EN BANC

G.R. No. 235935 — **REPRESENTATIVES EDCEL C. LAGMAN, TOMASITO S. VILLARIN, EDGAR R. ERICE, TEDDY BRAWNER BAGUILAT, JR., GARY C. ALEJANO, and EMMANUEL A. BILLONES, Petitioners, v. SENATE PRESIDENT AQUILINO PIMENTEL III, SPEAKER PANTALEON D. ALVAREZ, EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, DEFENSE SECRETARY DELFIN N. LORENZANA, BUDGET SECRETARY BENJAMIN E. DIOKNO, and ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF GENERAL REY LEONARDO GUERRERO, Respondents.**

G.R. No. 236061 — **EUFEMIA CAMPOS CULLAMAT, NOLI VILLANUEVA, RIUS VALLE, ATTY. NERI JAVIER COLMENARES, DR. MARIA CAROLINA P. ARAULLO, RENATO M. REYES, JR., CRISTINA E. PALABAY, BAYAN MUNA PARTYLIST REPRESENTATIVE CARLOS ISAGANI T. ZARATE, GABRIELA WOMEN'S PARTY REPRESENTATIVES EMERENCIANA A. DE JESUS, and ARLENE D. BROSAS, ANAKPAWIS REPRESENTATIVE ARIEL B. CASILAO, ACT TEACHERS' REPRESENTATIVES ANTONIO L. TINIO, and FRANCISCA L. CASTRO and KABATAAN PARTYLIST REPRESENTATIVE SARAH JANE I. ELAGO, Petitioners, v. PRESIDENT RODRIGO DUTERTE, SENATE PRESIDENT AQUILINO PIMENTEL III, HOUSE SPEAKER PANTALEON ALVAREZ, EXECUTIVE SECRETARY SALVADOR MEDIALDEA, DEFENSE SECRETARY DELFIN LORENZANA, ARMED FORCES OF THE PHILIPPINES CHIEF-OF-STAFF GENERAL REY LEONARDO GUERRERO, PHILIPPINE NATIONAL POLICE DIRECTOR-GENERAL RONALDO DELA ROSA, Respondents.**

G.R. No. 236145 — **LORETTA ANN P. ROSALES, Petitioner, v. PRESIDENT RODRIGO R. DUTERTE, represented by EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, MARTIAL LAW ADMINISTRATOR SECRETARY DELFIN N. LORENZANA, MARTIAL LAW**

IMPLEMENTER, GENERAL REY L. GUERRERO, and PHILIPPINE NATIONAL POLICE DIRECTOR-GENERAL RONALDO M. DELA ROSA, and the CONGRESS OF THE PHILIPPINES, consisting of the SENATE OF THE PHILIPPINES represented by SENATE PRESIDENT AQUILINO Q. PIMENTEL III and the HOUSE OF REPRESENTATIVES, represented by HOUSE SPEAKER PANTALEON D. ALVAREZ, Respondents.

G.R. No. 236155 **CHRISTIAN S. MONSOD, DINAGAT ISLANDS REPRESENTATIVE ARLENE J. BAG-AO, RAY PAOLO J. SANTIAGO, NOLASCO RITZ LEE B. SANTOS III, MARIE HAZEL E. LAVITORIA, NICOLENE S. ARCAINA and JOSE RYAN S. PELONGCO, Petitioners, v. SENATE PRESIDENT AQUILINO PIMENTEL III, SPEAKER PANTALEON D. ALVAREZ, EXECUTIVE SECRETARY SALVADOR MEDIALDEA, DEPARTMENT OF NATIONAL DEFENSE (DND) SECRETARY DELFIN N. LORENZANA, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT (DILG) SECRETARY (Officer-In-Charge) EDUARDO M. AÑO, ARMED FORCES OF THE PHILIPPINES (AFP) CHIEF OF STAFF GENERAL REY LEONARDO GUERRERO, PHILIPPINE NATIONAL POLICE (PNP) CHIEF DIRECTOR-GENERAL RONALDO DELA ROSA, NATIONAL SECURITY ADVISER HERMOGENES C. ESPERON, JR., Respondents.**

Promulgated:

February 6, 2018

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CONCURRING OPINION

LEONARDO-DE CASTRO, *J.*:

I concur with the Decision penned by the Honorable Justice Noel Gimenez Tijam dismissing the consolidated petitions which assail the constitutionality of Resolution No. 4 adopted on December 13, 2017 by the

Senate and the House of Representatives in joint session, resolving "To further extend Proclamation No. 216, Series of 2017, entitled Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao for a period of one (1) year from January 1, 2018 to December 31, 2018."

However, for the same reason that I adduced in my Separate Concurring Opinion in the case of *Lagman v. Medialdea*,[1] I wish to restate here that a special civil action such as a petition for *certiorari* is one of the appropriate proceedings to question the factual basis of a declaration of martial law or the suspension of the writ of *habeas corpus* or the extension of such declaration and/or suspension. In the said Separate Concurring Opinion I stated:

> As for concerns that a petition for *certiorari*, prohibition or *habeas corpus* imposes procedural constraints that may hinder the Court's factual review of the sufficiency of the basis for a declaration of martial law or the suspension of the privilege of *habeas corpus*, these may all be addressed with little difficulty. In the hierarchy of legal authorities binding on this Court, constitutional provisions must take precedence over rules of procedure. It is Section 18, Article VII of the 1987 Constitution which authorizes the Court to review factual issues in order to determine the sufficiency of the factual basis of a martial law declaration or a suspension of the privilege of the writ of *habeas corpus* and, as discussed above, the Court may employ the most suitable procedure in order to carry out its jurisdiction over the issue as mandated by the Constitution. Time and again, the Court has stressed that it has the inherent power to suspend its own rules when the interest of justice so requires.
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> The Court should be cautious that it does not take a position in these consolidated cases that needlessly restricts our people's judicial remedies nor carelessly clips our own authority to take cognizance of the issue of constitutional sufficiency under Section 18, Article VII in ***any*** appropriate action that may be filed with the Court. Such would be antagonistic to the clear intent of the framers of the 1987 Constitution to empower our citizens and the Judiciary as a vital protection against potential abuse of the executive power to declare martial law and suspend the privilege of the writ of *habeas corpus*. (Citation omitted.)

Joint Resolution No. 4 of both Houses of Congress, implements the provision of Section 18, Article VII of the Constitution which vests upon the Congress the power to extend the presidential proclamation of martial law as follows:

> Sec. 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

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[1] G.R. No. 231658, July 4, 2017.

> part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. **Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.**
>
> The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.
>
> The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ **or the extension thereof**, and must promulgate its decision thereon within thirty days from its filing.
>
> 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.
>
> The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.
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> During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released. (Emphasis supplied.)

The above-quoted provision of Section 18, Article VII unequivocally empowers Congress, upon the initiative of the President, to extend the proclamation of martial law or the suspension of the writ of *habeas corpus* under the following conditions: (1) the invasion or rebellion shall persist or continue; (2) the public safety requires it; and (3) the extension is decided, by a joint majority vote of Congress in a regular or special session.

Regarding the first two requirements to justify the extension of said proclamation or suspension, it is appropriate to reiterate my disquisition in my Separate Concurring Opinion in *Lagman*, to wit:

> The concept of rebellion in our penal law was explained in the leading case of *People v. Hernandez*, where the Court ruled that the word "rebellion" evokes, not merely a challenge to the constituted authorities, but, also, civil war, on a bigger or lesser scale, with all the evils that go with it; and that all other crimes, which are committed either **singly** or **collectively** and as a necessary means to attain the purpose of rebellion, or in connection therewith and in furtherance thereof, constitute only the

simple, not complex, crime of rebellion. The Court also underscored that political crimes are those directly aimed against the political order and that the decisive factor in determining whether a crime has been committed to achieve a political purpose is the **intent** or **motive** in its commission.

While rebellion is considered as an act of terrorism under the law, the latter can be used to achieve a political end, such as removing from allegiance to the State any part of the national territory or overthrowing the duly constituted authorities. Even so, such lawless elements engaged in terrorism will never acquire any status recognized under International Humanitarian Law. Yet, acts of terrorism may be taken into account in the context of determining the necessity for a declaration of martial law within our constitutional framework.

Plainly then, rebellion can be committed through an offense or a violation of any special law so long as it is done as necessary means to attain, or in furtherance of, the purpose of rebellion. In *Ponce Enrile v. Amin*, the Court held **that the offense of harboring or concealing a fugitive**, or a violation of Presidential Decree No. 1829, **if committed in furtherance of the purpose of rebellion, should be deemed to form part of the crime of rebellion instead of being punished separately**. The Court explained:

> All crimes, whether punishable under a special law or general law, which are mere components or ingredients, or committed in furtherance thereof, become absorbed in the crime of rebellion and cannot be isolated and charged as separate crimes in themselves. Thus:
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> > "This does not detract, however, from the rule that the ingredients of a crime form part and parcel thereof, and hence, are absorbed by the same and cannot be punished either separately therefrom or by the application of Article 48 of the Revised Penal Code. x x x" (Citing People v. Hernandez)
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> The *Hernandez* and other related cases mention common crimes as absorbed in the crime of rebellion. These common crimes refer to all acts of violence such as murder, arson, robbery, kidnapping, *etc.* as provided in the Revised Penal Code. The attendant circumstances in the instant case, however, constrain us to rule that the theory of absorption in rebellion cases must not confine itself to common crimes but also to offenses under special laws which are perpetrated in furtherance of the political offense.

In his dissenting opinion in *Fortun*, Justice Velasco states that the Constitution does not require precision in establishing the fact of rebellion. In support of this, he cites an excerpt from the Brief of *Amicus Curiae* Fr. Joaquin Bernas, S.J., as follows:

From all these it is submitted that the focus on public safety adds a nuance to the meaning of rebellion in the Constitution which is not found in the meaning of the same word in Article 134 of the Penal Code. The concern of the Penal Code, after all, is to punish *acts of the past.* But the concern of the Constitution is to counter threat to public safety both *in the present and in the future* arising from present and past acts. Such nuance, it is submitted, gives to the President a degree of flexibility for determining whether rebellion constitutionally exists as basis for martial law even if facts cannot obviously satisfy the requirements of the Penal Code whose concern is about past acts. To require that the President must first convince herself that there can be proof beyond reasonable doubt of the existence of rebellion as defined in the Penal Code and jurisprudence can severely restrict the President's capacity to safeguard public safety for the present and the future and can defeat the purpose of the Constitution.

What all these point to are that the twin requirements of "actual rebellion or invasion" and the demand of public safety are inseparably entwined. But whether there exists a need to take action in favour of public safety is a factual issue different in nature from trying to determine whether rebellion exists. The need of public safety is an issue whose existence, unlike the existence of rebellion, is not verifiable through the visual or tactile sense. Its existence can only be determined through the application of prudential estimation of what the consequences might be of existing armed movements. Thus, in deciding whether the President acted rightly or wrongly in finding that public safety called for the imposition of martial law, the Court cannot avoid asking whether the President acted wisely and prudently and not in grave abuse of discretion amounting to lack or excess of jurisdiction. Such decision involves the verification of factors not as easily measurable as the demands of Article 134 of the Penal Code and can lead to a prudential judgment in favour of the necessity of imposing martial law to ensure public safety even in the face of uncertainty whether the Penal Code has been violated. This is the reason why courts in earlier jurisprudence were reluctant to override the executive's judgment.

In sum, since the President should not be bound to search for proof beyond reasonable doubt of the existence of rebellion and since deciding whether public safety demands action is a **prudential matter**, the function of the President is far from different from the function of a judge trying to decide whether to convict a person for rebellion or not. **Put differently, looking for rebellion under the Penal Code is different from looking for rebellion under**

> **the Constitution**. x x x.[2] (Emphasis supplied; citation omitted.)

I also cited the case of *Aquino v. Ponce Enrile*,[3] where the Court expounded on the sophisticated and widespread nature of a modern rebellion, which has now even exacerbated with the advancement of technology. *Aquino* relevantly discussed:

> It [rebellion] does not consist simply of armed clashes between organized and identifiable groups on fields of their own choosing. It includes subversion of the most subtle kind, necessarily clandestine and operating precisely where there is no actual fighting. Underground propaganda, through printed news sheets or rumors disseminated in whispers; recruitment of armed and ideological adherents, raising of funds, procurement of arms and materiel, fifth-column activities including sabotage and intelligence - all these are part of the rebellion which by their nature are usually conducted far from the battle fronts. They cannot be counteracted effectively unless recognized and dealt with in that context.

Rebellion in contemporary times has acquired a graver complexion. In Section 3(b) of Republic Act No. 9372, the "Human Security Act of 2007," rebellion is considered as an act of terrorism. Acts of terrorism can be directed towards the attainment of political objectives just as in the case of rebellion namely, to remove the allegiance to the State of any part of the national territory or to overthrow the duly constituted authorities. It is within the context of the ever increasingly ominous global threat posed by terrorism to national sovereignty and public safety that the sufficiency of the factual grounds invoked by the President and sustained by Congress must be evaluated by the Court. Particularly, the factual basis is encapsulated in the preambulatory clause of Joint Resolution No. 4 of Congress quoted below:

> WHEREAS, the President informed the Congress of the Philippines of the remarkable progress made during the period of Martial Law, but neverthess reported the following essential facts, which as Commander-in-Chief of all armed forces of the Philippines, he has personal knowledge of: First, despite the death of Hapilon and the Maute brothers, the remnants of their groups have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion; Second, the Turaifie Group has likewise been monitored to be planning to conduct bombings, notably targeting the Cotabato area; Third, the Bangsamoro Islamic Freedom Fighters continue to defy the government by perpetrating at least fifteen (15) violent incidents during the Martial Law period in Maguindanao and North Cotabato; Fourth, the remnants of the Abu Sayyaf Group in Basilan, Sulu, Tawi-Tawi and Zamboanga Peninsula remain a serious security concern; and last, the new People's Army took advantage of the situation and intensified their decades-long rebellion against the government and

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2 Id.

3 158-A Phil. 1, 48-49 (1974).

> stepped up terrorist acts against innocent civilians and private entities, as well as guerilla warfare against the security sector and public and government infrastructure, purposely to seize political power through violent means and supplant the country's democratic form of government with Communist rule[.]

There is evident constitutional basis to sustain the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* as well as their extension outside of the existence of or the absence of a "theater of war" where civilian authorities are unable to function. This is found in Section 18, Article VII of the Constitution which pertinently provides that "a state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of civil courts, or legislative assemblies, nor authorize the conferment of jurisdiction and military courts and agencies over civilians where civil courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ."

Furthermore, it should be stressed that Congress is empowered by the aforecited Section 18, Article VII to determine the period of extension of the martial law proclamation or suspension of the privilege of the writ, in like manner that it can exercise its power to revoke such proclamation or suspension. Thus, both the aforesaid revocation and extension shall be done by the "Congress, voting jointly, by a vote of at least a majority or all its Members in regular or special session."

The underlying reason articulated in the course of the deliberation of the 1986 Constitutional Commission of the manner of voting is to avoid the possibility of deadlock and to facilitate the process of revocation.[4] Presumably, the Constitutional Commission adopted the same manner of voting for the extension of the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* for the same reason, that the Congress may with facility and without the possibility of a stalemate decide on the said extension.

The *ponencia* of the Honorable Justice Noel Gimenez Tijam has detailed the sufficient factual bases undeniably demonstrating that rebellion persists and that public safety requires the extension of the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao for a period of one (1) year from 1 January 2018 to 31 December 2018.

Both the Senate and the House of Representatives decisively resolved to extend Presidential Proclamation No. 216 by two hundred forty (240) affirmative votes. The collective decision of the Executive and the Legislative Branches of the Government to extend for one (1) year the said

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4 *Padilla v. Congress of the Philippines*, G.R. No. 231671, July 25, 2017.

proclamation, which was arrived at through a constitutionally mandated process can be the long awaited strong political will that will restore the elusive peace and promote prosperity in the whole of Mindanao.

Accordingly, I vote to **DISMISS** the petitions in G.R. Nos. 235935, 236061, 236145 and 236155.

Teresita Leonardo de Castro

TERESITA J. LEONARDO-DE CASTRO
Associate Justice