EN BANC

G.R. No. 243522 – REPRESENTATIVES EDCEL C. LAGMAN, TOMASITO S. VILLARIN, TEDDY BRAWNER BAGUILAT, JR., EDGAR R. ERICE, GARY C. ALEJANO, JOSE CHRISTOPHER Y. BELMONTE, AND ARLENE "KAKA" J. BAG-AO, *Petitioners*, ***versus*** **HON. SALVADOR C. MEDIALDEA, EXECUTIVE SECRETARY; HON. DELFIN N. LORENZANA, SECRETARY OF THE DEPARTMENT OF NATIONAL DEFENSE AND MARTIAL LAW ADMINISTRATOR; GEN. BENJAMIN MADRIGAL, JR., CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES AND MARTIAL LAW IMPLEMENTOR; AND HON. BENJAMIN E. DIOKNO, SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT; AND THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE PHILIPPINES AS COMPONENT HOUSES OF THE CONGRESS OF THE PHILIPPINES, RESPECTIVELY REPRESENTED BY HON. SPEAKER GLORIA MACAPAGAL-ARROYO AND HON. SENATE PRESIDENT VICENTE C. SOTTO III,** *Respondents*.

G.R. No. 243677 – BAYAN MUNA PARTYLIST REPRESENTATIVE CARLOS ISAGANI T. ZARATE, GABRIELA WOMEN'S PARTY REPRESENTATIVES EMERENCIANA A. DE JESUS AND ARLENE D. BROSAS, ANAKPAWIS REPRESENTATIVE ARIEL B. CASILAO, ACT TEACHERS REPRESENTATIVES ANTONIO L. TINIO AND FRANCE L. CASTRO, AND KABATAAN PARTYLIST REPRESENTATIVE SARAH JANE I. ELAGO, *Petitioners*, ***versus*** **PRESIDENT RODRIGO DUTERTE, CONGRESS OF THE PHILIPPINES, REPRESENTED BY SENATE PRESIDENT VICENTE C. SOTTO III AND HOUSE SPEAKER GLORIA MACAPAGAL-ARROYO, EXECUTIVE SECRETARY SALVADOR MEDIALDEA, DEFENSE SECRETARY DELFIN LORENZANA, ARMED FORCES OF THE PHILIPPINES CHIEF-OF-STAFF LIEUTENANT GENERAL BENJAMIN MADRIGAL, JR., PHILIPPINE NATIONAL POLICE DIRECTOR-GENERAL OSCAR DAVID ALBAYALDE,** *Respondents*.

G.R. No. 243745 – CHRISTIAN S. MONSOD, RAY PAOLO J. SANTIAGO, NOLASCO RITZ LEE B. SANTOS III, MARIE HAZEL E. LAVITORIA, DOMINIC AMON R. LADEZA, XAMANTHA XOFIA A. SANTOS, *Petitioners*, ***versus*** **SENATE OF THE PHILIPPINES (represented by SENATE PRESIDENT VICENTE SOTTO III), HOUSE OF REPRESENTATIVES (represented by SPEAKER GLORIA MACAPAGAL-ARROYO), EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, DEPARTMENT OF NATIONAL DEFENSE (DND) SECRETARY DELFIN N.**

LORENZANA, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT (DILG) SECRETARY EDUARDO M. AÑO, ARMED FORCES OF THE PHILIPPINES (AFP) CHIEF OF STAFF GEN. BENJAMIN R. MADRIGAL, JR., PHILIPPINE NATIONAL POLICE (PNP) CHIEF DIRECTOR GENERAL OSCAR D. ALBAYALDE, NATIONAL SECURITY ADVISER HERMOGENES C. ESPERON, JR., *Respondents*.

G.R. No. 243797 – RIUS VALLE, JHOSA MAE PALOMO, JEANY ROSE HAYAHAY AND RORELYN MANDACAWAN, *Petitioners*, ***versus*** **THE SENATE OF THE PHILIPPINES, REPRESENTED BY THE SENATE PRESIDENT VICENTE C. SOTTO III, THE HOUSE OF REPRESENTATIVES, REPRESENTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES GLORIA MACAPAGAL ARROYO, THE EXECUTIVE SECRETARY, THE SECRETARY OF NATIONAL DEFENSE, THE SECRETARY OF THE INTERIOR AND LOCAL GOVERNMENT, THE CHIEF OF STAFF, ARMED FORCES OF THE PHILIPPINES, THE DIRECTOR GENERAL, PHILIPPINE NATIONAL POLICE, AND ALL PERSONS ACTING UNDER THEIR CONTROL, DIRECTION, INSTRUCTION, AND/OR SUPERVISION,** *Respondents*.

Promulgated:

February 19, 2019

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DISSENTING OPINION

CAGUIOA, *J.*:

Before the Court are consolidated petitions filed under Section 18, Article VII of the Constitution, assailing the constitutionality of the third extension of the proclamation of martial law and suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao for another year, from January 1 to December 31, 2019. The petitioners in G.R. Nos. 243522, 243745, and 243797 additionally pray for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction (WPI).

Sufficiency of Factual Basis

A. Whether there exists sufficient factual basis for the extension of martial law in Mindanao

All four petitions question the sufficiency of the factual basis of the third extension of martial law, arguing cumulatively that there is no longer any rebellion in Mindanao and public safety does not require the extension.

The respondents, on the other hand, claim that there are ongoing rebellions being waged by the Communist Party of the Philippines (CPP) – New People's Army (NPA) – National Democratic Front (NDF) and the DAESH-inspired groups in Mindanao and that public safety requires the extension. Moreover, the respondents maintain that the President and Congress had probable cause to believe that there are ongoing rebellions in Mindanao.

A.1. Whether rebellion exists and persists in Mindanao

In support of the President's request for extension of martial law, the Executive department presented to the Congress during the joint session of the Senate and the House of Representatives a compilation of violent incidents committed by the Abu Sayyaf Group (ASG), the Bangsamoro Islamic Freedom Fighters (BIFF), the Daulah Islamiyah (DI) and other groups that have established affiliation with ISIS/DAESH (collectively called by the Executive and respondents as Local Terrorist Rebel Groups [LTRGs]), and by what the Executive calls the Communist Terrorist Rebel Groups (CTRGs), the components of which are: the CPP, the NPA, and the NDF for the period of January 1 to November 30, 2018.[1]

The violent incidents attributed to the ASG, BIFF and DI consist of one hundred thirty-seven (137) incidents of ambuscades, arson, firefighting/attack, grenade throwing, harassment, IED/landmining explosion, attempted kidnapping, kidnapping, liquidation, murder and shooting. As for the NPA, the violent incidents consist of one hundred seventy-seven (177) incidents involving ambushes, raids, nuisance harassments and harassments, disarming, landmining, SPARU operations, liquidations, kidnappings, robberies/holdups, bombings, and arson.[2]

According to the respondents, these criminal acts constitute rebellion as they were committed in furtherance of the crime.[3] The President was aware that these criminal activities are part and parcel of rebellion as he stated in the letter that "[the ASG, BIFF, DI], and other terrorist groups x x x continue to defy the government by perpetrating hostile activities during the extended period of Martial Law" and "x x x the CTG which has publicly declared its intention to seize political power through violent means and supplant the country's democratic form of government with Communist rule, took advantage and likewise posed serious security concerns x x x."[4]

Before the Court, the respondents submitted as Annexes to their submissions an updated compilation of reports of these violent incidents to include all violent incidents for the entire period of 2018 which they

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1 *Rollo* (G.R. No. 243522), Vol: 2, pp. 825-826, citing Slide Nos. 8 and 9 of the AFP Presentation.
2 Id. at 826-827, citing Slide Nos. 27 and 26 of the AFP Presentation.
3 Id. at 827.
4 Id. at 828. Emphasis in the original.

attributed to the ASG, the BIFF, the DI, and the NPA. These Annexes, in turn, had covering tables summarizing the contents of the submitted data. With the exception of the NPA-initiated violent incidents, these covering tables/summaries are supported by individual reports that supply the date of the incident, the type of incident, and the particulars of the said incident. In some cases, these include acronyms that tend to show the source of the information.

The respondents argue that these reports, being duly validated and authenticated in accordance with military procedure, are akin to entries in official records by a public officer which under the law enjoy the presumption as *prima facie* evidence of the facts stated therein, and that the trustworthiness of these official records is reinforced by the legal presumption of regularity in the performance of official duty.[5] As well, the respondents point out that the petitioners have not advanced any basis for the Court to doubt the reports which emanated from the AFP Office of the Deputy Chief of Staff for Intelligence J2 (OJ2).[6] They submit that there really are no inconsistencies, and the annexes are faithful accounts of the violent incidents in 2018 attributed to a specific threat group.[7]

These arguments do not persuade.

Section 18, Article VII of the Constitution squarely places the burden of proof upon the political departments to show sufficient factual basis for the extension of martial law and the suspension of the privilege of the writ of *habeas corpus*. This is the Court's rulings in *Lagman v. Medialdea*[8] and *Lagman v. Pimentel III*[9] and no reason exists to deviate therefrom. Accordingly, applying the presumption of regularity in the performance of official duty and the presumption that these reports are *prima facie* evidence of the facts stated therein in a manner that excuses the respondents from introducing substantial evidence to prove to the Court that the twin requirements for the extension exist, defeats any intelligent review under Section 18.

To stress anew, Section 18 is in the nature of a neutral fact-checking mechanism by the Court. Having established the quantum of evidence required for the determination of the elements of rebellion as defined in the Revised Penal Code (RPC) as "probable cause", and in the determination of the twin requirements as substantial evidence, there are certain fundamental precepts in administrative fact-finding that are applicable. In *Ang Tibay v. CIR*,[10] the Court held:

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5 Id. at 838.
6 Id.
7 Id. at 839.
8 G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1 [En Banc, per J. Del Castillo].
9 G.R. Nos. 235935, 236061, 236145 & 236155, February 6, 2018 [En Banc, per J. Tijam].
10 69 Phil. 635 (1940) [En Banc, per J. Laurel].

> x x x The fact, however, that the Court of Industrial Relations may be said to be free from the rigidity of certain procedural requirements does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character. There are cardinal primary rights which must be respected even in proceedings of this character:
>
> x x x x
>
> (2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the **tribunal *must consider* the evidence presented**. x x x In the language of this Court in Edwards *vs.* McCoy, 22 Phil., 598, "the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration."
>
> (3) "While the duty to deliberate does not impose the obligation to decide right, it does imply **a necessity** which cannot be disregarded, namely, that **of having something to support its decision**. A decision with absolutely nothing to support it is a nullity, a place when directly attached." x x x This principle emanates from the more fundamental principle that the genius of constitutional government is contrary to the vesting of unlimited power anywhere. Law is both a grant and a limitation upon power.
>
> (4) **Not only must there be some evidence to support a finding or conclusion x x x, but the evidence must be "substantial."** x x x "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind accept as adequate to support a conclusion." x x x The statute provides that 'the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order. x x x But this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a **basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence.** x x x
>
> (5) **The decision must be rendered on the evidence presented at the hearing, or at least contained in the record** and disclosed to the parties affected. x x x Only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them. It should not, however, detract from their duty actively to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy. x x x[11]

As applied to a Section 18 review, these fundamental principles require the government to show as much of its factual basis **to enable the Court** to reach the conclusion that the third extension of martial law and the

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[11] Id. at 641-643. Citations omitted; emphasis and underscoring supplied.

suspension of the privilege of the writ of *habeas corpus* is justified by substantial evidence.

This burden entails the introduction of evidence of such quality and quantity that, after the consideration by the Court, there is "substantial evidence," that is, **relevant evidence with rational probative force, as a reasonable mind might accept as adequate to support a conclusion**. Stated differently, the evidence of the government must be such that, after weeding out the irrelevant evidence and those that are incompetent (uncorroborated hearsay or rumor) even under flexible evidentiary rules of an administrative proceeding, enough evidence remains to engender in the mind of the Court the finding that (1) rebellion persists in Mindanao, and (2) public safety requires the extension. ***This cannot be hurdled by the expediency of a presumption.***

To be certain, according the political departments the presumption of regularity in a Section 18 proceeding is simply untenable **and completely opposite to the duty of government to positively establish, with facts and evidence, the basis for the extension of Martial Law**:

> x x x [W]hile the Executive and Legislative departments cannot be compelled to produce evidence to prove the sufficiency of factual basis, these presumptions cannot operate to gain judicial approbation in the face of the refusal to adduce evidence, or presentation of insufficient evidence. For otherwise, the ruling that fixes the burden of proof upon the Executive and Legislative departments becomes illusory, and logically inconsistent: the Court cannot rule on the one hand that respondents in a Section 18 proceeding bear the burden of proof, and then on the other, rule that the presumptions of constitutionality and regularity apply. In short, the Court cannot say that the respondents must present evidence showing sufficient factual basis, but if they do not or cannot, the Court will presume that sufficient factual basis exists. x x x
>
> Indeed, if the Court needs to rely upon presumptions during a Section 18 review, then it only goes to show that the Executive and Legislative departments failed to show sufficient factual basis for the declaration or extension. Attempts at validation on this ground is equivalent to the Court excusing the political departments from complying with the positive requirement of Section 18.[12]

That said, and even if the presumption of regularity can somehow apply in a Section 18 proceeding, it will not prevent the Court from examining the government's evidence for consistency and credibility and weighing their rational probative force.

In this regard, the Court notes that this disputable presumption, even if accorded, may not even apply. After a careful examination of the submissions

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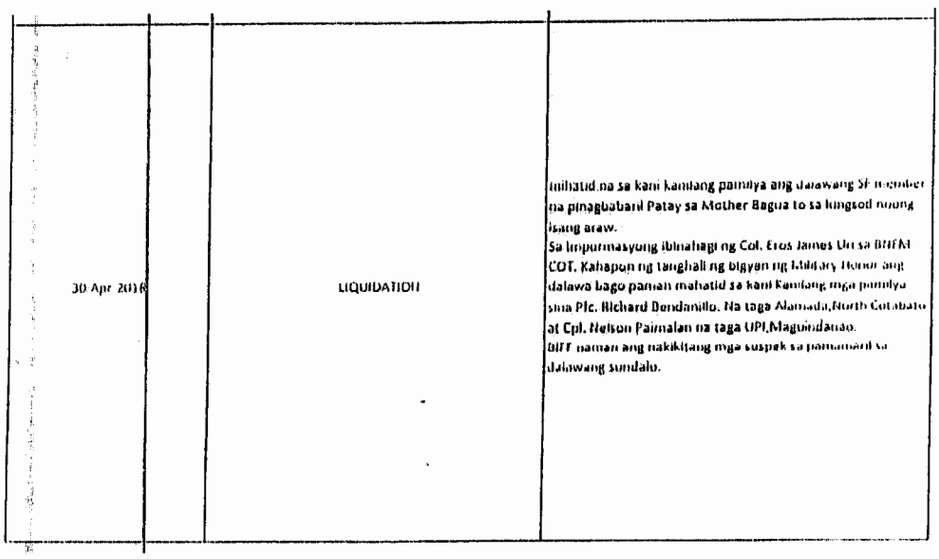
[12] *J.* Caguioa, Dissenting Opinion in *Lagman v. Pimentel III*, supra note 9, at 4.

of the government, it is immediately evident that **the evidence itself contain irregularities that foreclose the application of the presumption**.

These include, just to name a few examples:

1. The government describes its evidence as consisting of reports duly validated and authenticated according to military procedure. Moreover, it is described as "reports x x x [emanating] from the OJ2"[13]. However, in the government's report of the April 30, 2018 liquidation[14] attributed to the BIFF, the Report states:



30 Apr 2018		LIQUIDATION	Inihatid na sa kani kanilang pamilya ang dalawang SF member na pinagbabaril Patay sa Mother Bagua to sa lungsod noong isang araw. Sa Impormasyong ibinahagi ng Col. Eros James Uri sa BNFM COT. Kahapon ng tanghali ng bigyan ng Military Honor ang dalawa bago paman mahatid sa kani kanilang mga pamilya sina Pfc. Richard Bendanillo. Na taga Alamada,North Cotabato at Cpl. Nelson Paimalan na taga UPI,Maguindanao. BIFF naman ang nakikitang mga suspek sa pamamaril sa dalawang sundalo.

A cursory search of BNFM COT yields the result that BNFM COT means Brigada News FM Cotabato.

Clearly, the source of the information for the foregoing entry is a news report. This belies, therefore, the claimed "validation" and "authentication" warranted by the government of the said AFP Reports as to the information that is proffered therein.

In this regard, it should be noted that out of the one hundred fifty (150) reports (entries) of violent incidents making up the respondents' submission, only seventy-one (71) entries had acronyms tending to point to the military or the police as the

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13 *Rollo* (G.R. No. 243522), Vol. 2, p. 838.

14 *Rollo* (G.R. No. 243522), Vol. 1, p. 265. The entry reads as follows:

"Inihatid na sa kani kanilang pamilya ang dalawang SF member na pinagbabaril Patay sa Mother Bagua to sa lungsod noong isang araw.

Sa Impormasyong ibinahagi ng Col. Eros James Uri sa BNFM COT. Kahapon ng tanghali ng bigyan ng Military Honor ang dalawa bago paman mahatid sa kani kanilang mga pamilya sina Pfc. Richard Bendanillo. Na taga Alamada, North Cotabato at Cpl. Nelson Paimalan na taga UPI, Maguindanao. BIFF naman ang nakikitang mga suspek sa pamamaril sa dalawang sundalo."

ultimate source of the information.[15] The inclusion of the foregoing stray entry thus prevents the Court from presuming that the remaining seventy-nine (79) entries that did not state their source actually come from the military or the police.

This thus casts doubt as to the source and the level of validation and authentication of the said information as warranted by the government of the said AFP Reports. In the same manner that the Court in *Lagman v. Pimentel III* held that online news articles have no probative value with respect to proving human rights violations, the Court cannot now presume as a regular military report that which obviously appears to be but based on a newsbyte. **Without the identification of the source of information, the report is nothing but an uncorroborated hearsay or rumor,** using the words of *Ang Tibay v. CIR*.[16]

2. Moreover, as noted by certain members of the Court during the oral arguments, the Annexes are **replete** with entries that are incomplete. Examples[17] of these, as flashed on the screen during the oral arguments, include:

31-Jan-18	AMBUSCADE	(3) workers of DPWH, ARMM identified as Abdulbasit Daimun, Adzhar Dakis and Abdul Sarabin, with one SCAA escort identified as Mittoy Estajal onboard a dump truck emanated from Ungkaya Pukan going to DPWH Office in Brgy Lagasan, Lamitan City, both in Basilan were fired upon by two (2) unidentified gunmen using M203 Grenade Launcher upon reaching vicinity of Brgy Baas, same city that resulted to the killing of two (2) civilians (Daimun and Dakis) and wounding of two (2) others (Sarabin and Estajal). Afterwich, the perpetrators withdrew towards the direction of Brgy Lebbuh, same city. The wounded victims were brought to Ciudad Medical in Zamboanga City for medication. Comments: a. The incident is an extortion related and possibly perpetrated by the group of Arjan Apinu under ASGSL Abdulla Jovel Indanan@ GURU. b. Since 2015, the group of @ GURU was monitored engaged in extortion activity targeting Construction Company, who has ongoing government projects in Tipo Tipo and Tuburan municipalities and prominent businessmen in the cities of

[15] During the oral arguments, the Court requested the respondents to submit a glossary of these acronyms to aid in the understanding of the reports. No submission was made.

[16] Supra note 10, at 643.

[17] See *rollo* (G.R. No. 243522), Vol. 1, pp. 217-218.

01-Feb-18	AMBUSCADE	certain Muksin Kaidin and Mukim (LNU) while onboard their vehicle were ambushed by undermined number of unidentified armed men at So Kapok Hawani, Brgy Latih, Patikul, Sulu. The victims sustained multiple GSWs and the body of Muksin Kaidin was burned due to the explosion of gasoline of said vehicle causing their death. Afterwhich, the suspects withdrew towards unknown directions while the cadavers of the victims were brought to IPHO Hospital, KHTB, Brgy Bus-Bus, Jolo, same province for proper disposition. Comments: a. Initial investigation conducted by the PNP averred that the motive of the incident is said to be a long-standing family feud or RIDO between the family of the victims and the suspects. b. On the other hand, it is most likely that this could be a handiwork of the Ajang-Ajang group tasked by the ASG to liquidate suspected military informants in the area. c. Patikul MPS conducted hot pursuit operations on the suspects and will likewise conduct investigation n to establish the motive and identity of the perpetrators.

The respondents were given the opportunity to rectify or supplement these gaps in the evidence. **Unfortunately, these gaps were not addressed**.[18]

Given the state of the government's evidence as observed above, the presumption of regularity in the performance of official duties, even if accorded, has been negated by the gaps and inconsistencies therein.

With the presumption unavailing, the evidence presented by the respondents will now be examined.

Evidence of persisting rebellion

The Court has previously held that the rebellion required for the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus,* or the extension thereof, is rebellion as defined under Article 134 of the Revised Penal Code:

> Article 134. *Rebellion or insurrection.* — How committed. — The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippines or any part thereof, of any body of land, naval or other

[18] Despite the Court's instructions to the respondents to rectify or supplement these gaps in the evidence in their Memorandum, these incomplete entries were not completed.

> armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.

In this regard, the rule as it stands — and that which is applicable for the instant review — is that for purposes of establishing the sufficiency of the factual basis for the extension of martial law, the government bears the burden of proof to show that:

> *First*,
>
> (1) [T]here is a (a) public uprising and (b) taking [of] arms against the [G]overnment; and
>
> (2) [T]he purpose of the uprising or movement is either (a) to remove from the allegiance to the Government or its laws: (i) the territory of the Philippines or any part thereof; or (ii) any body of land, naval, or other armed forces; or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives.[19]

And *second*, that public safety requires the extension.

To show the first requirement — the persistence of rebellion already parsed in *Lagman v. Medialdea*, the government must show with substantial evidence **the concurrence of both the overt act of rebellion and the specific purpose**. This is consistent with the jurisprudence on rebellion, thus:

> From the foregoing, it is plainly obvious that it is not enough that the overt acts of rebellion are duly proven. **Both purpose and overt acts are essential components of the crime. With either of these elements wanting, the crime of rebellion legally does not exist. In fact, even in cases where the act complained of were committed simultaneously with or in the course of the rebellion, if the killing, robbing, or etc., were accomplished for private purposes or profit, without any political motivation, it has been held that the crime would be separately punishable as a common crime and would not be absorbed by the crime [of] rebellion.**[20]

The totality of the evidence presented by the respondents consists of the following:

1. Specific reports of violent incidents divided into the groups which purportedly initiated them and a covering summary for each group. These were attached to the respondents' Comment as Annexes:

    a. Annex "4" referring to ASG-initiated violent incidents,
    b. Annex "5" referring to BIFF-initiated violent incidents,

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19 *Lagman v. Pimentel III*, supra note 9, at 39, citing *Lagman v. Medialdea*, supra note 8, at 53 and 54.

20 *People v. Lovedioro*, 320 Phil. 481, 489 (1995) [First Division, per J. Kapunan]. Emphasis and underscoring supplied.

c. Annex "6" referring to DI-initiated violent incidents, and
d. Annex "7" referring to NPA-initiated violent incidents.[21]

2. Monthly Reports in the implementation of Martial Law;

3. Letter[22] of Major General Pablo M. Lorenzo, Deputy Chief of Staff for Intelligence of the AFP; and Letter[23] of Police Director Ma. O R. Aplasca containing PNP Data and other supporting reports providing updates or more information on the reports contained in the Annexes.[24]

Analysis of the data

To be able to make a reasonable inference from the compiled reports submitted, these reports (also called entries) were identified, analyzed, and then grouped according to: (1) the **designation of the incident**,[25] (2) the **perpetrator**,[26] (3) the **motive**,[27] and (4) completeness of the entry.[28] The number of reported **casualty**[29] is also noted.

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21 *Rollo* (G.R. No. 243522), Vol. 1, pp. 215-289.

22 *Rollo* (G.R. No. 243522), Vol. 2, pp. 847-859.

23 Id. at 860.

24 Annexes "2-A" to "2-U" of the OSG Memorandum, id. at 861-881.

25 **Designation of the incident.** The designation by the respondents of the types of the incidents (as those enumerated in the respondents' covering summaries in the column activities, *e.g.*, ambuscade, arson, carnapping, kidnapping, and murder) is adopted throughout this Opinion for consistency.

26 **Identification of the perpetrator.** The reports are grouped according to these criteria:

a. No perpetrator. Entries are considered to have identified no perpetrator when the report does not state any perpetrator at all, states that the violent incident was committed by "[an] unidentified person," simply "armed men," "unidentified perpetrators," or descriptions of similar import.
b. Suspected perpetrator. Entries are considered as stating a suspected perpetrator when it states that the violent incident was committed by "[more or less] ten (10) suspected [ASG/BIFF/DI]," "unidentified armed men believed to be [ASG/BIFF/DI] member" or other descriptions of similar import.
c. General identification. Entries are considered as having generally identified the perpetrator when it states that the violent incident was committed by "[ASG/BIFF/DI]," "undetermined number of [ASG/BIFF/DI]," "riding-in-tandem [ASG/BIFF/DI]" or other descriptions of similar import.
d. Specific identification. Entries are considered to have specifically identified a perpetrator when it names a specific person belonging to either ASG, BIFF or DI as having committed the violent incident described, *e.g.*, "three (3) individuals with one (1) identified as Darmin Nani @Kulot, an ASG member x x x," "undetermined number of ASG members led by Abdulla Jovel Indanan @Guru," and "assailants identified as @Ben, Mungkay, Alaam and Allam."

27 **Statement of motive.** A report is considered to have no motive when no motive is stated or when the report states that the "motive of the incident not yet determined," "motive x x x is yet to be determined," or "motive of the incident is still unknown." All reports that state a motive are discussed under the Annexes where they are found. See February 5, 2018 account of liquidation, *rollo* (G.R. No. 243522), Vol. 1, p. 221; June 25, 2018 account of kidnapping, id. at 237; and July 15, 2018 account of murder, id. at 239, as examples.

28 **Incomplete entries.** As shown by the exemplars in pages 8-9, these entries show, on their face, that the text in the cells were incomplete. For purposes of conclusions made below, these incomplete entries are still considered. However, if the missing text prevents the Court from identifying the perpetrator or the motive, even if by context these are supplied, then these entries are considered to have stated no perpetrator or motive, as applicable. See May 6, 2018 account of a kidnapping incident, id. at 285; and May 13, 2018 account of a liquidation incident, id. at 284, in Annex "6" as examples of the treatment for missing text.

29 **Casualty.** Casualty count is a total count including all reported casualty, without distinguishing between government, civilian or armed groups.

ASG-initiated violent incidents

Annex "4" consists of alleged ASG-initiated violent incidents for the whole year of 2018 presented through a covering summary and specific reports therefor. The covering summary[30] is replicated below:

ANNEX "4"

ASG - INITIATED VIOLENT INCIDENTS
(01 January to 31 December 2018)

ACTIVITIES	INCIDENT PROVINCE						CASUALTIES									
							MILITARY		CIVILIAN			ASG				
	BASILAN	SULU	TAWI-TAWI	ZAMBOANGA PENINSULA	OTHERS	TOTAL	WIA	KIA	WND	MSNG	KLD	WND	KLD	APP	ARR	CAP	SUR
AMBUSCADE	4	1				5		2	4		4						
ARSON	1					1											
CARNAPPING		1				1											
GRENADE THROWING	1					1											
HARASSMENT	2	14				10	6		1		4		1				
IED LANDMINING/EXPLOSION	3	5				8	10	6	8		6						
ATTEMPTED KIDNAPPING	1	1				2											
KIDNAPPING		15		1	2	18				3							
LIQUIDATION	3	3				6		1			6						
MURDER	3		1			4					4						
SHOOTING		3		1		4	1		6								
SUBTOTAL	18	43	1	2	2	66	17	9	19	3	22	0	2	0	0	0	0
GRANDTOTAL	66						17	9	19	3	22	0	2		0		

The above table shows a total of sixty-six (66) incidents attributed to the ASG that resulted in thirty-three (33) persons dead, thirty-six (36) persons wounded, and three (3) persons missing.

The specific reports accompanying the summary, on the other hand, show sixty-six (66) incidents resulting in thirty-seven (37) persons dead (not 33), thirty-eight (38) persons wounded (not 36), and thirty-nine (39) persons missing (not 3). For ease of reference, the totality of the data in Annex "4," when analyzed, shows:

ASG-initiated Violent Incidents	No. of Reports	Reported Casualty		
		Dead	Wounded	Missing
No perpetrator, no motive[31]	20	12	19	15
No perpetrator, motive not political[32]	1	0	0	0
Suspected ASG, no motive[33]	7	6	3	1
Suspected ASG, motive not political[34]	4	2	4	2
ASG generally identified, no motive[35]	13	9	6	5
ASG specifically identified, no motive[36]	17	7	6	16
ASG specifically identified, motive not political[37]	4	1	0	0
Total	**66**	**37**	**38**	**39**
Per respondents' summary	66	33	36	3
Incomplete Reports	10	16	12	11

30 *Rollo* (G.R. No. 243522), Vol. 1, p. 215.
31 Id. at 216, 219, 220, 223, 226-229, 232-233, 237, 239-243 and 245.
32 Id. at 230.
33 Id. at 216, 223, 225, 229, 231 and 240.
34 Id. at 217-218, 222 and 226.
35 Id. 221, 226-227, 234, 236-238 and 242-245.
36 Id. at 216, 221-222, 224, 232-235, 239, 241 and 244-245.
37 Id. at 219, 224, 227 and 235.

Of these sixty-six (66) entries, ten (10) are incomplete entries. Thirty-two (32) entries either do not identify perpetrators or identify the perpetrators as "suspected ASG" or "believed to be ASG." Fifty-seven (57) entries either do not identify the motive or state that the motive is undetermined. These gaps concur in twenty-six (26) entries which neither identify the perpetrators nor supply the motive.

Of the nine (9) entries that supply the motive, seven (7) are equivocal as to the political purpose. The information contained in these entries even lend to the conclusion that these are common crimes committed for private purposes or without the political motivation required in rebellion. These are:

1. The January 31, 2018 account of ambuscade wherein DPWH workers were fired upon by "two (2) unidentified gunmen" with a grenade launcher. The Report goes on to state that it was "possibly perpetrated by the group of Arjan Apinu under ASGSL Abdulla Joven Indanan x x x Group of @ GURU was monitored engag[ing] in extortion activit[ies] targeting [c]onstruction [c]ompan[ies]" and that the motive is "**extortion[-]related**."[38]

2. The February 1, 2018 account of an ambuscade wherein a vehicle was ambushed by "unde[te]rmined number of unidentified armed men x x x most likely x x x [the] handiwork of the Ajang-Ajang group tasked by the ASG to **liquidate suspected military informants**." The stated motive is "**long-standing family feud or RIDO** between the family of the victims and the suspects."[39]

3. The February 14, 2018 account of kidnapping committed by "undetermined number of men" by abducting a DPWH-ARMM Engineer at gunpoint. The Report states that "motive of the incident is **probably** part of the **express kidnapping efforts** of the ASG."[40]

4. The February 28, 2018 account of harassment of BPAT and LGU conducting road construction projects by "[more or less ten (10)] fully armed ASG led by ASGSL Abdullah Jovel INDANAN @ GURO." The Report goes on to state that "@ GURO has a **family feud** with the incumbent Barangay Chairman of Dugaa" where the shooting happened.[41]

5. The March 7, 2018 account of the kidnapping of a school teacher "by three (3) unidentified armed men onboard a single motorcycle" but "it could not be ignored that the **ASG could have been involved** in said abduction since x x x incidents were rampant in the area." The Report

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38 Id. at 217. Emphasis and underscoring supplied.
39 Id. at 218. Emphasis and underscoring supplied.
40 Id. at 222. Emphasis and underscoring supplied.
41 Id. at 224. Emphasis and underscoring supplied.

continues, "[i]nitial [PNP] investigation [show] that the **victim was in debt with a large amount of money from an unidentified man** and has been neglecting paying her dues."[42]

6. The April 16, 2018 account of a grenade thrown at the warehouse of the ARMM District Engineer by an "unidentified person wearing black jacket." The Report states that the "initial motive x x x is believed to be **extortion**."[43]

7. The June 17, 2018 account of the shooting of ASGSL Bagade @Sayning who was "**mistakenly shot and killed** by his own brother Muslim Bagade."[44] The PNP data[45] confirms this accidental shooting.

As well, among the violent incidents used to support the persistence of rebellion and requirement of public safety are two (2) incidents **that appear to have taken place outside of Philippine jurisdiction**:

1. The September 11, 2018 account of the kidnapping of the captain and crew of a fishing trawler **in Sempornah, Sabah** by "two (2) armed men with M16." The report states that the kidnap victims were taken by pumpboat towards Sitangkai/Sibutu Island in the Philippines.[46]

2. The December 5, 2018 account of the kidnapping of one (1) Malaysian and two (2) Indonesians who were kidnapped **in Lahad Datu, [Sabah]** and thereafter monitored in Pata, Sulu. According to the report, the kidnappers were "around 20 ASG members with three of them identified as ASGSL RADEN ABU, SALIP MURA, and @ BONG" and "ASG had already contacted the Consul x x x."[47]

BIFF-initiated violent incidents

Annex "5" consists of alleged BIFF-initiated violent incidents for the whole year of 2018 presented through a covering summary followed by specific reports therefor. The summary[48] submitted by the respondents is replicated as follows:

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42 Id. at 226. Emphasis and underscoring supplied.
43 Id. at 230. Emphasis and underscoring supplied.
44 Id. at 235. Emphasis and underscoring supplied.
45 *Rollo* (G.R. No. 243522), Vol. 2, p. 881.
46 *Rollo* (G.R. No. 243522), Vol. 1, p. 242. Emphasis and underscoring supplied.
47 Id. at 244. Emphasis and underscoring supplied.
48 Id. at 246.

BIFF-INITIATED VIOLENT INCIDENTS
(01 January to 31 December 2018)

ANNEX "5"

ACTIVITIES	INCIDENT			GOVT				CIVILIAN				BIFF				
	PROVINCE															
	NORTH COTABATO	MAGUINDANAO	TOTAL	WIA	KIA	WIA	KIA	WND	MSNG	KLD	WND	KLD	APP	ARR	CAP	SUR
AMBUSCADE	1		1				1									
ARSON		2	2													
EXPLOSION		1	1													
FIREFIGHT/ATTACK	1	3	4					4		2	2	8				
GRENADE THROWING		3	2	1												
HARASSMENT	9	31	40	7	1							2				
IED LANDMINING/ROADSIDE BOMBING	2	19	21	13	1	2				4						
KIDNAPPING		1	1						2							
MURDER		1	1							2		1				
SHOOTING		1	1				1									
LIQUIDATION	1	1	2		2		1	1								
SUBTOTAL	14	62	76	21	4	2	3	5	2	8	2	9	0	0	0	0
GRANDTOTAL	76			21	4	2	3	5	2	8	2	9				

The table shows a total of seventy-six (76) incidents attributed to the BIFF that resulted in twenty-four (24) persons dead, thirty (30) persons wounded, and two (2) persons missing.

The specific reports, on the other hand, show seventy-four (74) incidents[49] (not 76) resulting in sixteen (16) persons dead (not 24), thirty-five (35) persons wounded (not 30), and two (2) persons missing. For ease of reference, the totality of the data in Annex "5," when analyzed, shows:

BIFF-initiated Violent Incidents	No. of Reports	Reported Casualty		
		Dead	Wounded	Missing
No perpetrator, no motive[50]	28	3	26	0
Suspected BIFF, no motive[51]	6	2	0	0
Suspected BIFF, motive not political[52]	1	0	0	0
BIFF generally identified, no motive[53]	20	1	8	0
BIFF generally identified, motive not political[54]	2	3	0	2
BIFF specifically identified, no motive[55]	13	5	0	0
BIFF specifically identified, motive not political[56]	4	2	1	0
Total	**74**	**16**	**35**	**2**
Per respondents' summary	76	24	30	2
Incomplete Reports	1	0	0	0

49 Annex "5" contains 76 entries. There were two double entries; hence, only 74 distinct incidents.
50 Id. at 247-250, 254, 256-257, 259-260, 263-264, 266, 269-278 and 281-282.
51 Id. at 248, 251, 265, 269, 275 and 279.
52 Id. at 272.
53 Id. at 247-248, 253, 255-256, 258-263, 265, 267, 271 and 278-280.
54 Id. at 272 and 274.
55 Id. at 248, 252, 257, 262, 267-271, 273 and 276-277.
56 Id. at 264, 266 and 281.

Of these seventy-four (74) incidents attributed to the BIFF, thirty-five (35) entries either do not identify the perpetrators or identify them merely as "suspected BIFF" or "believed to be BIFF." Sixty-seven (67) entries either do not supply the motive or state that the motive is undetermined. Twenty-eight (28) of these entries neither identify the perpetrators nor supply the motive.

Only seven (7) entries supply both perpetrators and the motive. However, they are also equivocal as to the purpose:

1. The April 18, 2018 account of an ambuscade by "[more or less] 10 fully armed men led by Guinda Mamaluba and @ Walo, all members of BIFF under Duren Mananpan @Marines" of a CAFGU member thereafter carting away the latter's cows. The stated motive is "**Rido**."[57]

2. The May 6, 2018 account of a firefight **between MILF and BIFF**, specifically, between "Cmdr @Diego of 105th BC, MILF against Mando Manot BIFF Karialan Faction." The Report states that **Datu Manot opposed Taya placing his campaign tarp** because Datu believes Taya killed his brother Tatu. Further @Diego, cousin of Datu, supports Taya.[58]

3. The July 24, 2018 account of arson committed by "unidentified armed men believed to be members of BIFF under unknown commander." The Report states that "**subject did not give into the mandatory zakat** to the armed group in the area during the harvest of his farm land."[59]

4. The July 23, 2018 account of a kidnapping. The Report described it as two (2) suspected assets of the operating troops in Pidsandawan, Mamasapano allegedly kidnapped by "BIFF x x x **for interrogation**."[60]

5. The August 13, 2018 account of a liquidation involving a CAFGU member assigned at Ginatilan detachment together with a CVO member shot to death. The perpetrators were identified as the "group of Allan and Walo Bungay, both BIFF members under Durin Manampan @Marines," the stated motive is "**personal grudge**."[61]

6. The October 15, 2018 account of a firefight between BIFF and Maliga, supporter of Vice Mayor Montawal. The Report identifies the groups involved as "combined groups of an estimated thirty (30) fully armed men of Gapor GUIAMLOD and Mastura BUDI, both followers of Buto SANDAY of BIFF against the group of Maliga GUIALAL who is known supporter of Vice Mayor Utto Montawal." The Report goes on to say,

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57 Id. at 264. Emphasis and underscoring supplied.
58 Id. at 266. Emphasis and underscoring supplied.
59 Id. at 272. Emphasis and underscoring supplied.
60 Id. Emphasis and underscoring supplied.
61 Id. at 274. Emphasis and underscoring supplied.

"**firefight is in relation to the harassment initiated by the group of Gapor against certain civilian** who is a resident of Brgy. Talapas, wherein the said group is also situated x x x."[62]

7. The October 18, 2018 account of a firefight between the "groups MILF, Task Force ITIHAD led by @ CMDR AKOB and @ CMDR BADRUDIN of 118BC against the group of BIFF led by Zainudin KIARO @ KIARO under Hassan INDAL." The stated reason is "**Rido** due to death o[f] the relative of ACOB family who was killed by the group of @ KIARO x x x sometime [in] August 2018."[63]

There is no entry or incident that shows the concurrence of the overt acts of rebellion and the specific political purpose required by Article 134 in the recitation of violent incidents attributed to the BIFF.

DI-initiated violent incidents

Annex "6" consists of alleged DI-initiated violent incidents for the whole year of 2018 presented through a covering summary accompanied by specific reports therefor. The table[64] submitted by the respondents is replicated below, as follows:

DI-INITIATED VIOLENT INCIDENTS — ANNEX "6"
(01 January to 31 December 2018)

ACTIVITIES	INCIDENT PROVINCE				PNP/AFP/CAFGU		CASUALTIES CIVILIAN				ASO				
	DI-MAUTE	DI-MAGUIG	DI-TURAIFE	TOTAL	WIA	KIA					KID	APP	ARR	CAP	SUR
AMBUSCADE				0											
ARSON				0											
BEHEADING				0											
FIREFIGHT/ATTACK	1		1	2											
GRENADE THROWING				0											
HARASSMENT				0											
IED LANDMINING/EXPLOSION		1	3	4			91		6						
KIDNAPPING	1			1				1							
LIQUIDATION	1			1					1						
MURDER				0											
SHOOTING	1			1	2										
SNIPING				0											
STRAFING	1			1											
SUBTOTAL	5	1	4	10	2	0	91	1	7	0	0	0	0	0	0
GRANDTOTAL	10				2	0	91	1	7	0	0				

The table/summary shows a total of ten (10) incidents attributed to the DI that resulted in seven (7) persons dead, ninety-one (91) persons wounded, and one (1) person missing.

The specific reports, in turn, show ten (10) incidents resulting in six (6) persons dead (not 7), ninety-one (91) persons wounded, and one (1) person missing. For ease of reference, the totality of the data in Annex "6," when analyzed, shows:

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62 Id. at 280. Emphasis and underscoring supplied.
63 Id. at 281. Emphasis and underscoring supplied.
64 Id. at 283.

DI-initiated Violent Incidents	No. of Reports	Reported Casualty		
		Dead	Wounded	Missing
No perpetrator, no motive[65]	5	5	91	0
Suspected DI, no motive[66]	1	0	0	1
Suspected DI, motive not political[67]	1	1	0	0
Perpetrators specifically identified, no motive[68]	3	0	0	0
Total Incidents	**10**	**6**	**91**	**1**
Incomplete Reports[69]	4	4	45	1
Per respondents' summary	10	7	93	1

Of the ten (10) incidents attributed to the DI, seven (7) entries either do not identify the perpetrators or identify them merely as "suspected DI" or "believed to be DI." Eight (8) entries do not supply the motive. From the context of one report, the motive appears to have been given but the text was incomplete.

Only three (3) reports specifically identified the perpetrators. These three incidents include: (1) the strafing of the residence of a Barangay Chairman by two identified suspects, although there is nothing to show that they are members of DI;[70] (2) an incident described as "harassment" involving an exchange of fire between groups of MILF Commanders and groups of Maranaos and Maguindanaoans;[71] and (3) a firefight between "groups of Salahudin HASSAN @ ORAK" and "group of Gani SALINGAN.[72] It is not clear whether either of these groups were DI or government forces. No casualties were stated for these incidents.

Of the seven (7) remaining incidents, two (2) identified the DI as the suspected perpetrators:

1. The May 13, 2018 account of a liquidation incident involving an incumbent barangay chairman candidate who was shot to death in his house identified the perpetrators as "[more or less] 10 armed men believed to be LTG (DI Maute Group)" with "[p]ossible motives[:] [(1)] **long[-]time political rivalry** with the family of Samer SULTAN, a noted DI/Maute Group supporter;" and [(2)] "he was **suspected as military informant** and x x x was also seen talking in public near the highway x x x with unidentified persons believed to be government Intelligence operatives."[73] This is the extent of what can be gathered from the incomplete entry.

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65 Id. at 285-288.
66 Id. at 285.
67 Id. at 284.
68 Id. at 286-287.
69 Id. at 284-286, 288.
70 Id. at 286.
71 Id. at 287.
72 Id.
73 Id. at 284. Emphasis and underscoring supplied.

2. The May 6, 2018 account of a kidnapping incident involving the abduction of a man "by the group" in relation to the May 13, 2018 liquidation.[74] The text tends to show that the motive was given in the cut-off part of the entry.

In the other five (5) incidents, which included all the IED explosions attributed to the DI, including the Brgy. Apopong and two Isulan, Sultan Kudarat explosions[75] that the President cited in his letter to Congress requesting for the Martial Law extension, **neither the identity of the perpetrators nor their motive was identified**. These incidents with unidentified perpetrators accounted for almost all the casualties in DI-initiated violent incidents, resulting in five (5) persons dead and ninety-one (91) wounded.

Following the oral arguments, the PNP submitted its Report on these incidents.[76] It stated that cases were filed against Bungos and Karialan for the Brgy. Apopong explosion[77] and a certain Salipudin Lauban Pasandalan was charged with two (2) counts of murder and thirty-four (34) counts of frustrated murder from the explosion near firecracker vendors in a mall in Cotabato City.[78] The PNP generally[79] attributes the two Isulan, Sultan Kudarat explosions to the BIFF.[80]

After considering all the foregoing submissions of the respondents relating to violent incidents attributed to DI, ***all IED explosions attributed to DI*** (*i.e.,* all IED entries in Annex "6") ***were subsequently attributed by the PNP either specifically or generally to the BIFF.***[81]

Given that all the evidence in Annex "6" appear to be equivocal as to purpose or point to common crimes committed for private purpose, or the incidents were subsequently attributed to the BIFF, **the unavoidable conclusion is that there is no DI-initiated incident that sufficiently shows an overt act of rebellion or the political purpose. In fine, no substantial evidence exists to support the claim of an ongoing DI rebellion. The fact that the crimes of murder and frustrated murder were filed instead of rebellion under Article 134 of the RPC against the DI members shows the lack of political motive to qualify them as rebellion.**

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74 Id. at 285.
75 Id. at 285-286. Emphasis and underscoring supplied.
76 *Rollo* (G.R. No. 243522), Vol. 2, pp. 861-881.
77 Id. at 880.
78 *Rollo* (G.R. No. 243522), Vol. 1, p. 288.
79 In relation to these incidents, the identification by the PNP data took this form: **"The incident was perpetrated by the BIFF."**
80 *Rollo* (G.R. No. 243522), Vol. 2, p. 880.
81 See id.

NPA-initiated violent incidents

Annex "7"[82] consists of NPA-initiated violent incidents for the whole year of 2018:

ANNEX "7"

RECAPITULATION OF NPA-INITIATED VIOLENT INCIDENTS (NIVIs)

TYPE OF INCIDENT	01 Jan to 22 May 2017	23 May to 23 Oct 2017	24 Oct to 31 Dec 2017	TOTAL 2017	01 Jan to 31 Dec 2018
A. GUERILLA OPNS					
AMBUSH	12	24	9	45	30
RAID	15	8	1	24	8
NUISANCE HARASSMENT	75	71	24	170	79
HARASSMENT	50	49	20	119	59
DISARMING	8	8	1	17	7
LANDMINING	13	13	0	26	16
SPARU OPNS	12	20	8	37	42
SUB-TOTAL	165	193	60	438	262
B. TERRORIST ACTVS					
LIQUIDATION	35	32	14	81	61
KIDNAPPING	18	23	2	43	6
ROBBERY/HOLD-UP	6	2	1	9	1
BOMBING	1	1	0	2	2
ARSON	54	33	7	94	44
SABOTAGE	1	0	0	1	1
SUB-TOTAL	116	91	24	230	117
GRAND TOTAL	300	284	84	668	369

RECAPITULATION OF NPA-INITIATED VIOLENT INCIDENTS (NIVIs) IN MINDANAO

TYPE OF INCIDENT	01 Jan to 22 May 2017	23 May to 23 Oct 2017	24 Oct to 31 Dec 2017	TOTAL 2017	01 Jan to 31 Dec 2018
A. GUERILLA OPNS					
AMBUSH	6	6	4	15	10
RAID	6	2	0	8	5
NUISANCE HARASSMENT	50	53	13	116	41
HARASSMENT	43	28	15	86	30
DISARMING	4	5	0	9	5
LANDMINING	10	7	0	17	10
SPARU OPNS	8	12	0	20	21
SUB-TOTAL	126	113	32	271	130
B. TERRORIST ACTVS					
LIQUIDATION	17	9	9	35	24
KIDNAPPING	17	18	2	37	7
ROBBERY/HOLD-UP	6	2	0	8	1
BOMBING	1	1	0	2	2
ARSON	42	21	6	69	29
SABOTAGE	1	0	0	1	0
SUB-TOTAL	84	51	16	151	63
GRAND TOTAL	210	164	48	422	193

The tables above, along with statements from Jose Maria Sison, founding Chairman of the CPP, and the accounts of surrender of CPP-NPA persons and firearms in the monthly reports of the implementation of martial law, make up the entirety of the government's submission on the factual basis on the ground of the CPP-NPA's ongoing rebellion. These statements by Sison include:

> The people's army can launch tactical offensives against the increasingly more vulnerable points of the enemy forces whenever these are overstretched and spread thinly in campaigns of suppression. The enemy armed forces does not have enough armed strength to concentrate on and destroy the Party and the people's army in any region, without those in other regions launching offensives to relieve their comrades in the region under attack.
>
> x x x x

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82 *Rollo* (G.R. No. 243522), Vol. 1, p. 289.

> As of the latest report, 75 of the total 98 maneuver battalions of the reactionary armed forces are concentrated in Mindanao under conditions of martial law. Forty-four battalions are deployed against the NPA areas and 31 against Bangsamoro groups. x x x[83]

And

> x x x [T]he Communist Party of the Philippines is relevant. It is leading a vibrant revolutionary movement. The CPP itself has grown from only 80 members in 1968 to tens of thousands now, and it has organized [the] New People's Army, and the New People's Armies all over the country like the Communist Party. The CPP and NPA and the mass organizations have created the local organs of political power which constitutes the people's government. So, that's a lot of achievement. The revolutionary movement has grown strong because it has the correct line.[84]

During the oral arguments, the respondents were asked whether they would be submitting additional details with respect to the rebellion by the NPA. **Despite their assurance that they would submit, no additional submissions were made in their Memorandum.**

As it stands, therefore, the evidence of the respondents as to the NPA rebellion consist only of (1) the tables above, **totally unsupported by any specific reports or details that will allow a reasonable review by the Court**, (2) reports of surrender of persons and firearms in the monthly reports and (3) what can only be considered as celebratory and aspirational claims of a private person.

Moreover, even if it is conceded that the CPP is actively engaged in rebellion, there is no showing of any damage to property, security or loss of life by which a determination on the requirement of public safety can be made. **All told, the evidence presented does not discharge the burden to show by substantial evidence the persistence of a communist rebellion that endangers public safety to a degree that requires the extension of martial law in Mindanao**.

Reports of Harassment Incidents

It is acknowledged that the Reports contain accounts of harassment against military or government installations and personnel. Analyzed, the data in the specific reports with respect to harassment are shown in the following table:

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[83] *Rollo* (G.R. No. 243522), Vol. 1, p. 168, citing Jose Maria Sison, "Great achievements of the CPP in 50 years of waging revolution," available at <https://josemariasison.org/great-achievements-of-the-cpp-in-50-years-of-waging-revolution/> (last accessed February 19, 2019). Underscoring omitted.

[84] Id. at 169-170, citing ABS-CBN News, "Early Edition: Joma Sison on 50th anniversary of the CPP" (December 25, 2018), available at: <https://www.youtube.com/watch?v=m2LM5wZa2q8> (last accessed February 19, 2019).

Harassment	ASG	Reported Casualty		BIFF	Reported Casualty		DI	Reported Casualty		Total	Total Reported Casualty	
		D	W		D	W		D	W		D	W
No. of incidents per cover summary	*16*	*7*	*5*	*40*	*3*	*7*	*0*	*0*	*0*	*56*	*10*	*12*
Based on specific reports												
Against other armed groups[85]	0	0	0	0	0	0	1	0	0	1	0	0
Against civilians/open spaces[86]	3	4	1	1	0	0	0	0	0	4	4	1
Against military/CAFGU/ BPAT personnel[87]	1	0	0	5	0	2	0	0	0	6	0	2
Against military detachments/posts[88]	7	0	6	34	4	9	0	0	0	41	4	15
No. of incidents per specific reports	11	4	7	40	4	11	1	0	0	52	8	18

Legend: D – Dead; W – Wounded.

While these violent incidents are to be condemned, **the commission of the acts without identifying any political motive constitutes lawless violence, and is not sufficient to prove the persistence of rebellion in Mindanao**.

For one, of the fifty-two (52) incidents tagged by the respondents as "harassment," the three (3) that supply the motive appear equivocal or inconsistent with the political purpose of rebellion:

(1) The February 4, 2018 account of harassment committed by an "undetermined number of Ajang-Ajang Group" against the detachment of 5Coy, PA under NIWANE. The stated motive is that "**related to the plan[ned] atrocities of ASGSL Hatib Hadjan SAWADJAAN** tapping the Ajang-Ajang Group to conduct harassments and liquidations to military installations and personnel as well as informants x x x."[89]

(2) The February 28, 2018 account of a harassment against BPAT and LGU conducting road construction projects by "MOL [ten (10)] fully armed ASG led by ASGSL Abdullah Jovel INDANAN @ GURO." The Report explains that "@ GURO has a **family feud** with the incumbent [Brgy.] Chairman of Dugaa" where the shooting happened.[90]

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85 Id. at 287.
86 Id. at 224, 231, 235 & 253.
87 Id. at 243 and 271.
88 Id. at 226-227, 237-238, 242, 244, 247-248, 251, 253, 255-263, 265, 267-271, 275-280 and 282.
89 Id. at 219. Emphasis and underscoring supplied.
90 Id. at 224. Emphasis and underscoring supplied.

(3) The March 30, 2018 account of a brief firefight between the Latih Detachment and "MOL forty (40) fully armed ASG members led by ASGSL Hajan SAWADJAAN" for the reason "x x x [t]he ASG's harassment of Latih Detachment **was to avenge the death of ASG member** Roger SAMLAON who was killed last [March 15], 2018 after encounter with government troops."[91]

In his Clarificatory Letter for Solicitor General Calida which was submitted to the Court, Major General Lorenzo explains,

> The word 'harassment' is a military term for a type of armed attack where the perpetrators fire at stationary military personnel, auxiliaries, or installations for a relatively short period of time (as opposed to a full armed attack) for the purpose of inflicting casualties, as a diversionary effort to deflect attention from another tactical undertaking, or to project presence in the area. At times, like in the case of the November 10, 2018 incident in Marogong, Lanao del Sur, harassments or attacks are directed against the MILF or any group perceived to be an ally or is supportive to the government. Harassments are undertaken not in isolation but as part of a bigger military strategy. This is a common tactic employed by the Communist Terrorist Group, the ASG, DI, and BIFF.[92]

Elsewhere in the letter, he explains,

> x x x motive is not an element of rebellion; it is not necessary to show motive to prove that there are groups presently waging a rebellion in Mindanao. As long as the perpetrators are associated with the mentioned rebel groups and they engage in armed attacks against government forces and civilians for the purpose of overthrowing the government, a reasonable mind would consider these acts as having been committed in furtherance of rebellion.[93]

Unfortunately, however, this legal argument cannot take the place of proof. In this case, the burden of the government is to establish, at the first instance, the persistence of rebellion. Since the government has not yet proven the existence or persistence of an ongoing rebellion, then the requisite of proving each incident as an act of rebellion has not been dispensed with. The determination of whether an act is "in furtherance of rebellion," or a distinct or separate crime in itself, precisely contemplates a situation where there is an ongoing rebellion the evidence of which is sorely missing here.

Second, **the fact that the government has not charged any person of rebellion during the second extension militates against the presumption that these acts, on their own, constitute substantial evidence of a persisting rebellion in Mindanao**.

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91 Id. at 227. Emphasis and underscoring supplied.

92 *Rollo* (G.R. No. 243522), Vol. 2, pp. 853-854.

93 Id. at 858.

Based on the submission of the OJ2 of the DND dated December 13, 2018,[94] which lists the arrested personalities during the declaration and extension of martial law, there were only four (4) persons arrested during the second extension from January 1, 2018 to December 31, 2018. **The table below shows that no one has been captured, arrested, or charged with rebellion during the entire second extension.**

NAME	DATE OF ARREST	PLACE OF ARREST/ APPREHENDING UNIT	STATUS	REMARKS
Abdelhakim Labdi Adib	22 January 2018	Basilan	CHARGED	On 24 January, filed case for illegal possession of explosives (c/o CPT POPANES)
[Najiya Dilangalen Karon Maute]	23 January 2018	Cotabato	RELEASED	Released for insufficiency of evidence
Jamar Abdulla Mansul	22 January 2018	NAIA	RELEASED	Released for lapse of period
[Fehmi Lassqued]	16 February 2018	Malate, Manila	FOR INQUEST	Pending Preliminary Investigation for Illegal Possession of Firearms, Illegal Possession of Explosives[95]

This was also confirmed by the PNP data submitted by the respondents which shows that there were no charges filed against the persons identified to have participated in the harassment of military or government installations or personnel.[96]

On the other hand, during the original period of Proclamation No. 216 and its first extended period ending in December 31, 2017, a total of thirty-nine (39) persons were charged with rebellion.[97] The submission shows that out of these thirty-eight (38) persons, twenty-eight (28) cases were filed in June 2017, eight (8) cases in July 2017 and three (3) cases in August 2017.[98]

The government's omission in filing rebellion charges against those identified to have attacked military or government facilities and personnel is in the nature of an admission that even by the determination of the Executive department, there was no probable cause to indict the persons involved with rebellion.

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94 *Rollo* (G.R. No. 243522), Vol. 1, pp. 72-85.

95 Id. at 85.

96 See *rollo* (G.R. No. 243522), Vol. 2, pp. 861-881. Annexes "2-A" to "2-U," Reports of charges filed did not relate to any of the incidents tagged as "Harassment" in Annexes "4" to "7" of the OSG Comment.

97 *Rollo* (G.R. No. 243522), Vol. 1, pp. 73-80 and 84.

98 Id.

Lastly, as for the other violent incidents described in the respondents' submissions that are not designated as harassment, the AFP explains,

> x x x On the other hand, kidnapping is undertaken particularly by the ASG to finance its operational and administrative expenses in waging rebellion. As shown in the presentation during the oral arguments, the ASG has amassed an estimated PhP41.9 million in ransom proceeds for 2018 alone. With regard to arson, the tactic is commonly used by the same rebel groups for various purposes such as intimidating people who are supportive of the government, as punitive action for those who refuse to give in to extortion demands, or simply to terrorize the populace into submission. All these activities are undoubtedly undertaken in furtherance of rebellion.[99]

Again, this explanation is not sufficient because without a single incident wherein the purpose and overt act of rebellion concur, rebellion does not *legally* exist.[100] Hence, there is no room to argue that any common crime is undertaken in furtherance of rebellion.

Totality of evidence

The evidence readily shows certain gaps that needed to either be completed or supplemented in order to make a showing of relevance and comprehensibility.

1. As adverted to above, fifteen (15) incomplete entries[101] do not allow the Court the full information on these reports.

2. There were reports that did not identify the perpetrators. Of the one hundred fifty (150) incidents, the entries on fifty-four (54)[102] incidents did not identify the perpetrators.

3. Almost ninety percent (90%) of the entries, or one hundred thirty-three (133) entries,[103] do not identify the motive or state that the motive is undetermined.

4. Fifty-three (53) entries[104] neither identify the perpetrators nor supply the motive.

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99 *Rollo* (G.R. No. 243522), Vol. 2, p. 854.

100 *People v. Geronimo*, 100 Phil. 90 (1956) [En Banc, per J. J.B.L. Reyes].

101 For ASG-attributed incidents, there are ten (10) incomplete entries. For BIFF-attributed incidents, there is one (1) incomplete entry. For DI-attributed incidents, there are four (4) incomplete reports.

102 These are: Twenty-one (21) entries of the sixty-six (66) incidents attributed to the ASG; twenty-eight (28) entries of the seventy-four (74) incidents attributed to the BIFF; and five (5) entries of the ten (10) incidents attributed to the DI.

103 These are: Fifty-seven (57) entries of the sixty-six (66) incidents attributed to the ASG; sixty-seven (67) entries of the seventy-four (74) incidents attributed to the BIFF; and nine (9) entries of the ten (10) incidents attributed to the DI.

104 These are: Twenty (20) entries of the sixty-six (66) incidents attributed to the ASG; twenty-eight (28) entries of the seventy-four (74) incidents attributed to the BIFF; five (5) entries of the ten (10) incidents attributed to the DI.

5. For the eighteen (18) total entries that do identify the perpetrators as members or suspected members of the said groups and supplies the motive, in at least sixteen (16)[105] of these entries, the specific details supplied tend to show that these crimes were committed for private motives or purposes or without the political motivation required in rebellion.

During the oral arguments, these gaps were painstakingly identified by some members of the Court to allow the respondents to address them. The respondents were even given a list of these incidents and were requested to complete or supplement them in their Memorandum.

Remarkably, the AFP Letter in response to the Court's request for additional information explained the paucity of information of some reports on account of them being "spot reports" that contain information that are only available at that given reporting time window.[106] It went on to state that "[s]ubsequent developments are communicated through 'progress reports' and detailed 'special reports.'"[107]

Unfortunately, nothing in the Memorandum of the respondents was submitted to complete the incomplete entries. As well, even as the Court requested an update on these "spot reports," no reports designated as "progress reports" or "special reports" were submitted. Neither did the respondents attempt to even explain how a fair amount of these incidents were attributed, or could be attributable, to what the respondents called "rebels" — despite the fact that the reports do not identify the perpetrators or the motive, or supply the identity of the perpetrators, **all of which point to the conclusion that these are common crimes committed for private purposes**. The respondents only explained that "[i]nquiries made with informants thereafter have become the basis in ascribing these violent activities to a particular threat group."[108]

The Court cannot make this leap for the respondents.

While the Court does not now presume to impose a mathematical or mechanical formula to determine sufficiency of factual basis, the totality of the respondents' submissions in support of the extension in this case does not constitute substantial evidence to show that rebellion persists in Mindanao.

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[105] For ASG-attributed incidents, of the nine (9) entries that supply both perpetrators and motive, seven (7) are equivocal as to the political purpose. For BIFF-attributed incidents, all seven (7) entries that supply both perpetrators and the motive are equivocal as to the political purpose. For DI-attributed incidents, the single (1) entry that supplies both perpetrators and motive is equivocal as to political purpose.

[106] *Rollo* (G.R. No. 243522), Vol. 2, p. 848.

[107] Id.

[108] Id. at 852.

A.2. Whether or not public safety is imperiled and requires the third extension of Proclamation No. 216 which imposed Martial Law and suspended the privilege of the writ of habeas corpus in the whole Mindanao

The petitioners in G.R. No. 243522 (*Lagman Petition*) argue that public safety was not imperiled, and thus should not justify or necessitate the third extension of martial law.[109] Petitioners therein posit that "the existence of actual invasion or rebellion does not necessarily actualize the requirement of public safety because rebellion can be effectively contained outside of populated communities or in isolated or remote areas where public safety is not imperiled or the overwhelming presence of superior government forces forestalls the danger to public safety."[110]

Meanwhile, the petitioners in G.R. No. 243677 (*Makabayan Bloc Petition*) advances the theory that there is a distinction between the threat to public safety that justifies the imposition of martial law, and one that simply triggers the President's calling out powers. According to them, the threat to public safety, in order to justify the imposition of martial law, "must have risen to a level that government cannot sufficiently or effectively govern, as exemplified by the closure of courts or government bodies, or at least the extreme difficulty of courts, the local government and other government services to perform their functions."[111] They further explain:

> x x x If there is rebellion or invasion but government continues to function nonetheless, the calling out powers may be employed by the President, but not martial law or the suspension of the privilege of the writ of *habeas corpus.* Only in cases where the rebellion or invasion has made it extremely difficult, if not impossible, for the government (or the courts) to function, to the extent that government or the local government in the area affected by the rebellion can no longer assure public safety and the delivery of government services, that the imposition of martial law is constitutionally permissible.[112]
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> x x x x
>
> x x x It must be reiterated that while government may assert that all rebellions threaten the safety of the public, this generic definition of public safety is not the same as the definition of public safety that triggers the imposition of martial law. Otherwise, there is no difference at all between the rebellion that necessitates the imposition of martial law, from the rebellion that merely triggers the calling out powers. x x x[113]

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[109] *Rollo* (G.R. No. 243522) Vol. I, p. 37.
[110] Id. at 38.
[111] *Rollo* (G.R. No. 243677), p. 22.
[112] Id. Emphasis omitted.
[113] Id. at 17.

Petitioners therein then add that the letter of the President dated December 6, 2018 requesting Congress to extend martial law in Mindanao from January 1, 2019 to December 31, 2019 did not allege that the situation had deteriorated to the extent that the civilian government no longer functioned effectively.[114] Thus, the petitioners conclude that public safety was not imperiled, and consequently, the further extension of martial law was void.

The arguments of petitioners in the G.R. No. 243745 (*Monsod Petition*) are similar to the arguments of petitioners in the *Makabayan Bloc Petition*. They argue that martial law — being an extraordinary power of the President — may only be declared, or extended, in the context of a "theater of war."[115] They contend that the existence of an actual rebellion is not the only requirement to validly declare martial law, and that the public safety requirement means "that the civilian government is unable to function,"[116] such that it is necessary to declare martial law.

The respondents, on the other hand, argue that threats to public safety exist, such that it was necessary for martial law to be extended. In its Memorandum, the OSG cited the following instances as concrete proof that public safety is imperiled:

> a. No less than 181 persons in the martial law Arrest Orders have remained at large.
>
> b. Despite the dwindling strength and capabilities of the local terrorist rebel groups, the recent bombings that transpired in Mindanao that collectively killed 16 people and injured 63 others in less than 2 months is a testament on how lethal and ingenious terrorist attacks have become.
>
> c. On October 5, 2018, agents from the Philippine Drug Enforcement Agency (PDEA) who conducted an anti-drug symposium in Tagoloan II, Lanao del Sur, were brutally ambushed, in which five (5) were killed and two (2) were wounded.
>
> d. The DI continues to conduct radicalization activities in vulnerable Muslim communities and recruitment of new members, targeting relatives and orphans of killed DI members. Its presence in these areas immensely disrupted the government's delivery of basic services and clearly needs military intervention.
>
> e. Major ASG factions in Sulu and Basilan have fully embraced the DAESH ideology and continue their express kidnappings. As of December 6, 2018, there are still seven (7) remaining kidnap victims under captivity.

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[114] Id. at 18.
[115] *Rollo* (G.R. No. 243745), p. 22.
[116] Id.

f. Despite the downward trend of insurgency parameters, Mindanao remains to be the hotbed of communist rebel insurgency in the country. Eight (8) out of the 14 active provinces in terms of communist rebel insurgency are in Mindanao.

g. The Communist Terrorist Rebel Group in Mindanao continues its hostile activities while conducting its organization, consolidation and recruitment. In fact, from January to November 2018, the number of Ideological, Political and Organizational (IPO) efforts of this group amounted to 1,420, which indicates their continuing recruitment of new members. Moreover, it is in Mindanao where the most violent incidents initiated by this group transpire. Particularly, government security forces and business establishments are being subjected to harassment, arson and liquidations when they defy their extortion demands.

h. The CTRG's exploitation of indigenous people is so rampant that Lumad schools are being used as recruiting and training grounds for their armed rebellion and anti-government propaganda. On November 28, 2018, Satur Ocampo and 18 others were intercepted by the Talaingod PNP checkpoint in Davao del Norte for unlawfully taking into custody 14 minors who are students of a learning school in Sitio Dulyan, Palma Gil in Talaingod town. Cases were filed against Ocampo's camp for violations of Republic Act (R.A.) No. 10364, in relation to R.A. No. 7610, as well as violation of Article 270 of the Revised Penal Code (RPC), due to the Philippine National Police's (PNP) reasonable belief that the school is being used to manipulate the minds of the students' rebellious ideas against the government.[117]

As previously held by the Court in *Lagman v. Medialdea*, the parameters for determining the sufficiency of the factual basis for the declaration of martial law are set by no less than the Constitution itself.[118] Section 18, Article VII provides that to justify the declaration of martial law, two requisites must **concur**: (1) actual invasion or rebellion, and (2) public safety requires the exercise of such power.[119] In *Lagman v. Medialdea*, the Court held that "[w]ithout the concurrence of the two conditions, the President's declaration of martial law and/or suspension of the privilege of the writ of *habeas corpus* must be struck down."[119a] Thus, the mere fact of a persisting rebellion or existence of rebels, standing alone, cannot be the basis for the extension.[120]

In the same case, the Court unequivocally held that "[i]nvasion or rebellion alone may justify resort to the calling out power **but definitely not the declaration of martial law or suspension of the privilege of the writ of *habeas corpus*.**"[121]

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[117] *Rollo* (G.R. No. 243522), Vol. 2, pp. 832-833. Citations omitted.
[118] Supra note 8, at 182.
[119] Id.
[119a] Id.
[120] *J.* Caguioa, Dissenting Opinion in *Lagman v. Pimentel III,* supra note 12, at 3.
[121] *Lagman v. Medialdea*, supra note 8, at 197. Emphasis and underscoring supplied.

It is thus clear that the requirement that public safety is imperiled is a separate and distinct requirement that the respondents have the burden to prove. Indeed, "the requirement of actual rebellion serves to **localize** the scope of martial law to cover only the areas of armed public uprising. Necessarily, the initial scope of martial law is the place where there is actual rebellion, meaning, concurrence of the normative act of armed public uprising and the intent. **Elsewhere, however, there must be a clear showing of the requirement of public safety necessitating the inclusion.**"[122]

In the present case, the respondents failed to prove that the public safety of the whole of Mindanao is imperiled.

Again, in *Lagman v. Medialdea,* the Court defined public safety as that which "involves the prevention of and protection from events that could endanger the safety of the general public from significant danger, injury/harm, or damage, such as crimes or disasters."[123] The Court therein likewise discussed that public safety is an abstract term, and thus, its range, extent, or scope could not be physically measured by metes and bounds.[124] The Court therein expounded:

> In fine, it is difficult, if not impossible, to fix the territorial scope of martial law in *direct proportion* to the "range" of actual rebellion and public safety simply because rebellion and public safety have no fixed physical dimensions. Their transitory and abstract nature defies precise measurements; hence, the determination of the territorial scope of martial law could only be drawn from arbitrary, not fixed, variables. The Constitution must have considered these limitations when it granted the President wide leeway and flexibility in determining the territorial scope of martial law.[125]

It is well, however, to qualify that while rebellion and public safety indeed have no fixed physical dimensions — and that, as a result, the Executive is given sufficient leeway to determine the scope of the territory covered by martial law in light of the information before him — the said discretion granted by the Constitution cannot be so broad so as to render nugatory the specific limitations placed by it to justify the imposition of the extraordinary power.

This limited, although sufficient, discretion is precisely the rationale for the power granted to, *and duty* imposed upon, the Court, under Section 18, Article VII of the Constitution, to check the sufficiency of the factual basis for the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus*. To state once more, Section 18 is a neutral and

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122 *J.* Caguioa, Dissenting Opinion in *Lagman v. Medialdea*, supra note 8, at 661.
123 Supra note 8, at 207.
124 Id.
125 Id. at 208-209.

straightforward fact-checking mechanism that serves the functions of (1) preventing the concentration in one person — the Executive — of the power to put in place a rule that significantly implicates civil liberties, (2) providing the sovereign people a forum to be informed of the factual basis of the Executive's decision, or, at the very least, (3) assuring the people that a separate department independent of the Executive may be called upon to determine for itself the propriety of the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*.[126]

Thus, the Court — in the performance of the afore-discussed constitutionally-granted power and duty — was called upon to hold that public safety no longer requires the extension of martial law **in the whole of Mindanao from January 1, 2019 to December 31, 2019** for the following reasons:

First, by the respondents' own submissions,[127] the supposed attacks that compromised public safety were limited only to certain cities and municipalities in the following provinces in Mindanao: Basilan, Sulu, Tawi-Tawi, Zamboanga Sibugay, Zamboanga del Norte, Maguindanao, North Cotabato, Lanao del Sur, and Sultan Kudarat. **This means that for the entirety of 2018, there were no attacks in other provinces such as Agusan del Norte, Agusan del Sur, Bukidnon, Camiguin, Isabela, Compostela Valley, Davao del Norte, Davao del Sur, Davao Occidental, Davao Oriental, Dinagat Islands, Lanao del Norte, Misamis Occidental, Misamis Oriental, Sarangani, South Cotabato, Surigao del Norte, Surigao del Sur, and Zamboanga del Sur.**

In fact, during the Joint Session of Congress held on December 12, 2018, no less than the Secretary of the Department of Interior and Local Government (DILG), Secretary Eduardo M. Año (Año), unequivocally confirmed that the government has already "restricted x x x the movement of the armed groups and x x x **restored order [in Mindanao], especially in the most affected areas**."[128]

When asked about the current public safety situation in Mindanao during the Joint Session, DILG Secretary Año clearly and categorically pronounced that "**[n]ot all in Mindanao are actually affected**" [129] and that the people of Mindanao can already "**go around without fear of being subjected to violence** x x x"[130] and "**feel more secured and safer.**"[131]

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[126] *J.* Caguioa, Dissenting Opinion in *Lagman v. Medialdea,* supra note 122, at 644-645.
[127] Annexes "4" to "7," OSG Comment, *rollo* (G.R. No. 243522), Vol. 1, pp. 215-289.
[128] *Rollo* (G.R. No. 243522), Vol. 2, pp. 521-522. Emphasis and underscoring supplied.
[129] Id. at 522. Emphasis supplied.
[130] Id. at 521. Emphasis supplied.
[131] Id. Emphasis supplied.

Hence, with the Executive department itself revealing that the people of Mindanao can now go around without fear, feeling more secure and safe, and with order already being restored especially in the most affected areas, it is clear that the current public safety situation in Mindanao does not warrant the further extension of martial law and the suspension of the privilege of the writ of *habeas corpus*.

Second, the respondents cite the following attacks perpetrated in the year 2018 as concrete proof that public safety was compromised, such that it is necessary to extend martial law for the whole Mindanao for the entire year of 2019: (1) 66 attacks by the ASG, (2) 74 attacks by the BIFF, and (3) 10 attacks by the DI. **However, as already shown, all of these were not duly proven by the respondents**.

For instance, the PNP data submitted by the respondents admitted to having no record of thirty-three (33) of the sixty-six (66) attacks they alleged to have been committed by the ASG,[132] and likewise admitted that one (1) of the attacks cited was not connected to the "ongoing rebellion."[133]

For the attacks claimed to have been perpetrated by the BIFF, the respondents were, as previously mentioned, asked to expound upon and provide proof for fifty-one (51) of the seventy-four (74) attacks whose perpetrators were unidentified but were nevertheless attributed to the BIFF.[134] Despite the Court's request, the respondents failed to explain how these attacks were attributable to the BIFF,[135] and with the PNP data even admitting to having no record of three (3) of these incidents.[136]

Of the ten (10) attacks attributed to DI, the respondents did not identify the perpetrators for four (4) of these attacks. They were likewise requested to provide further information regarding these attacks.[137] The respondents, however, again failed to do so, and even admitted that "the above excerpts of the reports do not identify the perpetrators and their motives as these were basically extracted from spot reports."[138] The respondents only offered a blanket claim that "[i]nquiries made with informants thereafter have become the basis in ascribing these violent activities to a particular threat group."[139]

These blanket generic claims do not, as they cannot, constitute substantial evidence that the attacks cited were connected with the

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132 See Annexes "2-A" to "2-U," OSG Memorandum, id. at 861-881.
133 Id. at 854.
134 Id. at 851.
135 Respondents did not address bullet K in either Annex "1" or Annexes "2-A" to "2-U" of the OSG Memorandum.
136 *Rollo* (G.R. No. 243522), Vol. 2, p. 881.
137 Id. at 852.
138 Id.
139 Id.

supposed rebellion, and that, consequently, public safety was endangered thereby.

The respondents argue:

> Lastly, it is significant to point out that the AFP is dealing with irregular rebel forces that have no formal organizational structure and whose members have no formal appointment papers. For security purposes, they commonly use aliases to hide their real identity. Therefore, establishing the identities of perpetrators for every attack takes time. The intelligence community, in validating the participation of the perpetrators of violence in the rebellion, cannot be reasonably expected to operate on the basis of the strict rules of evidence. The asymmetric warfare being waged by the rebel groups allows them to thrive despite lopsided force disparity in favor of the military. Unlike government security forces, the rebels' actions are not constrained by legal restrictions. They are largely anonymous and can easily merge with the population when confronted by the military.[140]

The respondents' point is well-taken. Investigations do take time — and for that exact reason, the respondents were given sufficient time and opportunity to submit reports on the outcome of further investigations, and to clarify or ascertain unclear entries (that showed incidents as early as January of 2018). In addition, that these various groups use aliases in their operations is acknowledged. That is why the Court accepted, for instance, that the report only states that "around 10 ASG elements led by @ ABU DARDA" were the perpetrators for the August 18, 2018 Ambuscade in Ungkaya Pukan, Basilan.[141] In this instance, the respondents were requested only to explain the attack's connection with the supposed rebellion, for the report itself only stated, without more, that the victim was a Barangay Peacekeeping Action Team (BPAT) member.

Thus, contrary to the claim of the respondents, they are not expected to "operate on the basis of the strict rules of evidence." The difficulty in establishing who the perpetrators of these attacks were is recognized. Yet, despite this recognition, the Court is called upon to be a trier of fact in the context of a Section 18 proceeding. **Therefore, the Court must be provided with proof — it must be convinced by evidence duly offered — that these attacks have indeed happened, and that they were in connection with an ongoing rebellion**. As amply put by Justice Francis Jardeleza in his Dissenting Opinion in *Lagman v. Pimentel III*:

> x x x Indeed, when our Framers tasked the Court to determine the sufficiency of the factual basis for the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*, it certainly did not mean for the Court to verify only the factual bases for the alleged

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[140] Id. at 858-859.

[141] *Rollo* (G.R. No. 243522), Vol. I, p. 241.

> rebellion and "permissively" rely on the President's assessment of the public safety requirement given the facts presented.
>
> For the Court to take such an approach goes against the very reason why it was given the specific mandate under Section 18, Article VII in the first place. Such an approach defeats the deliberate intent of our Framers to "shift [the] focus of judicial review to determinable facts, as opposed to the manner or wisdom of the exercise of the power" and "[create] an objective test to determine whether the President has complied with the constitutionally prescribed conditions."[142]

At the risk of being repetitive, a Section 18 proceeding, such as the present case, ***is a fact-checking mechanism***. Thus, the Court expects and requires a certain level of proof, and blanket claims of "according to informants", "suspected ASG", "believed to be BIFF" would not suffice.

In light of the foregoing failure of the respondents to substantiate a significant number of the attacks they claim to have imperiled public safety, the inevitable conclusion is that public safety does not require the further extension of martial law and suspension of the privilege of the writ of *habeas corpus* for the entire year of 2019.

A.3. Whether the further extension of Martial Law has been necessary to meet the situation in Mindanao

Lest it be misunderstood, the foregoing discussion does not mean that I am turning a blind eye to the situation in Mindanao. While the facts do fall short of qualifying the situation into an existing rebellion, they do indicate that there is a threat thereof. ***However***, the Constitution requires an *actual* rebellion or invasion, along with a concurrent real threat to public safety, in order for the President to declare martial law — a threat of rebellion, no matter how imminent, cannot be a ground to declare martial law or extend such declaration.

To be sure, in the drafting of the present Constitution, the phrase "imminent danger" of insurrection or rebellion as ground for the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* had been removed. This was because the phrase was "fraught with possibilities of abuse" and that in any case, the framers have recognized that the calling out power of the President is "sufficient for handling imminent danger."[143]

Verily, martial law is a law of necessity. "Necessity creates the conditions for martial law and at the same time limits the scope of martial

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[142] *J.* Jardeleza, Dissenting Opinion in *Lagman v. Pimentel III*, supra note 9, at 15-16.

[143] *Lagman v. Medialdea*, supra note 8, at 159, citing Bernas, Joaquin, G., THE INTENT OF THE 1986 CONSTITUTION WRITERS, 1995 ed., pp. 456-458.

law." [144] In this context, the necessity of martial law is dictated not merely by the gravity of the rebellion sought to be quelled, but also by the necessity of martial law to address the exigencies of a given situation.[145]

Thus, the President's exercise of extraordinary powers must be measured against the scale of necessity and calibrated accordingly. The Court's determination of insufficiency of factual basis implies that the conditions for the use of such extraordinary power are absent. This does not mean, in any manner whatsoever, that the Court assumes to do such calibration in the President's stead. Rather, the Court merely checks the said calibration in hindsight, in accordance with its power and mandate under the Constitution.

Necessity in the context of martial law should be understood in the concept envisioned by the framers of the 1987 Constitution, *i.e.*, a theater of war. In *Lagman v. Medialdea*, the Court cited the following portions of the Constitutional deliberations discussing the conditions existing in a theater of war:

> FR. BERNAS. That same question was asked during the meetings of the Committee: What precisely does martial law add to the power of the President to call on the armed forces? The first and second lines in this provision state:
>
> > A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies . . .
>
> The provision is put there, precisely, to reverse the doctrine of the Supreme Court. I think it is the case of *Aquino v. COMELEC* where the Supreme Court said that in times of martial law, the President automatically has legislative power. So these two clauses denied that. A state of martial law does not suspend the operation of the Constitution; therefore, it does not suspend the principle of separation of powers.
>
> The question now is: During martial law, can the President issue decrees? The answer we gave to that question in the Committee was: **During martial law, the President may have the powers of a commanding general in a theatre of war.** In actual war when there is fighting in an area, the President as the commanding general has the authority to issue orders which have the effect of law but strictly in a theater of war, not in the situation we had during the period of martial law. In other words, there is an effort here to return to the traditional concept of martial law as it was developed especially in American jurisprudence, where martial law has reference to the theater of war.
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> x x x x

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[144] *Lagman v. Pimentel III*, supra note 9, at 59, citing Bernas, Joaquin, G., THE 1987 CONSTITUTION OF THE PHILIPPINES, A COMMENTARY, 2009 ed., p. 903.

[145] *J.* Caguioa, Dissenting Opinion in *Lagman v. Pimentel III*, supra note 12, at 19-20.

> FR. BERNAS. This phrase was precisely put here because **we have clarified the meaning of martial law; meaning, limiting it to martial law as it has existed in the jurisprudence in international law, that it is a law for the theater of war.** In a theater of war, civil courts are unable to function. If in the actual theater of war civil courts, in fact, are unable to function, then the military commander is authorized to give jurisdiction even over civilians to military courts precisely because the civil courts are closed in that area. But in the general area where the civil courts are open then in no case can the military courts be given jurisdiction over civilians. This is in reference to a theater of war where the civil courts, in fact, are unable to function.
>
> MR. FOZ. **It is a state of things brought about by the realities of the situation in that specified critical area.**
>
> FR. BERNAS. That is correct.
>
> MR. FOZ. And it is not something that is brought about by a declaration of the Commander-in-Chief.
>
> FR. BERNAS. **It is not brought about by a declaration of the Commander-in-Chief.** The understanding here is that the phrase 'nor authorize the conferment of jurisdiction on military courts and agencies over civilians' has reference to the practice under the Marcos regime where military courts were given jurisdiction over civilians. We say here that we will never allow that except in areas where civil courts are, in fact, unable to function and it becomes necessary for some kind of court to function.[146]

Consequently, the necessity of martial law requires a showing that it is necessary for the military to perform civilian governmental functions or acquire jurisdiction over civilians to ensure public safety. As further stated in *Lagman v. Medialdea*:

> The powers to declare martial law and to suspend the privilege of the writ of *habeas corpus* involve curtailment and suppression of civil rights and individual freedom. Thus, **the declaration of martial law serves as a warning to citizens that the Executive Department has called upon the military to assist in the maintenance of law and order**, and while the emergency remains, the citizens must, under pain of arrest and punishment, not act in a manner that will render it more difficult to restore order and enforce the law. As such, **their exercise requires more stringent safeguards by the Congress, and review by the Court.**[147]

While the standard of necessity may appear exacting, it should not be seen as an undue restraint on the powers that the President may exercise in the given exigencies. As already explained, the President is equipped with broad and expansive powers to suppress acts of lawless violence, and even actual rebellion or invasion in a theater of war, through the calling out power

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[146] Supra note 8, at 159-161, citing II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 398 and 402 (1986). Emphasis and underscoring supplied.

[147] Id. at 159. Emphasis and underscoring supplied.

— a power which neither requires any concurrence by the legislature nor is subject to judicial review.

Indeed, the Court in *Lagman v. Medialdea* recognized that the extraordinary powers are conferred by the Constitution with the President as Commander-in-Chief; hence, it follows that the power to choose which among these extraordinary powers to wield in a given set of conditions is a judgment call on the part of the President. ***However***, the Court therein emphasized that this power to choose is only *initially* vested in the President, stating that "the power and prerogative to determine whether the situation warrants a mere exercise of the calling out power; or whether the situation demands suspension of the privilege of the writ of *habeas corpus*; or whether it calls for the declaration of martial law, also lies, **at least initially**, with the President."[148] **This means that the choice of the President, particularly as regards martial law, is not unfettered and immune to subsequent review. Indeed, the President's power to declare martial law is qualified by the Legislature's concurrence and the Court's review and the same must satisfy the requirements set forth by the Constitution.**

Thus, a finding by the Court that the President need not declare martial law as the situation in Mindanao may be addressed by the calling out powers is not by any means an encroachment on the Executive's prerogative in the exercise of the extraordinary powers. On the contrary, the Court would be merely doing its Constitutionally-mandated duty of ensuring that the declaration of martial law, or the extension thereof, has been made in accordance with the limits prescribed by the Constitution, *i.e.*, that actual invasion or rebellion exists (or persists) and that public safety requires the imposition of martial law and the suspension of the privilege of the writ of *habeas corpus*.

In this case, the respondents have failed to prove that rebellion persists and that public safety has been imperiled to the extent necessitating the extension of martial law and the suspension of the privilege of the writ of *habeas corpus*. As mentioned earlier, the events and circumstances, while worthy of stern condemnation and military reprisal, do not show the existence of an actual rebellion in a theater of war — at most, they merely indicate a threat or imminent danger. Thus, in the absence of an armed public uprising which imperils the operation of the civilian government, a declaration of martial law or any extension thereof necessarily fails the test of sufficiency, as such absence negates not only the existence of an actual (or persisting) rebellion, but also refutes the respondents' assertion that said declaration or extension is necessitated by the requirements of public safety.[149]

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[148] Supra note 8, at 162. Emphasis supplied.

[149] *J.* Caguioa, Dissenting Opinion in *Lagman v. Pimentel III*, supra note 12, at 27.

Through these pronouncements, the mistaken notion that martial law is required to quell the rebellion, or to empower the military and the police to engage the lawless elements in Mindanao is addressed. As already stated, the Executive is fully empowered to deploy the armed forces as necessary to suppress lawless violence, and even rebellion, whether actual or imminent, without martial law. **That the extension of martial law is to be nullified does not mean that the government is suddenly rendered powerless to address the complex problems in Mindanao**. The following exchange during the oral arguments between Justice Marvic M.V.F. Leonen and the counsel for petitioners illustrates this point:

> **JUSTICE LEONEN:**
> Yes, by a protracted declaration of martial law which means the military rules regardless of whether or not it is benign, there is an implicit message that local governments cannot do it, is that not correct?
>
> **ATTY. DIOKNO:**
> That is the case, yes.
>
> **JUSTICE LEONEN:**
> And the danger there is recognized by our Constitution because, therefore, it said that martial law is only exigent and contingent, is that not correct?
>
> **ATTY. DIOKNO:**
> I think it's clear, Your Honor, that the martial law is really intended to be a temporary to address an emergency.
>
> **JUSTICE LEONEN:**
> And to win against one thousand six hundred (1600) communists and five hundred seventy-five (575), I will not even say Muslim, I will say Salafis, I will say violent extremists, will take not only the might of the military no matter how professional they are, but good governance, is that not correct?
>
> **ATTY. DIOKNO:**
> That is so true, Your Honor, no... (interrupted)
>
> **JUSTICE LEONEN:**
> And martial law is antithetical to good governance, is that not correct?
>
> **ATTY. DIOKNO:**
> That is the case, Your Honor.
>
> **JUSTICE LEONEN:**
> Because we do not give an opportunity to civilian authorities to catch up, is that not correct?
>
> **ATTY. DIOKNO:**
> Yes, Your Honor.

JUSTICE LEONEN:
Okay, may I ask you, can checkpoints be set up without martial law?

ATTY. DIOKNO:
Yes, Your Honor.

JUSTICE LEONEN:
Can busses *(sic)* be searched without martial law?

ATTY. DIOKNO:
Yes, Your Honor.

JUSTICE LEONEN:
Saluday vs. People under the ponentia *(sic)* of Justice Carpio, unanimous Court said it can, very recently, 2018 only. Can the attendance of LGUs be checked without martial law?

ATTY. DIOKNO:
Of course, yes, Your Honor.

JUSTICE LEONEN:
In fact, will they, will the local governments in the ARMM be more fearful and attend to their duties if it is ordered by the President himself rather than simply the military?

ATTY. DIOKNO:
Yes, I believe so.

JUSTICE LEONEN:
Who is more feared, the president or the military?

ATTY. DIOKNO:
(Chuckles) I'm not sure, Your Honor.

JUSTICE LEONEN:
Well, I guess people will say the Commander-in-Chief is more powerful than the military. So, what we need really is a serious program to counter violent extremism, as well as a serious program to build good governance rather than martial law, is that not correct?

ATTY. DIOKNO:
That is true, Your Honor.

JUSTICE LEONEN:
Because no matter the numbers of fighting forces and firearms, it will always recur if the root causes are not addressed, is that not correct?

ATTY. DIOKNO:
That is correct.[150]

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[150] TSN, January 29, 2019, pp. 109-111.

To reiterate, martial law is an emergency governance response — the least benign of the emergency powers — that is directed against the civilian population, thereby allowing the military to perform what are otherwise civilian government functions and vesting military jurisdiction over civilians. It is through this lens that the Court determines the sufficiency of the basis for the extension of martial law. However, as already mentioned, the respondents have failed to prove the requisites, along with the necessity, for the extension of martial law and the suspension of the privilege of the writ of *habeas corpus*.

B. Whether Proclamation No. 216 has become functus officio with the cessation of the Marawi Siege that it may no longer be extended

The four petitions assert that the martial law declared in Proclamation No. 216 has become *functus officio* with the cessation of the Marawi siege. These petitions argue that Proclamation No. 216 and the President's Report dated May 25, 2017 pronounced that the sole objective or purpose of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao was to quell the Maute-Abu Sayyaf rebellion.[151] With the siege having been quelled, the petitioners now argue that the objective or purpose of the proclamation has already been achieved, and therefore an extension thereof is no longer necessary.[152]

Meanwhile, the respondents contend that while it may be admitted that Proclamation No. 216 specifically cited the attack of the Maute group on Marawi City as the basis for the declaration of martial law, the Court has recognized in *Lagman v. Pimentel III* that the rebellion in Mindanao, which the proclamation seeks to address, was not necessarily ended by the cessation of the Marawi siege.[153] The Court recognized the fact that the attack on Marawi City has spilled over to the areas in Mindanao and has spurred attacks from other rebel and terrorist groups.[154]

The respondents further advance that the issue of whether Proclamation No. 216 has become *functus officio* was consequently and indirectly rejected by the Court in affirming the second extension based on the same grounds cited for the third extension now in question.[155]

Today, the Court was called upon to finally definitively rule that Proclamation No. 216 has become *functus officio* with the cessation of the Marawi siege; thus, it may no longer be extended.

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151 *Rollo* (G.R. No. 243522), Vol. 2, p. 772.
152 *Rollo* (G.R. No. 243522), Vol. 1, p. 173.
153 Id. at 174.
154 Id.
155 Id. at 175.

Functus officio is the Latin phrase for "having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority."[156] It is applied to an officer whose term has expired, and who has consequently no further official authority; and also to an instrument, power, agency, which has fulfilled the purpose of its creation, and is therefore of no further virtue or effect.[157]

In this relation, the Dissenting Opinion of Senior Associate Justice Antonio T. Carpio in *Lagman v. Pimentel III* is illuminating:

> The Constitution provides that Congress, voting jointly, may extend the period of martial law and the suspension of the privilege of the writ "if the x x x rebellion shall persist." **Literally and without need of constitutional construction, the word "persist" means the continued existence of the same invasion or rebellion when martial law was initially proclaimed or the privilege of the writ was initially suspended.** In the deliberations of the Constitutional Commission, the framers understood that the extension could be justified "if the invasion (or rebellion) is still going on." The authority of Congress to extend martial law and the suspension of the privilege of the writ is, therefore, limited to the same rebellion persisting at the time of the extension. **In other words, the rebellion used by Congress as justification to extend martial law and the suspension of the privilege of the writ must be the same rebellion identified in the initial proclamation of the President.**
>
> x x x x
>
> **Indeed, the authority of Congress to extend the proclamation of martial law and the suspension of the privilege of the writ must be strictly confined to the rebellion that "persists," the same rebellion cited by President Duterte in Proclamation No. 216. Hence, the end of the Maute rebellion marked the end of the validity of Proclamation No. 216.** Any extension pursuant thereto is unconstitutional since the Maute rebellion already ceased, with the death of its leader Isnilon Hapilon and the liberation of Marawi City. To uphold the extension of martial law and the suspension of the privilege of the writ when the Maute rebellion no longer persists, in Marawi City or anywhere else in Mindanao, would sanction a clear violation of Section 18, Article VII of the Constitution.[158]

The Constitution cannot be any clearer: the Congress may extend the President's proclamation of martial law if **the same** rebellion necessitating such proclamation shall persist.[159]

To recall, the relevant portion of Proclamation No. 216 reads:

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156 <https://thelawdictionary.org/functus-officio/> (last accessed February 19, 2019).

157 Id.

158 *J.* Carpio, Dissenting Opinion in *Lagman v. Pimentel III*, supra note 9, pp. 6-7, 10. Citations omitted; emphasis and underscoring supplied.

159 *J.* Caguioa, Dissenting Opinion in *Lagman v. Pimentel III*, supra note 12, at 14.

> WHEREAS, part of the reasons for the issuance of Proclamation No. 55 was the **series of violent acts committed by the Maute terrorist group** such as the attack on the military outpost in Butig, Lanao del Sur in February 2016, killing and wounding several soldiers, and the mass jailbreak in Marawi City in August 2016, freeing their arrested comrades and other detainees;
>
> WHEREAS, today 23 May 2017, the **same Maute terrorist group** has taken over a hospital in Marawi City, Lanao del Sur, established several checkpoints within the City, burned down certain government and private facilities and inflicted casualties on the part of Government forces, and started flying the flag of the Islamic State of Iraq and Syria (ISIS) in several areas, thereby openly attempting to remove from the allegiance to the Philippine Government this part of Mindanao and deprive the Chief Executive of his powers and prerogatives to enforce the laws of the land and to maintain public order and safety in Mindanao, constituting the crime of rebellion; and
>
> WHEREAS, **this recent attack shows the capability of the Maute group** and other rebel groups **to sow terror, and cause death and damage to property** not only in Lanao del Sur but also in other parts of Mindanao.[160]

With the foregoing, it is clear that Proclamation No. 216 was issued to quell the Marawi siege as perpetrated by the Maute group. The third extension, on the other hand, as advanced by the respondents themselves, is based on the alleged ongoing rebellion perpetrated by the LTRGs and the CTRGs. This cannot be, as violent attacks by different armed groups could easily form the basis of an endless chain of extensions, so long as there are overlaps in the attacks.[161] This dangerously supports the theoretical possibility of perpetual martial law.[162] Thus, by clear mandate of the Constitution that Congress may extend the President's proclamation of martial law only if the **same** rebellion necessitating such proclamation shall persist, then Proclamation No. 216 has become *functus officio* with the cessation of the Marawi Siege.

Nevertheless — and this point is crucial — even if the attacks by the LTRGs and the CTRGs were to be considered, the extension still fails the test of sufficiency of factual basis, as both the (a) existence of an actual rebellion or invasion, and (b) that public safety necessitates such declaration or suspension, do not exist.

C. Whether or not grave abuse of discretion was attendant in the manner by which Congress approved the extension of martial law and the suspension of the privilege of the

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160 Emphasis supplied.

161 *J.* Caguioa, Dissenting Opinion in *Lagman v. Pimentel III*, supra note 12, at 15.

162 Id.

writ of habeas corpus is a political question and thus not reviewable by the Court

As to whether the Court may take cognizance of the petitioners' argument that Congress, in joint session, committed grave abuse of discretion amounting to lack or excess of jurisdiction with respect to the manner by which it approved the extension of martial law and the suspension of the privilege of the writ of *habeas corpus,* the answer is in the negative.

First and foremost, there can be no serious doubt that the instant petitions were brought "under the third paragraph of Section 18 of Article VII of the 1987 Constitution x x x."[163]

The constitutional mandate under Section 18, Article VII is to delve into both factual and legal issues indispensable to the final determination of the sufficiency of the factual basis of the extension of martial law and suspension of the privilege of the writ of *habeas corpus*.

As a neutral and straightforward fact-checking mechanism, the Court's role prescinds independently from how the Legislature evaluated the President's request. **The Court's role in Section 18 is to make *its own* determination.** This necessarily means that a Section 18 review does not concern itself with the correctness or wrongness of the assessment made by Congress.

In other words, the question of whether there is sufficient basis for extending Martial Law is to be resolved by the Court under the aegis and within the parameters only of Section 18 — without regard to the question of whether or not Congress committed grave abuse of discretion. **The Court fulfills its role under Section 18 totally independent of whatever Congress may have said**.

In the fairly recent case of *Baguilat, Jr. v. Alvarez,*[164] citing *Defensor-Santiago v. Guingona,*[165] the Court held that the Constitution "vests in the House of Representatives the sole authority to determine the rules of its proceedings."[166] Hence, as a general rule, "[t]his Court has no authority to interfere and unilaterally intrude into that exclusive realm, without running afoul of [C]onstitutional principles that it is bound to protect and uphold x x x. Constitutional respect and a becoming regard for the sovereign acts of a coequal branch prevents the Court from prying into the internal workings of the [House of Representatives]."[167] The Constitutional grant to Congress to

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[163] See *rollo* (G.R. No. 243522), Vol. 1, p. 3; *rollo* (G.R. No. 243677), p. 5; *rollo* (G.R. No. 243745), p. 7.
[164] G.R. No. 227757, July 25, 2017, 832 SCRA 111 [En Banc, per J. Perlas-Bernabe].
[165] 359 Phil. 276, 300 (1998) [En Banc, per J. Panganiban].
[166] *Baguilat, Jr. v. Alvarez*, supra note 164, at 132-133.
[167] Id. at 133.

determine its own rules of proceedings has generally been "traditionally construed as a grant of full discretionary authority to the Houses of Congress in the formulation, adoption and promulgation of its own rules. As such, the exercise of this power is generally exempt from judicial supervision and interference x x x."[168]

Hence, as Congress is bestowed by the Constitution the power to formulate, adopt, and promulgate its own rules, the Court will not hesitate to presume good faith on the part of Congress with respect to the rules it adopted in deliberating the extension of martial law and the suspension of the privilege of the writ of *habeas corpus*.

In contrast, however, good faith belief is irrelevant in the Court's duty under a Section 18 review. To be sure, a nullification resulting from a Section 18 review does not ascribe any grave abuse to the actors involved in the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* or the extension thereof. Stated differently, the declaration or suspension, or the extension thereof may fail to pass constitutional muster under Section 18 despite the good faith belief of the actors. The test of sufficient factual basis — the establishment of the twin requirements — goes beyond a showing of good faith belief. Good faith belief would not be far removed from the standard of grave abuse in *Lansang v. Garcia*[169] (*Lansang*) which is decidedly no longer the standard of a Section 18 review under the 1987 Constitution.[170] The independent review of the Court, being akin to administrative fact-finding, must either be supported by substantial evidence[171] or pass the test of reasonableness[172] in order to hurdle the standard of Section 18.

Accordingly, the test of grave abuse, even the existence thereof in the declaration, suspension, or extension, will not be determinative of the outcome of a Section 18 review by the Court. If the government can show sufficient factual basis for the proclamation, suspension, or extension — meaning that it presents to the Court substantial evidence to support the existence or persistence of rebellion and the requirement of public safety, as the case may be, — then the assailed action will be upheld even without having to determine whether or not there is a showing of grave abuse. Conversely, no amount of good faith belief will save a declaration, suspension, or extension from being nullified if the government fails to meet its burden to adduce substantial evidence to the Court in a Section 18 review proving the twin requirements for the declaration, suspension, or extension.

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[168] *Spouses Dela Paz v. Senate Committee on Foreign Relations*, 598 Phil. 981, 986 (2009) [En Banc, per J. Nachura].

[169] 149 Phil. 547 (1971) [En Banc, per C.J. Concepcion].

[170] *Lagman v. Medialdea*, supra note 8 and *Lagman v. Pimentel III*, supra note 9.

[171] *J.* Caguioa, Dissenting Opinion in *Lagman v. Medialdea*, supra note 122, at 647.

[172] *J.* Jardeleza, Dissenting Opinion in *Lagman v. Pimentel III*, supra note 142, at 2.

In this regard, jurisprudence has defined a political question as involving "those questions which, under the Constitution, are to be *decided by the people* in their sovereign capacity, or in regard to which *full discretionary authority* has been delegated to the Legislature or executive branch of the Government."[173]

Hence, with the Constitution granting Congress express authority to promulgate its own internal rules in the conduct of its deliberations, the issues raised by the petitioners as to the propriety of the time limits imposed upon members of Congress in making interpellations and explaining their individual votes, the failure of Congress to provide to its members certain documents, figures, and other data, as well as other procedural issues surrounding the Congress' manner of conducting the deliberations, are political questions not cognizable by the Court.

The Constitution does not provide specific rules as to the time limits to be observed by the members of Congress in conducting its deliberations, as well as with respect to the quality and quantity of documents and data that must be furnished to the members of Congress during the deliberations. Hence, as Section 18 is silent as to the procedural rules that Congress must observe in conducting its deliberations, Congress, as an independent branch of government, is given some leeway in determining how it should conduct its deliberations for the extension of martial law and the suspension of the privilege of the writ of *habeas corpus*.

Further, there is no specific procedural rule on the deliberations for the extension of martial law and the suspension of the privilege of the writ of *habeas corpus* laid down in the most recent version of the Rules of the House of Representatives promulgated by the House.[174] Hence, not only are the rules on time limits and the insufficient furnishing of documents raised by the petitioners not contrary to the existing Rules of the House, but, even assuming for the sake of argument that the conduct observed by Congress during the joint session digressed from the existing Rules of the House, such would still not be invalid as the Court, as long as no constitutional provision is violated, "will not interfere with the right of Congress to amend its own rules."[175]

Therefore, considering the foregoing, the manner by which Congress approved the extension of martial law and the suspension of the privilege of the writ of *habeas corpus* is beyond the scope of the Court's review in a Section 18 petition, and is a political question that is not reviewable by the Court.

Nevertheless, as already exhaustively discussed, the political question doctrine does not impact on the duty of the Court to discharge its own duty

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[173] *Tañada v. Cuenco*, 103 Phil. 1051, 1067 (1957) [En Banc, per J. Concepcion].
[174] <www.congress.gov.ph/download/docs/hrep.house.rules.pdf> (last accessed February 19, 2019).
[175] *Pimentel, Jr. v. Senate Committee on the Whole*, 660 Phil. 202, 220 (2011) [En Banc, per J. Carpio].

under Section 18 to determine, for itself, whether or not there is sufficient basis to extend martial law. Consequently, as to this determination by the Court, the Congress cannot interfere.

At this juncture, I would like to take the opportunity to clarify certain fundamental points where I wholly disagree with the *ponencia*:

I. On the scope of a Section 18 review

The *ponencia* rules that the sufficiency of factual basis for the extension must be determined from the facts or information contained in the President's request supported by the reports made by his alter ego to Congress.[176] The *ponencia* also rules that the Court cannot expect exactitude and preciseness of the facts or information stated in the written Report as the Court's review is confined to the sufficiency and not the accuracy thereof.[177]

As I have previously observed in *Lagman v. Pimentel III*, this view is not a reasonable interpretation of the extent of review contemplated in Section 18. Suppose that the reports given to Congress were insufficient, but the political departments are ready and able to submit evidence of sufficient factual basis during a subsequent Section 18 review. Is the Court then bound to invalidate based on a lack of sufficient factual basis before Congress?

All submissions of the government in this case have been considered. The need for accuracy in the information is not difficult to grasp. Section 18 is a judicial proceeding. Thus, when the government is tasked to show **sufficient factual basis** to the Court, it must be through evidence. Evidence, in turn, is the means of ascertaining in a judicial proceeding the truth respecting a matter of **fact.**[178] Evidence must at the very least be accurate[179] in order to serve its purpose.

Otherwise, if the political departments are excused from presenting accurate information, if even the most lenient standards of an administrative fact-finding do not apply in Section 18 as Justice Ramon Paul L. Hernando suggests, then the Court is merely going through the motions in a Section 18 review. For what value does it carry for the Court to find sufficient inaccurate factual basis?

In layman's terms, how can something that is inaccurate and untrue be considered sufficient? Thus, the repeated insistence and talismanic reliance on the phrase "accuracy is not equivalent to sufficiency" amounts to nothing

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[176] *Ponencia*, p. 15.
[177] See id.
[178] RULES OF COURT, Rule 128, Sec. 1.
[179] Preferably complete, comprehensible, and credible.

more than a complete and total abdication by the Court of its duty under Section 18. The recurrent use of the foregoing pronouncement renders nugatory the power and duty of the Court under Section 18, for it binds the Court to view as gospel truth — whether supported by evidence or otherwise — any claim of untoward incidents put forth by the Executive and the military to justify the existence of rebellion and the perils to public safety. **If this is the majority's formulation, Section 18 can just as well be deleted from the Constitution as it is totally useless within the checks and balances framework of the Constitution**.

This mindset — that the Court should not require correctness or accuracy in the reports submitted by the Executive — makes little to no sense in a review of sufficiency of factual basis of an **extension** of martial law, as compared to its initial declaration. This pronouncement may have been understandable in the initial declaration of martial law through Proclamation No. 216 as the Executive indeed had to respond to an urgent situation, *i.e.*, the Marawi siege. Hence, in the ensuing emergency, it was understandable that the Executive no longer had the opportunity to verify the claims before acting accordingly. **It cannot be said, however, that this same urgency exists for the extension, especially the one in the case at hand wherein a third extension is sought, for the Executive and the military have had ample time (all of a year, if not more) to compile information and further investigate, if necessary, so that their claims may qualify as "evidence" in court.** This is the reason why, as I stated earlier, blanket claims of "according to informants," "suspected ASG," and "believed to be BIFF" would not suffice.

Going back to the case at hand, the review of the sufficiency of the factual basis extended beyond the facts and information contained in the President's request and the supporting reports — the more generous interpretation being precisely to allow the government a fuller opportunity to show to the Court and to the people sufficient factual basis for the extension. The political departments were even given the opportunity to complete, correct, and supplement their submissions. **Notwithstanding that all submissions, no matter if incomplete, inconsistent, or unintelligible, were considered, the totality of the evidence was still not constitutive of substantial evidence to prove the persistence of rebellion or the requirement of public safety to justify the third extension**.

II. On the false dichotomy between probable cause and substantial evidence

The *ponencia* draws an apparent distinction between probable cause and substantial evidence, as if probable cause is a lower standard compared to substantial evidence. When a probable cause determination reaches the

Court, as it does in a Section 18 review, the evidence required to support probable cause is substantial evidence. **This is rudimentary**.

When the Court reviews the probable cause determination of the Ombudsman, the threshold is substantial evidence:

> x x x It is well-settled that courts do not interfere with the Ombudsman's discretion in determining probable cause whose findings, when **supported by substantial evidence** and in the absence of grave abuse of discretion or any capricious, whimsical and arbitrary judgment as to amount to an evasion of a positive duty, are entitled to great weight and respect, as in this case.[180]

And:

> x x x It is settled that the Ombudsman's determination of whether or not probable cause exists is entitled to great weight and respect, and should stand so long as supported by substantial evidence x x x.[181]

When the Court or a judge reviews the probable cause determination of the prosecutor, the threshold is substantial evidence:

> The general rule of course is that the judge is not required, when determining probable cause for the issuance of warrants of arrests, to conduct a *de novo* hearing. The judge only needs to personally review the initial determination of the prosecutor finding a probable cause **to see if it is supported by substantial evidence.**
>
> But here, the prosecution conceded that their own witnesses tried to explain in their new affidavits the inconsistent statements that they earlier submitted to the Office of the Ombudsman. Consequently, it was not unreasonable for Judge Yadao, for the purpose of determining probable cause based on those affidavits, to hold a hearing and examine the inconsistent statements and related documents that the witnesses themselves brought up and were part of the records. Besides, she received no new evidence from the respondents.[182]

When the third extension is validated by the majority based on the existence of probable cause divorced from substantial evidence, there is basic misunderstanding of the quantum of evidence continuum. **When the fundamental requirements in the most permissive of judicial and administrative proceedings are held not to apply to review the factual basis for the extension of martial law, then is this not basically saying**

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[180] *Tolentino, Jr. v. Jallores*, G.R. No. 242051, November 5, 2018 (Unsigned Resolution). Citation omitted; emphasis supplied.

[181] *Sandoval II v. Office of the Ombudsman*, G.R. No. 241671, October 1, 2018 (Unsigned Resolution). Citation omitted.

[182] *People v. Dela Torre-Yadao*, 698 Phil. 471, 487-488 (2012) [En Banc, per J. Abad]. Citations omitted; emphasis supplied.

that the Court is willing to accept even a scintilla of evidence? This is simply egregious error.

III. Totality versus piecemeal examination of the evidence

The *ponencia* attempts to discredit any in-depth analysis of the government submissions as "piecemeal." It states, "[i]n finding sufficiency of the factual basis for the third extension, the Court has to give due regard to the military and police reports which are not palpably false, contrived, or untrue; consider the full complement or totality of the reports submitted, and not make a piecemeal or individual appreciation of the facts and the incidents reported."[183] Elsewhere, it continues, "[t]he absence of motives indicated in several reports does not mean that these violent acts and hostile activities committed are not related to rebellion which absorbs other common crimes."[184]

Herein lies another crucial flaw in the *ponencia*'s reasoning, not less important than the Court's failure to exact some level of accuracy.

The rule remains the same as in *Lagman v. Pimentel III*: the government is required to show two things in a Section 18 review of an extension of martial law: (1) the persistence of the original rebellion, and (2) demand of public safety.

To show the persistence of rebellion, the government is required to prove, **at least one incident** wherein the overt act of rebellion (*i.e.*, rising up publicly and taking arms against the government) and the specific political purpose of rebellion (*i.e.*, 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 of depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives) concur.

When the *ponencia* concedes that there is absence of motive in several reports, what it really thus concedes is that it failed to find a single report that presents convincingly an act of rebellion with a rebellious purpose. This dissent presents all reports that state the motive. **However, none of these reports presents convincingly an act of rebellion with a rebellious purpose**.

Accordingly, when the *ponencia* does not find in one, it says it finds in the totality of the evidence — this is simply nonsensical. Any close examination of the evidence is accused of missing the forest for the trees.

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183 *Ponencia*, p. 16.
184 Id. at 19.

The *ponencia*, however, illogically finds a forest where there is not a single tree. The examination of all the violent incidents can only show, at most, a demand of public safety arising from a proliferation of private crimes. It is well to emphasize that the requirement of public safety is separate from the requirement of an actual rebellion.

IV. On the reliance upon Montenegro v. Castañeda and other inapplicable cases to defer to the determination of the political departments and excusing them from showing accuracy in the factual basis presented

The *ponencia* also rules that "the Court need not make an independent determination of the factual basis for the proclamation or extension of martial law and the suspension of the privilege of the writ of *habeas corpus*. x x x It would be impossible for the Court to go on the ground to conduct an independent investigation or factual inquiry, since it is not equipped with resources comparable to that of the Commander-in-Chief to ably and properly assess the ground conditions."[185]

Citing a passage in *Montenegro v. Castañeda*[186] (*Montenegro*) to compare the machinery of the Court and the Executive branch and that the former "cannot be in a better position to ascertain or evaluate the conditions prevailing in the Archipelago,"[187] the *ponencia* then concludes, "[t]he Court need not delve into the accuracy of the reports upon which the President's decision is based, or the correctness of his decision to declare martial law or suspend the writ, for this is an executive function. The threshold or degree of sufficiency is, after all, an executive call."[188] Furthermore, it cites the decision of the Court in *David v. Macapagal-Arroyo*[189] citing the case of *Integrated Bar of the Philippines (IBP) v. Zamora*,[190] that the Court cannot undertake an independent investigation beyond the pleadings.[191]

I strongly disagree. The danger of recklessly citing *Montenegro* cannot be overstated.

Montenegro involved the validity of Proclamation No. 210, s. 1950 suspending the privilege of the writ of *habeas corpus*, **operating under the**

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185 *Ponencia*, p. 15.
186 91 Phil. 882, 887 (1952) [En Banc, per J. Bengzon].
187 *Ponencia*, p. 16.
188 Id.
189 522 Phil. 705 (2006) [En Banc, per J. Sandoval-Gutierrez].
190 392 Phil. 618 (2000) [En Banc, per J. Kapunan].
191 *Ponencia*, p. 16.

1935 Constitution.[192] Completing the picture of the passage quoted by the *ponencia*, the ultimate basis for that *ratio* in *Montenegro* is its reliance upon the decisions of the United States Supreme Court that were likewise used as basis for the holding in *Barcelon v. Baker, Jr.*[193] (*Barcelon*):

> And we agree with the Solicitor General that in the light of the views of the United States Supreme Court thru, Marshall, Taney and Story quoted with approval in *Barcelon vs. Baker* (5 Phil., 87, pp. 98 and 100) the authority to decide whether the exigency has arisen requiring suspension belongs to the President and "his decision is final and conclusive" upon the courts and upon all other persons.
>
> Indeed as Justice Johnson said in that decision, whereas the Executive branch of the Government is enabled thru its civil and military branches to obtain information about peace and order from every quarter and corner of the nation, the judicial department, with its very limited machinery can not be in better position to ascertain or evaluate the conditions prevailing in the Archipelago.
>
> But even supposing the President's appraisal of the situation is merely *prima facie*, we see that petitioner in this litigation has failed to overcome the presumption of correctness which the judiciary accords to acts of the Executive and Legislative Departments of our Government.[194]

Turning our attention to *Barcelon*, it is instantly apparent that it cannot be basis for the Court to anchor its findings in a Section 18 review to the determination of the political departments on account of the latter's far more superior information-gathering machinery. The Court in *Barcelon* refused to review the factual basis of the suspension of the privilege of the writ of *habeas corpus* for being a political question:

> We are of the opinion that the only question which this department of the Government can go into with reference to the particular questions submitted here are as follows:
>
> (1) Admitting the fact that Congress had authority to confer upon the President or the Governor-General and the Philippine Commission authority to suspend the privilege of the writ of *habeas corpus*, was such authority actually conferred? and
>
> (2) Did the Governor-General and the Philippine Commission, acting under such authority, act in conformance with such authority?

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[192] The Commander-in-Chief Clause in the 1935 Constitution reads:

> ARTICLE VII.—EXECUTIVE DEPARTMENT
>
> SEC. 11. (2) The President shall be commander-in-chief of all armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privileges of the writ of *habeas corpus*, or place the Philippines or any part thereof under martial law.

There was no counterpart provision to the third paragraph of Section 18 for a review by the Court.

[193] 5 Phil. 87 (1905) [En Banc, per J. Johnson].

[194] *Montenegro v. Castañeda*, supra note 186, at 887.

> If we find that Congress did confer such authority and that the Governor-General and the Philippine Commission acted in conformance with such authority, then this branch of the Government is excluded from an investigation of the facts upon which the Governor-General and the Philippine Commission acted, and upon which they based the resolution of January 31, 1905, and the executive order of the Governor-General of the same date. *Under the form of government established in the Philippine Islands, one department of the Government has no power or authority to inquire into the acts of another, which acts are performed within the discretion of the other department.*[195]

Relying upon decisions of the United States Supreme Court to this effect, *Barcelon* concludes:

> We base our conclusions that this application should be denied upon the following facts:
>
> x x x x
>
> Fourth. That the conclusion set forth in the said resolution and the said executive order, as to the fact that there existed in the Provinces of Cavite and Batangas open insurrection against the constituted authorities, was a conclusion entirely within the discretion of the legislative and executive branches of the Government, after an investigation of the facts.
>
> Fifth. That one branch of the United States Government in the Philippine Islands has no right to interfere or inquire into, for the purpose of nullifying the same, the discretionary acts of another independent department of the Government.
>
> Sixth. Whenever a statute gives to a person or a department of the Government discretionary power, to be exercised by him or it, upon his or its opinion of certain facts, such statute constitutes him or it the sole and exclusive judge of the existence of those facts.
>
> Seventh. The act of Congress gave to the President, or the Governor-General with the approval of the Philippine Commission, the sole power to decide whether a state of rebellion, insurrection, or invasion existed in the Philippine Archipelago, and whether or not the public safety required the suspension of the privilege of the writ of *habeas corpus*.
>
> Eighth. This power having been given and exercised in the manner above indicated, we hold that such authority is exclusively vested in the legislative and executive branches of the Government and their decision is final and conclusive upon this department of the Government and upon all persons.[196]

Verily, this has not been the state of the law for close to thirty-three (33) years – counted from the adoption of the 1987 Constitution, and close to fifty (50) years if counted from Lansang.

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[195] *Barcelon v. Baker, Jr.*, supra note 193, at 96-97. Italics in the original.
[196] Id. at 97-98.

Even the deferential Court in *Lansang* abandoned *Barcelon* and exercised some level of review of the factual basis of the suspension.[197] Most discretionary acts of the political departments are now subject to the Court's expanded power of judicial review,[198] with the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* and the extension thereof being subject to the test for sufficiency of factual basis under Section 18. **To be sure, the *ponencia* unwarrantedly seeks to rewrite the 1987 Constitution, and unduly reverts back to the 1935 and 1973 Constitutions.**

Any presumption of correctness in a Section 18 proceeding will be in violation of the express provision of the Constitution. This is why the two earlier Section 18 decisions were silent as to the applicability of the presumption of regularity in the performance of official functions. This is why the totality of the government's submissions is examined.

As for the cases of *David v. Macapagal-Arroyo* and *IBP v. Zamora*, a reading of the cases reveals that these do not purport to make a rule with respect to a Section 18 review of the declaration of martial law, suspension of the privilege of the writ of *habeas corpus*, or the extension thereof. **Both cases deal with the exercise of the calling out powers of the President**.

In *David v. Macapagal-Arroyo,* the issue was the constitutionality of President Arroyo's Presidential Proclamation No. 1017 and General Order No. 5 that "declare[d] a [s]tate of [n]ational [e]mergency" and "call[ed] upon the AFP and the PNP to prevent and suppress acts of terrorism and lawless violence in the country," respectively.[199]

In *IBP v. Zamora*, the issue was the validity of President Estrada's Letter of Instruction 02/2000 and the deployment of the Philippine Marines. To place the *ponencia*'s premise within its proper context, the *ratio* for the Court's statement that the Court cannot undertake an independent investigation beyond the pleadings was only to support the ultimate conclusion that "[t]here is a clear textual commitment under the Constitution to bestow on the President full discretionary power to call out the armed forces and to determine the necessity for the exercise of such power."[200] The Court then clearly drew a distinction between the review of the power to call on the armed forces as against the power to declare martial law or suspend

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[197] In *Lansang*, the Court stated: "The first major question that the Court had to consider was whether it would adhere to the view taken in *Barcelon v. Baker* and reiterated in *Montenegro v. Castañeda*, pursuant to which, 'the authority to decide whether the exigency has arisen requiring suspension (of the privilege or the writ of *habeas corpus*) belongs to the President and his "decision is final and conclusive" upon the courts and upon all other persons.' x x x Upon mature deliberation, a majority of the Members of the Court had, however, reached, although tentatively, a consensus to the contrary, and decided that the Court had authority to and should inquire into the existence of the factual bases required by the Constitution for the suspension of the privilege of the writ; x x x." (*Lansang v. Garcia*, supra note 169, at 577.)

[198] 1987 CONSTITUTION, Art. VIII, Sec. 1.

[199] Supra note 189, at 740 and 741-742.

[200] Supra note 190, at 640.

the privilege of the writ of *habeas corpus* — primarily, that the review of the exercise of calling out powers may prove unmanageable for the Courts on account of lack of textual standards, as opposed to that of the less benign powers subject to the conditions of Section 18. Prefaced with the text of Section 18, the Court explained:

> Under the foregoing provisions, Congress may revoke such proclamation or suspension and the Court may review the sufficiency of the factual basis thereof. However, there is no such equivalent provision dealing with the revocation or review of the President's action to call out the armed forces. The distinction places the calling out power in a different category from the power to declare martial law and the power to suspend the privilege of the writ of *habeas corpus*, otherwise, the framers of the Constitution would have simply lumped together the three powers and provided for their revocation and review without any qualification. *Expressio unius est exclusio alterius*. Where the terms are expressly limited to certain matters, it may not, by interpretation or construction, be extended to other matters. That the intent of the Constitution is exactly what its letter says, *i.e.*, that the power to call is fully discretionary to the President, is extant in the deliberation of the Constitutional Commission x x x
>
> x x x x
>
> The reason for the difference in the treatment of the aforementioned powers highlights the intent to grant the President the widest leeway and broadest discretion in using the power to call out because it is considered as the lesser and more benign power compared to the power to suspend the privilege of the writ of *habeas corpus* and the power to impose martial law, both of which involve the curtailment and suppression of certain basic civil rights and individual freedoms, and thus necessitating safeguards by Congress and review by this Court.
>
> Moreover, under Section 18, Article VII of the Constitution, in the exercise of the power to suspend the privilege of the writ of *habeas corpus* or to impose martial law, two conditions must concur: (1) there must be an actual invasion or rebellion and, (2) public safety must require it. These conditions are not required in the case of the power to call out the armed forces. The only criterion is that "whenever it becomes necessary," the President may call the armed forces to prevent or suppress lawless violence, invasion or rebellion." **The implication is that the President is given full discretion and wide latitude in the exercise of the power to call as compared to the two other powers.**
>
> If the petitioner fails, by way of proof, to support the assertion that the President acted without factual basis, then this Court cannot undertake an independent investigation beyond the pleadings. The factual necessity of calling out the armed forces is not easily quantifiable and cannot be objectively established since matters considered for satisfying the same is a combination of several factors which are not always accessible to the courts. **Besides the absence of textual standards that the court may use to judge necessity, information necessary to arrive at such judgment might also prove unmanageable for the courts.** Certain pertinent information might be difficult to verify, or wholly unavailable to the courts. In many instances, the evidence upon which the President might

> decide that there is a need to call out the armed forces may be of a nature not constituting technical proof.
>
> x x x x
>
> Thus, it is the unclouded intent of the Constitution to vest upon the President, as Commander-in-Chief of the Armed Forces, full discretion to call forth the military when in his judgment it is necessary to do so in order to prevent or suppress lawless violence, invasion or rebellion. Unless the petitioner can show that the exercise of such discretion was gravely abused, the President's exercise of judgment deserves to be accorded respect from this Court.[201]

There is no question that the political departments have the machinery to determine the conditions on the ground, but this is not basis to hold that the standard of review in this case is the same as that in *David v. Macapagal-Arroyo* and *IBP v. Zamora*. **This far superior information-gathering machinery of the Executive department is *precisely* why the Court has held, in the past Section 18 proceedings before it, that the government bears the burden of proof to show the factual basis. That is why burden of proof is upon the respondents. Let them meet their burden. If the Court is not able to determine the accuracy or the existence of the factual basis of the extension of martial law, then it only means that the government did not meet its burden**.

This far superior information-gathering machinery is *precisely* the reason why, in my view, the evidence presented in this case — unsubstantiated, uncorroborated, and based on conjectures, rumor and hearsay — is unacceptable.

V. On the holding that rebellion that allows the exercise of Commander-in-Chief powers is more expansive than that defined in the RPC

The *ponencia* states that "rebellion contemplated in the Constitution as essential to the declaration of martial law has an expansive scope and cannot be confined to the definition of rebellion as a crime under the Revised Penal Code. Therefore, it is not restricted to the time and locality of actual war nor does it end when actual fighting in a particular area has ceased. It refers to a state or condition resulting from the commission of a series or combination of acts and events, past, present and future, primarily motivated by ethnic, religious, political or class divisions which incites violence, disturbs peace and order, and pose threat to the security of the nation."[202]

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[201] Id. at 642-644. Emphasis and underscoring supplied.

[202] *Ponencia*, p. 20.

It continues, "martial law cannot be restricted only to areas where actual fighting continue to occur,"[203] premised by citations of the *Amicus Curiae Brief* of Fr. Joaquin Bernas in *Fortun v. Macapagal-Arroyo*[204] (*Fortun*), *In the Matter of the Petition for Habeas Corpus of Benigno S. Aquino v. Enrile*[205] (*Aquino v. Enrile*), and *Montenegro* because "rebels have become more cunning and instigating rebellion from a distance is now more attainable, perpetrating acts of violence clandestinely in several areas of Mindanao."[206]

First, as explained above, jurisprudence prior to the 1987 Constitution such as *Aquino v. Enrile* and *Montenegro* cannot conclusively serve as precedents.

Second, by no stretch of the imagination can *Fortun* be considered as rule-setting in a Section 18 review. *Fortun* involved the question of constitutionality of Proclamation No. 1959, s. 2009 issued by former President Gloria Macapagal-Arroyo to declare martial law and suspend the privilege of the writ of *habeas corpus* in Maguindanao. The Proclamation was withdrawn after just eight days, before the Congress could even convene in joint session. The Court's decision issued three years later, or in 2012, dismissed the consolidated petitions for having become moot and academic. **Because of the dismissal for mootness, there was no discussion as to the scope of martial law and the proper interpretation of "rebellion" under the Constitution.**

While the oft-cited *Amicus Brief* of Fr. Bernas is offered to advance a more "lenient" definition of rebellion, being qualified by the prudential estimation of the demand of public safety, **this portion of the brief is to advance the position that the proof of rebellion required for the purpose of exercising the President's Commander-in-Chief powers is not proof beyond reasonable doubt.**

This was in fact discussed in the Dissenting Opinion of Senior Associate Justice Carpio who opined that "probable cause of the existence of either invasion or rebellion suffices and satisfies the standard of proof for a valid declaration of martial law and suspension of the writ."[207] **This was the standard adopted in *Lagman v. Medialdea* and *Lagman v. Pimentel III* that rebellion in Section 18 is the same rebellion in the Revised Penal Code.** This is also supported by an opinion just as astute as Fr. Bernas'. In the *Amicus Memorandum* of Justice Vicente V. Mendoza in *Fortun*, he submitted that rebellion in the Constitution is the same rebellion in the RPC, thus:

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[203] Id. at 22.
[204] Cited in *J.* Velasco, Dissenting Opinion in *Fortun v. Macapagal-Arroyo*, 684 Phil. 526, 629-630 (2012).
[205] 158-A Phil. 1 (1974) [En Banc, per C.J. Makalintal].
[206] *Ponencia*, p. 22.
[207] *J.* Carpio, Dissenting Opinion in *Fortun v. Macapagal-Arroyo*, supra note 204, at 597.

Whether the term "rebellion" in Section 18, Article VII of the 1987 Constitution has the same meaning as the term "rebellion" is defined in Article 134 of the Revised Penal Code.

The term "rebellion" has always been understood in this country as an armed public uprising against the government for the purpose of seizing power. This has always been the meaning of the crime of rebellion since the enactment of Act No. 292, Sec. 3, from which Art. 134 of the present Revised Penal Code was taken. Hence, the term "rebellion" in Art. VII, Sec. 18 of the Constitution must be understood as at present defined in Art. 134 of the Revised Penal Code, consisting of —

> [the] rising publicly and taking [of] 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.

Like "treason," "bribery, graft and corruption" in the Impeachment Clause, the Constitution has left the meaning of "rebellion" in the Commander in Chief Clause to be defined by law.

Indeed, it is with the crime of rebellion as defined in the penal law that petitioners in the habeas corpus cases of *Barcelon v. Baker*, *Montenegro v. Castañeda*, and *Lansang v. Garcia* were charged. It is the same crime with which some of the accused in the Maguindanao massacre are charged in the prosecutors' offices and in trial court.

With this meaning of "rebellion," the members of the Constitutional Commission were familiar. There was an attempt to provoke a discussion of the nature of rebellion in the Constitutional Commission the discussion ended in a reiteration of the concept of rebellion as a public uprising against the government for the purpose of seizing power. It was pointed out that any other armed resistance against the government would only be either sedition or tumultuous affray, not justifying the imposition of martial law or the suspension of the privilege of the writ of habeas corpus. Thus, in the deliberations of the Commission on July 29, 1986 the following discussion took place:

> MR. DE LOS REYES. May I ask some questions of the Committee.
>
> One of the significant changes in Section 15 is that the phrase "imminent danger thereof" was deleted, including the word "insurrection." [I] would like to be clarified as to the reason for the deletion of the phrase "or imminent danger thereof" in justifying the imposition of martial law and suspension of the privilege of the writ of habeas corpus.
>
> MR. REGALADO. [T]he gentleman will recall that in the 1935 Constitution the phrase "imminent danger thereof" did not appear in the Bill of Rights. However, the framers of the 1973 Constitution wanted to have a strong President and they added the phrase "imminent danger thereof" in the

> provision on Commander-in-Chief.[208] [B]ut recent events have shown that the phrase is fraught with possibilities of abuse. Where the President states that there is an imminent danger of rebellion, it appears that he would have to rely on his word because he could always say that this is the military intelligence report. [E]ven with the Supreme Court trying to look into their factual basis under the proposed Constitution, can still be thwarted because the Supreme Court cannot just disregard a so-called classified, highly reliable intelligence report coming from different agencies which for all we know could easily be contrived in the hands of a scheming President…
>
> MR. DE LOS REYES. As I see now, the Committee envisions actual rebellion and no longer imminent rebellion. Does the Committee mean there should be actual shooting or actual attack on the legislature or Malacañang, for example? Let us take for example a contemporary event – this Manila Hotel incident, … would the Committee consider that an act of rebellion?
>
> MR. REGALADO. If we consider the definition of rebellion under Article 134 and 135 of the Revised Penal Code, that presupposes actual assemblage of men in an armed public uprising for the purposes mentioned in Article 134 and by the means employed under Article 135. I am not trying to pose as an expert about this rebellion that took place in the Manila Hotel. [I] do not know whether we consider that there was really an armed public uprising. Frankly I have my doubts on that because we are not privy to the investigation conducted here.
>
> MR. DE LOS REYES. I ask that question because I think modern rebellion can be carried out nowadays in a more sophisticated manner because of the advance of technology, mass media and others. Let us consider this for example: There is an obvious synchronized or orchestrated strike in all industrial firms, then there is a strike of drivers so that employees and students cannot attend school nor go to their places of work, practically paralyzing the government. Then in some remote barrios, there are ambushes by so-called subversives, so that the scene is that there is an orchestrated attempt to destabilize the government and ultimately supplant the constitutional government.
>
> Would the Committee call that an actual rebellion, or is it an imminent rebellion?
>
> MR. REGALADO. At the early stages where there was just an attempt to paralyze the government or some sporadic incidents in other areas, but without armed public uprising,

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[208] J. V.V. Mendoza Amicus Memorandum in *Fortun*, p. 11. He adds: The phrase "imminent danger thereof" was already in the Commander in Chief Clause. What was done was to write it also in the Bill of Rights.

> that would amount to sedition under Article 138, or it can be considered tumultuous disturbance.
>
> ....
>
> MR. REGALADO. It [then] becomes a matter of appreciation. If ... there is really an armed uprising although not all over the country, not only to destabilize but to overthrow the government, that would already be considered within the ambit of rebellion. If the President considers it, it is not yet necessary to suspend the privilege of the writ. It is not yet necessary to declare martial law because he can still resort to the lesser remedy of just calling out Armed Forces for the purpose of preventing or suppressing lawlessness or rebellion." (Sic)[209]

Thus, only an actual rebellion is contemplated in the Constitution as ground for declaring martial law or suspending the privilege of the writ of habeas corpus. Short of that, an incident may only justify using the Armed Forces for the purpose of suppressing lawless violence. This is the consequence of deleting "imminent danger [of rebellion]" and "insurrection" in our two previous Constitutions as grounds for declaring martial law or suspending the privilege of the writ.

Mere allegations — without more — that "heavily armed groups in the province of Maguindanao have established positions to resist government troops, thereby depriving the Executive of its powers and prerogatives to enforce the law and to maintain public order and safety," and that "condition of peace and order in the province of Maguindanao has deteriorated to the extent that the local judicial system and other government mechanism in the province are not functioning, thus endangering public safety" are insufficient to constitute an allegation of actual rebellion that alone can justify the declaration of martial law and/or the suspension of the privilege of the writ of habeas corpus.

That "rebellion" in the Commander in Chief Clause means the crime of rebellion as defined in Art. 134 of the Revised Penal Code is clear from Art. VII, Sec. 18 which provides that "The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion." One can only be "judicially charged" with rebellion only if one is suspected of having committed acts defined as rebellion in Art. 134 of the Revised Penal Code.

The government's interpretation of the term "rebellion" would broaden its meaning and defeat the intention of the Constitution to reduce the powers of the President as Commander in Chief.[210]

The *ponencia*'s holding in fact amounts to an abandonment of the holding in *Lagman v. Medialdea* and *Lagman v. Pimentel III* that required an

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[209] Id. at 11-12, citing II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 411-413 (1986).

[210] Id. at 9-13.

actual rebellion, albeit not necessarily that which was covered in the original proclamation. **Unbelievably, the decision reached by the majority today does not even contain a standard of what amorphous rebellion is sufficient for a Section 18 review**.

VI. On the finding that the reports of violent incidents submitted by the government constituted a consistent pattern of rebellion in Mindanao.

The *ponencia* states, "[w]hile the primary justification for the President's request for extension is the on-going rebellion in Mindanao, the situation remains the same despite the death of the leaders, and the addition of rebel groups whose activities were intensified and pronounced after the first and second extensions."[211]

It continues, "[t]he factual basis for the extension of martial law is the continuing rebellion being waged in Mindanao by Local Terrorist Rebel Groups (LTRG) – identified as the ASG, BIFF, DI, and other groups that have established affiliation with the ISIS/DAESH, and by the Communist Terrorist Rebel Groups (CTRG) – the components of which are the Communist Party of the Philippines (CPP), New People's Army (NPA), and the National Democratic Front (NDF).[212] x x x The cited events demonstrate the spate of violence of rebel groups in Mindanao in pursuit of the singular objective to seize power over parts of Mindanao or deprive the President or Congress of their power and prerogatives over these areas.[213] x x x [T]hese violent incidents should not be viewed as isolated events but in their totality, showing a consistent pattern of rebellion in Mindanao."[214]

That the activities of "addition[al] rebel groups" "intensified and [became] pronounced after the first and second extensions" is not borne by the records. In fact, the government has consistently stated that there is a downward trend in crime, capability of violent groups, and even proliferation of drugs. A clear reduction in number of violent incidents in 2018 is shown by the specific reports in the Annexes when examined on a monthly basis. The monthly reports in the implementation of martial law in fact show a consistent upward trend in the number of "local terrorist groups (LTGs) [members]" and "CPP-NPA Terrorists (CNTs)" getting neutralized, the number of LTG and CNT members having surrendered, and the number of loose firearms being surrendered.[215] This same upward trend is apparent in the efforts of the military and the police in the establishment of Barangay

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211 *Ponencia*, p. 17.
212 Id.
213 Id. at 19.
214 Id.
215 See AFP Monthly Reports on the implementation of Martial Law in Mindanao from January to December 2018.

Intelligence Networks and security patrols that insulate unaffected areas, the conduct of checkpoint operations, joint AFP-PNP operations and joint intelligence operations, even in the campaign against illegal drugs. **The *ponencia's* statements or reasons are therefore bereft of any basis, if not totally contradicted by, the respondents' assertions**.

There is no disagreement that the reports paint a violent picture of Mindanao. Where, however, the majority finds a "consistent pattern of rebellion," only a consistent pattern of lawless violence, or an imminent threat of rebellion, in reality exists.

As exhaustively examined in the body of this opinion, each and every incident was examined to see if in any one of these incidents the overt act of rebellion and the political purpose of rebellion concur. **There was not one incident that was positively shown to have been committed for the purpose of removing from the allegiance to the 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 and prerogatives as required by Article 134 of the RPC.**

Without an actual rebellion therefore, no amount of lawless violence can justify martial law.

This same question had already been clearly raised in the resurrected *Barcelon*. More than a century ago, Justice Willard, dissenting, asked:

> The question in the case is this: **Have the Governor-General and the Commission power to suspend the writ of *habeas corpus* when no insurrection in fact exists?** If tomorrow they should suspend the writ in Manila, would that suspension be recognized by the courts?
>
> That in such a case they ought not to suspend the writ and that where no insurrection in fact exists they would have no right to do so, are propositions which have no bearing upon the case. The question is, Have they the power to do it?
>
> Prior to the passage of the act of Congress of July 1, 1902, the Commission had that power. They could suspend the writ, take it away entirely from certain provinces, or repeal entirely the law which authorized it to be issued. They had absolute control over it. (*In re* Calloway, 1 Phil. Rep., 11.)
>
> By the decision of the majority in this case the Governor-General and the Commission still have that power. The effect of this decision is to give them the same power which the Commission exercised before the passage of the act of Congress of July 1, 1902. In other words, that part of the act which relates to the writ of *habeas corpus* has produced no effect. It is repealed by this decision, and Congress accomplished nothing by inserting it in the law. No construction which repeals it should be given to this article. If a given construction leads to that result it seems to me that it

must be certain that the construction is wrong. No other argument to prove that it is wrong is needed. Congress must have intended that this provision should produce some effect. To hold that it has produced no effect is to defeat such intention.

But it is said that by the terms of the act, while the Governor-General and the Commissioners have the power to suspend the writ, they should not do it except in cases where insurrection in fact exists, and they, being men of character and integrity, would not do it except in such cases. As the Government is at present constituted, this is undoubtedly true. This argument, however, is fully answered by what was said by the Supreme Court of the United States in the case of *Ex parte* Milligan (4 Wallace 2, 125):

> "This nation, as experience has proved, can not always remain at peace, and has no right to expect that it will always have wise and humane rulers, sincerely attached to the principles of the Constitution. Wicked men, ambitious of power, with hatred of liberty and contempt of law, may fill the place once occupied by Washington and Lincoln."[216]

VII. On the ratio that because rebellion is a continuing crime, it continues despite the cessation of the armed public uprising

The *ponencia* states "[c]lashes between rebels and government forces continue to take place in other parts of Mindanao. Kidnapping, arson, robbery, bombings, murder — crimes which are absorbed in rebellion — continue to take place therein. These crimes are part and parcel of the continuing rebellion in Mindanao. The report of the military shows that the reported IED incidents, ambuscade, murder, kidnapping, shooting, and harassment in 2018 were initiated by ASG members and the BIFF."[217]

The *ponencia* explains further, "[b]e it noted that rebellion is a continuing crime. It does not necessarily follow that with the liberation of Marawi, rebellion no longer exists. It will be a tenuous proposition to confine rebellion simply to a resounding clash of arms with government forces."[218]

Taken together with the refusal to exact some level of accuracy in evidence, this lackadaisical legal standard for rebellion is so unworkable that it can admit of martial law for as long as the political departments claim that rebellion found to have existed during the initial declaration persists. **This rule prevents any intelligent and functional Section 18 review.** Again, the *ponencia* may just as well have deleted Section 18 from the Constitution.

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[216] *Barcelon v. Baker, Jr.*, supra note 193, at 118-119. Emphasis and underscoring supplied.
[217] *Ponencia*, p. 27.
[218] Id., citing *Lagman v. Pimentel III*, supra note 9, at 43 and 44.

The jurisprudence on rebellion as a continuing crime, predominantly *Umil v. Ramos*[219] (*Umil*), was made in the context of warrantless arrests. Instead of being in support for the proposition that martial law may be declared and extended in areas where there is no armed public uprising, *Umil*, while I hesitate to speak of its lingering applicability, is precisely an argument against declaring or extending martial law anywhere and everywhere rebels may be without the demand of public safety because, to reiterate, **martial law is not necessary to run after rebels even outside the areas of armed uprising.**

Rebellion is not a continuing crime in the sense that once it has been determined to have existed, rebellion becomes *res judicata*. The floodgates have been opened for a perpetual martial law in *Lagman v. Pimentel III*, and we are seeing the results now.

This is unfortunate, because there has been no dearth of opinions attempting to place "rebellion as a continuing crime" in its proper context — which is demonstrably entirely separate from the question presented in Section 18, that is, whether a rebellion found in Section 18 continues to exist. Justice Florentino Feliciano registered his opinion in *Umil*, thus:

> 9. I respectfully submit that an examination of the "continuing crimes" doctrine as actually found in our case law offers no reasonable basis for such use of the doctrine. More specifically, that doctrine, in my submission, does *not* dispense with the requirement that overt acts recognizably criminal in character must take place in the presence of the arresting officer, or must have just been committed when the arresting officer arrived, if the warrantless arrest it to be lawful. The "continuing crimes" doctrine in our case law (*before* rendition of *Garcia-Padilla vs. Enrile* does not sustain warrantless arrests of person who, *at the time of the actual arrests,* were performing *ordinary acts of day-to-day life,* upon the ground that the person to be arrested is, as it were, merely resting in between specific lawless and violent acts which, the majority conclusively presumes, he *will* commit the moment he gets an opportunity to do so.
>
> Our case law shows that the "continuing crimes" doctrine has been used basically in relation to two (2) problems: the first problem is that of determination of whether or not a particular offense was committed within the territorial jurisdiction of the trial court; the second problem is that of determining whether a single crime or multiple crimes were committed where the defense of double jeopardy is raised.
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> x x x x
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> 12. My final submission, is that, the doctrine of "continuing crimes," which has its own legitimate function to serve in our criminal law jurisprudence, cannot be invoked for weakening and dissolving the constitutional guarantee against warrantless arrest. Where no overt acts comprising all or some of the elements of the offense charged are shown to have been committed by the person arrested without warrant, the

[219] 279 Phil. 266 (1991) [En Banc, Per Curiam].

> "continuing crime" doctrine should not be used to dress up the pretense that a crime, begun or committed elsewhere, continued to be committed by the person arrested in the presence of the arresting officer. The capacity for mischief of such a utilization of the "continuing crimes" doctrine, is infinitely increased where the crime charged does not consist of unambiguous criminal acts with a definite beginning and end in time and space (such as the killing or wounding of a person or kidnapping and illegal detention or arson) but rather of such problematic offenses as membership in or affiliation with or becoming a member of, a subversive association or organization. For in such cases, the overt constitutive acts may be morally neutral in themselves, and the unlawfulness of the acts a function of the aims or objectives of the organization involved.[220]

In the context of validity of warrantless arrests, Justice Santiago Kapunan also sought to clarify the import and applicability of *Umil* in the later case of *Lacson v. Perez*[221] (*Lacson*):

> Petitioners were arrested or sought to be arrested without warrant for acts of rebellion ostensibly under Section 5 of Rule 113. Respondent's theory is based on *Umil vs. Ramos*, where this Court held:
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> > The crimes of rebellion, subversion, conspiracy or proposal to commit such crimes, and crimes or offenses committed in furtherance thereof or in connection therewith constitute direct assault against the State and are in the nature of *continuing crimes*.
>
> Following this theory, it is argued that under Section 5(a), a person who "has committed, is actually committing, or is attempting to commit" rebellion and may be arrested without a warrant at any time so long as the rebellion persists.
>
> Reliance on *Umil* is misplaced. The warrantless arrests therein, although effected a day or days after the commission of the violent acts of petitioners therein, were upheld by the Court because at the time of their respective arrests, they were members of organizations such as the Communist Party of the Philippines, the New Peoples Army and the National United Front Commission, then outlawed groups under the Anti-Subversion Act. Their mere membership in said illegal organizations amounted to committing the offense of subversion which justified their arrests without warrants.
>
> In contrast, it has not been alleged that the persons to be arrested for their alleged participation in the "rebellion" on May 1, 2001 are members of an outlawed organization intending to overthrow the government. Therefore, to justify a warrantless arrest under Section 5(a), there must be a showing that the persons arrested or to be arrested has committed, is actually committing or is attempting to commit the offense of rebellion. In other words, there must be an overt act constitutive of rebellion taking place in the presence of the arresting officer. x x x[222]

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220 Id. at 328-331.

221 410 Phil. 78 (2001) [En Banc, per J. Melo].

222 Id. at 105-106. Citations omitted; emphasis supplied.

Again, this was still the context when the doctrine of rebellion as a continuing crime was touched upon in the 2004 case of *Sanlakas v. Reyes*.[223] In her Separate Opinion, Justice Consuelo Ynares-Santiago explains this doctrine in *Umil* and *Lacson*:

> Rebellion has been held to be a continuing crime, and the authorities may resort to warrantless arrests of persons suspected of rebellion, as provided under Section 5, Rule 113 of the Rules of Court. However, this doctrine should be applied to its proper context — *i.e.*, relating to subversive armed organizations, such as the New People's Army, the avowed purpose of which is the armed overthrow of the organized and established government. Only in such instance should rebellion be considered a continuing crime.[224]

Verily, there is no pretense at precedent that can support the proposition that rebellion continues when it has not been shown to exist.

As for the argument that these violent acts are "part and parcel of rebellion," "in furtherance of rebellion," or "absorbed by rebellion," this is placing the cart before the horse; plainly an egregious error. Here as well, the context of cited jurisprudence was whether violent acts are separate, complexed or absorbed by rebellion — very clearly divorced from the question of whether rebellion exists. Violent acts that are absorbed in rebellion for being considered as having been committed in furtherance thereof, requires the existence of a rebellion in the first place.

The requirement of concurrence of overt act and political purpose in a specific intent felony of rebellion is not new. *People v. Geronimo*[225] is instructive on this point:

> x x x As in treason, where both intent and overt act are necessary, the crime of rebellion is integrated by the coexistence of both the armed uprising for the purposes expressed in article 134 of the Revised Penal Code, *and* the overt acts of violence described in the first paragraph of article 135. **That *both* purpose and overt acts are essential components of one crime, and that without either of them the crime of rebellion legally does not exist, is shown by the absence of any penalty attached to article 134.** It follows, therefore that any or all of the acts described in article 135, when committed as a *means* to or *in furtherance* of the subversive ends described in article 134, become absorbed in the crime of rebellion, and can not be regarded or penalized as distinct crimes in themselves. In law they are part and parcel of the rebellion itself, and can not be considered as giving rise to a separate crime that, under article 48 of the Code, would constitute a complex one with that of rebellion.[226]

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223 466 Phil. 482 (2004) [En Banc, per J. Tinga].

224 Id. at 532.

225 Supra note 100.

226 Id. at 95. Citations omitted; emphasis supplied.

At the risk of being repetitive — but if only to belabor the truth that the majority have closed their eyes to — ***there is no single incident in the government's submissions wherein the purpose and overt act of rebellion concur***. Hence, in this case, as instructed by *People v. Geronimo,* the Court should have found that rebellion does not exist (or persist). Without a political purpose, these ambuscades, murder, kidnapping, shooting and other violent incidents are common crimes committed for private purposes, as is clearly shown by the reports themselves. **The Court cannot find the persistence of rebellion by supplying the political or rebellious purpose where the government itself did not show any.**

VIII. On taking into consideration public clamor in a Section 18 review

The *ponencia* states, "[t]he Resolutions coming from the [Regional and Provincial Peace and Order Councils] x x x reflect the public sentiment for the restoration of peace and order in Mindanao. [Having been] initiated by the people x x x who live through the harrows of war, x x x importance must be given to these resolutions as they are in the best position to determine their needs."[227]

Moreover, "[t]he Court must remember that We are called upon to rule on whether the President, and this time with the concurrence of the two Houses of Congress, acted with sufficient basis in approving anew the extension of martial law. We must not fall into or be tempted to substitute Our own judgment to that of the People's President and the People's representatives. We must not forget that the Constitution has given us separate and quite distinct roles to fill up in our respective branches of government."[228]

Testing for constitutional compliance is *not* a question of popularity. The people in their sovereign capacity speak in and through the Constitution. There is nothing in Section 18 that takes into consideration the perceived public clamor for martial law. **The role of the Court in Section 18 is not to validate the extension of a popular martial law; but to validate the extension of martial law that has sufficient basis in fact and nullify one that does not**.

When the Court reviews the factual basis under Section 18, it merely discharges its duty under the Constitution; it does not substitute its own discretion to that of the "People's President and the People's representatives." As early as *The Federalist Papers*, Alexander Hamilton had already disabused this notion:

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[227] *Ponencia*, p. 23.
[228] Id. at 27.

Some perplexity respecting the rights of the courts to pronounce legislative acts void, because contrary to the Constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged that the authority which can declare the acts of another void, must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American constitutions, a brief discussion of the ground on which it rests cannot be unacceptable.

There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.

If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed, that the Constitution could intend to enable the representatives of the people to substitute their WILL to that of their constituents. It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.

x x x x

This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors, which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community. Though I trust the friends of the proposed

> Constitution will never concur with its enemies, in questioning that fundamental principle of republican government, which admits the right of the people to alter or abolish the established Constitution, whenever they find it inconsistent with their happiness, **yet it is not to be inferred from this principle, that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents, incompatible with the provisions in the existing Constitution, would, on that account, be justifiable in a violation of those provisions**; or that the courts would be under a greater obligation to connive at infractions in this shape, than when they had proceeded wholly from the cabals of the representative body. **Until the people have, by some solemn and authoritative act, annulled or changed the established form, it is binding upon themselves collectively, as well as individually; and no presumption, or even knowledge, of their sentiments, can warrant their representatives in a departure from it, prior to such an act.** But it is easy to see, that it would require an uncommon portion of fortitude in the judges to do their duty as faithful guardians of the Constitution, where legislative invasions of it had been instigated by the major voice of the community.[229]

In this jurisdiction, this was very eloquently explained by Justice Jose Laurel in *Angara v. Electoral Commission*:[230]

> But in the main, the Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government. The overlapping and interlacing of functions and duties between the several departments, however, sometimes makes it hard to say just where the one leaves off and the other begins. In times of social disquietude or political excitement, the great landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated. In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof.
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> x x x x
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> The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? **The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution** to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them.[231]

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229 Federalist No. 78, "The Judiciary Department," Alexander Hamilton, available at: <http://avalon.law.yale.edu/18th_century/fed78.asp> (last accessed February 19, 2019). Citations omitted; emphasis supplied.

230 63 Phil. 139 (1936) [En Banc, per. J. Laurel].

231 Id. at 157-158. Emphasis and underscoring supplied.

When the Court is called upon to undertake a Section 18 review, it is obliged to measure the evidence of the government **as against positive constitutional requirements**. When the Court finds that there is noncompliance with constitutional requirements, the nullification arising from the finding is not a result of the Court replacing the discretion of the political departments with its own. It is, in fact, a result of the precedence of the Constitution over the acts of the "People's President and the People's representatives."

Summary of Points

In sum, the consolidated petitions must be granted because:

1) In the review of an extension of martial law under Section 18, the government bears the burden to show the persistence of rebellion and requirement of public safety must be separately proved by substantial evidence.

   a) The judgment in a Section 18 review is transitory; hence, both requirements must be proved anew.

   b) The rebellion must be that covered in the original Proclamation. Any pile-on rebellion prevents an intelligent Section 18 review.

   c) To prove the persistence of rebellion, the government must show at least one incident wherein the acts of rebellion and the political purpose thereof concur.

   d) To prove the demand of public safety, the endangerment of public safety must be shown to be at a scale that the lesser Commander-in-Chief powers are not sufficient to address the exigency of the situation.

2) There is lack of sufficient factual basis for the third extension of martial law.

   a) There is insufficient factual basis that the rebellion persists.

      i) Based on statements of the President and the military establishment, Marawi has been liberated. Proclamation No. 216 has thus become *functus officio*. In fact, the government's submissions do not contain a single evidence of an attack by the DI against military installations or facilities, much less an armed public uprising.

      ii) Even if violent incidents alleged to have been initiated by the ASG, BIFF and NPA are considered, there is no

violent incident presented wherein the concurrence of the act of rebellion and political purpose thereof is shown. In this regard, ALL reports that stated a motive for the violent incident were either equivocal or clearly for a private purpose.

iii) Even if activities of the NPA are considered rebellion, no sufficient information was given to show overt acts of rebellion and the scale of endangerment of public safety for any intelligent Section 18 review.

b) There is insufficient factual basis that the demands of public safety necessitate the extension of martial law.

i) The reports localize lawless violence as only having occurred in nine (9) out of twenty-seven (27) provinces in Mindanao.

ii) Actions and statements by government organs show that endangerment of public safety has not reached a scale requiring martial law — elections are being conducted, people feel safe, investments have risen, and the monthly reports reveal a downward trend in the capability of terrorists.

Conclusion

Today, the Court reiterates the wholesale branding of common criminals and terrorists in Mindanao as "rebels," of acts of violence and lawlessness as "rebellion from several fronts," — all in an unbecoming deference to the political departments so inconsistent with the provisions of the present Constitution that it requires a hark back to cases that applied the very different provisions of the 1935 and 1973 Constitutions. The Court not only effectively reverted to *Lansang* that only tests for grave abuse, it regressed to *Barcelon* and *Montenegro* where the determination of the basis for the suspension of the privilege of the writ of *habeas corpus* was a political question. Again, all to justify the third extension of martial law over the whole of Mindanao in the face of a clear paucity — nay, total absence — of factual basis.

If indeed, the challenge posed by each of these groups — ASG, BIFF, DI, NPA — is sufficient to warrant the declaration of martial law then, by all means, the President can declare martial law citing the same as the basis. But this in no way allows a declaration that identifies one rebellion, and pile-on additional, different "rebellions" by any and all common criminals who happen to capitalize on the perceived precarious peace and order situation obtaining in a subsisting declaration as basis for its extension. This also in

no way allows the government to rely on a previous finding of actual rebellion to meet the burden of proving the persistence of that actual rebellion such that the mere showing of violent incidents by "rebels" is enough to validate an extension. The Court cannot make a rule that prevents a reasoned discharge of its role under Section 18.

The issue can no longer be framed so simplistically as that of the President's decisive action in an emergency. Almost two years no longer counts as a blink of an eye. Even Fr. Bernas's position in the oft-cited Dissent of Justice Presbitero Velasco, Jr. in *Fortun* recognizes a shift in focus in a Section 18 review:

> It may be noted, however, that Section 18, Article VII of the 1987 Constitution requires the Honorable Court to resolve the petitions challenging martial law within thirty days. More than thirty days have elapsed since the filing of the petitions. Does this therefore mean that the Court is now bereft of power to review the proclamation of martial law?
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> The answer to this question depends on the purpose of the thirty[-] day limit prescribed by the Constitution. **The purpose is for the Court to be able to put an end, at the soonest possible time, to the continuing effects of martial law should the Court find the proclamation to be unconstitutional.** It should be obvious, however, that once martial law is lifted the thirty[-]day limit no longer serves any purpose. **There no longer is any rush to terminate an emergency. The Court therefore is already afforded the luxury of a more leisurely study of whatever issues there might be that need to be resolved.**[232]

Thus, two years in, the Court's Section 18 review should have already transcended well beyond the question of whether the President correctly declared martial law. That train left the station in *Lagman v. Medialdea*. Two years in, it is no longer unreasonable to ask for complete, consistent, and accurate information to support a claim that there is sufficient factual basis for a **third** extension of martial law.

True, the demands of Section 18 are not so unreasonable as to demand a city taken over or overrun, or a certain number of deaths and injuries or amount of property damage before the President can exercise his Commander-in-Chief powers.

But Section 18 is also not so accommodating as to not ask, when martial law — the least benign of the Commander-in-Chief powers — is sought to be kept in place for an extended period, why: (1) the government insists on martial law still without having identified what additional powers are sought to be exercised; (2) the government claims there is a persisting rebellion, but did not charge a single person with rebellion during the last

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[232] Fr. Joaquin Bernas, Brief of Amicus Curiae in *Fortun v. Macapagal-Arroyo*, p. 7. Emphasis and underscoring supplied.

extension; (3) despite the request of the Court to update the factual basis submitted, the AFP is still confined to "spot reports" that detail incidents that happened as early as thirteen months ago, in January of 2018; (4) in 2019, the PNP still has no record of most of the violent incidents in 2018 that form the basis of the President's request for extension to the Congress; (5) despite the massive gains the government achieved in making Mindanao safe enough for people to move about freely, for investments to grow, for the conduct of free and honest elections and plebiscites, it is still not safe enough to return to normalcy.

The government's whole of nation approach to national security is working. The monthly reports in the implementation of martial law and the statements of the Executive functionaries during the joint session of Congress confirm this. **The insufficiency of factual basis for the third extension of martial law is not a failure on the part of the President or Congress; it is a continuing testament to the unwavering heroism of our military, police and civilian auxiliaries, and the commendable resilience of the people in Mindanao.**

Accordingly, I vote to **GRANT** the consolidated petitions and **DECLARE** that the third extension of Martial Law over the whole of Mindanao does not have sufficient factual basis.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice