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G.R. No. 235935 – REPRESENTATIVES EDCEL C. LAGMAN, TOMASITO S. VILLARIN, EDGAR R. RICE, 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 GEN. 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 EMERNCIANA 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 GEN. REY LEONARDO GUERRERO, PHILIPPINE NATIONAL POLICE DIRECTOR-GENERAL RONALD 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 RONALD 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 C. 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 GEN. REY LEONARDO GUERRERO, PHILIPPINE NATIONAL POLICE (PNP) CHIEF DIRECTOR GENERAL RONALD M. DELA ROSA, NATIONAL SECURITY ADVISER HERMOGENES C. ESPERON, JR., ***respondents.***

Promulgated:
February 6, 2018

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DISSENTING OPINION

The best propaganda is that which,
as it were, works invisibly,
penetrates the whole of life
without the public having any knowledge
of its propagandistic initiative.[1]

- Joseph Goebbels
Nazi Politician and Propaganda Minister

We live in a fantasy world,
a world of illusion,
the great task in life is to find reality.[2]

- Iris Murdoch
Author and Philosopher

LEONEN, *J.*:

The extension of the declaration of martial law and the suspension of the privilege of the writ of habeas corpus as the principal means to address the long war against terrorism given the facts in this case is a short-sighted populist fallacy that is not supported by the Constitution. It is a solution that denies the complexity of a generational problem. It assures an environment conducive to the emergence of an authoritarian.

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1 *As quoted in* SUSAN L. CARRUTHERS, THE MEDIA AT WAR 82 (2nd ed., 2011).
2 *As quoted in* JOHN R. SULER, PSYCHOLOGY OF THE DIGITAL AGE: HUMANS BECOME ELECTRIC 358 (2016).

At issue in this case is whether a longer second extension of martial law should be constitutionally allowed considering declarations of victory in Marawi as well as progress in the interdiction of terrorists.

There are no facts that support the length of the extension. There are no facts that support why martial law and the suspension of the privilege of the writ of habeas corpus should be applied throughout the entirety of Mindanao. The declaration of martial law does not specify the additional powers that will be granted to the Commander-in-Chief and the military.

The President inserts a new reason for the longer second extension of martial law which was not present in Proclamation No. 216, Series of 2017: the Maoist Marxist Leninist rebellion of the Communist Party of the Philippines-New Peoples' Army-National Democratic Front. Yet, even assuming that this was constitutionally permissible, the facts as alleged by the Armed Forces of the Philippines (AFP) show that this fifty-year protracted insurgency is declining, the result of their successes even without martial law.

The government failed to show why the normal legal framework and the professional work of the military, police and local government units are insufficient to meet the threats that they describe. The facts they present are not sufficient to support the use of the extraordinary powers of the Commander in Chief to declare martial law and the suspend the privilege of the writ of habeas corpus.

The majority surrenders the Constitutional mandate of both Congress and this Court to do a reasonable, conscientious, and sober check on the use of the most awesome powers of the President as Commander-in-Chief. More than any constitutional organ, this Court should be the last to succumb to fear stoked by a pastiche of incidents without context. More than ever, this Court is called upon to practice its studied independence. It should show that it is an institution that can look beyond political pressure. It should be the constitutional body that does a sober and conscientious review amid the hysteria of the moment. This Court should be the last to succumb to false and simplified dichotomies.

The presentations of the government are simply allegations of reality whose basis in fact remain illegible and invisible, hidden under the cloak of the military's concept of confidentiality. Even if true, the numbers they present do not match the constitutional exigencies required.

The deliberation in Congress was hobbled by the belated request for extension from the President and the imposition of a rule by its "supermajority" clearly designed to produce no other result than accession to the wishes of the President without serious deliberation. Each representative

of the House of Representatives and each Senator were to reveal the preferences of their constituents in just three (3) minutes. Three (3) minutes were all that each of them had to raise questions, clarify, and express dissent, if any. The Congress' leadership's resolute persistence to keep to such time limits sacrificed democratic parliamentary deliberation. This was grave abuse of discretion.

The Constitution requires that on a matter as important as martial law, this Court should not defer even as Congress renders itself unable to meet the expectations of democratic deliberation. The revisions introduced in 1987 guard against grave abuse of discretion as well as the failure of legislative inquiry into the sufficiency of the factual basis for invoking the Commander-in-Chief powers to declare a state of martial law and the suspension of the writ of habeas corpus.

The Constitution does not allow us to blind ourselves with any version of the political question doctrine. The majority opinion, in its proposal for a type of deferential factual review, is nothing but a reincarnation of the political question doctrine similar to that in *Aquino v. Enrile* and *Morales v. Enrile* during the darker days of martial law declared by Ferdinand E. Marcos.

We do not know the extraordinary powers that will be wielded under the rubric of martial law. The majority glosses over the executive and the legislature's silence as to the extra powers that will be exercised under a state of martial law. We are asked to defer to the invisible.

This is not what we have learned from history. It is not what the Constitution allows.

Respectfully and in conscience, I cannot agree.

The proposal of the President to extend the state of martial law and the suspension of the writ of habeas corpus as well as Congress' Resolution No. 4 of Both Houses issued on December 13, 2017 should be declared unconstitutional. They are anathema to our republican and democratic state with the people as sovereign, as mandated by the 1987 Constitution.

Part I of this dissent narrates the facts and the proceedings that precede the second and longer extension of martial law and the suspension of the privilege of the writ in Mindanao. Part II summarizes the reasons for this conclusion in Part I of this dissent. The succeeding parts elaborate on the reasons. This dissent should be read in relation to my separate opinion

also in G.R. No. 231658, *Lagman, et al. v. Medialdea*[3] or the 2017 Martial Law cases, questioning the first extension of the declaration of martial law and the suspension of the privilege of the writ of habeas corpus.

I

The events leading to these consolidated cases are as follows:

On May 23, 2017, a state of martial law was declared in Mindanao for a period not exceeding sixty (60) days, through President Rodrigo Roa Duterte's Proclamation No. 216, which read:

> 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

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[3] G.R. No. 231658, July 4, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/231658.pdf> [Per J. Del Castillo, En Banc].

> 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 23rd day of May in the year of our Lord, Two Thousand and Seventeen.

Thereafter, the President submitted his Report on the declaration of martial law. Both the Senate and the House of Representatives issued resolutions finding no reason to revoke the declaration.[4]

Petitions were then filed before this Court assailing the declaration of martial law and the suspension of the privilege of the writ as unconstitutional as there was no sufficient factual basis for these acts. Finding that Proclamation No. 216 was supported by sufficient factual basis, this Court dismissed these petitions in a Decision dated July 4, 2017.

In a Letter[5] dated July 18, 2017, the President explained to Congress that the rebellion would not be quelled completely by the expiry of the sixty (60) day period for the effectivity of martial law provided under the Constitution. Thus, he requested that the proclamation of martial law be extended until December 31, 2017.

Congress acted on the President's Letter in a Special Joint Session and adopted Resolution of Both Houses No. 2,[6] extending the effectivity of Proclamation No. 216 until December 31, 2017. This was the first extension.

On October 17, 2017, Marawi City was freed from the terrorist groups' influence.[7]

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4 *Respondent's Memorandum*, p. 2.
5 *Respondent's Memorandum*, Annex D.
6 *Lagman Petition*, Annex B.
7 *Lagman Petition*, Annex C.

From October 17, 2017 until December 2017, there was no indication that there was any need to further extend martial law.

Despite the liberation of Marawi City, Secretary Delfin N. Lorenzana wrote a Letter[8] dated December 4, 2017, forwarding an undated letter written by AFP General Rey Leonardo B. Guerrero, recommending that President Duterte extend martial law and suspend the privilege of the writ of habeas corpus in Mindanao for twelve (12) months, until December 31, 2018. Secretary Lorenzana said:

> Due to compelling reasons and based on current security assessment made by the Chief of Staff, Armed Forces of the Philippines, the undersigned recommends the extension of Martial Law for another 12 months or 1 year beginning January 1, 2018 until December 31, 2018 covering the whole island of Mindanao primarily to ensure total eradication of DAESH-inspired Da'awatul Islamiyah Waliyatul Masriq (DIWM), other like-minded Local/Foreign Terrorist Groups (L/FTGs) and Armed Lawless Groups (ALGs), and the communist terrorists (CTs) and their coddlers, supporters and financiers, and to ensure speedy rehabilitation, recovery and reconstruction efforts in Marawi, and the attainment of lasting peace, stability, economic development and prosperity in Mindanao.
>
> The previous Martial Law declaration which is still in effect until end of December 2017 has resulted in remarkable achievements, such as the death of Hapilon and the Maute brothers. However, the remnants of their groups were monitored to be continuously rebuilding their organization through the recruitment and training of new members/fighters. Likewise, there are also other terrorist groups, such as the TURAIFIE, monitored to be planning to conduct terrorist activities in some parts of Mindanao, and there are data that indicate that armed struggle in Mindanao is still relatively strong.
>
> This proposed second extension of implementation of Martial Law in Mindanao coupled with continued suspension of the privilege of the writ of habeas corpus will significantly help not only the AFP, but also other stakeholders in quelling and putting an end to the on-going DAESH-inspired DIWM groups and communist terrorists-staged rebellion, and in restoring public order, safety, and stability in Mindanao.

In his undated Letter[9] to the President, General Guerrero cited the following justifications for the extension of martial law:

> The DAESH-Inspired DIWM groups and allies continue to visibly offer armed resistance in other parts of Central, Western, and Eastern Mindanao in spite of the neutralization of their key leaders and destruction of their forces in Marawi City;

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[8] *Lagman Petition,* Annex C-1.
[9] *Lagman Petition,* Annex C-2.

> Other DAESH-Inspired DIWM groups and allies continue to visibly offer armed resistance in other parts of Central, Western, and Eastern Mindanao in spite of the neutralization of their key leaders and destruction of their forces in Marawi City;
>
> Other DAESH-inspired and like-minded threat groups such as BIFF, AKP, DI-Maguid, DI-Toraype, and the ASG remain capable of staging similar atrocities and violent attacks against vulnerable targets in Mindanao, including the cities of Davao, Cagayan de Oro, General Santos, Zamboanga and Cotabato;
>
> The CTs have been pursuing and intensifying their political mobilization (army, party and mass base building, rallies, pickets and demonstrations, financial and logistical build up), terrorism against innocent civilians and private entities, and guerrilla warfare against the security sector, and public government infrastructures;
>
> The need to intensify the campaign against the CTs is necessary in order to defeat their strategy, stop their extortion, defeat their armed component, and to stop their recruitment activities;
>
> The threats being posed by the CTs, the ASG, and the presence of remnants, protectors, supporters and sympathizers of the DAESH/DIWM pose a clear and imminent danger to public safety and hinders the speedy rehabilitation, recovery and reconstruction efforts in Marawi City, and the attainment of lasting peace, stability, economic development and prosperity in Mindanao;
>
> The 2nd extension of the implementation of Martial Law coupled with the continued suspension of the privilege of the writ of habeas corpus in Mindanao will significantly help not only the AFP, but also other stakeholders in quelling and putting an end to the on-going DAESH-inspired DIWM groups and CT-staged rebellion, and in restoring public order, safety, and stability in Mindanao; and
>
> In seeking for another extension, the AFP is ready, willing and able to perform anew its mandated task in the same manner that it had dutifully done so for the whole duration of Martial Law to date, without any reported human rights violation and/or incident of abuse of authority.

Thus, in a Letter[10] dated December 8, 2017, the President asked Congress for a second extension of the proclamation of martial law and the privilege of the writ of habeas corpus in Mindanao, for a period of one (1) year, to last until December 31, 2018. The only attachments to the President's Letter were the letters of Secretary Lorenzana and General Guerrero.

Acting on the President's Letter, the House of Representatives and Senate promulgated Rules of the Joint Session of Congress on the Call of the President to Further Extend the Period of Proclamation No. 216, Series of

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[10] *Lagman Petition,* Annex C.

2017,[11] to govern the joint session during which Congress would perform its constitutional duty to determine whether rebellion persists, and whether public safety requires the extension of martial law.[12] During this joint session, resource persons from the Executive Department would report "on the factual basis of the letter of the President calling upon Congress to further extend the period" of martial law in Mindanao.[13] These rules limited a member's period to interpellate resource persons to only three (3) minutes.[14]

During the joint session on December 13, 2017, the only materials provided to the members of Congress were the three (3) letters written by the President, General Guerrero, and Secretary Lorenzana.[15] Nonetheless, Congress passed Resolution of Both Houses No. 4, Further Extending 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. It read:

> WHEREAS, the Senate and the House of Representatives, in a Special Joint Session held on July 22, 2017, extended the Proclamation of Martial Law and the Suspension of the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao until December 31, 2017;
>
> WHEREAS, in a communication addressed to the Senate and the House of Representatives, President Rodrigo Roa Duterte requested the Congress of the Philippines "to further extend the proclamation 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 01 January 2018 to 31 December 2018, or for such other period of time as the Congress may determine, in accordance with Section 18, Article VII of the 1987 Philippine Constitution";
>
> WHEREAS, the President informed the Congress of the Philippines of the remarkable progress made during the period of Martial Law, but nevertheless 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

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[11] *Representative Lagman's Memorandum,* Annex G.

[12] CONST., Art., VII, sec. 18.

[13] *Representative Lagman's Memorandum,* Annex G. Rule V, Section 6, Rules of the Joint Session of Congress on the Call of the President to Further Extend the Period of Proclamation No. 216, Series of 217.

[14] *Representative Lagman's Memorandum,* Annex G. Rule V, Section 7, Rules of the Joint Session of Congress on the Call of the President to Further Extend the Period of Proclamation No. 216, Series of 217.

[15] TSN dated January 16, 2018, pp. 58–60.

> 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 stepped up terrorist acts against innocent civilians and private entities, as well as guerrilla 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;
>
> WHEREAS, Section 18, Article VII of the 1987 Constitution authorizes the Congress of the Philippines to extend, at the initiative of the President, such proclamation or suspension for a period to be determined by the Congress of the Philippines, if the invasion or rebellion shall persist and public safety requires it;
>
> WHEREAS, on December 13, 2017, after thorough discussion and extensive debate, the Congress of the Philippines in a Joint Session, by two hundred forty (240) affirmative votes comprising the majority of all its Members, has determined that rebellion persists, and that public safety indubitably requires the further extension of the Proclamation of Martial Law and the Suspension of the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao; Now, therefore, be it
>
> Resolved by the Senate and the House of Representatives in a Joint Session Assembled, 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.

Thus, four (4) petitions[16] were filed before this Court, assailing Congress' act of extending martial law and the suspension of the writ of habeas corpus, as well as the President's act of recommending it. Respondents, through the Office of the Solicitor General, filed their comments to the petitions, and this Court set the case for oral arguments.

During the Oral Arguments, on January 17, 2018, Major General Fernando Trinidad, Deputy Chief of Staff for Intelligence, Chief of the AFP made a Power Point presentation on the Extension of Martial Law in Mindanao, to update this Court as to how martial law has been implemented, and to explain the necessity of extending martial law.[17] Through various manifestations filed before us, the respondents represented by the Office of the Solicitor General refused to make public any portion of the Operational Directives from the Chief of Staff of the Armed Forces on the Conduct of Martial Law or their Program to Counter Violent Extremism. The Court thus decided that the contents of these documents will not be taken into

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[16] *Lagman v. Pimentel III*, docketed as G.R. No. 235935; *Cullamat v. Duterte*, docketed as G.R. No. 236061, *Rosales v. Duterte*, docketed as G.R. No. 236145; and *Monsod v. Pimentel III*, docketed as G.R. No. 236155.

[17] TSN, January 17, 2018, p. 51.

consideration.

The parties filed their respective memoranda on January 24, 2018.

II

With the filing of any appropriate action under Article VII, Section 18,[18] this Court is required to conduct greater judicial and judicious scrutiny of both the Proclamation of Martial Law and the Suspension of the Privilege of the Writ of Habeas Corpus by the President and the decision of Congress to allow any extension of these Commander-in-Chief powers.

The heightened scrutiny can be discerned from (1) the text and context of the provision; (2) the textual evolution of the provision from past constitutions and their various interpretations in jurisprudence; and (3) a reasonable informed contemporary interpretation based upon an analysis of the text, context, and textual history as well as history in general.

Martial law is a state which suggests a derogation of the fundamental republican and democratic concept of a state where sovereignty resides in the people. It is a derogation of the elaborate balance of civil governance and limited government laid out in the Constitution. Martial law is a label or rubric for a set of extraordinary powers to be exercised by the President in a situation of extreme exigency. Regardless of the incumbent, the possible scope of the powers that can be exercised intrinsically calls for an

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

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.

examination of how it affects the fundamental individual and collective rights embedded in our constitutional order.

Martial law generally allows more powers to the AFP. The clear intent of the Constitution is for the sovereign through both its elected representatives as well as the Supreme Court to do an exacting review of a declaration of martial law.

The heightened scrutiny in Article VII, Section 18 already includes the power to review whether the President in his proclamation or request for extension, or the Congress in its decision to extend, has gravely abused its discretion. The Supreme Court does not lose its powers under Article VIII, Section 1[19] simply with an invocation of Article VII, Section 18. The result would be the absurd situation of hobbling judicial review when the Constitution requires the Court to exercise its full powers.

Besides, both powers were properly invoked in the consolidated petitions.

There can be no rational review if the powers that the President wishes to exercise are not clearly defined. There can be no rational review if all that we are presented with is a declaration of the state of martial law—a description, label, or rubric—not the actual powers that the Commander-in-Chief, through the military, is willing to exercise in derogation of the regular powers already granted by the Constitution and statutes. A declaration of a state of martial law is superfluous when ambiguous or when it simply reiterates powers which can be exercised by the Chief Executive.

This is the situation we have in this case. We have an ambiguous declaration of martial law with no unique powers over an area that is too broad, where the fear of skirmishes in which imminence has not also been proven to exist. There are no actual debilitating confrontations deserving of martial law powers. There are no confrontations that could not be solved by the calling out powers of the President or the surgical application of the suspension of the privilege of the writ of habeas corpus.

There is no rebellion that endangers public safety as required by the Constitution as basis for the declaration of martial law or the suspension of the privilege of the writ of habeas corpus.

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[19] CONST., art. VIII, sec. 1 provides:
Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Article VII, Section 18, when properly invoked, raises issues with respect to (a) the reasonability of the extension of the declaration of the state of martial law or the suspension of the privilege of the writ of habeas corpus, and (b) the sufficiency of the factual basis for the declaration of the state of martial law and the suspension of the privilege of the writ of habeas corpus. These two relate to each other. Both must pass both congressional and judicial inquiry.

On one hand, the reasonability of the extension of the state of martial law and the suspension of the writ of habeas corpus will depend on the following inquiries:

(a) whether the powers originally granted were properly exercised and it was not the inability to effectively and efficiently wield them that caused the extension;

(b) whether the past application of defined powers, under the declaration of a state of martial law and the suspension of the writ of habeas corpus, was conducted in a manner which did not unduly interfere with fundamental rights. In other words, the Court needs to be convinced that the powers requested under martial law were and will be exercised in a manner least restrictive of fundamental rights;

(c) whether the proposed extension has clear, reasonable, and attainable targets, and therefore, whether the period requested is supported by these aims;

(d) whether there are credible and workable rules of engagement for the exercise of the powers properly disseminated through the ranks of the military that will implement martial law; and

(e) whether there is basis for the scope of the area requested for the extension of the declaration of martial law and the suspension of the privilege of the writ of habeas corpus.

On the other hand, the sufficiency of the factual basis for the declaration or the suspension consists of two (2) elements. Both elements must prove rebellion and the necessity of the extraordinary powers for public safety purposes.

The first element of this part of the inquiry is the concept of "factual basis." It must not only depend on factual assertions made by the military.

The basis for the factual assertions must be presented in a reasonable manner. That is, that this Court must distinguish and evaluate the relationship between *factum probandum* and *factum probans*—between the ultimate facts alleged and the evidentiary facts used, and the reasonability of the inferences to arrive at the allegations.

The second element of this inquiry is the concept of the "sufficiency" of the factual basis. This means that it should relate to the powers necessary for the evil it seeks to prevent.

The "evil" sought to be addressed by clearly defined powers under a state of martial law is the presence of actual—not imminent—rebellion, and "public safety" is a necessity for the exercise of such powers. "Public safety" cannot be the damage or injury inherent in acts of rebellion. If that is so, then there would have been no necessity to make it a textual requirement in Article VII, Section 18. Rather, it should mean more. In examining the history of martial law in general, and the clear expressed desire to avoid the kind of martial law imposed through Proclamation 1081 in 1972, we see that martial law is imposed in a situation where civil and/or judicial authority could not exercise its usual powers. The history of martial law in this country also implies that such exigency should require a measured and definitive timetable, target, and strategy.

In both general inquiries, the extraordinary powers—as well as their scope and limitations—should be clear. Apart from making them clear to those that will review, they should be made public and transparent. They cannot be confidential.

Both Congressional and judicial reviews include these two (2) basic inquiries: whether there are clear, transparent, and necessary powers articulated under martial law, and whether the declaration of such kind of martial law is supported by sufficient factual basis.

Unlike the Court, Congress may provide for oversight in the exercise of powers by the President as Commander-in-Chief. Such oversight may be to ensure that the fundamental rights of citizens are guaranteed even under a state of martial law or with the suspension of the privilege of the writ of habeas corpus. The possible abuse of discretion in the lack of oversight exercised by Congress is not in issue in this case but, in my view, should likewise be justiciable due to the extraordinary nature of these Commander-in-Chief prerogatives.

Both the President and Congress also gravely abused their discretion when they failed to make public the powers that are to be exercised by the military, the remedies, and the strategy. Public participation in quelling the

rebellion, assuming that it exists, should always be encouraged. There should no longer be any secret decrees.

Congress gravely abused its discretion in that it extended the proclamation of a state of martial law and the suspension of the privilege of the writ of habeas corpus (a) without a proper presentation of all the facts in their proper context; (b) without examining the basis of the conclusions inherent in the allegations of facts by the military; (c) without knowing the powers that will be exercised that are unique to the declaration of a state of martial law; and (d) without ascertaining why there needed to be a longer extension in the same area even with the declaration of continued victories by the military.

All these were unexamined because of the existence of the fifth ground that rendered the extension unconstitutional. There was (e) a lack of deliberation. The deliberation was hobbled by the late request submitted by the President to extend the declaration and the rules of Congress which unconstitutionally restricted discussion. Each representative of each district and each nationally elected Senator were given only three minutes to interpellate, clarify, and express their dissent, if any.

The facts presented were generalized and meant to justify extraordinary powers on the basis of general fears of what might happen. They listed a litany of violent confrontations, past and present, with no coherent timeline.

Terrorism and rebellion are vastly different. Even the aims of each group categorized as terrorists and enumerated in the presentations of the government are different. Some of the groups are separated in terms of ideology and methods. Many of these groups are continuously driven by internal and violent divisions. It is illogical and deceiving to present them as a coordinated enemy, and therefore, accumulate their collective strengths to stoke fear of potential catastrophe. This is fear mongering at its best and this Court should provide the sobriety called for by the Constitution.

More importantly, the government has not highlighted its victories. It has not presented how its normal law enforcement abilities have been able to disrupt and interdict past attempts to sow chaos and discord. It has not shown why its ordinary capabilities remain short to address all the law-and-order problems it enumerates.

III

Judicial review, properly invoked, is not a privilege of this Court. It is its sworn duty.

The textual evolution of Article VII, Section 18 of the Constitution and the context in which it was formulated reveals a mandate for this Court not to give full deference to the Executive when the Commander-in-Chief powers are exercised. The present text entails "a heightened and stricter mode of review."[20]

Under the Malolos Constitution, the President of the Republic was granted very broad Commander-in-Chief powers. The President had "the army and the navy" at his or her disposal.[21] The Malolos Constitution did not provide for any particular safeguard when the president exercises the commander-in-chief powers other than the provision imposing liability of the President for high treason.[22] Judicial power, which was vested in the Supreme Court and in other courts created by law,[23] was simply defined as the "power to apply the laws, in the name of the Nation, in all civil and criminal trials."[24]

The Philippine Bill of 1902 further developed the Commander-in-Chief Powers of the President. Section 5, Paragraph 7 allowed the President or the Governor to suspend the privilege of the writ of habeas corpus under certain conditions. The privilege of the writ of habeas corpus could only be suspended with the approval of the Philippine Commission in cases of "rebellion, insurrection, or invasion" and when the "public safety may require it."[25]

The question of whether the judiciary may review the exercise of the Commander-in-Chief powers under the Philippine Bill of 1902 was raised in *Barcelon v. Baker*. In resolving the case, this Court deferred to the judgment of the Governor General and the Philippine Commission and ruled that the factual basis relied upon for the suspension of the privilege of the writ of habeas corpus was purely political, and thus, beyond the scope of judicial review. In refusing to take judicial cognizance of the issue, this Court relied on the principle of separation of powers and on the presumption that each branch of the government properly dispensed its functions.[26]

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[20] J. Leonen, Dissenting Opinion in *Lagman v. Medialdea*, G.R. No. 231658, July 4, 2017, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/231658.pdf> [Per J. Del Castillo, En Banc].

[21] MALOLOS CONST., Art. 65.

[22] MALOLOS CONST., Art. 71.

[23] MALOLOS CONST., Art. 79.

[24] MALOLOS CONST., Art. 77.

[25] Phil. Bill of 1902, sec. 5.

[26] J. Leonen, Dissenting Opinion in *Lagman v. Medialdea*, G.R. No. 231658, July 4, 2017, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/231658.pdf> [Per J. Del Castillo, En Banc].

The Philippine Autonomy Act, or the Jones Law of 1916, expressly recognized the executive as the "commander in chief of all locally created armed forces and militia."[27] Section 21 of the Philippine Autonomy Act stated:

> He shall be responsible for the faithful execution of the laws of the Philippine Islands and of the United States operative within the Philippine Islands, and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the Islands, or summon the posse comitatus, or call out the militia or other locally created armed forces, to prevent or suppress lawless violence, invasion, insurrection, or rebellion; and *he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privileges of the writ of habeas corpus, or place the Islands, or any part thereof, under martial law: Provided, That whenever the Governor General shall exercise this authority, he shall at once notify the President of the United States thereof, together with the attending facts and circumstances, and the President shall have power modify or vacate the action of the Governor-General.* He shall annually and at such other times as he may be required make such official report of the transactions of the Government of the Philippine Islands to an executive department of the United States to be designated by the President, and his said annual report shall be transmitted to the Congress of the United States; and he shall perform such additional duties and functions as may in pursuance of law be delegated or assigned to him by the President.[28] (Emphasis supplied)

The Philippine Autonomy Act recognized the executive's calling out powers "to prevent or suppress lawless violence, invasion, insurrection, or rebellion."

This is also the first time that "martial law" appeared in the organic act of the Philippines. The Governor General was given the power to "suspend the privileges of the writ of habeas corpus, *or place the Islands, or any part thereof under martial law*" but only "in case of rebellion or invasion, or imminent danger thereof." In the exercise of these powers, legislative concurrence was not necessary. The Governor General, however, was required to notify the President of the United States of such declaration. Only the President may vacate the action of the Governor General.

The 1935 Constitution also gave the President the power to call out the armed forces, and to suspend the writ of habeas corpus or to place the Philippines or any part thereof under martial law:

> Section 10
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> ...

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[27] Phil. Autonomy Act, sec. 21.
[28] Phi. Autonomy Act, sec. 21.

> (2) The President shall be commander-in-chief of all armed forces of the Philippines, and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of invasion, insurrection, or rebellion or imminent danger thereof, when the public safety requires it, he may suspend the privilege of the writ of habeas corpus, or place the Philippines or any part thereof under Martial Law.[29]

The privilege of the writ of habeas corpus could only be suspended and martial law could only be declared in case of "invasion, insurrection, or rebellion or imminent danger thereof, when the public safety requires it."

The privilege of the writ of habeas corpus was suspended under the 1935 Constitution. This was challenged in *Montenegro v. Castañeda.*[30] Similar to *Barcelon*, a policy of non-interference was adopted in *Montenegro*. This Court deferred to the executive's discretion and ruled that "the authority to decide whenever the exigency has arisen requiring the suspension belongs to the President and "his decision is final and conclusive upon the courts and upon all other persons."[31]

Later, the pronouncements in *Barcelon* and *Montenegro* were unanimously reversed in *Lansang v. Garcia.* This Court recognized the power of the President to suspend the privilege of the writ but qualified that the same was "limited and conditional." Courts may, therefore, inquire whether the power was exercised in accordance with the Constitution:[32]

> Indeed, the grant of power to suspend the privilege is neither absolute nor unqualified. The authority conferred by the Constitution, both under the Bill of Rights and under the Executive Department, is limited and conditional. The precept in the Bill of Rights establishes a general rule, as well as an exception thereto. What is more, it postulates the former in the *negative*, evidently to stress its importance, by providing that "(t)he privilege of the writ of *habeas corpus* shall *not* be suspended . . . ." It is only by way of *exception* that it permits the suspension of the privilege "in cases of invasion, insurrection, or rebellion" — or, under Art. VII of the Constitution, "imminent danger thereof" — "when the public safety requires it, in any of which events the same may be suspended wherever during such period the necessity for such suspension shall exist." *Far from being full and plenary, the authority to suspend the privilege of the writ is thus circumscribed, confined and restricted, not only by the prescribed setting or the conditions essential to its existence, but, also, as regards the time when and the place where it may be exercised.* These factors and the aforementioned setting or conditions mark, establish and define the extent, the confines and the limits of said power, beyond which

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29 1935 CONST., sec. 10, par. 2.

30 91 Phil. 882 (1952) [Per J. Bengzon, En Banc].

31 Id. at 887.

32 J. Leonen, Dissenting Opinion in *Lagman v. Medialdea*, G.R. No. 231658, July 4, 2017, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/231658.pdf> [Per J. Del Castillo, En Banc].

> it does not exist. And, like the limitations and restrictions imposed by the Fundamental Law upon the legislative department, adherence thereto and compliance therewith may, within proper bounds, be inquired into by courts of justice. Otherwise, the explicit constitutional provisions thereon would be meaningless. Surely, the framers of our Constitution could not have intended to engage in such a wasteful exercise in futility.[33] (Emphasis supplied)

Despite these pronouncements, this Court upheld the suspension of the privilege of the writ of *habeas corpus* ruling that the existence of a rebellion and that public safety required such suspension.[34]

In *In the Matter of the Petition for Habeas Corpus of Aquino et al. v. Ponce Enrile*,[35] this Court, once again, was faced with the propriety of the exercise of the President of his Commander-in-Chief powers. The majority of this Court in *Aquino* held that the declaration of martial law was purely political in nature and therefore, may not be inquired into by this Court.

The 1973 Constitution reiterated the President's Commander-in-Chief powers under the 1935 Constitution. Article VII, Section 11 provides:

> Section 11. The President shall be commander-in-chief of all armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privilege of the writ of habeas corpus,or place the Philippines or any part thereof under martial law.

This Court in *In the Issuance of the Writ of Habeas Corpus for Parong et al. v. Enrile*,[36] expressly reverted to the doctrine in *Barcelon* and *Montenegro* regarding deference to the President upon the suspension of the privilege of the writ of habeas corpus:

> In times of war or national emergency, the legislature may surrender a part of its power of legislation to the President. Would it not be as proper and wholly acceptable to lay down the principle that during such crises, the judiciary should be less jealous of its power and more trusting of the Executive in the exercise of its emergency powers in recognition of the same necessity? Verily, the existence of the emergencies should be left to President's sole and unfettered determination. His exercise of the power to suspend the privilege of the writ of habeas corpus on the occasion thereof, should also be beyond

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33 *Lansang v. Garcia*, 149 Phil. 547, 586 (1971) [Per J. Concepcion, En Banc].

34 J. Leonen, Dissenting Opinion in *Lagman v. Medialdea*, G.R. No. 231658, July 4, 2017, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/231658.pdf> [Per J. Del Castillo, En Banc].

35 158-A Phil. 1 (1974) [Per C.J. Makalintal, En Banc].

36 206 Phil. 392 (1983) [Per J. De Castro, En Banc].

> judicial review. Arbitrariness, as a ground for judicial inquiry of presidential acts and decisions, sounds good in theory but impractical and unrealistic, considering how well-nigh impossible it is for the courts to contradict the finding of the President on the existence of the emergency that gives occasion for the exercise of the power to suspend the privilege of the writ. For the Court to insist on reviewing Presidential action on the ground of arbitrariness may only result in a violent collision of two jealous powers with tragic consequences, by all means to be avoided, in favor of adhering to the more desirable and long-tested doctrine of "political question" in reference to the power of judicial review.
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> Amendment No. 6 of the 1973 Constitution, as earlier cited, affords further reason for the reexamination of the Lansang doctrine and reversion to that of Barcelon vs. Baker and Montenegro vs. Castañeda.[37] (Citations omitted)

Shortly after the promulgation of *Parong*, this Court ruled upon *In the Matter of the Petition for Habeas Corpus of Morales, Jr. v. Enrile* which reiterated the doctrine in *Lansang*.

The passage of the 1987 Constitution finally put an end to the pliability of past Courts under martial law as declared by former President Ferdinand E. Marcos. That the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus may judicially be inquired into is now firmly established in the present text of the Constitution, particularly Article VII, Section 18:[38]

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

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[37] Id. at 431–432.

[38] J. Leonen, Dissenting Opinion in *Lagman v. Medialdea*, G.R. No. 231658, July 4, 2017, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/231658.pdf> [Per J. Del Castillo, En Banc].

> 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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> 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.
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> 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 the 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.

Article VII, Section 18 of the 1987 Constitution, in stark contrast with its predecessors, provides for a more heightened and stricter scrutiny when the President exercises his Commander-in-Chief powers.

Compared with the provisions in the earlier Constitutions, more stringent conditions are needed before the President can declare martial law or suspend the privilege of the writ of habeas corpus.

First, the conditions of "invasion, insurrection, or rebellion, or imminent danger thereof" found in past Constitutions are narrowed down and limited to actual "invasion or rebellion."

Second, there is an added requirement that "public safety requires" the declaration or suspension.

Third, a time element is also introduced. 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.

Apart from these stringent conditions, the 1987 Constitution grants a more active role to the other branches of government as a check on the possible excesses of the executive.

Article VII, Section 18 specifically delineates the roles of Congress and the Judiciary when the President exercises his Commander-in-Chief powers. The President and the Congress, as held in *Fortun v. Macapagal-*

Arroyo,[39] must "act in tandem in exercising the power to proclaim martial law or suspend the privilege of the writ of *habeas corpus*."[40]

Congress is given "a much wider latitude in its power to revoke the proclamation or suspension." The President is left powerless to set aside or contest the revocation of Congress.[41]

This Court, on the other hand, is directed to review "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." The propriety of the declaration of martial law and the suspension of the privilege of the writ is therefore "justiciable and within the ambit of judicial review."[42] This Court is further mandated to promulgate its decision within a period of 30 days from the filing of an "appropriate proceeding" by "any citizen."[43]

The active roles of the two (2) branches of government were further differentiated in my dissenting opinion in *Lagman v. Medialdea*:

> The framers also intended for the Congress to have a considerably broader review power than the Judiciary and to play an active role following the President's proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*. Unlike the Court which can only act upon an appropriate proceeding filed by any citizen, Congress may, by voting jointly and upon a majority vote, revoke such proclamation or suspension. The decision to revoke is not premised on how factually correct the President's invocation of his Commander-in-Chief powers are, rather, Congress is permitted a wider latitude in how it chooses to respond to the President's proclamation or suspension. While the Court is limited to reviewing the sufficiency of the factual basis behind the President's proclamation or suspension, Congress does not operate under such constraints and can strike down the President's exercise of his Commander-in-Chief powers as it pleases without running afoul of the Constitution.
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> With its veto power and power to extend the duration of martial law upon the President's initiative and as a representative of its constituents, Congress is also expected to continuously monitor and review the situation on the areas affected by martial law. Unlike the Court which is mandated to promulgate its decision within thirty (30) days from the time a petition questioning the proclamation is filed, Congress is not saddled with a similar duty. While the Court is mandated to look into the sufficiency of the factual basis and whether or not the proclamation was

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39 684 Phil. 526 (2012) [Per J. Abad, En Banc].

40 Id. at 557.

41 J. Leonen, Dissenting Opinion in *Lagman v. Medialdea*, G.R. No. 231658, July 4, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/231658.pdf> 20 [Per J. Del Castillo, En Banc].

42 J. Leonen, Dissenting Opinion in *Lagman v. Medialdea*, G.R. No. 231658, July 4, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/231658.pdf> 19 [Per J. Del Castillo, En Banc].

43 Id.

> attended with grave abuse of discretion, Congress deals primarily with the wisdom behind the proclamation or suspension. Much deference is thus accorded to Congress and is treated as the President's co-equal when it comes to determining the wisdom behind the imposition or continued imposition of martial law or suspension of the writ.[44]

The 1987 Constitution also makes it easier to question the propriety of the declaration of martial law or the suspension of the privilege of the writ of habeas corpus in that it allows "any citizen" to file an appropriate proceeding. The provision, in effect, relaxes the rules on *locus standi*.[45]

The heightened level of judicial scrutiny will be further discussed in this opinion.

IV

Public respondents failed to address the requirement that public safety requires for the extension of martial law.

The first paragraph of Article VII, Section 18 of the Constitution mentions the phrase "public safety requires it" twice. The first reference in the constitutional text refers to the original proclamation of martial law or the suspension of the privilege of the writ of habeas corpus. The second reference to the requirement of public safety refers to the extension of any proclamation, thus:

> 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***. (Emphasis supplied)

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[44] Id. at 20.
[45] Id. at 11.

The Constitution requires that martial law may be imposed not only if there is rebellion or invasion. It also requires that ***it is indispensable to public safety***. The resulting damage or injuries cannot simply be the usual consequences of rebellion or invasion. It must be of such nature that the powers to be exercised under the rubric of martial law or with the suspension of the writ of habeas corpus are indispensable to address the scope of the conflagration. The mere allegation of the existence of rebellion is not enough.

A review of the history of the concept of martial law in general and as applied to our jurisdiction is necessary in order to understand what the present provision requires.

The beginnings of the concept of martial law in England from 1300 to 1638 are discussed in The Early History of Martial Law in England from the Fourteenth Century to the Petition of Right[46]:

> The term martial law refers to a summary form of criminal justice, exercised under direct or delegated royal authority by the military or police forces of the Crown, which is independent of the established processes of the common law courts, the ecclesiastical courts, and the courts which administered the civil law in England. Martial law is not a body of substantive law, but rather summary powers employed when the ordinary rule of law is suspended. "It is not law," wrote Sir Matthew Hale, "but something rather indulged than allowed as a law . . . and that only in cases of necessity."
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> . . . .
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> From the beginnings of summary procedure against rebels in the reign of Edward I until the mid-sixteenth century, martial law was regarded in both its forms as the extraordinary usages of war, to be employed only in time of war or open rebellion in the realm, and never as an adjunct of the regular criminal law. Beginning in the mid-1550s, however, the Crown began to claim the authority to expand the hitherto carefully circumscribed jurisdiction of martial law beyond situations of war or open rebellion and into territory which had been the exclusive domain of the criminal law . . .

Comparatively, in *Duncan v. Kahanamoku*,[47] a case of American origin, martial law was defined as the "exercise of the military power which resides in the Executive Branch of Government to preserve order, and insure the public safety in domestic territory in time of emergency, when other branches of the government are unable to function or their functioning

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[46] J.V. Capua, *The Early History of Martial Law in England from the Fourteenth Century to the Petition of Right*, 36 CAMBRIDGE L.J. 152 (1977).

[47] 327 U.S. 304 (1946) [Per J. Black].

would itself threaten the public safety."[48] Justice Davis in *Ex Parte Milligan*,[49] noted that "martial rule can never exist where the courts are open and in the proper and unobstructed exercise of their jurisdiction."[50]

As traditionally conceived, martial law is an extraordinary situation that arises in exigent circumstances. It is required when the civilian government in an area is unable to maintain peace and order requiring the military to step in to address the conflagration, govern temporarily until the area can again be governed normally and democratically under a civilian government. Martial law was never conceived as a substitute for democratic and representative civilian government.

Prior to the 1987 Constitution, martial law had been declared three (3) times in the Philippines.

In 1896, the provinces of Manila, Laguna, Cavite, Batangas, Pampanga, Bulacan, Tarlac, and Nueva Ecija were declared to be in a state of war and under martial law because of the open revolution of the Katipunan against Spain.[51] The proclamation declaring martial law stated:

> The acts of rebellion of which armed bodies of the people have been guilty during the last few days at different points of the territory of this province, seriously disturbing public tranquility, make it imperative that the most severe and exemplary measures be taken to suppress at its inception an attempt as criminal as futile.[52]

The first article declared a state of war against the eight (8) provinces, and the following nine (9) articles described rebels, their acts, and how they would be treated.[53] Clearly, from the point of view of the colonial civilian government, there were areas which were not fit for civilian government because of the extent of the insurgency.

The Philippines was again placed under martial law during the Second Republic by virtue of Proclamation No. 29 signed by President Jose P. Laurel on September 21, 1944. It cited the danger of invasion being imminent and the public safety so requiring it as the justification for the imposition of the same.[54] The proclamation further declared that:

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48 C.J. Stone, Concurring Opinion in *Duncan v. Kahanamoku*, 327 U.S. 304. 355 (1946) [Per. J. Black] citing Luther v. Borden, 48 U.S. 1 (1849) [Per J. Taney].

49 *Ex Parte Milligan*, 71 U.S. (4 Wall.) 2–142 (1866) [Per J. Davis]

50 Id. at 127.

51 PRESIDENTIAL MUSEUM AND LIBRARY, *Evolution of the Revolution*, <http://malacanang.gov.ph/7824-evolution-of-the-revolution/> (last accessed on June 22, 2017).

52 Ambeth Ocampo, *Martial Law in 1896*, PHILIPPINE DAILY INQUIRER, December 18, 2009, <https://www.pressreader.com/philippines/philippine-daily-inquirer/20091218/283180079571432> (last accessed June 22, 2017).

53 Id.

54 Proc. No. 29 (1944).

1. The respective Ministers of State shall, subject to the authority of the President, exercise direct supervision and control over all district, provincial, and other local governmental agencies in the Philippines when performing functions or discharging duties affecting matters within the jurisdiction of his Ministry and may, subject to revocation by the President, issue such orders as may be necessary therefor.

2. The Philippines shall be divided into nine Military Districts, seven to correspond to the seven Administrative Districts created under Ordinance No. 31, dated August 26, 1944; the eight, to compromise the City of Manila; and the ninth, the City of Cavite and the provinces of Bulacan, Rizal, Cavite, and Palawan.

3. The Commissioners for each of said Administrative Districts shall have command, respectively, of the first seven military districts herein created, and shall bear the title of Military Governor; and the Mayors and Provincial Governors of the cities and provinces compromised therein shall be their principal deputies, with the title of deputy city or provincial military governor, as the case may be. The Mayor of the City of Manila shall be Military Governor for the eight Military District; and the Vice-Minister of Home Affairs, in addition to his other duties, shall be the Military Governor for the ninth Military District.

4. All existing laws shall continue in force and effect until amended or repealed by the president, and all the existing civil agencies of an executive character shall continue exercising their agencies of an executive character shall continue exercising their powers and performing their functions and duties, unless they are inconsistent with the terms of this Proclamation or incompatible with the expeditions and effective enforcement of the martial law herein declared.

5. It shall be the duty of the Military Governors to suppress treason, sedition, disorder and violence; and to cause to be punished all disturbances of public peace and all offenders against the criminal laws; and also to protect persons in their legitimate rights. To this end and until otherwise decreed, the existing courts of justice shall assume jurisdiction and try offenders without unnecessary delay and in a summary manner, in accordance with such procedural rules as may be prescribed by the Minister of Justice. The decisions of courts of justice of the different categories in criminal cases within their original jurisdiction shall be final and unappealable. Provided, however, That no sentence of death shall be carried into effect without the approval of the President.

6. The existing courts of justice shall continue to be invested with, and shall exercise, the same jurisdiction in civil actions and special proceedings as are now provided in existing laws, unless otherwise directed by the President of the Republic of the Philippines.

7. The several agencies of the Government of the Republic of the Philippines are hereby authorized to call upon the armed forces of the Republic to give such aid, protection, and assistance as may be necessary to enable them safely and efficiently to exercise their powers

> and discharge their duties; and all such forces of the Republic are required promptly to obey such call.
>
> 8. The proclamation of martial law being an emergency measure demanded by imperative necessity, it shall continue as long as the need for it exists and shall terminate upon proclamation of the President of the Republic of the Philippines.[55]

The next day, Proclamation No. 30[56] was issued, which declared the existence of a state of war in the Philippines. The Proclamation cited the attack by the United States and Great Britain in certain parts of the Philippines in violation of the territorial integrity of the Republic, causing death or injury to its citizens and destruction or damage to their property. The Proclamation also stated that the Republic entered into a Pact of Alliance[57] with Japan, based on mutual respect of sovereignty and territories, to safeguard the territorial integrity and independence of the Philippines.[58] Again the situation was dire in that invasion was imminent.

The third declaration of martial law was an abuse of the concept and was deployed for other purposes. President Ferdinand Marcos issued Proclamation No. 1081 on September 21, 1972 putting the entire Philippines under martial law. The proclamation in part reads:

> NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested upon me by Article VII, Section 10, Paragraph (2) of the Constitution, do hereby place the entire Philippines as defined in Article I, Section 1 of the Constitution under martial law and, in my capacity as their commander-in-chief, do hereby command the armed forces of the Philippines, to maintain law and order throughout the Philippines, prevent or suppress all forms of lawless violence as well as any act of insurrection or rebellion and to enforce obedience to all the laws and decrees, orders and regulations promulgated by me personally or upon my direction.
>
> In addition, I do hereby order that all persons presently detained, as well as all others who may hereafter be similarly detained for the crimes of insurrection or rebellion, and all other crimes and offenses committed in furtherance or on the occasion thereof, or incident thereto, or in connection therewith, for crimes against national security and the law of nations, crimes against public order, crimes involving usurpation of authority, rank, title and improper use of names, uniforms and insignia, crimes committed by public officers, and for such other crimes as will be enumerated in Orders that I shall subsequently promulgate, as well as crimes as a consequence of any violation of any decree, order or regulation promulgated by me personally or promulgated upon my

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55 Id.

56 Proc. No. 30 (1944).

57 PRESIDENTIAL MUSEUM AND LIBRARY, *Dr. Jose P. Laurel as President of the Second Philippine Republic,* <http://malacanang.gov.ph/5237-dr-jose-p-laurel-as-president-of-the-second-philippine-republic/#_edn7> (last accessed July 3, 2017).

58 Proc. No. 30 (1944).

> direction shall be kept under detention until otherwise ordered released by me or by my duly designated representative.[59] (Emphases supplied)

Subsequent events revealed the draconian control that the President allegedly had as Commander-in-Chief. As narrated in my separate opinion in the first *Lagman v. Medialdea*:[60]

> The next day, on September 22, 1972, President Marcos promulgated General Order Nos. 1 to 6, detailing the powers he would be exercising under martial law.
>
> General Order No. 1 gave President Marcos the power to "govern the nation and direct the operation of the entire Government, including all its agencies and instrumentalities, in [his] capacity and . . . exercise all the powers and prerogatives appurtenant and incident to [his] position as such Commander-in-Chief of the Armed Forces of the Philippines."
>
> General Order No. 2 ordered the arrest of several individuals. The same was followed by General Order No. 3, which stated that "all executive departments, bureaus, offices, agencies, and instrumentalities of the National Government, government-owned or controlled corporations, as well as governments of all the provinces, cities, municipalities, and barrios throughout the land shall continue to function under their present officers and employees and in accordance with existing laws." However, General Order No. 3 removed from the jurisdiction of the judiciary the following cases:
>
> 1. Those involving the validity, legality or constitutionality of Proclamation No. 1081 dated September 21, 1972, or of any decree, order or acts issued, promulgated or [performed] by me or by my duly designated representative pursuant thereto. (As amended by General Order No. 3-A, dated September 24, 1972).
>
> 2. Those involving the validity, legality or constitutionality of any rules, orders or acts issued, promulgated or performed by public servants pursuant to decrees, orders, rules and regulations issued and promulgated by me or by my duly designated representative pursuant to Proclamation No. 1081, dated Sept. 21, 1972.
>
> 3. Those involving crimes against national security and the law of nations.
>
> 4. Those involving crimes against the fundamental laws of the State.
>
> 5. Those involving crimes against public order.
>
> 6. Those crimes involving usurpation of authority, rank, title, and improper use of names, uniforms, and insignia.

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[59] Proc. No. 1081 (1972).

[60] J. Leonen, Dissenting Opinion in *Lagman v. Medialdea*, G.R. No. 231658, July 4, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/231658.pdf> [Per J. Del Castillo, En Banc].

7. Those involving crimes committed by public officers.

General Order No. 4 imposed the curfew between the hours of 12 midnight and 4 o'clock in the morning wherein no person in the Philippines was allowed to move about outside his or her residence unless he or she is authorized in writing to do so by the military commander-in-charge of his or her area of residence. General Order No. 4 further stated that any violation of the same would lead to the arrest and detention of the person in the nearest military camp and the person would be released not later than 12 o'clock noon the following day.

General Order No. 5 ordered that:

all rallies, demonstrations, and other forms of group actions by persons within the geographical limits of the Philippines, including strikes and picketing in vital industries such as companies engaged in manufacture or processing as well as in the distribution of fuel, gas, gasoline, and fuel or lubricating oil, in companies engaged in the production or processing of essential commodities or products for exports, and in companies engaged in banking of any kind, as well as in hospitals and in schools and colleges, are strictly prohibited and any person violating this order shall forthwith be arrested and taken into custody and held for the duration of the national emergency or until he or she is otherwise ordered released by me or by my designated representative.

General Order No. 6 imposed that "no person shall keep, possess, or carry outside of his residence any firearm unless such person is duly authorized to keep, possess, or carry such firearm and any person violating this order shall forthwith be arrested and taken into custody . . ."

Martial law arises from necessity, when the civil government cannot maintain peace and order, and the powers to be exercised respond to that necessity. However, under his version of martial law, President Marcos placed all his actions beyond judicial review and vested in himself the power to "legally," by virtue of his General Orders, do anything, without limitation. It was clearly not necessary to make President Marcos a dictator to enable civil government to maintain peace and order. President Marcos also prohibited the expression of dissent, prohibiting "rallies, demonstrations, and other forms of group actions" in the premises not only of public utilities, but schools, colleges, and even companies engaged in the production of products of exports. Clearly, these powers were not necessary to enable the civil government to execute its functions and maintain peace and order, but rather, to enable him to continue as self-made dictator.

President Marcos' implementation of martial law was a total abuse and bastardization of the concept of martial law. A reading of the powers which President Marcos intended to exercise makes it abundantly clear that there was no public necessity that demanded that the President be given those powers. Martial law was a stratagem. It was an artifice to hide the weaknesses of his leadership as people rose up to challenge him. It was ruse to perpetuate himself in power despite the term limitations in the 1973 Constitution.[61]

[61] Id. at 32–35.

It is in this context that the 1987 Constitution imposed further safeguards. It was in response to the authoritarian tendencies that a commander-in-chief may display. It was part of a constitution ratified by the sovereign Filipino people that lived through these abuses. ***Among others, it required not simply the allegation of facts showing rebellion, but a showing of the necessity to exercise specific extraordinary powers to ensure public safety.***

The 1987 Constitution returned to the original concept of martial law: a set of extraordinary powers arising only from a clear necessity, declared because civil governance is no longer possible. The authority to place the Philippines or any part thereof under martial law is not a definition of a power, but a declaration of a status – that there exists a situation wherein there is no capability for civilian government to continue. It is a declaration of a condition on the ground, that there is a vacuum of government authority, and by virtue of such vacuum, military rule becomes necessary. Further, it is a temporary state, for military rule to be exercised until civil government may be restored.

This Court cannot dictate the parameters of what powers the President may exercise under a state of martial law to address a rebellion or invasion. For this Court to tell the President exactly how to govern under a state of martial law would be undue interference with the President's powers. There may be many different permutations of governance under a martial law regime. It takes different forms, as may be necessary.

However, while this Court cannot state the parameters for the President's martial law, this Court's constitutional role is to require that the President provide the parameters himself, upon declaring martial law. The Constitution, in my reading, requires Congress to examine the powers to be wielded in relation to the facts provided. The proclamation and any extension must contain the powers he intends to wield. The powers under the rubric of martial law must reasonably relate to the exigency.

In these consolidated cases, both the President, in requesting for the extension of the "state of martial law" and the suspension of the writ of habeas corpus, as well as Congress, in granting the extension, committed grave abuse of discretion. Proclamation No. 216 s. 217, the President's request for extension and the Resolution of Both Houses No. 4 does not define the powers to be wielded. It is a carte blanche grant of extraordinary power to the President, which the Constitution does not sanction.

The absence of the public safety necessity for a declaration of martial law and the suspension of the privilege of the writ is clear from the documents presented. Marawi City has been liberated and is undergoing

rehabilitation.[62] Moreover, by President's own admission, the AFP "has achieved remarkable progress in putting the rebellion under control."[63]

Strangely, the President sought the extension of martial law not just for public safety but for other objectives as well. In his Letter to Congress, he stated that ***"[p]ublic safety indubitably requires such further extension, not only for the sake of security and public order, but more importantly to enable the government and the people of Mindanao to pursue the bigger task of rehabilitation and the promotion of a stable socio-economic growth and development.***"[64] Certainly, these objectives could be achieved through the ordinary efforts of the local government units concerned. ***These are not bases for the suspension of the writ of habeas corpus or the declaration of martial law. These statements are a grave cause for concern as they imply sinister motives to use martial law to undermine the legal order.***

General Trinidad, the Intelligence Chief or J-2 of the AFP, during the presentation before this Court, claimed that an extension of martial law in Mindanao is warranted given that "the magnitude of scope, as well as the presence of rebel groups in Mindanao" endangers public safety and the security of the entire Mindanao.[65] Mere presence of rebel groups, however, does not justify the extension of martial law. There must be a showing that these groups are committing rebellion and that the rebellion has become of such magnitude that public safety requires the imposition of martial law.

V

This Court can only assess whether the public safety requires the imposition of martial law or its extension if it sees the reasonability of the specific remedy sought, in relation to the facts established. Thus, the government, in alleging that martial law is necessary, should cite specific, measurable, attainable, reasonable, and time bound objectives.

This is especially true when the second extension is for a longer period.

Not only did the government fail to articulate the powers it wanted under the extension of martial law, it also failed to define the targets it has for martial law. The powers to be exercised and its sufficiency for the targets of the extension, therefore, could not be assessed. There are no judicial standards available to assess what does not exist.

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62 *Lagman Petition,* Annex C, p. 2.
63 Id.
64 Id. at 5.
65 TSN dated January 17, 2018, p.68.

During the oral arguments, General Guerrero only managed to provide a general target, "to quell the rebellion":

JUSTICE LEONEN:
Okay. Just very quickly, in one year's time, what is the objective?

GENERAL GUERRERO:
The objective is to quell the rebellion.

JUSTICE LEONEN:
Zero, no combatant. What do you mean "quell the rebellion", General? I think you are in the . . .

GENERAL GUERRERO:
Ideally, Sir, it is, we should say there should be no remnants but ah. . .

JUSTICE LEONEN:
So if there are remnants there will be an extension of Martial Law.

GENERAL GUERRERO:
As I have said, ideally, but we are just realistic. We cannot reduce them to zero. What is more important is for us to be able to reduce them to a significant level where they can no longer be considered as a threat.

JUSTICE LEONEN:
I think some of us have encountered "engagements with the armed forces." And we know for a fact that you conduct roadmaps in order to set your targets for particular periods.

GENERAL GUERRERO:
Yes, Your Honor.

JUSTICE LEONEN:
So, may we know what the target is under Martial Law, what exactly, how much degradation of forces are you looking at?

GENERAL GUERRERO:
You have to understand, Your Honor, that Martial Law is just a snapshot of the entire campaign plan.

JUSTICE LEONEN:
Yes, so within one year . . .

GENERAL GUERRERO:
Martial Law came as a necessity because of the developments in the security situation.

JUSTICE LEONEN:
I understand but . . .

GENERAL GUERRERO:
The original campaign plan stated for a duration of 2017 to 2022 but we have broken down our activities by months, by years, by quarters . . .

JUSTICE LEONEN:

Okay, so the original plan was 2017 to 2022 did not envision Martial Law, is that not correct?

GENERAL GUERRERO:

Yes, Your Honor.

JUSTICE LEONEN:

And now with Martial Law, it is going to be speeded up, is that not correct?

GENERAL GUERRERO:

That is our hope, Your Honor, for us to be able to fast track the accomplishment of our mission.

JUSTICE LEONEN:

So, what is the target in 2018?

GENERAL GUERRERO:

The target for 2018 is for us to reduce, to finish the remaining ISIS rebels here in Mindanao, and there are others . . .

JUSTICE LEONEN:

You realize, of course, that we are the only country in the world that has that for a target, for a realistic target . . .

GENERAL GUERRERO:

Pardon me, Your Honor.

JUSTICE LEONEN:

We are the only country in the world, all countries will want to remove all ISIS inspired. But even the United States, and I will show you later, has said that it is close to improbable unless you actually dig human rights violation in order to remove all of it but, for course, it will increase the rebellion in case you want to do so. But if you really want a realistic target, it cannot be zero . . .

GENERAL GUERRERO:

Clearly, Your Honor.

JUSTICE LEONEN:

. . . unless you're saying, General, that after 2018, if there is a single communist existing, a single Daesh person existing, or the rag tag team of the BIFF existing, that there will still be an extension of Martial Law.

GENERAL GUERRERO:

Your Honor, the problem is not only military. Talking about reducing the number of the armed elements to zero is impossible for as long as we do not address the root cause of the problem.

JUSTICE LEONEN:

Okay. So, under Martial Law you will have control of social welfare.

GENERAL GUERRERO:
Not control, Your Honor. Clearly we have not vested with that authority and we do not intend to arrogate such function upon ourselves.

JUSTICE LEONEN:
Good. So, nice to hear that from you but then isn't that the actual situation without Martial Law?

GENERAL GUERRERO:
I do not know, I cannot speak for the Department of Social Welfare and Development, Your Honor.

. . . .

JUSTICE LEONEN:
Yes, so what did Martial Law add?

GENERAL GUERRERO:
As I have said, it has given us enhanced authority, Your Honor.

JUSTICE LEONEN:
Yes, but the enhanced authority is not clear but perhaps I should ask that of the Solicitor General to be fair to you because you are in . . .

GENERAL GUERRERO:
Let me just explain, Your Honor.

JUSTICE LEONEN:
Yes.

GENERAL GUERRERO:
What today is multi-dimensional. What you see in Marawi is only one dimension of the war that is tactical.

JUSTICE LEONEN:
Yes.

GENERAL GUERRERO:
Beneath the tactical warfare that is very obvious and very apparent are underlying elements . . .

JUSTICE LEONEN:
Yes.

GENERAL GUERRERO:
Elements that involve politics . . .

JUSTICE LEONEN:
Yes.

GENERAL GUERRERO:
. . . legal, informational, cyber, political, diplomatic, economical and technological.

. . . .

JUSTICE LEONEN:

Okay. So, the group in Basilan is severely degraded, is that not correct?

GENERAL GUERRERO:

I beg your pardon, Your Honor?

JUSTICE LEONEN:

The group in Basilan is severely degraded, the Basilan ASG, because this was the Hapilon group. And most of them transferred to Marawi, is that not correct?

GENERAL GUERRERO:

You have to understand, Your Honor, that the figures I have presented are figures based on intelligence reports that we have gathered on the ground. They are not accurate. In fact, they have only accounted for regulars, armed regulars, but we have not accounted for sympathizers, Your Honor.

JUSTICE LEONEN:

The intelligence reports are not accurate.

GENERAL GUERRERO:

Yes, Your Honor.

JUSTICE LEONEN:

And we are relying on the accuracy of the presentation of the Army to declare Martial Law or for the sufficiency of facts. What do you mean "they are not accurate"?

GENERAL GUERRERO:

It is not accurate in a sense that we cannot guarantee the one hundred percent exactness of the figures that they are presenting.

JUSTICE LEONEN:

Okay. So, the army presented figures, of course, not one hundred percent with confidence, and now these conclusions of fact have been presented to the Court. So, are we not relying on facts which have no sufficiency in basis?

GENERAL GUERRERO:

Your Honor, the intelligence process is a tedious process. It is not guess work, Your Honor.

JUSTICE LEONEN:

But part of it is.[66]

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[66] TSN dated January 17, 2018, pp. 86–96.

Also, in response to the interpellation of the Chief Justice, the Chief of Staff of the Armed Forces could only zero in on the "psychological advantage" of the announcement of martial law. Thus:

> CHIEF JUSTICE SERENO:
> So, the martial law administrator is the Secretary?
>
> GENERAL GUERRERO:
> Yes, Your Honor.
>
> CHIEF JUSTICE SERENO:
> Okay. Because you are the implementor you can immediately just say to the agencies, We need this, evacuate, they will immediately follow because you are the martial law implementor, is that correct?
>
> GENERAL GUERRERO:
> My implementation of martial law, Your Honor, is dependent on the powers that are, or authorities that are vested in me by the President.
>
> CHIEF JUSTICE SERENO:
> Okay. So, what makes it easier, is it psychological? That's why I've been asking since yesterday, is it psychological, the calling out powers on steroids?
>
> GENERAL GUERRERO:
> Yes, Your Honor.
>
> CHIEF JUSTICE SERENO:
> So, it's psychological?
>
> GENERAL GUERRERO:
> It's partly psychological, Your Honor.
>
> CHIEF JUSTICE SERENO:
> Okay, partly psychological. What do you think makes people more cooperative in a martial law setting?
>
> GENERAL GUERRERO:
> It's the fact that a, a strong authority is in charge.
>
> CHIEF JUSTICE SERENO:
> A what?
>
> GENERAL GUERRERO:
> A strong authority is in charge.[67]

VI

Reviewing the sufficiency of the factual basis means examining both the allegations and the reasonability of the inferences arising from the actual facts used as basis for such allegations. In other words, we should not

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[67] TSN dated January 17, 2018, pp. 141–142.

content ourselves with the *factum probandum* or what is alleged. We should also review the *factum probans* as well. A proper review of the "sufficiency of the factual basis" requires that this Court examine the evidentiary facts that would tend to prove the ultimate facts and the premises of the inferences used to arrive at the conclusions made by the government.

The government, through the AFP, regaled this Court with its allegations of fact. This was accepted by the majority in Congress and the majority in this Court. There was no effort to reveal the general sources of this intelligence information, the nuances in the analysis of the various groups, and the premises used to make the inferences from the sources which they gathered.

In other words, the majority accepts only the allegations of fact of the Armed Forces and the President. Certainly, this cannot meet the Constitutional requirement that this Court review the "sufficiency of the factual basis" of the declaration of martial law or the suspension of the privilege of the writ of habeas corpus.

This Court often discusses the difference between ultimate and evidentiary facts in relation to pleadings, and what must be alleged to establish a cause of action. Ultimate facts are the facts that constitute a cause of action. Thus, a pleading must contain allegations of ultimate facts, so that a court may ascertain whether, assuming the allegations to be true, a pleading states a cause of action.[68] Of course, the veracity of the ultimate facts will be established during trial, generally through the presentation of evidence that will prove evidentiary facts. In *Tantuico, Jr. v. Republic*,[69] this Court explained:

> The rules on pleading speak of two (2) kinds of facts: the first, the "ultimate facts", and the second, the "evidentiary facts." In Remitere vs. Vda. de Yulo, the term "ultimate facts" was defined and explained as follows:
>
> > "The term 'ultimate facts' as used in Sec. 3, Rule 3 of the Rules of Court, means the essential facts constituting the plaintiff's cause of action. A fact is essential if it cannot be stricken out without leaving the statement of the cause of action insufficient. . . ." (Moran, Rules of Court, Vol. 1, 1963 ed., p. 213).
> >
> > "Ultimate facts are important and substantial facts which either directly form the basis of the primary right and duty, or which directly make up the wrongful acts or omissions of the defendant. The term does not refer to the details of probative matter or particulars of evidence by which these

[68] RULES OF COURT, Rule 8, sec. 1.
[69] 281 Phil. 487–508 (1991) [Per J. Padilla, En Banc].

> material elements are to be established. It refers to principal, determinate, constitutive facts, upon the existence of which, the entire cause of action rests."

while the term "evidentiary fact" has been defined in the following tenor:

> "Those facts which are necessary for determination of the ultimate facts; they are the premises upon which conclusions of ultimate facts are based. Womack v. Industrial Comm., 168 Colo. 364, 451 P.2d 761, 764. Facts which furnish evidence of existence of some other fact."[70]

Another basic rule that this Court must not lose sight of in its undertaking is that a bare allegation is not evidence.[71] Surmise is not evidence,[72] conjecture is not evidence,[73] suspicion is not evidence,[74] and probability is not evidence.[75]

Worth noting is the emphasis on the importance of credible evidence. This is contained in a catena of cases already decided by this Court.

In *Castillo v. Republic:*[76]

> Basic is the rule that bare allegations, unsubstantiated by evidence, are not equivalent to proof, i.e., mere allegations are not evidence. Based on the records, this Court finds that there exists insufficient factual or legal basis to conclude that Felipe's sexual infidelity and irresponsibility can be equated with psychological incapacity as contemplated by law. We reiterate that there was no other evidence adduced. Aside from the psychologist, petitioner did not present other witnesses to substantiate her allegations on Felipe's infidelity notwithstanding the fact that she claimed that their relatives saw him with other women. Her testimony, therefore, is considered self-serving and had no serious evidentiary value.

Thus, although a psychologist testified as to the link between the husband's infidelity and psychological incapacity in *Castillo*, this Court reiterated that the courts, in all the cases they try, must base judgments on the totality of evidence adduced during their proceedings:

> It bears repeating that the trial courts, as in all the other cases they try, must always base their judgments not solely on the expert opinions

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70 Id. at 495–496.
71 *Lagasca v. De Vera*, 79 Phil. 376–381 (1947) [Per J. Perfecto, First Division].
72 *People v. Dunig y Rodriguez*, 289 Phil. 949–956 (1992) [Per J. Cruz, First Division].
73 *Joaquin v. Navarro*, 99 Phil. 367–373 (1956) [Per J. Padilla, En Banc].
74 *People v. Mamalias*, 385 Phil. 499–514 (2000) [Per J. Puno, First Division].
75 *People v. Balanon*, 304 Phil. 79–87 (1994) [Per J. Bellosillo, First Division].
76 G.R. No. 214064, February 6, 2017 <sc,judiciary.gov.ph?pdf?web?viewer.html?file=jurisprudence/2017/214064.pdf> [Per J. Peralta, Second Division].

RRB

presented by the parties but on the totality of evidence adduced in the course of their proceedings.[77]

Likewise in *Dela Llana v. Biong,*[78]

Notably, Dra. dela Llana anchors her claim mainly on three pieces of evidence: **(1)** the pictures of her damaged car, **(2)** the medical certificate dated November 20, 2000, and **(3)** her testimonial evidence. However, none of these pieces of evidence show the causal relation between the vehicular accident and the whiplash injury. In other words, **Dra. dela Llana, during trial, did not adduce the *factum probans* or the evidentiary facts by which the *factum probandum or the ultimate fact can be established***, as fully discussed below.

Dra. dela Llana contends that the pictures of the damaged car show that the massive impact of the collision caused her whiplash injury. We are not persuaded by this bare claim. Her insistence that these pictures show the causation grossly belies common logic. These pictures indeed demonstrate the impact of the collision. However, it is a far-fetched assumption that the whiplash injury can also be inferred from these pictures.

Also, in *Gomez v. Gomez:*[79]

Before proceeding further, it is well to note that the factum probandum petitioner is trying to establish here is still the alleged intercalation of the Deeds of Donation on blank pieces of paper containing the signatures of Consuelo. The factum probans this time around is the alleged payment of the Donors Tax after the death of Consuelo.

Firstly, it is apparent at once that there is a failure of the factum probans, even if successfully proven, to prove in turn the factum probandum. As intimated by respondents, payment of the Donors Tax after the death of Consuelo does not necessarily prove the alleged intercalation of the Deeds of Donation on blank pieces of paper containing the signatures of Consuelo.

Secondly, petitioner failed to prove this factum probandum.

Ariston, Jr. never testified that Consuelo herself physically and personally delivered PCIB Check No. A144-73211 to the BIR. He instead testified that the check was prepared and issued by Consuelo during her lifetime, but that he, Ariston, Jr., physically and personally delivered the same to the BIR. On the query, however, as to whether it was delivered to the BIR before or after the death of Consuelo, petitioner and respondents presented all the conflicting evidence we enumerated above.

The party asserting a fact has the burden of proving it. Petitioner, however, merely formulated conjectures based on the evidence he presented, and did not bother to present Nestor Espenilla

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77 Id. at 7.

78 722 Phil. 743–763 (2013) [Per J. Brion, Second Division].

79 543 Phil. 436–483 (2007) [Per J. Chico-Nazario, Third Division].

to explain the consecutive numbers of the RTRs or what he meant with the words on even date in his certification. Neither did petitioner present any evidence that the records of the BIR Commissioner were falsified or antedated, thus, letting the presumption that a public official had regularly performed his duties stand. This is in contrast to respondents direct evidence attesting to the payment of said tax during the lifetime of Consuelo. With respect to respondents evidence, all that petitioner could offer in rebuttal is another speculation totally unsupported by evidence: the alleged fabrication thereof.

In Vda. de Viray v. Spouses Usi,[80] this Court explained:

The Court rules in favor of petitioners.

Petitioners contend first off that the CA erred in its holding that the partitions of Lot 733 and later of the divided unit Lot 733-C following the Galang Plan were actually the partitions of the pro-indiviso shares of its co-owners effectively conveying to them their respective specific shares in the property.

We agree with petitioners.

First, the CA's holding aforestated is neither supported by, nor deducible from, the evidentiary facts on record. He who alleges must prove it. Respondents have the burden to substantiate the factum probandum of their complaint or the ultimate fact which is their claimed ownership over the lots in question. They were, however, unsuccessful in adducing the factum probans or the evidentiary facts by which the factum probandum or ultimate fact can be established.

Finally, in *People v. Agustin*:[81]

Even assuming arguendo that the xerox copies presented by the prosecution as secondary evidence are not allowable in court, still the absence thereof does not warrant the acquittal of appellant. In *People vs. Comia*, where this particular issue was involved, the Court held that the complainants' failure to ask for receipts for the fees they paid to the accused therein, as well as their consequent failure to present receipts before the trial court as proof of the said payments, is not fatal to their case. The complainants duly proved by their respective testimonies that said accused was involved in the entire recruitment process. Their testimonies in this regard, being clear and positive, were declared sufficient to establish that factum probandum.

Indeed, the trial court was justified and correct in accepting the version of the prosecution witnesses, their statements being positive and affirmative in nature. This is more worthy of credit than the mere uncorroborated and self-serving denials of appellant. The lame defense consisting of such bare denials by appellant cannot overcome the evidence presented by the prosecution proving her guilt beyond reasonable doubt.

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80 699 Phil. 205–235 (2012) [Per J. Velasco, Third Division].

81 317 Phil. 897 (1995) [Per J. Regalado, Second Division].

To establish that the factual basis for the extension of martial law is sufficient, the government has to show evidence for its factual allegations as well as the context for its inference. An enumeration of violent incidents containing nothing but the area of the incident, the type of violent incident, and the date of the incident, without its sources and the basis for its inference, does not meet the sufficiency of the factual basis to show persisting rebellion and the level of threat to public safety that will support a declaration of martial law or the suspension of the writ of habeas corpus.

There are two (2) *facta probanda*, or ultimate facts, necessary to establish that martial law was properly extended, namely: (1) the persistence of an actual rebellion; and (2) that public safety requires the extension of martial law.

Of course, no single piece of evidence can establish these ultimate facts. There must be an attempt to establish them through evidentiary facts, which must, in turn, be proved by evidence—not bare allegations, not suspicion, not conjecture.

Letters stating that rebellion persists and that public safety requires the extension of martial law do not prove the *facta probanda*. The letters only prove that the writers thereof wrote that rebellion persists and public safety requires the extension of martial law. Lists of violent incidents do not prove the *facta probanda*; they only tend to prove the *factum probans* that there were, in fact, violent incidents that occurred. But, assuming the evidence is credible to prove the *factum probans* that violent incidents have occurred, this *factum probans*, without context, is insufficient to show that rebellion persists.

We do not conflate the *factum probandum* with the *factum probans*. Muddling the two undermines the review required by the Constitution. It will lead this Court to simply accept the allegations of the government without any modicum of review.

VII

Put differently, the factual basis for the proclamation of martial law and its extension must not only be those that are alleged, but also that the allegation must be sufficient or credible. The facts can only be judicially deemed sufficient if their basis is transparent and legible. The basis relied upon for the proclamation of martial law or its extension must be shown, to a certain degree of confidence, to be factually true based upon the credibility of its intelligence sources and the viability of its inferences. Sufficient

validation must be shown in terms of the suggestions made by intelligence sources, as well as checking on the reliability of the process of reaching a conclusion. The conclusion must be factually sufficient as of the time of the review both by Congress and then by this Court.

The President cannot be expected to personally gather intelligence information from the ground. He or she would have to rely on intelligence reports given by those under his or her command.[82] That it is based on intelligence information does not mean that Congress and the Court cannot inquire further because of its confidentiality. Otherwise, there will be no sense in the review of the factual sufficiency for the exercise of the powers of the Commander-in-Chief.

Intelligence information is gathered through five (5) intelligence information disciplines namely: (1) signals intelligence; (2) human intelligence; (3) open-source intelligence; (4) geospatial intelligence; and (5) measurement and signatures intelligence. I described these intelligence information disciplines in my dissenting opinion in *Lagman*:

> Signals Intelligence (SIGINT) refers to the interception of communications between individuals and "electronic transmissions that can be collected by ships, planes, ground sites, or satellites."
>
> Human Intelligence (HUMINT) refers to information collected from human sources either through witness interviews or clandestine operations.
>
> By the term itself, Open-Source Intelligence (OSINT) refers to readily-accessible information within the public domain. Open-Source Intelligence sources include "traditional media, Internet forums and media, government publications, and professional or academic papers."
>
> Newspapers and radio and television broadcasts are more specific examples of Open-Source Intelligence sources from which intelligence analysts may collect data.
>
> Geospatial Intelligence (GEOINT) pertains to imagery of activities on earth. An example of geospatial intelligence is a "satellite photo of a foreign military base with topography[.]"
>
> Lastly, Measures and Signatures Intelligence (MASINT) refers to "scientific and highly technical intelligence obtained by identifying and analyzing environmental byproducts of developments of interests, such as weapons tests." Measures and Signatures Intelligence has been helpful in "identify[ing] chemical weapons and pinpoint[ing] the specific features of unknown weapons systems."[83] (Citations omitted)

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[82] Dissenting Opinion of J. Leonen in *Lagman v. Medialdea,* G.R. No. 231658, July 4, 2017, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/231658_leonen.pdf > 54–55 [Per J. Del Castillo, En Banc].

[83] Id.

Intelligence reports must be shown to have at least undergone a rigorous analytical process for them to be considered truthful and worthy of belief. It is not enough that facts are gathered through the five (5) intelligence collection disciplines. Good intelligence requires good analysis. The information gathered must be analyzed through the application of specialized skills and the use of analytical tools. For instance, levels of confidence may be ascribed to determine the quality and reliability of the information. Information, assumptions, and judgments may also have to be differentiated so as not to muddle established facts with mere assumptions. All these processes require the use of sound logic.[84]

In this case, there is no sufficient factual basis that would support Congress' act of extending the proclamation of martial law in Mindanao.

No intelligence information—other than possibly a power point presentation—was given to each member of the House of Representatives and the Senate from which they could assess if an extension of martial law in Mindanao was warranted. During the oral arguments, petitioner Lagman explained that the members of Congress were not informed of the context of the intelligence information backing the President's initiative to extend the proclamation of martial law in Mindanao. Congress was not even informed of the processes done to vet the information they were provided:

> JUSTICE LEONEN:
> Were you introduced to the different factions inside the BIFF?
>
> CONGRESSMAN LAGMAN:
> No, Your Honor.
>
> JUSTICE LEONEN:
> Were you introduced to the different factions of the Abu Sayyaf Group?
>
> CONGRESSMAN LAGMAN:
> No, Your Honor.
>
> JUSTICE LEONEN:
> In other words, in the entirety of the deliberations in the extension of Martial Law, the Congress did not have the opportunity to act, look at the context of the intelligence information given to you.
>
> CONGRESSMAN LAGMAN:
> The time given to us was too short that we could not exhaust all the possible questions we have to ask.
> . . . .
>
> JUSTICE LEONEN:

[84] Id. at 56.

You are not aware that the Abu Sayyaf Group, not its entirety, not all of them are affiliated with ISIS or ISIS-inspired groups.

CONGRESSMAN LAGMAN:
There was no detail of this, Your Honor.

JUSTICE LEONEN:
No information about that?

CONGRESSMAN LAGMAN:
No information.

JUSTICE LEONEN:
You are not aware of the strength of the AKP as of December of last year? That in the reports of the intelligence, they say that there are about 7, 8 or 9 individuals only under the AKP, based on intelligence reports that were given to the Supreme Court.

CONGRESSMAN LAGMAN:
That was not part of the briefing and that was not deliberated upon during joint session.

JUSTICE LEONEN:
And you are not aware of what the 185 skirmishes were and whether the army was walloped, or it was the enemy that was walloped, 180 plus skirmishes with the Abu Sayyaf and the NPAs.

CONGRESSMAN LAGMAN:
There was a litany of skirmishes as said in this letter, as well as in the briefings, but no details were given to us.

JUSTICE LEONEN:
So, you were not told that in most of these skirmishes, in fact almost all, the army prevailed.

CONGRESSMAN LAGMAN:
No, Your Honor, we were not informed of that.

JUSTICE LEONEN:
And you were told that because there were so many skirmishes, they needed Martial Law.

CONGRESSMAN LAGMAN:
That's correct, Your Honor.[85]

VIII

The facts even only as alleged by the government, assuming them to be true, do not adequately show that there is the kind of rebellion that

[85] TSN dated January 16, 2018, pp. 61–64.

requires a declaration of martial law or the suspension of the writ of habeas corpus.

First, by the Executive's own admission, the neutralization of at least "920 DAESH-inspired fighters" as well as their leaders fast-tracked the clearing of Marawi City, hastened its liberation, and paved the way for its rehabilitation.[86] The numbers of the purported DAESH-inspired groups have gone down and as a result, "remnants" of these groups are now only in the process of rebuilding through recruitment operations.

In other words, the government, in so far as the purpose for declaring martial law through Proclamation No. 216, Series of 2017 is concerned, already achieved its target.

However, in his Letter dated December 8, 2017 addressed to Congress, President Duterte asserted that the continued recruitment operations of local terrorist groups warranted the extension of martial law. He stated that "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."[87] These recruitment operations, according to AFP Chief of Staff General Guerrero, point to the conclusion that these groups are capable "of strengthening their organization."[88] Thus:

> [T]he remnants of DAESH-inspired DIWM members and their allies, together with their protectors, supporters and sympathizers, have been monitored in their continued efforts towards radicalization/recruitment, financial and logistical build-up, as well as in their consolidation/reorganization in Central Mindanao, particularly in the provinces of Maguindanao and North Cotabato and also in Sulu and Basilan.[89]

The President's conclusions seem to be in reference to the conclusion of Secretary of Defense Delfin Lorenzana, who also emphasized the recruitment operations of local terror groups as a justification to extend martial law in Mindanao. In his Letter to President Duterte, Secretary Lorenzana wrote that "remnants of their groups were monitored to be continuously rebuilding their organization through the recruitment and training of new members/fighters."[90]

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86 *Monsod Petition,* p. 13.
87 *Rosales Petition,* Annex E, p. 2.
88 *Lagman Petition,* Annec C-2, p. 2.
89 *Rosales Petition,* Annex E, pp. 2–3.
90 *Lagman Petition,* Annex C-1, p. 2.

Among the local terror groups surveyed are the Bangsamoro Islamic Freedom Fighters (BIFF), the Abu Sayyaf Group (ASG), the Dawlah Islamiyah (DI), and communist rebels.[91] Based allegedly on the military's consistent monitoring, the "MAUTE Group, TURAIFIE Group, MAGUID Group, and Basilan-based ASG continuously conduct recruitment and training activities" in Basilan, Lanao Provinces, Maguindanao, and Sarangani.[92]

The Maute Group, in particular, is alleged to have intensified their recruitment efforts in various areas in Mindanao, particularly in Marawi City, Lumbatan, Bayang, Tubaran, and in Lanao del Sur.[93] Maguid remnants are allegedly also actively recruiting in Sarangani and Sultan Kudarat[94] while the Turaifie Group continues to recruit, reorganize, and strengthen its capabilities.[95] They add that "local terrorist remnants are continuously reorganizing, radicalizing communities, recruiting new members, and sow terror," allegedly due to the support of foreign terrorist organizations.[96]

The alleged recruitment operations undertaken by the remnants of local terror groups do not clearly establish actual rebellion or even the imminence of one. The BIFF, AKP, DI-Maguid, DI-Toraype, and the ASG's perceived capability of "staging similar atrocities and violent attacks"[97] remains just that.

If at all, these groups' recruitment activities only tend to prove that their numbers have gone down, prompting them to rebuild their weakened organizations. For example, the AFP has confirmed that the manpower of the Bangsamoro Islamic Freedom Fighters was reduced from 2016 to the first semester of 2017 by at least 4.33%.[98]

More importantly, the AFP in their presentation admits to the total fighting strength of the alleged terrorist taken together and the numbers of its new recruits. It claims that there were 400 members out of the 537 total who are new recruits of the Dawlah Islamiyah.[99]

This allegation of fact by itself should be enough to cause serious reflection.

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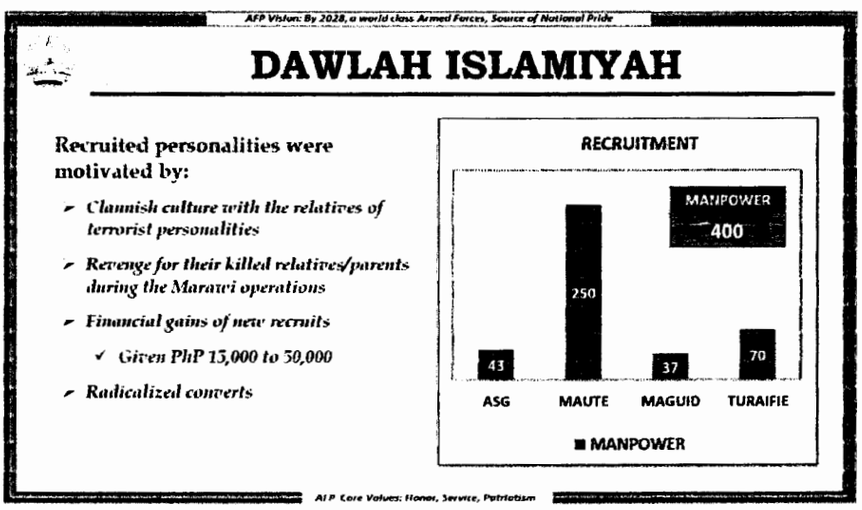
91 Martial Law Extension Briefing Powerpoint Presentation, slide 16.
92 Martial Law Extension Briefing Powerpoint Presentation, slide 38.
93 Martial Law Extension Briefing Powerpoint Presentation, slide 57.
94 Martial Law Extension Briefing Powerpoint Presentation, slide 59.
95 Martial Law Extension Briefing Powerpoint Presentation, slide 60.
96 Martial Law Extension Briefing Powerpoint Presentation, slide 48.
97 *Lagman Petition*, Annex C-2, p. 3.
98 Martial Law Extension Briefing Powerpoint Presentation, slide 18.
99 Martial Law Extension Briefing Powerpoint Presentation, slide 34.

There are more than a hundred thousand men and women in the AFP. There will be more if we consider the strength of the Philippine National Police. There are millions of residents in various provinces and municipalities in the different islands that comprise the Mindanao region. 537 seem so obviously deficient to hold any ground or to challenge the authority of the entire machinery of the Republic of the Philippines.

The basis of the AFP to arrive at such exact number for the total personnel complement of a terrorist group in hiding has not been presented. If we grant the exact number to be accurate, then it would also be reasonable to conclude that law enforcers know who they are and where they are already located, and therefore, could fashion operations that would interdict or disrupt their activities. If it is true that the 400 members are new recruits, then the alleged hard-core members would only amount to 137. Again, this hardly is a decent figure that will support an extended declaration of martial law and a suspension of the writ of habeas corpus throughout the entire Mindanao region, and for a period of one year.



Furthermore, the Armed Forces also admits the motivations for the 400 to join these groups. In its PowerPoint presentation, it cites clannish culture with the relatives of terrorist personalities, revenge for killed relatives/parents during the Marawi operations, financial gains of new recruits, and radicalized converts as among the reasons for the increase in DI recruits.[100]

Again, the basis for the military's conclusions as to the motives of those who joined the terrorist group was unclear and was never presented. Both Congress and this Court were made to accept these conclusions without any basis other than their assertion. This is hardly the kind of scrutiny that the Constitution requires when it states that "sufficiency in the factual basis for the declaration of martial law."

[100] Martial Law Extension Briefing Powerpoint Presentation, slide 34.

Even if these were true, this Court should be hard pressed to find any relation at all to how a declaration of martial law or a suspension of the writ of habeas corpus will address these motives. A military solution does not address clannish cultures, motivations for revenge, financial needs, or conversion into a new religion. Rather, it can simply be further cause for radicalization.

Both the President and Armed Forces Chief of Staff General Guerrero continue to assert that the recruitment "pose a clear and imminent danger to public safety and hinders the speedy rehabilitation, recovery, and reconstruction efforts in Marawi City, and the attainment of lasting peace, stability, economic development and prosperity in Mindanao."[101] Again, apart from being simply allegations, early recovery is clearly not a constitutional basis for the use of Commander-in-Chief powers. If it is, then logically the labyrinth of our procurement law, misunderstanding among local government officials, and corruption can also be basis for a future declaration of martial law.

IX

Second, a closer look at the analysis of the facts, even only as alleged, as presented to Congress and this Court, does not support the respondents' conclusion as to the persistence of the kind of rebellion that warrants a declaration of martial law or the suspension of the privilege of the writ of habeas corpus.

To instill fear in uninquisitive minds, the government presents a grand, coordinated plan to overthrow it and attempts to portray the local groups as coordinated and DAESH-affiliated. To add some credibility to the claim of rebellion, the government repeatedly alleges that the groups have a common goal to establish a *wilayat* in Mindanao.

In *Lagman v. Medialdea*, respondents failed to completely account for the internal factions and ideological differences within the alleged ISIS-inspired groups. This cast doubt on the accuracy of the claim that these groups were united in the goal of establishing a *wilayat*. The reports essentially just enumerated the widespread atrocities of the ISIS-inspired groups[102] and made it appear that these groups were working together under a cohesive plan.[103]

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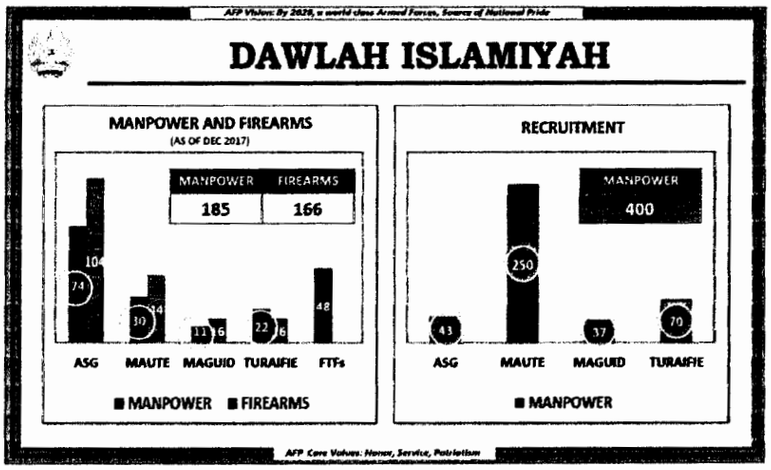
[101] *Lagman Petition*, Annex C-2, p. 4.

[102] *See* OSG Annex in *Lagman v. Medialdea,* Significant Atrocities in Mindanao Prior to the Marawi City Incident.

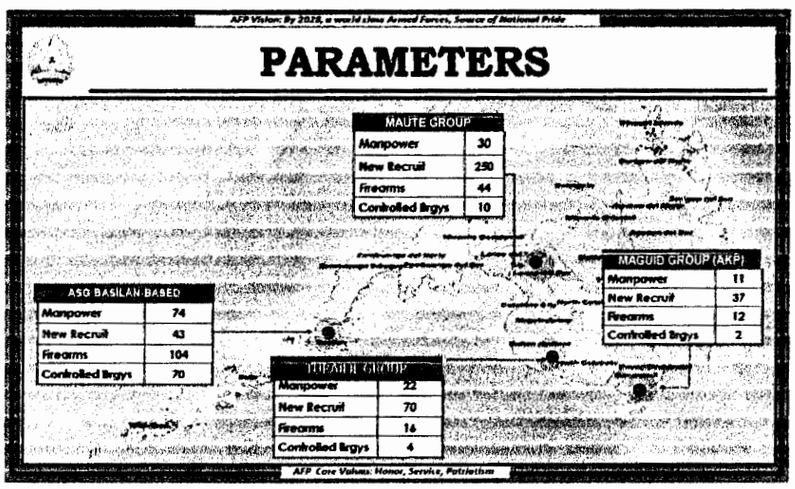
[103] *See* Dissenting Opinion of J. Leonen in *Lagman v. Medialdea*, G.R. No. 231648, July 4, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/231658_leonen.pdf > [Per J. Del Castillo, En Banc].

The Dawlah Islamiyah, a coalition of DAESH-inspired local terror groups composed of the ASG Basilan, some members of the Abu Sayyaf Sulu Group, the Maute Group, AKP, and the Turaifie Group are alleged to have recruited 400 individuals in addition to the present 137 members.[104] The Turaifie Group, a relatively new group, allegedly recruited 70 new members in addition to their present membership.



Yet there was no proof to show the coordination between the groups. The possibility that they will have the motive or ability to wage the kind of rebellion sufficient to excite the extraordinary power of martial law is lacking.

The numbers presented by AFP show that a majority of 52% (or 280 individuals out of a total of 537) of the Dawlah Islamiyah is made up of the Maute Group.[105] However, as pointed out in my dissenting opinion in *Lagman*, the Maute Group began as a private militia, known primarily for their extortion activities. It was founded by scions of a political clan who regularly fielded candidates for local elections. The Maute Group is followed by the Basilan-based ASG faction in numbers, which comprises 21.8% (117 individuals) of the entire group. As mentioned in my dissenting opinion in *Lagman*, the Basilan-based ASG faction, which



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[104] Martial Law Extension Briefing Powerpoint Presentation, slide 33. The slide shows a total membership of 185 individuals as of December 2017. However, the membership of local terror groups are only 137, the remaining 48 are accounted for as foreign terrorist fighters.

[105] Martial Law Extension Briefing Powerpoint Presentation, slide 32.

was also engaged in kidnappings and extortion, was bound by ethnicity, family ties, loyalty to leadership, and desire for revenge—*not ideology*.[106]

Furthermore, with the death of its key leaders in Marawi and the continued arrests of its members, the government has not credibly presented the emergence of a stronger leadership for this faction.

In its assessment of the ASG, the AFP highlighted the group's activities.[107] There was no correlation made between these activities and the purported rebellion. The AFP claims that the "death of Hapilon fast-tracked the unification of the Sulu- and Basilan-based ASG to achieve their common goal with the Dawlah Isalmiyah in establishing a *wilayat* in Mindanao." This, however, is a bare allegation. Again, the AFP did not present anything to prove that the Abu Sayyaf Sulu group and Basilan group are indeed coordinating with each other.

The AFP recognized the BIFF as a factionalized organization. During the oral arguments, General Trinidad stated that "the leadership differences between Esmail Abubakar alias "BUNGOS" and "KARIALAN" have divided the BIFF into factions." Strangely however, the AFP claims that "both factions still reinforce each other"[108] and that some BIFF elements "also coddle and provide support to their comrades and relatives under the group of former Vice Chairman for Internal Affairs Abu Turaifie."[109] Again, no evidence was presented to indicate coordination between the two (2) factions or the coordination of some BFF elements with Turaifie. As such, these claims remain to be mere allegations. The reasons for the factionalism have not been presented. The motive to move together in joint operations have not been presented. Neither have cases been presented as to their ability to join forces in the past.

The AFP's assessment that "[o]ther DAESH-inspired and like-minded rebel groups remain capable of staging similar atrocities and violent attacks against vulnerable targets in Mindanao"[110] also does not appear to be supported by any evidence. Assuming that this assertion is truthful and accurate, the capability to commit atrocities does not conclusively or even remotely establish that rebellion exists, that it is imminent, or that the requirement of public safety as required by the constitution exists.

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[106] *See* Dissenting Opinion of J. Leonen in *Lagman v. Medialdea*, G.R. No. 231648, July 4, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/231658_leonen.pdf > 75–76 [Per J. Del Castillo, En Banc].

[107] Martial Law Extension Briefing Powerpoint Presentation, slide 26–28.

[108] Martial Law Extension Briefing Powerpoint Presentation, slide 21. The original states, "both factions still *reinforces* each other."

[109] TSN dated January 17, 2018, p. 56.

[110] Martial Law Extension Briefing Powerpoint Presentation, slide 48.

The AFP assessed that the Dawlah Islamiyah is attempting "to replicate the siege of Marawi in other cities or areas in Mindanao to achieve their goal of establishing a wilayat."[111] However, this assessment is only based on the alleged continuous recruitment and training activities of these groups and on the alleged "support of Foreign Terrorist Fighters."[112] These allegations were further not substantiated by the AFP during their presentation.

The woeful numbers of terrorist personnel (537) and the belief in the possibility of their coordination alone does not support this portrayal of being able to establishing a *wilayat*. It is not based on credible evidence.

Worse, the portrayal is inaccurate, even *beyond conjecture*, as it is incompatible with the known context here in the Philippines. Even a cursory look at the context of Islam in the Philippines would reveal that the portrayal of the DAESH-inspired groups is incongruous with the current understanding of ISIS, DAESH, the local terrorist groups, or the ARMM and its populace.

As discussed in my dissenting opinion in *Lagman*, adherence to DAESH ideology would naturally alienate the Muslim population throughout Mindanao.[113] The DAESH brand of Islam is fundamentally nihilistic and apocalyptic, and unabashedly medieval.[114] DAESH has been described as following Salafi-jihadis. They are of the position that many Muslims are *marked for death as apostates*, having done acts such as wearing Western clothes, shaving one's beard, voting in an election, or even being lax about calling others apostates.[115]

X

Third, there is also absolutely no basis for the extension of martial law in the area requested, that is, the entire Mindanao region.

The on-going recruitment operations and reorganization efforts alleged to be "geared towards the conduct of intensified atrocities and armed public uprisings" are admittedly being carried out only in Central Mindanao, particularly "in the provinces of Maguindanao and North Cotabato and also in Sulu and Basilan."[116] This is not yet the area of operations but merely the recruitment areas.

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[111] Martial Law Extension Briefing Powerpoint Presentation, slide. 46.
[112] Martial Law Extension Briefing Powerpoint Presentation, slide 34–36.
[113] *See* Dissenting Opinion of J. Leonen in *Lagman v. Medialdea*, G.R. No. 231648, July 4, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/231658_leonen.pdf > 76 [Per J. Del Castillo, En Banc].
[114] Id. at 74.
[115] Id. at 75.
[116] *Rosales Petition,* Annex E, p. 3.

The supposed target areas of the Turaifie Group and the Bangsamoro Islamic Freedom Fighters certainly do not comprise the entire region of Mindanao but only the Cotabato area and Maguindanao. Furthermore, although the areas of Basilan, Sulu, Tawi-Tawi, and the Zamboanga Peninsula were mentioned in relation to the Abu-Sayyaf group, there is no evidence or allegation showing that these areas are indeed targets of the Abu-Sayyaf group.

In his Letter to Congress, the President only identified these as key areas because of the presence of ASG remnants: "[f]ourth, the remnants of the Abu Sayyaf Group (ASG) in Basilan, Sulu, Tawi-Tawi, and Zamboanga Peninsula remain as a serious security concern."

The presentation of the AFP mentioned that the BIFF continues to sow terror in Central Mindanao.[117] The Abu-Sayyaf Group is still present in Zamboanga, Tawi-Tawi, and Sulu.[118] Meanwhile, the Maute Group, the Turaifie Group, and the AKP continue to occupy areas in Central Mindanao.[119] Basilan, Sulu, Tawi-Tawi, and Zamboanga Peninsula were also identified as key areas due to the concentration of the remnants of the Abu-Sayyaf Group in those areas.[120]

Then, there is the epistemological jump. The President asked and Congress approved that the implementation of martial law and the suspension of the privilege of the writ of habeas corpus cover the entire Mindanao area. It is true that law enforcement will be required to disrupt any nefarious intention. Certainly, however, justifying law enforcement is a world apart from justifying the factual sufficiency for martial law or the suspension of the writ of habeas corpus.

XI

Fourth, the President and his advisers failed to explain why Congress should "further extend the proclamation 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" or from January 1, 2018 to December 31, 2018. Likewise, there is no explanation why the original period of 60 days was insufficient. There was likewise no explanation why the first extension of a few months was also not enough.

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[117] Martial Law Extension Briefing Powerpoint Presentation, slide 23.
[118] Martial Law Extension Briefing Powerpoint Presentation, slide 25.
[119] Martial Law Extension Briefing Powerpoint Presentation, slide 32.
[120] Martial Law Extension Briefing Powerpoint Presentation, slide 58.

At the very least, the recommendation of AFP Chief of Staff General Guerrero should have enumerated targets or specific objectives that the AFP intended to accomplish during the extension. No success indicators were even mentioned in his recommendation to the President. The request for a one (1)-year extension of martial law, therefore, appears to be unreasonable and arbitrary as there is no correlation between the objectives of the extension to the requested time frame.

The President, through the recommendation of AFP Chief of Staff General Guerrero, stated that the extension of martial law and the suspension of the privilege of the writ of habeas corpus in Mindanao would help all law enforcement agencies to "quell completely and put an end to the on-going rebellion in Mindanao and prevent the same from escalating to other parts of the country,"[121] without stating the powers he would be requiring to accomplish these objectives. The ambiguous objective seems to guarantee further extensions. The failure of the majority to see that the facts are not sufficient to support an extension almost guarantees those extensions.

Strangely, the AFP seeks the extension of martial law and the suspension of the writ of habeas corpus in Mindanao not to "gain any extra power . . . but to hasten the accomplishment of the AFP's mandated task in securing the safety of our people in Mindanao, in particular and the whole country, in general."[122] The AFP did not specify in its presentation what powers they would use during the extension of martial law. This goal of hastening AFP's accomplishment of its mandated task hardly justifies the purpose or rationale behind the one (1)-year extension. The extension is purely arbitrary. It is, thus, unconstitutional.

XII

Finally, the government's surreptitious insertion of incidents relating to the 50-year protracted and diminishing Marxist Leninist Maoist insurrection communist insurrection of the Communist Party of the Philippines through its New Peoples' Army and National Democratic Front falls short of the constitutional requirements. It appears to be an afterthought to bolster the factual milieu in view of the military successes in relation to the alleged DAESH-related groups.

The insurrection by the related groups under the wing of the Communist Party of the Philippines or the New Peoples' Army or the National Democratic Front was not in the proclamation or used as basis for the first extension of the declaration of the state of martial law and the

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[121] *Rosales Petition,* Annex E, p. 5.
[122] TSN dated January 17, 2018, p. 69.

suspension of the privilege of the writ of habeas corpus.[123] There is also no explanation why this ongoing insurrection should be the basis for extending martial law or suspending the writ of habeas corpus only throughout Mindanao considering that there are isolated incidents of violence attributed to this group in other parts of the country. Nor was there any explanation why the exercise of these Commander-in-Chief powers will be for one year considering that the engagement with the army has been for more than fifty years. It is not clear what is sought to be achieved within this one-year period in relation to this group.

The initial declaration of martial law was based on the acts of the Maute group on May 23, 2017. Proclamation No. 216 reads, in part:

> 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.[124]

A perusal of Proclamation No. 216 reveals that the true intent of the initial declaration of martial law was to quell the rebellion allegedly carried out by the Maute group and other DAESH-inspired groups. It was premised solely on the alleged plan of the DAESH-inspired groups to establish a *wilayah* in Mindanao.[125] Proclamation No. 216 referred to and highlighted the atrocities that the DAESH-inspired groups committed but nowhere did it mention the communist insurgency led by the NPA or acts attributable to the NPA.

That Proclamation No. 216 was limited in its scope to the DAESH-inspired groups is even more magnified by the Solicitor General's admission in this case that the focus of the initial proclamation of martial law "was the Marawi S[ie]ge...and the Daesh inspired rebellious groups"[126] as well as evidence presented by the government in *Lagman v. Medialdea*. There was absolutely no reference to the NPA or atrocities attributable to the NPA.

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123 Proc. No. 216 (2017).
124 Proc. No. 216 (2017).
125 *See* OSG Memorandum in *Lagman v. Medialdea*, pp. 5–8.
126 TSN dated January 17, 2018, pp. 225–226.

As if to give credence to the extension of martial law in the entire region of Mindanao for a year, the NPA's communist insurgency was included as a justification for the first extension.

In a Letter[127] dated July 18, 2017, the President reported on the successful operations in Marawi City:

> From 23 May 2017 to 10 July 2017, the AFP's operations had neutralized three hundred seventy-nine (379) out of the estimated six hundred (600) DIWM rebels, and had recovered three hundred twenty-nine (329) firearms. Around one thousand seven hundred twenty-two (1,722) residents of Marawi City had been rescued and a total of sixteen (16) barangays had been declared clear of DIWM presence. During clearing operations conducted by the AFP, approximately Seventy-Five Million Pesos (P75,000,000.00) in cash and cheques were recovered from a house in Marawi City.
>
> Operations against other rebel groups likewise yielded positive results. Against the BIFF, eighteen (18) members had been neutralized and two (2) had been arrested. Against the ASG, twenty-three (23) had been neutralized, five (5) apprehended, forty-one (41) surrendered to government forces, and forty-seven (47) firearms had been recovered.[128]

Without explaining the connection to the alleged actual rebellion, the President added:

> As the government's security forces intensified efforts during the implementation of Martial Law, one hundred eleven (111) members of the New People's Army (NPA) had been encountered and neutralized, while eighty-five (85) firearms had been recovered from them.[129]

Also, in his Letter dated December 8, 2017, the President said:

> Apart from these, at least fifty-nine (59) arson incidents have been carried out by the NPA in Mindanao this year, targeting businesses and private establishments and destroying an estimated ₱2.2 billion-worth of properties. Of these, the most significant were the attack on Lapanday Food Corporation in Davao City on 09 April 2017 and the burning of facilities and equipment of Mil-Oro Mining and Frasec Ventures Corporation in Mati City, Davao Oriental on 06 May 2017, which resulted in the destruction of properties valued at ₱1.85 billion and ₱109 million, respectively.
>
> As a direct result of these atrocities on the part of the NPA, I was constrained to issue Proclamation No. 360 on 23 November 2017 declaring the termination of peace negotiations with the National

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127 *Rosales Petition,* Annex D.
128 Id. at 2–3.
129 Id. at 3.

> Democratic Front-Communist Party of the Philippines-New People's Army (NDF-CPP-NPA) effective immediately. I followed this up with Proclamation No. 374 on 05 December 2017, where I declared the CPP-NPA as a designated/identified terrorist organization under the Terrorism Financing Prevention and Suppression Act of 2012, and the issuance of a directive to the Secretary of Justice to file a petition in the appropriate court praying to proscribe the NDF-CPP-NPA as a terrorist organization under the Human Security Act of 2007.[130]

During oral arguments, several Justices pressed for an explanation from respondents, having noticed the discrepancy in using the NPA as basis for the extension of martial law:

> JUSTICE CARPIO:
>
> Thank you. Counsel, let['s] settle it. Just one more point. In the original declaration of martial law, only the Maute rebellion was mentioned specifically, correct?
>
> SOLICITOR GENERAL CALIDA:
>
> There were others, Your Honor.
>
> JUSTICE CARPIO:
>
> And other rebels? But not, no other specific rebellions? Maute or Maute group DAES is ISIS inspired, but no other rebels?
>
> SOLICITOR GENERAL CALIDA:
>
> Yes, Your Honor.
>
> JUSTICE CARPIO:
>
> Okay, so no specific mention of CPP-NPA rebellion. It's just other rebels.
>
> SOLICITOR GENERAL CALIDA:
>
> Yes, but it is subsume[d] under that term, Your Honor.
>
> JUSTICE CARPIO:
>
> Yes, okay. Now, in the first extension. There was also no mention of CPP-NPA specifically it was not mentioned. Correct?
>
> SOLICITOR GENERAL CALIDA:
>
> Actually, Your Honor, the president mentioned it, Your Honor. And may I read for the record.
>
> JUSTICE CARPIO:
>
> First extension?
>
> SOLICITOR GENERAL CALIDA:
>
> Yes, Your Honor.
>
> JUSTICE CARPIO:
>
> As the government security forces intensified efforts during the implementation of martial law, one hundred eleven members of the New

[130] *Rosales Petition,* Annex E, pp. 4–5.

People's Army (NPA) had been encountered and neutralized while eighty-five firearms have been recovered from them.

JUSTICE CARPIO:
But what was the first extension merely extended the initial declaration. Correct?

SOLICITOR GENERAL CALIDA:
Yes, Your Honor.

JUSTICE CARPIO:
So what governs is the initial declaration? Because you were just extending it.

SOLICITOR GENERAL CALIDA:
Yes, Your Honor. But I mentioned the term.

JUSTICE CARPIO:
Yes.

SOLICITOR GENERAL CALIDA:
And other rebel groups includes the NPA, Your Honor.

JUSTICE CARPIO:
Yeah, but the first proclamation of the President in the first declaration mentions other rebels.

SOLICITOR GENERAL CALIDA:
Yes, Your Honor.

JUSTICE CARPIO:
Without specifying what these other rebels are, other rebels aside from the Maute Group, there were other rebels.

SOLICITOR GENERAL CALIDA:
Yes, Your Honor.

JUSTICE CARPIO:
Now, in this second extension, it says now, CPP-NPA?

SOLICITOR GENERAL CALIDA:
Yes, Your Honor.

JUSTICE CARPIO:
Now, my question is, when the Constitution says that if the rebellion persists, then Congress may extend. When you use the word persist and extend, you referring to the original ground for declaration of martial law. Correct?

SOLICITOR GENERAL CALIDA:
Yes, Your Honor. But as I've said, it covers the NPA because the Court can take judicial notice the oldest rebel group in the Philippines is the NPA. They have been fighting the government way back in 1960s, Your Honor.

JUSTICE CARPIO:

You are saying that when the Congress approved or approved the extension, the first extension, they were also referring to the CPP-NPA rebellion? Is that what you are saying?

SOLICITOR GENERAL CALIDA:
That is what I assumed, Your Honor.

JUSTICE CARPIO:
Okay, and also this Court, also when the Court approved.

SOLICITOR GENERAL CALIDA:
Yes, Your Honor.[131]

. . . .

JUSTICE LEONEN:
I'll move on to a different point and just a point of fact. During the confidential hearings on the first Martial Law Petition, *Lagman v. Medialdea*, you were present, correct?

SOLICITOR GENERAL CALIDA:
I was, Your Honor.

JUSTICE LEONEN:
Okay, that is not confidential. Will you confirm that there was no presentation during the confidential briefing on the CPP-NPA?

SOLICITOR GENERAL CALIDA:
Well, at that time, Your Honor, because of the on-going peace negotiations, we did not want to, you know . . . when we are in a negotiating mode, Your Honor, you want to be in the . . . (interrupted)

JUSTICE LEONEN:
I understand but my question is a bit factual that to convince the Court that there was a necessity for the proclamation of Martial Law in *Lagman v. Medialdea*, one, that was last year, there was no presentation of the CPP NPA's strength and "atrocities".

SOLICITOR GENERAL CALIDA:
I think the focus there was the Marawi S[ie]ge, Your Honor, and the Daesh inspired rebellious groups, Muslim groups, Your Honor.[132]
. . . .

JUSTICE LEONEN:
Extension of Martial Law. By the way, was the NPA or the existence of the NPA, the basis for the initial proclamation of Martial Law?

ATTY. COLMENARES:
It was stated as an initial, in the initial proclamation, your Honor. It only stated, in fact, the entire proclamation it only stated the events in Marawi and the Maute, Your Honor.

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[131] TSN dated January 17, 2018, pp. 190–194.
[132] Id. at 225–226.

> JUSTICE LEONEN:
>
> Because my reading might have been mistaken of the proclamation, there might have been several paragraphs which were not there, but are you sure that in Proclamation 216, there is no mention of the NPA at all?
>
> ATTY. COLMENARES:
>
> Yes, there was no mention, Your Honor, I think it was only three pages. In fact, the proclamation merely alleged that there is rebellion as shown by the examples of Maute activities in Marawi. And in fact, the proclamation, Your Honor, in fact even failed to allege that public safety requires the imposition of Martial Law, Your Honor.[133]

To understand the motive and dangers of the intercalation, a distinction must be made between terrorism and rebellion. Terrorist acts are largely intended to instill fear or to intimidate governments or societies.[134] Though a terrorist act may be in pursuit of a political or ideological goal, the immediate purpose of a terrorist act is to draw attention to the terrorist's cause. Reflecting this, terrorist attacks are planned to generate the most publicity, and primarily target civil society.

I pointed out in my separate opinion in *Lagman v. Medialdea* that the Marawi incident was not rebellion, but a conflagration caused by a retreating armed force. To quell the conflagration, there was no need to declare martial law.

Acts of rebellion, on the other hand, are acts of armed resistance to an established government or leader as challenges to established state authority. Acts of rebellion target the state.

There may exist individuals or organizations which ultimately wish to challenge the established state authority, and who utilize acts of terrorism to draw attention to their cause, as part of their recruitment. Challenging state authority, even with violence, does not automatically constitute all of its acts of violence as acts of rebellion.

Generally, for purposes of declaring a state of martial law and suspending the privilege of the writ of habeas corpus, rebellion, as contemplated by the Constitution, cannot be defined strictly by the Revised Penal Code. The statutory definition of rebellion is merely persuasive. To require that this Court be restricted by the statutory definition of rebellion is tantamount to giving Congress the power to amend the Constitution through legislation. The Constitution does not state that martial law may be declared

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[133] TSN dated January 16, 2018, pp. 70–71.

[134] United States Department of Defense, *DOD Dictionary of Military and Associated Terms*, 238, June 2017 <http://www.dtic.mil/doctrine/new_pubs/dictionary.pdf> (last accessed Feb 6, 2018).

"in case of invasion or rebellion, which may be defined by law," or anything of similar import.

Even if we assume that Article 134 of the Revised Penal Code defines the rebellion that is constitutionally required, the facts as presented by respondent government are not enough to prove that rebellion persists to the extent required to support a declaration of martial law or the suspension of the writ of habeas corpus.

The President claims in his Letter to Congress that the New People's Army "intensified their decades-long rebellion against the government and stepped up terrorist acts against innocent civilians and private entities, as well as guerilla warfare against the security sector and public and government infrastructure...to seize political power...and supplant the country's democratic form of government with Communist rule."[135] Armed Forces Chief of Staff General Guerrero details this in his Letter to the President:

> This year, the CTs perpetrated a total of 385 atrocities (both terrorism and guerrilla warfare) in Mindanao, which resulted in 41 KIA and 62 WIA on the part of government forces. On the part of the civilians, these atrocities resulted in the killing of 23 and the wounding of 6. The most recent was the November 9, 2017 ambush in Talakag, Bukidnon, resulting in the killing of 1 PNP personnel and wounding of 3 others as well as the killing of a four-month old infant and the wounding of 2 civilians.
>
> Apart from these, 59 arson incidents were carried out by the NPA in Mindanao for this year, targeting businesses and private establishments that destroyed an estimated Php2.2B-worth of properties. Of these, the most significant were the April 9, 2017 attack on Lapanday Food Corporation in Davao City and the May 6, 2017 burning of facilities and equipment of Mil-Oro Mining and Frasec Ventures Corporation in Mati City, Davao Oriental which resulted in PhP1.85B and PhP109M-worth of properties destroyed.[136]

The AFP grouped the NPA with local terrorist groups and added the "intensified" communist insurgency as a justification for the extension of martial law. To dramatize its point, the AFP cited one incident: the November 2017 ambush in Talakag Bukidnon, which left three (3) individuals wounded and claimed the lives of an infant and a PNP personnel.[137] The AFP also cited the attacks of the NPA against private individuals, business establishments, and mining companies[138] as well as the NPA's extortion activities.

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[135] *Lagman Petition,* Annex C, p. 4.
[136] *Lagman Petition,* Annex C-2, p. 3.
[137] Martial Law Extension Briefing Powerpoint Presentation, slide 63.
[138] Martial Law Extension Briefing Powerpoint Presentation, slide 62–71.

The factual basis of the AFP, however, establishes neither an intensified communist insurgency nor the existence of rebellion sufficient to support a declaration of martial law or the suspension of the writ of habeas corpus. If at all, it proves that the communist insurgency has diminished and has refocused its efforts against extortion activities. Even with extortion activities, the numbers show a marked decline.

The NPA, on the basis of isolated criminal acts, was made to appear as a formidable organization capable of seizing power from the government. However, the assertions regarding the strength of the NPA glaringly contradict the NPA's current capabilities. ***The NPA was estimated to have a total of 26,000 soldiers back in the 1980s. Their numbers have significantly decreased to 4,000 in 2017.***[139] ***Current data furnished by no less than the AFP shows that as of the first semester of 2017, the numbers of the NPA in Mindanao have gone down to 1,748.***[140]

The attacks mentioned by the AFP in its presentation were directed against private entities, not against the government. The properties the NPA burned belonged to private corporations such as Lapanday Food Corporation,[141] mining companies,[142] and DOLE,[143] among others. It does not belong to government entities.

The extortion activities of the NPA, assuming they are related to an on-going rebellion, do not seem to have intensified. The NPA is claimed to have amassed ₱1.05 billion in 2016 from private individuals and entities but their extortion activities appeared to have declined. The AFP, however, reports that as of the first semester of 2017, the NPA has taken roughly only ₱91 million from private entities. This is a marked decline. It does not show the intensified efforts of the insurgents as alleged by the respondents.

XIII

Terrorism must not be ignored. It is a tragic and violent reality that we must address head-on. However, military rule is not the solution that will extinguish all acts of terrorism. This conclusion is replete in the relevant literature and expressed by the most experienced experts.

In *Fifteen Years On, Where Are We in the "War on Terror"?*, Brian Michael Jenkins, a former Green Beret who has served on the White House

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[139] *Cullamat Petition*, p. 19 citing National Security Policy, *2017–2022 National Security Policy for Change and Well-Being of the Filipino People*, <http://www.nsc.gov.ph/attachments/article/NSP/NSP-2017-2022.pdf> (last visited February 7, 2018)

[140] Martial Law Extension Briefing Powerpoint Presentation, slide 61.

[141] Martial Law Extension Briefing Powerpoint Presentation, slide 66.

[142] Martial Law Extension Briefing Powerpoint Presentation, slide 66, 70–71.

[143] Martial Law Extension Briefing Powerpoint Presentation, slide 69.

Commission on Aviation Safety and Security and as an advisor to the National Commission on Terrorism of the United States of America, explores the complex issues that face those addressing terrorism.

An effective understanding of the implications of terrorist events is difficult to achieve without delving deeper into the context behind the events. Numbers alone and gut reactions should not replace scrutiny. Terrorists are opportunistic. They succeed when they can manipulate and capitalize on gut reactions and imperfect knowledge.

Jenkins points out that the so-called "War on Terror" is complicated by issues such as the ambiguity of the enemy's identity, conflated by the ever-changing political environment adding to the list of enemies; society's fears of terrorism being driven and increased by news coverage; and the constant flux of world events. To gain a more accurate picture of what the acts of terrorism convey, Jenkins proposes a more global and balanced appreciation of the situation:

> A thorough appreciation of the current situation requires assessing progress in different fields of action and different geographic theatres . . .
>
> . . . In some areas, counterterrorism efforts have been successful; in others, less so. And for every plus or minus entry, there is a "however". Moreover, as shown in the preceding discussion, the situation has been and continues to be dynamic.
>
> On the plus side, our worst fears have not been realized. There have been no more 9/11s, none of the worst cases that post-9/11 extrapolations suggested. The 9/11 attacks now appear to be a statistical outlier, not a forerunner of further escalation. Terrorists have not used weapons of mass destruction, as many expected they would do. (At least they have not used them *yet*, many would add.) While the Islamic State appears to have recruited some chemical weapons specialists, the terrorist arsenal remains primitive, although lethal within bounds.
>
> Contrary to the inflated rhetoric of some in government, the operational capabilities of al-Qa'ida and the Islamic State remain limited. Both enterprises are beneficiaries of fortune (they would argue, of "God's will"). They are successful opportunists. The Islamic State's military success in Syria and Iraq reflects the collapse of the government's forces, not military prowess. With its legions of foreign fighters and deep financial pockets, the Islamic State theoretically could launch a global terrorist offensive, but the surge would probably be brief. This is not, as some have suggested, World War III.
>
> *Neither al-Qa'ida nor the Islamic State has become a mass movement, although both organizations attract sympathy in Muslim countries.* The vast majority of Muslims polled over the years express negative views of jihadist organizations, but a significant minority expresses favorable views of al-Qa'ida and, more recently, of the Islamic State . . .

> *The constellation of jihadist groups is not as meaningful as it appears to be.* Competing for endorsements, al-Qa'ida and the Islamic State have attracted declarations of loyalty from local groups across Africa, the Middle East, and Asia and have established a host of affiliates, provinces, and jihadist footholds. This is growth by acquisition and branding. A lot of it is public relations. Many of these groups are the products of long-standing local grievances and conflicts that would continue if there were no al-Qa'ida or Islamic State. Some are organizational assertions that represent only a handful of militants. The militants share a banner but are, for the most part, focused on local quarrels rather than a global jihad. There is no central command. There are no joint operations. The groups operate autonomously. Their connections in many cases are tenuous, although, with time, they could evolve into something more connected. The split between al-Qa'ida and the Islamic State has divided the groups. A number of them are beset by further internal divisions.
>
> Like all terrorists, jihadis can kill, destroy, disrupt, alarm, and oblige governments to divert vast resources to secure against their attacks, but terrorists cannot translate their attacks into permanent political gain. Yet this is not the way they measure things. They tend to see their mission as continuing operations to demonstrate their commitment and awaken others.
>
> *The Islamic State is losing territory and can be defeated.* With coalition air support and other external assistance, government forces in Iraq and U.S.-backed Kurdish and Arab fighters in Syria have been able to retake territory held by the Islamic State. Progress is slow, though faster than many analysts initially anticipated. This is not just a military challenge; it is also an effort to put something in place to govern recovered towns and cities.
>
> *Al-Qa'ida Central's command has been reduced to exhorting others to fight.* The Islamic State has made very effective use of social media to reach a broader audience. Its advertisement of atrocity as evidence of its authenticity appears to have been a magnet for marginal and psychologically disturbed individuals. Jihadist ideology has become a conveyer of individual discontents.[144] (Emphasis in the original)

Jenkins makes a case for having a nuanced, information and analysis-based understanding of and approach to counter terrorism. Thus, to effectively address terrorism, a clear program for countering violent extremism (CVE) requires a multi-faced approach.

No such program was presented before Congress or this Court. The context of martial law to address public safety was inadequately provided by the government.

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[144] Brian Michael Jenkins, *Fifteen Years On, Where are We in the "War on Terror"?*, 9 CTC SENTINEL 7, 10–11 (September, 2016).

It is enlightening to compare this to how other countries are comprehensively addressing terrorism. Unfortunately, respondents have manifested that they preferred not to declassify and make public this government's program to counter violent extremism.

One such program belongs to the United Kingdom (UK), which faces threats from Al Qa'ida, as well as its affiliates, associated groups, and "lone-wolf" terrorists, while also facing the violence associated with Northern Ireland-related terrorism. The UK has developed and improved upon its own Counter Terrorism Strategy (CONTEST). In CONTEST the Secretary of State for the Home Department details to parliament the comprehensive strategy that the UK is adopting to counter terrorism. Through CONTEST, the messaging is clear as to what the UK's goals are and what areas across all fields must be worked on in order to keep Britain safe from terrorist attacks.

CONTEST was designed with the following principles in mind:

> - Effective: we will regularly assess the progress we are making and the outcomes of this strategy;
> - Proportionate: we will ensure that the resources allocated to CONTEST, and the powers that are used for counter-terrorism work are proportionate to the risks we face and necessary to reduce those risks to a level we judge is acceptable;
> - Transparent: wherever possible and consistent with our security we will seek to make more information available about the threats we face, the options we have and the response we have decided on;
> . . . .
> - Flexible: terrorists will seek new tactics to exploit vulnerabilities in our protective security; we will regularly re-assess the risks we face and ensure that risk assessment is the foundation of our work;
> - Collaborative: countering terrorism requires a local, national and international response. We will continue to work with foreign governments, the private sector, non-governmental organisations and the public; and
> - Value for money: to deliver a counter-terrorism that is sustainable over the long term we will try to reduce costs while we maintain our core capabilities.[145]

Further, the UK's CONTEST is organized around four (4) areas of activity, namely, "Pursue," "Prevent," "Protect," and "Prepare."[146]

Pursue is concerned with stopping terrorist attacks within the UK and against UK interests worldwide. This involves the early detection, investigation, and disruption of terrorist activity before it poses a danger to

[145] CONTEST: The United Kingdom's Strategy for Countering Terrorism, pp. 40–42.
[146] Id. at 40.

the public.[147] Among the planned Pursue activities are a continued assessment of counter-terrorism powers to ensure they are both effective and proportionate; an improvement of the ability to prosecute and deport people for terrorist-related offenses; an increase of capabilities to detect, investigate, and disrupt terrorist threats; the improvement of the ability to handle sensitive and secret materials during judicial proceedings to promote justice and national security; and to enable the UK to better tackle threats at their source by working with other countries as well as multilateral organizations.[148]

Prevent aims to stop people from supporting terrorism, or becoming terrorists themselves.[149] It is recognized as a key part of CONTEST. The primary objectives of the UK in relation to Prevent are to:

- Respond to the ideological challenge of terrorism and the threat we face from those who promote it;
- Prevent people from being drawn into terrorism and ensure that they are given appropriate advice and support; and
- Work with a wide range of sectors (including education, criminal justice, faith, charities, the internet and health) where there are risks of radicalisation which we need to address.[150]

Protect is intended to strengthen the UK's protection against a terrorist attack within the country, or against its interests abroad. CONTEST recognizes that priorities under Protect must be informed by an assessment of facts: what the terrorists are trying to do, what their targets may be, and the vulnerabilities in said targets.[151] The government's objectives in relation to Protect are to:

- Strengthen UK border security;
- Reduce the vulnerability of the transport network;
- Increase the resilience of the UK's infrastructure; and
- Improve protective security for crowded places.[152]

Prepare is intended to mitigate the impact of terrorist attacks that cannot be stopped.[153] Among the government's objectives here are to:

- Continue to build generic capabilities to respond to and recover from a wide range of terrorist and other civil emergencies;
- Improve preparedness for the highest impact risks in the National Risk Assessment;

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147 Id. at 45.
148 Id.
149 Id. at 40.
150 Id. at 59–60.
151 Id. at 80.
152 Id. at 82.
153 Id. at 93.

- Improve the ability of the emergency services to work together during a terrorist attack; and
- Enhance communications and information sharing for terrorist attacks.[154]

The foregoing objectives reflect the UK government's recognition, that it is essential to have a strategy that is both effective and proportionate, more focused and more precise, "which uses powers selectively, carefully and in a way that is as sparing as possible."[155]

XIV

The government's presentation contained no sophistication in relation to how martial law, as generally conceived, can contribute to addressing the different types of violence it sought to address. They were not required by Congress or by the majority of this Court. Representing the government, the Solicitor General insisted through manifestations to even keep the program to counter violent extremism confidential and unavailable to the petitioners and the public.

We cannot remain so woefully uninformed that they will believe that a mere declaration and its psychological advantage is enough.

Again, there is enough publicly available literature that can inform us on the complexity of the problem.

For example, lessons on how individuals are recruited and radicalized may also be taken from the Institute for Policy Analysis of Conflict (IPAC). IPAC was founded on the premise that violent conflict cannot be prevented without accurate analysis.

Its report analyzing the custodial debriefings of seven (7) individuals arrested in relation to the Davao bombing of September 2016 is instructive.

The report reveals the cell group responsible for the Davao bombing consisted of a core group of friends who brought others into the fold, and that two (2) men were instrumental in the cell's formation.

One of them, Fakhrudin Dilangalen, was an Islamic teacher who had already been involved in pro-ISIS activities as early as 2014. The other was

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[154] Id. at 93–94.
[155] Id. at. 119.

the cell's leader, T.J. Macabalang, a businessman who had become fascinated by the establishment of a caliphate in 2014.[156]

Fakhrudin was a regular speaker after sunset prayers in a mosque in Sousa, Cotabato, who organized the young male attendees of his discussions into a cell and who sent small groups of these young men to train with AKP. Many of these young men were university students. T.J. Macabalang, on the other hand, was a motorcycle shop-owner with a drag racing club, who took up information technology at the University of Visayas in Cebu. In 2014, having become fascinated by the establishment of a caliphate, and having become committed to ISIS through his exploration of ISIS online, he reached out to Fakhrudin. In January, 2015, Fakhrudin invited T.J. in his home in Cotabato, and they proceeded with fifteen (15) others to the AKP camp in Butril, Palimbang, where most of them underwent a 40-day military training course. However, in December, 2015, Fakhrudin told T.J. he was breaking with AKP and its commander over a variance of views.

In January 2016, T.J. and Fakhrudin met Abdullah Maute in Butig, Lanao del Sur, and subsequently, Fakhrudin moved to Butig to join the Maute group. With Fakhrudin gone, T.J. replaced him as amir of the Cotabato cell.

Members of T.J.'s drag racing club joined, and they likewise brought others into the group. At the time of the Davao bombing, the cell had around thirty (30) members, despite the fact that T.J. did not have substantial religious knowledge.[157]

Noting that the key to radicalization in this instance was not poverty, and noting further that basic data-gathering from detainees has not yet been done by Philippine authorities, this IPAC report proposes that the following steps be taken to provide a basis for an effective counter-radicalization program:

- A mapping of university-based recruitment into extremist based both on detainee data as well as research in tertiary institutions by researchers who understand the distinctions among different streams of Islam.

- A compilation of the narratives used to draw recruits into pro-ISIS activity, both in religious study discussions as well as during military training.

- A systematic focus on cities other than Cotabato where radical cells were known to be active, using detainee information to try and draw a

[156] 41 INSTITUTE FOR POLICY ANALYSIS OF CONFLICT, POST-MARAWI LESSONS FROM DETAINED EXTREMISTS IN THE PHILIPPINES 3 (2017).

[157] Id. at 4.

> more complete picture of how these cells worked. We know, for example, that the organization initially known as Khilafah Islamiyah Mindanao (KIM) was founded in Cagayan de Oro by a man who became part of Maute's inner circle in Marawi, Ustadz Humam Abdul Najid alias Owayda (also known as Wai). Mapping the connections in Cagayan and understanding Owayda's role there remain essential.
>
> - A mapping of mosques known to have hosted discussions with pro-ISIS preachers. The Salaf mosque in Cotabato is one example but there will surely be many others. Local ulama councils may want to work out a mechanism by which they can share information about known extremists to try and prevent mosques and other institutions from being recruitment centers.
>
> - A detailed understanding of the role of women and why and through whom women became involved as financiers, propagandists and combatants.[158]

In the context of these insights, a general declaration of martial law without specifying the types of powers that will be exercised different from ordinary law enforcement action appears simplistic. The factual basis, apart from being too generalized, unsupported by evidence and incoherent, simply is not sufficient to support the finding that the declaration of martial law and the suspension of the privilege of the writ is needed to address the kind of danger to public safety that is existing in various parts of Mindanao.

XV

This was because the deliberations in Congress did not provide for any reasonable space for democratic deliberation.

As a general rule, this Court will not interfere with the proceedings of Congress. In *Baguilat, Jr. v. Alvarez*,[159] this Court recognized Congress' sole authority to promulgate rules to govern its proceedings. However, this is not equivalent to an unfettered license to disregard its own rules. Further, the promulgated rules must not violate fundamental rights.

As loathe as this Court is to examine the internal workings of a co-equal branch of government, there are circumstances where this Court's constitutional duty needs such examination.

In *Baguilat*, I stressed the need for this Court to fulfill its duty to uphold the Constitution even if it involves inquiring into the proceedings of

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[158] Id. at 10–11.

[159] G.R. No. 227757, July 25, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/227757.pdf > [Per J. Perlas-Bernabe, En Banc].

a co-equal branch. I pointed out the danger in refusing this duty, where the proceedings are designed to stifle dissent:

> Caution must be exercised in having a complete hands-off approach on matters involving grave abuse of discretion of a co-equal branch. This Court has come a long way from our pronouncements in *Mabanag v. Vito*.
>
> In *Mabanag*, the Congress voted on the "Resolution of Both Houses Proposing an Amendment to the [1935] Constitution of the Philippines to be Appended as an Ordinance Thereto." The Resolution proposed to amend the 1935 Constitution to give way for the American parity rights provision, which granted United States citizens equal rights with Filipinos in the exploitation of our country's natural resources and the operation of public utilities, contrary to Articles XIII and XIV of the 1935 Philippine Constitution.
>
> Article XV, Section 1 of the 1935 Constitution required the affirmative votes of three-fourths (3/4) of all members of the Senate and the House, voting separately, before a proposed constitutional amendment could be submitted to the people for approval or disapproval. The Senate was then composed of 24 members while the House had 98 members. Two (2) House representatives later resigned, leaving the House membership with only 96 representatives. Following the Constitutional mandate, the required votes to pass the Resolution were 18 Senators and 72 Representatives.
>
> The Senate suspended three (3) Senators from the Nacionalista Party, namely, Ramon Diokno, Jose O. Vera, and Jose E. Romero, for alleged irregularity in their elections. Meanwhile, the House also excluded eight (8) representatives from taking their seats. Although these eight (8) representatives were not formally suspended, the House nevertheless excluded them from participating for the same reason. Due to the suspension of the Senators and Representatives, only 16 out of the required 18 Senators and 68 out of the 72 Representatives voted in favor of the Resolution.
>
> *Mabanag* recognized that had the excluded members of Congress been allowed to vote, then the parity amendment that gave the Americans rights to our natural resources, which this Court ruled impacted on our sovereignty, would not have been enacted.
>
> Nevertheless, the absence of the necessary votes of three-fourths (3/4) of either branch of Congress, voting separately, did not prevent Congress from passing the Resolution. Petitioners thus assailed the Resolution for being unconstitutional. This Court, ruling under the 1935 Constitution upheld the enactment despite the patent violation of Article XV, Section 1.
>
> *Mabanag* ruled that Congress in joint session already certified that both Houses adopted the Resolution, which was already an enrolled bill. Thus, this Court had no more power to review as it was a political question:

> In view of the foregoing considerations, we deem it unnecessary to decide the question of whether the senators and representatives who were ignored in the computation of the necessary three-fourths vote were members of Congress within the meaning of Section 1 of Article XV of the Philippine Constitution.

Justice Perfecto's dissent, however, considered the matter a constitutional question — that is to say, deciding whether respondents violated the requirements of Article XV of the 1935 Constitution was within this Court's jurisdiction.

Subsequent rulings have since delimited and clarified the political question doctrine, especially under the 1987 Constitution. It bears stressing that Article VIII, Section 1 explicitly grants this Court the power "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

We cannot again shy away from this constitutional mandate.

The rule of law must still prevail in curbing any attempt to suppress the minority and eliminate dissent.

In *Estrada v. Desierto*:

> To a great degree, the 1987 Constitution has narrowed the reach of the political question doctrine when it expanded the power of judicial review of this [C]ourt not only to settle actual controversies involving rights which are legally demandable and enforceable but also to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. Heretofore, the judiciary has focused on the "thou shalt not's" of the Constitution directed against the exercise of its jurisdiction. With the new provision, however, courts are given a greater prerogative to determine what it can do to prevent grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. Clearly, the new provision did not just grant the Court power of doing nothing. (Emphasis supplied)

Any attempt by the dominant to silence dissent and take over an entire institution finds no room under the 1987 Constitution. Parliamentary practice and the Rules of the House of Representatives cannot be overruled in favor of personal agenda.

It is understandable for the majority in any deliberative body to push their advantages to the consternation of the minority. However, in a representative democracy marked with opportunities for deliberation, the complete annihilation of any dissenting voice, no matter how reasonable, is a prelude to many forms of authoritarianism. While politics speaks in numbers, many among our citizens can only hope that those political numbers are the result of mature discernment. Maturity in politics is marked by a courageous attitude to be open to the genuine opposition,

> who will aggressively point out the weaknesses of the administration, in an orderly fashion, within parliamentary forums. After all, if the true interest of the public is in mind, even the administration will benefit by criticism.[160]

In this case, the rules of the Joint Session of Congress[161] appear to have been designed to stifle discourse and genuine inquiry into the sufficiency of factual basis for the extension of martial law. They give a member of Congress no more than three (3) minutes to interpellate resource persons during the Joint Session:

> RULE V
>
> CONSIDERATION OF THE LETTER OF THE PRESIDENT DATED DECEMBER 8, 2017 CALLING UPON THE CONGRESS OF THE PHILIPPINES "TO FURTHER EXTEND THE PROCLAMATION 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 01 JANUARY 2018 TO 31 DECEMBER 2018, OR FOR SUCH OTHER PERIOD OF TIME AS THE CONGRESS MAY DETERMINE, IN ACCORDANCE WITH SECTION 18, ARTICLE VII OF THE 1987 PHILIPPINE CONSTITUTION"
>
> SEC. 6. The relevant agencies of the Executive Department shall report to the Joint Session on the factual basis of the letter of the President calling upon Congress to further extend the period of Proclamation No. 216, Series of 2017.
>
> SEC. 7. Any member of Congress may interpellate the resource persons for not more than three (3) minutes excluding the time of the answer of the resource persons.

During the oral arguments, petitioner Lagman provided some detail as to how Congress performed its inquiry into the factual basis for the extension of martial law. Not only were the members of Congress given an inadequate three (3) minutes to interpellate resource persons during the Joint Session, but they were also only provided with three (3) letters as basis for their vote. Although the three (3) letters contained some factual allegations, no basis for the factual allegations was provided to the members of Congress during their Joint Session:

> JUSTICE LEONEN:
>
> . . . .
>
> Congressman Lagman, I am sure that you were given the operational orders or the OPORD while you were conducting the

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[160] Dissenting Opinion of J. Leonen in *Baguilat v. Alvarez,* G.R. No. 227757, July 25, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/227757_leonen.pdf > 36–39 [Per J. Perlas-Bernabe, En Banc]

[161] Memorandum by Representative Lagman, Annex G.

congressional hearings that you were given the OPORD, the Operational Directive of the Chief of Staff to the Service Command for the extension of Martial Law, is that not correct?

CONGRESSMAN LAGMAN:
Well, we were given the letter of the President . . .

JUSTICE LEONEN:
I'm sorry Congressman Lagman. So, the only thing given to you as Congressmen was the letter of the President.

CONGRESSMAN LAGMAN:
With the annexes of the recommendation both of the Secretary of National Defense and the . . .

JUSTICE LEONEN:
Let me get this right. So, the Congress decided on the basis of a letter of the President, the annex was the letter of the Chief of Staff and the . . .

CONGRESSMAN LAGMAN:
And also of the Secretary of National Defense.

JUSTICE LEONEN:
In other words, was there intelligence information given to each member of the House and the Senate when they reviewed the factual basis of the assertions in the letter?

CONGRESSMAN LAGMAN:
There was a briefing before we had the joint session but definitely no confidential information was given to the members.

JUSTICE LEONEN:
The briefing was in power point, correct?

CONGRESSMAN LAGMAN:
No, Your Honor . . .

JUSTICE LEONEN:
So, it was just . . .

CONGRESSMAN LAGMAN:
That was before, *wala*....

JUSTICE LEONEN:
So, let me again go back. So, Congress relied on a briefing but was not given materials when it actually voted for the extension of Martial Law in the entirety of Mindanao for one year. You were relying on the letter of the President, the letter of the SND, the letter of the Chief of Staff, and the words that were given only during the briefing, am I not correct?

CONGRESSMAN LAGMAN:
Those were the only documents in the briefing conducted but during the joint session, we were allowed to make some interpellation and inquiries on the Executive Panel but it was very limited. We were only given three minutes.

JUSTICE LEONEN:
Three minutes.

CONGRESSMAN LAGMAN:
Three minutes.[162]

This account was described further by petitioners Lagman, et al. in their Memorandum and unrefuted by the respondents:

> 11. Petitioner Lagman was present during the entire joint session of the Congress on December 13, 2017 when the request of the President for a yearlong extension of martial law and the suspension of the writ in Mindanao was summarily granted by the Congress. He is absolutely certain there was no PowerPoint presentation made by the resource persons from the military and police establishments and executive department during the joint session.
>
> 12. He was also present during the all-Member caucus of the House of Representatives held in the afternoon of December 12, 2017 when the military and police establishments briefed the Members of the House of Representatives on the security situation in Mindanao. There was a PowerPoint presentation made principally by General Alex Monteagudo, the Chief of the National Intelligence Coordinating Agency (NICA). But the caucus was not the body charged with approving the extension.
>
> 13. The PowerPoint presentation, which included the assessment/conclusions of the military-police establishment, was not substantiated by independent hard data and validated accounts. It was bereft of verified and verifiable basis. It was not supported by documentary evidence. Verily, the PowerPoint presentation lacks the disclosure of the factual data on which it was based.
>
> 14. When sensitive questions were asked, the usual answer was that they involved classified information which are confidential in nature and any disclosure may endanger national security.
>
> 15. It was during his briefing that General Monteagudo said that "Marawi is only the tip of the iceberg", an understatement to justify alleged looming bigger terrorist threats and attacks. This estimation was not backed up with facts.
>
> . . . .
>
> 19. It is false for the Solicitor General to claim that Petitioner Lagman was absent in either or both the briefing and joint session.[163]

The foregoing account exposes a failure on the part of Congress to look into the factual basis for extending the proclamation of martial law. Not only that, but the limitation of three (3) minutes to interpellate resource

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[162] TSN dated January 16, 2018, pp. 58–60.
[163] Memorandum by Representative Lagman, pp. 5–6.

persons during the Joint Session suggests an intention to suppress any inquiry into the factual premise for the extension of martial law.

The discussion of Congress was crammed in one (1) day towards the end of a Congressional session. This was due to the belated request for extension communicated by the President.[164]

By passing and enforcing the joint rules, Congress shirked its own constitutionally mandated duty to determine, first, whether the actual rebellion persists and, second, whether public safety requires the extension of martial law on account of the persisting actual rebellion. The rules provided by Congress ensured that those members who wished to perform their roles and inquire as to the facts were prevented from doing so. Time for deliberation and reconsideration by their colleagues were clearly curtailed.

Congress' deliberations, or manifest lack thereof, should be enough to encourage this Court to approach this case with more rigor and less deference. The Congress could have been more critical and analytical in its review of the facts presented through PowerPoint presentations.

XVI

The majority in this Court presents its decision in the context of a choice between terrorism and rebellion on the one hand and martial law on the other. This is a false dichotomy.

There are peace and order problems in Mindanao. Indeed, these are to be addressed convincingly and decisively with law enforcement and with a strategic program to counter violent extremism. Terrorism and isolated acts of rebellion require comprehensive solutions that sincerely addresses the causes of the emergence of radical ideologies hand in hand with military and police actions to disrupt and suppress violence. Martial law is not the only option.

To label the law enforcement problems in Mindanao simplistically as rebellion in order to grant a carte blanche authority for the President under the rubric of martial law is dangerous sophistry.

Accepting the allegations of the government, without any effort to determine its quality in terms of the evidence supporting it and to examine its logic in its entirety, amounts to a failure to do our constitutional duty to examine not only grave abuse of discretion but the factual sufficiency of the

[164] TSN dated January 16, 2018, p. 27.

exercise of extraordinary Commander-in-Chief powers. To be blind to the kind of deliberation that was done in Congress is to fail our covenant with the sovereign Filipino people.

In the 1970s, there was a Court which painfully morphed into a willing accomplice to the demise of fundamental rights through tortured readings of their clear constitutional mandate in order to accommodate a strongman. What followed was one of the darkest episodes in our history. Slowly but surely, soldiers lost their professionalism. Thousands lost their freedoms. Families suffered from involuntary disappearances, torture, and summary killings. Among them are some of the petitioners in this case.

Regardless of the motives of the justices then, it was a Court that was complicit to the suffering or our people. It was a Court that degenerated into a willing pawn diminished by its fear of the impatience of a dictator.

The majority's decision in this case aligns us towards the same dangerous path. It erodes this Court's role as our society's legal conscience. It misleads our people that the solution to the problems of Mindanao can be solved principally with the determined use of force. It is a path to disempowerment.

Contrary to the text and spirit of the Constitution, the decision in this case provides the environment that enables the rise of an emboldened authoritarian.

This is far from the oath to the Constitution that I have taken. I, therefore, dissent.

ACCORDINGLY, in view of the foregoing, I vote to grant the Petitions and declare the President's request for extension of the period covered by Proclamation No. 216 series of 2017 and Congress' Resolution of Both Houses No. 4 issued on December 13, 2017 as unconstitutional.

MARVIC M.V.F. LEONEN
Associate Justice