

EN BANC

G.R. No. 231658 — Representatives Edcel C. Lagman, Tomasito S. Villarin, Gary C. Alejano, Emmanuel A Billones, and Teddy Brawner Baguilat, Jr., petitioners, *-versus-* Hon. Salvador C. Medialdea, Executive Secretary; Hon. Delfin N. Lorenzana, Secretary of the Department of National Defense and Martial Law Administrator; and Gen. Eduardo Año, Chief of Staff of the Armed Forces of the Philippines and Martial Law Implementor, respondents;

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G.R. No. 231771 — Eufemia Campos Cullamat, Virgilio T. Lincuna, Ateliana U. Hijos, Roland A. Cobrado, Carl Anthony D. Olalo, Roy Jim Balanghig, Renato Reyes, Jr., Cristina E. Palabay, Amaryllis H. Enriquez, ACT Teachers' Representative Antonio L. Tinio, Gabriela Women's Party Representative Arlene D. Brosas, Kabataan Party-List Representative Sarah Jane I. Elago, Mae Paner, Gabriela Krista Dalena, Anna Isabelle Estein, Mark Vincent D. Lim, Vencer Mari Crisostomo, Jovita Montes, petitioners, *-versus-* President Rodrigo Duterte, Executive Secretary Salvador Medialdea, Defense Secretary Delfin Lorenzana, Armed Forces of the Philippines Chief of Staff Lt. General Eduardo Año, Philippine National Police Director-General Ronaldo Dela Rosa, respondents;

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G.R. No. 231774 — Norkaya S. Mohamad, Sittie Nur Dyhanna S. Mohamad, Noraisah S. Sani, Zahria P. Muti-Mapandi, petitioners, *-versus-* Executive Secretary Salvador C. Medialdea, Department of National Defense Secretary Delfin N. Lorenzana, Department of Interior and Local Government Secretary (Officer-in-Charge) Catalino S. Cuy, Armed Forces of the Philippines Chief of Staff Gen. Eduardo M. Año, Philippine National Police Chief Director Ronaldo M. Dela Rosa, National Security Adviser Hermogenes C. Esperon, Jr., respondents.

Promulgated:

July 4, 2017

x ----- Edcel C. Lagman ----- x

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SEPARATE CONCURRING OPINION**REYES, J.:**

“The right of a government to maintain its existence is the most pervasive aspect of sovereignty. To protect the nation’s continued existence, from external as well as internal threats, the government ‘is invested with all those inherent and implied powers which, at the time of adopting the Constitution, were generally considered to belong to every government as such, and as being essential to the exercise of its functions.’”¹ The government, particularly the President, should be accorded extensive authority and discretion when what is at stake is the sovereignty and territorial integrity of the State. The measures undertaken by the President in such cases should enjoy the widest latitude of constitutional interpretation, tempered only by reason, lest the government be stymied and rendered inutile.

I.

At the center of the controversy in this case is a proper interpretation of Article VII, Section 18 of the 1987 Constitution,² which outlines the President’s Commander-in-Chief powers, *i.e.*, *first*, the power to call out the armed forces; *second*, the power to declare martial law; and *third*, the power to suspend the privilege of the writ of *habeas corpus*. The power to call out the armed forces may only be exercised if it is necessary to prevent or suppress lawless violence, invasion or rebellion. On the other hand, the power to declare martial law and suspend the privilege of the writ of *habeas corpus* entails a more stringent requisite – it necessitates the existence of actual invasion or rebellion and may only be invoked when public safety necessitates it.

¹ Separate Opinion of J. Antonio in *Aquino v. Ponce Enrile*, 158-A Phil. 1, 288 (1974), citing Mr. Justice Bradley, concurring in *Legal Tender Cases* [US] 12 Wall. 457, 554, 556, 20 L. ed. 287, 314, 315.

² Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

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

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There is invasion when there is a hostile or forcible encroachment on the sovereign rights of the Philippines.³ On the other hand, the term rebellion in Section 18 of Article VII of the Constitution must be understood as having the same meaning as the crime of rebellion defined and punishable under Article 134 of the Revised Penal Code (RPC),⁴ which reads:

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

In rebellion, it is not enough that there be a public uprising and taking arms against the Government, it must be shown that the purpose of the uprising or movement is either: *first*, to remove from the allegiance to the Government or its laws the territory of the Philippines or any part thereof or any body of land, naval, or other armed forces; or *second*, to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives.⁵

It is in the President alone that the Constitution vests the powers to declare martial law and suspend the privilege of the writ of *habeas corpus* subject to the aforementioned requisites. Accordingly, contrary to the petitioners' suppositions, the recommendation of the Secretary of the Department of National Defense (DND) or of any other high-ranking officials of the Armed Forces of the Philippines (AFP) is not a condition precedent to the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus*.

Further, when the President declares martial law or suspends the privilege of the writ of *habeas corpus*, he is inevitably exercising a discretionary power solely vested in his wisdom. The President, as Commander-in-Chief and Chief Executive on whom is committed the responsibility of preserving the very survival of the State, is empowered, indeed obliged, to preserve the State against domestic violence and foreign attack. In the discharge of that duty, he necessarily is accorded a very broad authority and discretion in ascertaining the nature and extent of the danger that confronts the nation and in selecting the means or measures necessary for the preservation of the safety of the Republic. Indeed, whether actual invasion or rebellion exists is a question better addressed to the President, who under the Constitution is the authority vested with the power of

³ See Black's Law Dictionary, 8th ed., p. 843.

⁴ See Dissenting Opinion of J. Carpio in *Fortun, et al. v. President Macapagal-Arroyo, et al.*, 684 Phil. 526, 591-592 (2012).

⁵ See *Ladlad v. Senior State Prosecutor Velasco*, 551 Phil. 313, 329 (2007).

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ascertaining the existence of such exigencies and charged with the responsibility of suppressing them. His actions in the face of such emergency must be viewed in the context of the situation as it then confronted him.⁶

In this regard, in declaring martial law and suspending the privilege of the writ of *habeas corpus*, the President only needs to be convinced that there is probable cause of the existence of an invasion or rebellion. To require a higher standard of evidence would amount to an unnecessary restriction on the President's use of exclusive prerogatives under Section 18 of Article VII of the Constitution. Probable cause is a reasonable ground of presumption that a matter is, or may be, well founded on such a state of facts as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so. The term does not mean actual or positive cause nor does it import absolute certainty. It is merely based on opinion and reasonable belief.⁷ It is enough that it is believed, given the state of facts, that an actual invasion or rebellion indeed exists.

Corollary to the foregoing, the petitioners' claim that the President should have exercised his calling out power instead of declaring martial law and suspending the privilege of the writ of *habeas corpus* to address the armed uprising of the Maute group in Marawi City is plainly untenable. To stress, the President, in case of the extraordinary circumstances mentioned in Section 18 of Article VII of the Constitution, has broad discretionary powers to determine what course of action he should take to defend and preserve the sovereignty and territorial integrity of the State or any part thereof. Thus, it would be unreasonable and utterly baseless to require the President to first exercise his calling out power and treat the same as a condition precedent to the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus*.

The imposition of martial law, however, "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 x x x."⁸ It does involve the substitution of the military in the civilian functions of government,⁹ except, by express terms of the Constitution, the performance of legislative and judicial functions. In other words, martial law entails a substitution of the military in the performance of executive functions, including the maintenance of peace and order and the enforcement of laws relative to the protection of lives and properties, which

⁶ See Separate Opinion of J. Antonio in *Aquino v. Ponce Enrile*, supra note 1.

⁷ See *Metropolitan Bank and Trust Company v. Hon. Gonzales, et al.*, 602 Phil. 1000, 1009 (2009).

⁸ 1987 CONSTITUTION, Article VII, Section 18.

⁹ See Dissenting Opinion of J. Tinga in *Prof. David v. Pres. Macapagal-Arroyo*, 522 Phil. 705, 830 (2006).

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is normally a function of the Philippine National Police (PNP).¹⁰ Otherwise stated, during a state of martial law, the military personnel take over the functions, *inter alia*, of the PNP.

II.

Although the President is accorded wide discretion in ascertaining the nature and extent of the danger that confronts the State, as well as the course of action necessary to deal with the same, his exercise of the powers as Commander-in-Chief under Section 18 of Article VII of the Constitution is nevertheless subject to certain constitutional limitations pursuant to the system of separation of powers and balancing of powers among the three great departments.

Thus, the President is required to submit a report to Congress within 48 hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*. Thereupon, congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. In the same manner, Congress may likewise extend such proclamation or suspension upon request by the President if the invasion or rebellion shall persist and public safety requires it.¹¹

Further, the 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 30 days from its filing.¹² I agree with the majority opinion that the term "appropriate proceeding," refers to a *sui generis* proceeding, which is separate and distinct from the jurisdiction of the Court laid down under Article VIII of the Constitution. Indeed, contrary to the respondents' assertion, the term "appropriate proceeding" under Section 18 of Article VII of the Constitution could not have referred to a *certiorari* proceeding under Rule 65 of the Rules of Court. The "appropriate proceeding" under Section 18, unlike a *certiorari* suit, must be resolved by the Court within 30 days from the institution of the action. More importantly, as articulated by Associate Justice Antonio T. Carpio, *certiorari* is an extraordinary remedy designed for the correction of errors of jurisdiction. What is at issue in the "appropriate proceeding" referred to under Section 18 is only the sufficiency of the factual basis for the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus*.

¹⁰ Republic Act No. 6975 known as the "Department of the Interior and Local Government Act of 1990", Section 24.

¹¹ 1987 CONSTITUTION, Article VII, Section 18.

¹² Id.

Thus, as aptly pointed out by Associate Justice Lucas P. Bersamin, the Court, once the “appropriate proceeding” is commenced, is mandated to examine and sift through the factual basis relied upon by the President to justify his proclamation of martial law or suspension of the privilege of the writ of *habeas corpus* and to determine whether such factual basis is sufficient or insufficient.

Also, as already stated, the petitioners have burden of proof to show that the President’s declaration of martial law and suspension of the privilege of the writ of *habeas corpus* lacks sufficient factual basis. *First*, as a general rule, official acts enjoy the presumption of regularity, and the presumption may be overthrown only by evidence to the contrary. When an act is official, a presumption of regularity exists because of the assumption that the law tells the official what his duties are and that he discharged these duties accordingly.¹³ The presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty. The presumption, however, prevails until it is overcome by no less than clear and convincing evidence to the contrary. Thus, unless the presumption is rebutted, it becomes conclusive.¹⁴ *Second*, it is elementary that he who alleges a fact must prove it, and a mere allegation is not evidence,¹⁵ and since the petitioners allege that there is no factual basis to support the said declaration and suspension, they are bound to prove their allegations.

III.

The petitioners failed to prove that the President had insufficient basis in declaring martial law and suspending the privilege of the writ of *habeas corpus* in the whole of Mindanao. It is incumbent upon the petitioners to present credible evidence to prove that the President’s declaration of martial law and suspension of the privilege of the writ of *habeas corpus* had insufficient basis. However, a perusal of the petitioners’ allegations shows that the same are merely based on various newspaper reports on the ongoing armed fighting in Marawi City between the government forces and elements of the Maute group. However, newspaper articles amount to “hearsay evidence, twice removed” and are therefore not only inadmissible but without any probative value at all.¹⁶

¹³ *Reyes, Jr. v. Belisario, et al.*, 612 Phil. 936, 960 (2009).

¹⁴ *Bustillo, et al. v. People*, 634 Phil. 547, 556 (2010).

¹⁵ *Garcia v. Philippine Airlines and/or Trinidad*, 580 Phil. 155, 176 (2008).

¹⁶ *See Feria v. Court of Appeals*, 382 Phil. 412, 423 (2000).

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A newspaper article is admissible only as evidence that such publication does exist with the tenor of the news therein stated, but not as to the truth of the matters stated therein.¹⁷ Hearsay evidence is that kind of evidence which does not derive its value solely from the credit to be attached to the witness himself, but rests also in part on the veracity and competency of some other person from whom the witness received his information.¹⁸ By itself, and as repeatedly conveyed by jurisprudential policy, hearsay evidence is devoid of merit, irrespective of any objection from the adverse party.¹⁹

The declaration of martial law and suspension of the privilege of the writ of *habeas corpus* are official acts of the President, exercised pursuant to the Commander-in-Chief powers accorded to him by no less than the Constitution. As such, the same enjoys the presumption of regularity, which is conclusive unless clear and convincing evidence of irregularity or failure to perform a duty is adduced. There is none in this case, however, except for hearsay evidence consisting of the unverified newspaper articles; the petitioners' allegations *vis-à-vis* the supposed irregularity in the declaration and suspension cannot be justified upon hearsay evidence that is never given any evidentiary or probative value in this jurisdiction.

IV.

The petitioners' attempt to convince the Court that no rebellion is happening in Marawi City fails miserably in light of the factual milieu on the ground. The fact of the Maute group's uprising and armed hostility against the government is not disputed. The petitioners, nevertheless, contend that the armed uprising undertaken by the Maute group in Marawi City is not for the purpose of removing the territory of the Philippines or any part thereof from the allegiance to the Government or its laws or depriving the President or Congress, wholly or partially, of any of their powers and prerogatives.

The supposed lack of culpable purpose behind a rebellion enumerated under Article 134 of the RPC is more apparent than real. It is a mere allegation unsupported by any evidence. The aforementioned culpable purpose, essentially, are the political motivation for the public uprising and taking arms against the Government. However, motive is a state of mind that can only be discerned through external manifestations, *i.e.*, acts and conduct of the malefactors at the time of the armed public uprising and immediately thereafter.

¹⁷ Id.

¹⁸ See Peralta, Jr., *Perspectives of Evidence*, 2005 ed., p. 269, citing 2 Jones *Evidence*, p. 514.

¹⁹ Id. at 275.

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Based on the President's report to Congress relative to Proclamation No. 216, at around 2:00 p.m. on May 23, 2017, members of the Maute group and the Abu Sayyaf Group (ASG) commenced their attack on various public and private facilities in Marawi City; they forcibly opened the gates of the Marawi City Jail and assaulted personnel thereof; they took over three bridges in Lanao del Sur to pre-empt military reinforcements; they set up road blockades and checkpoints and forcibly occupied certain areas; they attacked and burned several schools, churches, and hospitals; they hoisted the flag of the Islamic State of Iraq and Syria (ISIS) in several areas in Marawi City.²⁰

Further, military intelligence reports had previously confirmed that the grand plan of the Maute group and other rebel groups in Mindanao is to raze the entire city of Marawi City, that would have served as a precursor for other terrorist groups to stage their own uprising across Mindanao in a bid to establish a *wilayah* or a province of the ISIS in the region.²¹ Simple logic would dictate that the foregoing circumstances points to no conclusion other than that the political motivation behind the armed public uprising by the Maute group has for its purpose the removal of Marawi City and, consequently, the whole of Mindanao, from the allegiance to the Government or, at the very least, deprive the President of his powers and prerogatives.

Also, the President, in declaring martial law and suspending the privilege of the writ of *habeas corpus* in the whole of Mindanao, had probable cause to believe that the armed insurgents in Marawi City and the rest of Mindanao are mounting a rebellion against the State and are not merely engaged in armed hostilities. It should be noted that the President had previously issued Proclamation No. 55 on September 4, 2016, which declared a state of national emergency on account of lawless violence in Mindanao. 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 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.²²

Further, based on the ISIS' propaganda material *Dabiq*, which was obtained by the AFP, as early as November 2014, a number of local rebel groups in Mindanao, particularly the Maute group, the ASG, the Ansarul Khilafah Philippines, and the Bangsamoro Islamic Freedom Fighters, have already pledged their allegiance to the ISIS caliphate.²³ In April 2016, the ISIS' weekly online newsletter *Al Naba* announced the appointment of

²⁰ President's Report relative to Proclamation No. 216, pp. 4-5.

²¹ Office of the Solicitor General's Memorandum, p. 66.

²² Proclamation No. 216, fourth whereas clause.

²³ Office of the Solicitor General's Memorandum, p. 5.

ASG's leader Isnilon Hapilon (Hapilon) as the *emir* or leader of all ISIS forces in the Philippines. Hapilon's appointment as *emir* is confirmed by the ISIS' June 21, 2016 online video entitled "The Solid Structure," which hailed Hapilon as the *mujahid* authorized to lead the soldiers of the Islamic State in the Philippines.²⁴ What is clear from the foregoing circumstances is that the rebel groups in Mindanao already have the organization and manpower to realize their goal of removing the whole of Mindanao from the allegiance to the Government.

Prior to the siege of Marawi City on May 23, 2017, the rebel groups in Mindanao had perpetrated several crimes and hostilities such as kidnapping and beheading victims, attacks on several military installations, bombing public places, attacks on several government offices, and ambush of military personnel.²⁵ The President, at the time of the issuance of Proclamation No. 216, has knowledge of the foregoing military intelligence reports, including the ultimate goal of the rebels to establish an ISIS caliphate in Mindanao. Indeed, as early as the first quarter of 2017, DND Secretary Delfin Lorenzana and National Security Adviser General Hermogenes Esperon, Jr. have submitted to the President thick briefers outlining the political motivation of the said rebel groups and a list of the armed attacks against the government in Mindanao.²⁶

Thus, it cannot be gainsaid that the President had reasonable belief that the hostilities in Marawi City is not merely an armed public uprising, but is already a realization of the rebel groups' plan to mount a full scale rebellion in Mindanao. Surely, the President may not be faulted for using everything in his arsenal of powers to deal with the exigencies of the situation; more so considering that what is at stake is the very sovereignty and territorial integrity of the State, which the President is duty-bound to preserve and protect. It would be unreasonable to wait for a territory of the Philippines to be actually removed from the allegiance to the Government before the President may be authorized to exercise his Commander-in-Chief powers.

In this regard, the contention that the coverage of the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* should have been limited only to Marawi City is utterly baseless. To stress, the conduct of the rebel groups at the time of the siege of Marawi City, and even prior thereto, coupled with the aforementioned military intelligence reports in the possession of the President, are sufficient bases to engender a reasonable belief that the Marawi City is but a staging ground for the widespread armed attacks in the whole of Mindanao, with the ultimate objective being the establishment of an ISIS caliphate therein and, thus,

²⁴ Id. at 7.

²⁵ Id. at 9-11.

²⁶ Id. at 11.

removing Mindanao from the allegiance to the Government. Given the foregoing considerations, it would be the height of absurdity to expect the President to dawdle around and wait for the armed attacks by the rebel groups to reach the neighboring cities of Marawi and the rest of the provinces of Mindanao before he exercise his power to declare martial law and suspend the privilege of the writ of *habeas corpus*.

The continued armed attacks by the Maute group and other rebel groups not only in Marawi City, but as well as in the rest of Mindanao, indubitably affects the residents therein who are forced to flee from their respective homes to avoid being caught in the cross-fire. Also, the said rebel groups, even prior to the siege of Marawi City, have been perpetrating several activities aimed at terrorizing the residents of Mindanao, such as bombing, kidnapping and attacks on military and government installations.

The members of the PNP, who are generally tasked to enforce all laws and ordinances relative to the protection of lives and properties and the maintenance of peace and order,²⁷ are way in over their heads in dealing with the rebel groups' attacks against the civilian populace in Mindanao. Indubitably, public safety necessitated, nay required, the President's declaration of martial law and suspension of the privilege of the writ of *habeas corpus*.

V.

It cannot be emphasized enough that sovereignty and territorial integrity, which are in danger of being undermined in cases of invasion or rebellion, are indispensable to the very existence of the State. It is therefore the primordial duty of the President, within the limits prescribed by the Constitution, to exercise all means necessary and proper to protect and preserve the State's sovereignty and territorial integrity. The President should thus be allowed wide latitude of discretion dealing with extraordinary predicament such as invasion or rebellion.

The petitioners' apprehensions regarding the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* is quite understandable given the abuses that were committed when the same measures were implemented in the Philippines a few decades back supposedly to address the threat of communist insurgency. Nevertheless, the ghosts of the past should not impede the resolution of our current predicament. The country is facing an actual rebellion in Mindanao; no amount of denial would make the rebellious insurgency in Mindanao wither away.

²⁷ Republic Act No. 6975, Section 24.

The President's powers to declare martial law and suspend the privilege of the writ of *habeas corpus* are retained in the 1987 Constitution by the framers thereof for a reason – they are effective measures to quell invasion or rebellion and are thus necessary for the protection and preservation of the State's sovereignty and territorial integrity. In any case, whatever the misgivings the petitioners may have as regards the present declaration of martial law and suspension of the privilege of the writ of *habeas corpus*, suffice it to say that the 1987 Constitution, unlike the 1935 and 1973 Constitutions, has placed enough safeguards to ensure that the ghosts of the past would no longer return to haunt us.

ACCORDINGLY, in view of the foregoing disquisitions, there being sufficient factual basis for the issuance by President Rodrigo Roa Duterte of Proclamation No. 216, I vote to **DISMISS** the consolidated petitions.



BIENVENIDO L. REYES
Associate Justice