwide* <<http://www.interaksyon.com/duterte-praises-marcos-iron-fisted-rule-eyes-declaring-martial-law-nationwide/>> [last updated May 26, 2017]; John Paolo Bencito, *Rody: Martial law in entire PH if...* <<http://manilastandard.net/news/top-stories/237568/rody-martial-law-in-entire-ph-if-.html>> [published May 25, 2017]; Audrey Modrallo, *Duterte praises Marcos’ Martial law as ‘very good’* <<http://www.philstar.com/headlines/2017/05/24/1703241/drawing-parallels-marcos-duterte-says-martial-law-period-good>> [last updated May 25, 2017]; Michael Peel & Grace Ramos, *Philippines’ Duterte declares martial law on Mindanao home island* <<https://www.ft.com/content/67736a20-3fd6-11e7-82b6-896b95f30f58?mhq5j=e3>> [published May 24, 2017]; *Duterte threatens martial law for all of Philippines* <<http://www.japantimes.co.jp/news/2017/05/25/asia-pacific/duterte-threatens-martial-law-philippines/#.WVuL07wQgU0>> [published May 25, 2017]; *Philippines’ Duterte warns of harsh measures as civilians flee fighting* <<http://www.channelnewsasia.com/news/asiapacific/philippines-duterte-warns-terrorists-i-ll-be-harsh-8878082>> [last updated May 24, 2107]), attached as Annexes “A” to “A-5,” respectively, of Lagman Memorandum.

*cc*

public and official statement seriously for this is no trivial matter. When President Ferdinand Marcos declared martial law in 1972 under the 1935 Constitution, he abolished Congress, shut down media, imprisoned leaders of the political opposition, packed the Supreme Court with his law school classmates and loyalists, and ruled by decree – thereby making himself a dictator for over 13 years until the people ousted him from power in 1986.

The review power of the Court, as well as of the Legislature, on the President's exercise of his Commander-in-Chief powers was precisely written in the 1987 Constitution as a checking mechanism to prevent a recurrence of the martial law of Marcos. The 1987 Constitution further mandates that a state of martial law does not suspend the operation of the Constitution. It is apparent that President Duterte does not understand, or refuses to understand, this fundamental principle that forms part of the bedrock of our democracy under the 1987 Constitution, despite his having taken a solemn oath of office to "preserve and defend the (1987) Constitution."

The Court cannot simply gloss over this Presidential mindset that has been publicly broadcasted to the nation and to the world. Any sign of acquiescence by the Court to this Presidential mindset could be fatal to the survival of the 1987 Constitution and our democracy. The Court cannot play with the fire of martial law which could turn into ashes the very Constitution that members of the Court are sworn to preserve and defend, a tragic event that once befell the Court in 1972 and brought the Court to its lowest point in its history. The Court must never allow the 1972 debacle to be ever repeated again. With this wisdom from hindsight, the Court must now stand firm and apply the clear letter and intent of the 1987 Constitution without fear or favor, for the nation and history demand no less from every member of the Court.

The decision of the Court in the present petitions has far reaching ramifications on the future of our civil liberties and our democratic society under the rule of law. For in deciding the present petitions, the Court prescribes the fundamental rules governing the exercise of the Commander-in-Chief powers under the 1987 Constitution not only for the incumbent President but also for all future Presidents. The Court should not mercilessly inflict on the Filipino people the constant fear of a recurrence of the nightmarish martial law of Marcos.

Just hours after the Decision in the present petitions was announced on 4 July 2017, President Duterte told media that he declared a Mindanao-wide martial law to prevent a "spillover":

*"Alam mo, iyong Central Mindanao if you look at the map is in Central Mindanao kaya nga central, sa gitna. You have the two Lanaos,"* he said.



“When you declare martial law, you have to use your coconut, the grey matter between your ears. **It’s easy to escape because there is no division in terms of land. You can go anywhere, there can be a spillover,**” he added.<sup>64</sup>

**This only confirms that there is no actual rebellion outside of Marawi City.** However, the President feared a “spillover” to other areas of Mindanao because “**it is easy to escape**” from Marawi City “because there is no division in terms of land.”

**ACCORDINGLY**, I vote to **PARTIALLY GRANT** the petitions 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

<sup>64</sup> Trisha Macas, *Duterte on SC decision: Mindanao-wide martial law really needed to prevent spillover* <<http://www.gmanetwork.com/news/news/nation/616846/duterte-on-sc-decision-martial-law-really-needed-to-prevent-spillover/story/>> [last accessed July 5, 2017]. See also Sandy Araneta, Macon Ramos-Araneta & Maricel V. Cruz, *Duterte, allies, foes give mixed reactions* <<http://manilastandard.net/news/top-stories/241072/duterte-allies-foes-give-mixed-reactions.html>> [last accessed July 5, 2017]; Dharel Placido, *Duterte says he was right to place entire Mindanao under martial law* <<http://news.abs-cbn.com/news/07/04/17/duterte-says-he-was-right-to-place-entire-mindanao-under-martial-law>> [last accessed July 5, 2017]; Nestor Corrales, *Duterte: I respect dissenting opinions on Mindanao martial law* <<http://newsinfo.inquirer.net/910896/duterte-i-respect-dissenting-opinions-on-mindanao-martial-law>> [last accessed July 5, 2017].