PHILIPPINE REPORTS

VOL. 812

JULY 3, 2017 TO JULY 4, 2017

VOLUME 812

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

JULY 3, 2017 TO JULY 4, 2017

SUPREME COURT
MANILA
2018

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2018

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DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 191458. July 3, 2017]

CHINATRUST (PHILS.) COMMERCIAL BANK, *petitioner, vs.* **PHILIP TURNER,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; COURTS CANNOT GRANT A RELIEF NOT PRAYED FOR IN THE PLEADING OR IN EXCESS OF WHAT IS BEING SOUGHT BY THE PARTY.— The Regional Trial Court and the Court of Appeals erred in holding that petitioner was negligent in failing to immediately address respondent's queries and return his money and was consequently liable for the anguish suffered by respondent. They ruled on an issue that was not raised by respondent in the lower court, thereby violating petitioner's right to due process. It is an established principle that "courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by the party." The rationale for the rule was explained in *Development Bank of the Philippines v. Teston*, where this Court held that it is improper to enter an order which exceeds the scope of the relief sought by the pleadings x x x.

2. ID.; REVISED RULES ON SUMMARY PROCEDURE; PRELIMINARY CONFERENCE; THE DETERMINATION OF ISSUES AT THE PRELIMINARY CONFERENCE BARS THE CONSIDERATION OF OTHER QUESTIONS ON APPEAL.— The case was decided by the Metropolitan

Trial Court pursuant to the Revised Rules on Summary Procedure. Accordingly, no trial was conducted as, after the conduct of a preliminary conference, the parties were made to submit their position papers. There was, thus, no opportunity to present witnesses during an actual trial. However, Section 9 of the Revised Rules on Summary Procedure calls for the submission of witnesses' affidavits together with a party's position paper after the conduct of a preliminary conference x x x. The determination of issues at the preliminary conference bars the consideration of other questions on appeal. This is because under Section 9 x x x, the parties were required to submit their affidavits and other evidence *on the factual issues as defined in the preliminary conference order*. Thus, either of the parties cannot raise a new factual issue on appeal, otherwise it would be unfair to the adverse party, who had no opportunity to present evidence against it.

3. **ID.; CIVIL PROCEDURE; APPEALS; ISSUES NOT RAISED IN THE TRIAL COURT MAY NOT BE RAISED FOR THE FIRST TIME ON APPEAL.—** Basic rules of fair play, justice, and due process require that arguments or issues not raised in the trial court may not be raised for the first time on appeal. x x x There is more reason for a reviewing court to refrain from resolving *motu proprio* an issue that was not even raised by a party. x x x [R]espondent's cause of action was anchored on the alleged non-remittance of the funds to his travel agency's account or *based on a breach of contract*. On appeal, however, the Regional Trial Court *motu proprio* found that petitioner was negligent in addressing respondent's concerns, which justified the award of damages against it. This was unfair to petitioner who had no opportunity to introduce evidence to counteract this new issue. The factual bases of this change of theory would certainly require presentation of further evidence by the bank in order to enable it to properly meet the issue raised.

4. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; RESCISSION OF CONTRACTS; A TELEGRAPHIC TRANSFER AGREEMENT COULD NO LONGER BE RESCINDED ONCE THE LOCAL BANK HAS FULLY EXECUTED THE TELEGRAPHIC TRANSFER; CASE AT BAR.—** [O]nce the amount represented by the telegraphic transfer order is credited to the account of the payee or appears in the name of the payee in the books of

the receiving bank, the ownership of the telegraphic transfer order is deemed to have been transmitted to the receiving bank. The local bank is deemed to have fully executed the telegraphic transfer and is no longer the owner of this telegraphic transfer order. It is undisputed that on September 13, 2004, the funds were remitted to Citibank-New York through petitioner's paying bank, Union Bank of California. Citibank-New York, in turn, credited Citibank-Cairo, Egypt, Heliopolis Branch. Moreover, it was established that the amount of US$430.00 was actually credited to the account of Min Travel on September 15, 2004, or merely two (2) days after respondent applied for the telegraphic transfer and even before petitioner received its "discrepancy notice" on September 17, 2004. Chinatrust is, thus, deemed to have fully executed the telegraphic transfer agreement and its obligation to respondent was extinguished. Hence, respondent could no longer ask for rescission of the agreement on September 22, 2004. When the funds were credited to the account of Min Travel at Citibank-Cairo, ownership and control of these funds were transferred to Min Travel. Thus, the funds could not be withdrawn without its consent.

APPEARANCES OF COUNSEL

Gonzaga Law Office for petitioner.
Beltran, Beltran, Rubrico, Koa & Mendoza for respondent.

D E C I S I O N

LEONEN, *J.*:

Issues that were not alleged or proved before the lower court cannot be decided for the first time on appeal. This rule ensures fairness in proceedings.

This Petition for Review assails the Court of Appeals' (a) December 14, 2009 Decision[1] affirming the Regional Trial

[1] *Rollo*, pp. 40-51. The Decision in CA G.R. SP No. 99491, was penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Hakim S. Abdulwahid and Jane Aurora C. Lantion of the Special Fourteenth Division of the Court of Appeals, Manila.

Court's Decision dated January 29, 2007 and (b) its March 2, 2010 Resolution[2] denying petitioner Chinatrust (Philippines) Commercial Bank's (Chinatrust) Motion for Reconsideration.[3] The Regional Trial Court set aside the Metropolitan Trial Court's dismissal[4] of the complaint. It ordered Chinatrust to restore to the account of respondent Philip Turner (Turner) the following amounts: 1) US$430 or ₱24,129.88, its peso equivalent as of September 13, 2004; and 2) US$30 or ₱1,683.48, its peso equivalent as of September 13, 2004. It also ordered Chinatrust to pay ₱20,000.00 as moral damages, ₱10,000.00 as exemplary damages, and ₱5,000.00 as attorney's fees.

On September 13, 2004, British national Turner initiated via Chinatrust-Ayala Branch the telegraphic transfer of US$430.00 to the account of "MIN TRAVEL/ESMAT AZMY, Account No. 70946017, Citibank, Heliopolis Branch" in Cairo, Egypt.[5] The amount was partial payment to Turner's travel agent for his and his wife's 11-day tour in Egypt.[6] Turner paid a service fee of US$30.00. Both amounts were debited from his dollar savings account with Chinatrust.[7]

On the same day, Chinatrust remitted the funds through the Union Bank of California, its paying bank, to Citibank-New York, to credit them to the bank account of Min Travel/Esmat Azmy in Citibank-Cairo, Egypt.[8]

On September 17, 2004, Chinatrust received Citibank-Cairo's telex-notice about the latter's inability to credit the funds it received because the "beneficiary name d[id] not match their

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[2] *Id*. at 60-61.

[3] *Id*. at 183-192.

[4] *Id.* at 165-167. The Decision dated January 15, 2006, in CIVIL CASE NO. 87471, was penned by Presiding Judge Rowena De Juan-Quinagoran of Branch 61, Metropolitan Trial Court, Makati City.

[5] *Id*. at 40-41.

[6] *Id*. at 10.

[7] *Id*. at 41.

[8] *Id*.

books (referred to as the 'discrepancy notice')."[9] In other words, the beneficiary's name "Min Travel/Esmat Azmy" given by Turner did not match the account name on file of Citibank-Cairo.[10] Chinatrust relayed this information to Turner on September 20, 2004, "the next succeeding business day."[11]

Chinatrust claimed that it relayed the discrepancy to Turner and requested him to verify from his beneficiary the correct bank account name.[12] On September 22, 2004, Turner allegedly informed Chinatrust that he was able to contact Esmat Azmy, who acknowledged receipt of the transferred funds. Turner, however, had to cancel his travel-tour because his wife got ill and requested from Chinatrust the refund of his money.[13]

According to Chinatrust, it explained to Turner that since the funds were already remitted to his beneficiary's account, they could no longer be withdrawn or retrieved without Citibank-Cairo's consent. Turner was, thus, advised to seek the refund of his payment directly from his travel agency.[14]

Turner allegedly insisted on withdrawing the funds from Chinatrust explaining that the travel agency would forfeit fifty percent (50%) as penalty for the cancellation of the booking, as opposed to the minimal bank fees he would shoulder if he withdrew the money through Chinatrust.[15] Hence, Chinatrust required Turner to secure, at least, his travel agency's written certification denying receipt of the funds so that it could act on his request. However, Turner purportedly failed to submit the required certification despite repeated reminders.[16]

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[9] *Id*. at 45.

[10] *Id*.

[11] *Id.*

[12] *Id*. at 11.

[13] *Id*. at 11-12.

[14] *Id.* at 12.

[15] *Id*.

[16] *Id*.

On October 28, 2004, Chinatrust received Citibank-Cairo's Swift telex reply, which confirmed receipt of Chinatrust's telegraphic funds transfer and its credit to the bank account of Min Travel, not "Min Travel/Esmat Azmy" as indicated by the respondent, as early as September 15, 2004.[17] This information was relayed to Turner on October 29, 2004.[18]

Despite this official confirmation, Turner allegedly continued to insist on his demand for a refund.[19]

On March 7, 2005, Turner filed a Complaint[20] against Chinatrust before the Metropolitan Trial Court of Makati City, demanding the refund of his telegraphic transfer of ₱24,129.88 plus damages.[21]

Upon further queries, Chinatrust received another telex on September 28, 2005 from Citibank-Cairo confirming again and acknowledging receipt of Turner's remittance and its credit to the account of Min Travel on September 15, 2004.[22]

After the parties had submitted their respective position papers in accordance with the Rules on Summary Procedure, the Metropolitan Trial Court of Makati City, Branch 61 rendered a Decision[23] on January 15, 2006, dismissing Turner's complaint for lack of merit as well as Chinatrust's counterclaim. The Metropolitan Trial Court found sufficient evidence to prove that Chinatrust complied with its contractual obligation to transmit the funds to Citibank-Cairo and that these funds were actually credited to the intended beneficiary's account.[24]

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[17] *Id*.

[18] *Id*. at 43 and 175.

[19] *Id*. at 14.

[20] *Id*. at 81-85. The case was docketed as Civil Case No. 87471.

[21] *Id*. at 83.

[22] *Id*. at 13.

[23] *Id*. at 165-167.

[24] *Id*. at 166-167.

Turner filed an appeal. On the substantive matters, Turner argued that the Metropolitan Trial Court erred in ruling that he had no basis in claiming a refund from Chinatrust and in not awarding him damages and attorney's fees.[25]

Branch 137, Regional Trial Court of Makati City rendered a Decision[26] on January 29, 2007, reversing and setting aside the decision of the Metropolitan Trial Court. While it agreed with the Metropolitan Trial Court's findings that the funds had been deposited to the account of the beneficiary as early as September 15, 2004, the Regional Trial Court ruled that this was not sufficient basis to absolve Chinatrust of any responsibility.[27] The trial court found insufficient evidence to show that Chinatrust was not negligent in the performance of its obligation under the telegraphic transfer agreement. It held that no "discrepancy notice" from Citibank-Cairo was even presented in evidence.[28]

The Regional Trial Court further held that Chinatrust failed to render its services in a manner that could have mitigated, if not prevented, the monetary loss, emotional stress, and mental anguish that Turner suffered for six (6) weeks while waiting for his intended beneficiary's confirmation of receipt of his money.[29] Hence, Chinatrust was found liable for the monetary loss suffered by Turner and for damages. The Decision disposed as follows:

WHEREFORE, in view of all the foregoing, the Decision of the Metropolitan Trial Court of Makati City, Branch 61, in Civil Case No. 87471, is hereby REVERSED and SET ASIDE, and a new one entered finding for plaintiff-appellant PHILIP TURNER, and against defendant-appellee CHINA TRUST (PHILS.) COMMERCIAL BANK CORPORATION by ordering the latter to pay, or restore to PHILIP TURNER's account with said Bank, the following amounts:

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[25] *Id*. at 172.

[26] *Id*. at 168-182.

[27] *Id*. at 175.

[28] *Id*. at 175 & 178.

[29] *Id*. at 181-182.

(1) US $ 430.00 or ₱24,129.88, the Peso equivalent at the rate of ₱56.1160/US $1.00, as of 13 September 2004; and

(2) US $ 30.00 or ₱1,683.48, the Peso equivalent at the rate of ₱56.1160/US $1.00, as of 13 September 2004.

The defendant-appellee bank is further ordered to pay plaintiff-appellant Philip Turner ₱20,000.00 as and for moral damages; ₱10,000.00 as and for exemplary damages; and ₱5,000.00 as and for reasonable attorney's fees.

SO ORDERED.[30]

Chinatrust filed a motion for reconsideration, but it was denied by the Regional Trial Court in a Resolution[31] dated June 4, 2007.

On July 4, 2007, Chinatrust filed a Petition for Review[32] under Rule 42 of the 1997 Rules of Civil Procedure before the Court of Appeals.

In its Decision[33] dated December 14, 2009, the Court of Appeals dismissed the petition and upheld the decision of the Regional Trial Court. Chinatrust's subsequent Motion for Reconsideration[34] was likewise denied in the Court of Appeals' Resolution[35] dated March 2, 2010.

Hence, this Petition[36] was filed. In compliance with this Court's directive, respondent filed his Comment,[37] to which petitioner filed its Reply.[38]

Petitioner stresses that based on the allegations in the Complaint, the real issue is "whether or not the petitioner-bank

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[30] *Id*. at 182.

[31] *Id*. at 193-198.

[32] *Id*. at 62-80. The appeal was docketed as CA-G.R. No. 99491.

[33] *Id*. at 40-51.

[34] *Id*. at 52-59.

[35] *Id*. at 60-61.

[36] *Id*. at 8-39.

[37] *Id*. at 209-217.

[38] *Id*. at 218-224.

has legally complied with its contractual obligation with respondent in remitting his telegraphic fund to the latter's beneficiary account with Citibank-Cairo."[39] It reasons that as respondent has failed to prove his allegation that his telegraphic transfer funds were not received or credited to his intended beneficiary's Citibank-Cairo account, the Court of Appeals should have dismissed respondent's complaint.[40]

Instead, the Court of Appeals adjudged petitioner liable for negligence: (1) when it did not immediately refund the telexed funds to respondent upon receipt of the discrepancy notice from Citibank-Cairo; and (2) when it did not immediately relay to Citibank-Cairo respondent's demand for the cancellation of the transaction.[41] According to petitioner, this was erroneous because the Court of Appeals ruled upon matters not alleged in the complaint or raised as an issue[42] and awarded damages not prayed for in the complaint.[43]

Petitioner further argues that respondent demanded for the return of his money long after—and not immediately after—he was informed of the discrepancy in the beneficiary's name. Moreover, respondent made the demand (1) only because he had changed his mind about the tour because his wife was ill, (2) after he had personally known that his beneficiary had received the transferred funds, and (3) to avoid the 50% forfeiture penalty.[44]

Petitioner adds that Article 1172 of the Civil Code was erroneously applied by the Court of Appeals because this provision refers to an obligor's negligence in performing the obligation. Here, the "acts of negligence" attributed to petitioner

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[39] *Id*. at 19.

[40] *Id*. at 23.

[41] *Id*. at 25-32.

[42] *Id*. at 24.

[43] *Id*. at 23.

[44] *Id*. at 26.

were those that transpired after it had fully performed its obligation to transfer the funds.[45]

Finally, petitioner contends that the Court of Appeals erred "when it unjustly enriched the respondent by making the petitioner liable to refund the amount already legally transferred to, and received by respondent's beneficiary, for his benefit."[46]

Respondent counters that the issues raised by petitioner are factual, which are not reviewable by this Court.[47] He further denies that he disclosed to the petitioner that he was able to contact his travel agency, which admitted that it had received the funds. On the contrary, respondent avers that he "demanded for the return of his money when the petitioner informed him that the funds could not be deposited to the beneficiary account."[48]

The issues for resolution are:

First, whether the Court of Appeals erred in affirming the Regional Trial Court's Decision, granting the refund of respondent's US$430.00 telegraphic funds transfer despite its successful remittance and credit to respondent's beneficiary Min Travel's account with Citibank-Cairo;

Second, whether petitioner Chinatrust (Philippines) Commercial Bank was negligent in the performance of its obligation under the telegraphic transfer agreement; and

Finally, whether the subsequent acts of petitioner after compliance with its obligation can be considered "negligent" to justify the award of damages by the Regional Trial Court, as affirmed by the Court of Appeals.

I

The Regional Trial Court and the Court of Appeals erred in holding that petitioner was negligent in failing to immediately

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[45] *Id*. at 33.

[46] *Id*.

[47] *Id*. at 210.

[48] *Id*. at 214.

address respondent's queries and return his money and was consequently liable for the anguish suffered by respondent. They ruled on an issue that was not raised by respondent in the lower court, thereby violating petitioner's right to due process.

It is an established principle that "courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by the party."[49] The rationale for the rule was explained in *Development Bank of the Philippines v. Teston,*[50] where this Court held that it is improper to enter an order which exceeds the scope of the relief sought by the pleadings:

> The Court of Appeals erred in ordering [Development Bank of the Philippines] to return to respondent "the ₱1,000,000.00" alleged down payment, a matter not raised in respondent's Petition for Review before it. In *Jose Clavano, Inc. v. Housing and Land Use Regulatory Board,* this Court held:
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> > **It is elementary that a judgment must conform to, and be supported by, both the pleadings and the evidence, and must be in accordance with the theory of the action on which the pleadings are framed and the case was tried. The judgment must be *secudum allegata et probata.***
>
> Due process considerations justify this requirement. It is improper to enter an order which exceeds the scope of relief sought by the pleadings, absent notice which affords the opposing party an opportunity to be heard with respect to the proposed relief. The fundamental purpose of the requirement that allegations of a complaint must provide the measure of recovery is to prevent surprise to the defendant.[51] (Emphasis supplied, citations omitted)

The bank's supposed negligence in the handling of respondent's concerns was not among respondent's causes of action and was never raised in the Metropolitan Trial Court. Respondent's cause of action was based on the theory that the

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[49] *Diona v. Balangue*, 701 Phil. 19, 31 (2013) [Per *J.* Del Castillo, Second Division].

[50] 569 Phil. 137 (2008) [Per *J.* Carpio-Morales, Second Division].

[51] *Id*. at 144.

telexed funds transfer did not materialize, and the relief sought was limited to the refund of his money and damages as a result of the purported non-remittance of the funds to the correct beneficiary account.[52]

"[T]he purpose of an action . . . and the law to govern it . . . is to be determined . . . by the complaint itself, its allegations and the prayer for relief."[53] The complaint states "the theory of a cause of action which forms the bases of the plaintiff's claim of liability."[54]

A review of the Complaint filed before the Metropolitan Trial Court reveals that respondent originally sued upon a breach of contract consisting in the alleged failure of petitioner to remit the funds to his travel agency's account in Cairo-Egypt.

Respondent's cause of action was based on paragraphs 5 and 6 of his Complaint:

> 5. That after a few days, the plaintiff verified from the defendant whether the telegraphic transfer was sent but the plaintiff was told that the fund was not applied to the intended account number and name as "THE BENE TITLE DOES NOT MATCH WITH THEIR BOOKS";
>
> 6. That the plaintiff talked with the President of the defendant and asked what was meant by that and was told that they did not succeed in sending the telegraphic transfer to the beneficiary account[.][55]

Respondent further alleged:

> 10. That because of the refusal of the defendant to return the amounts given by the plaintiff, *the latter suffered sleepless nights,*

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[52] *Rollo,* pp. 82-83.

[53] *Heirs of Vda. de Vega v. Court of Appeals,* 276 Phil. 177, 186 (1991) [Per *J.* Medialdea, First Division] citing *Rone, et al. v. Claro, et al.,* 91 Phil. 250 (1952) [Per *J.* Montemayor, *En Banc*].

[54] *Tantuico, Jr. v. Republic,* 281 Phil. 487, 495 (1991) [Per *J.* Padilla, *En Banc*].

[55] *Rollo*, p. 82.

worry and anxiety because of his fear that he lost the money that he entrusted to the defendant for transfer to the beneficiary account for which the plaintiff should be awarded moral damages on the amount of ₱20,000.00;

11. That *the defendant was guilty of gross negligence in failing to comply with its obligation to send the telegraphic transfer to the intended beneficiary account*;

12. That by way of example, the defendant should be ordered to pay exemplary damages in the amount of ₱20,000.00.[56] (Emphasis supplied)

In both his Complaint and Position Paper,[57] respondent anchored his claim for refund and damages on the "discrepancy notice" and the manager's explanation that the funds were not successfully credited to the beneficiary's account. Respondent demanded for the return of his money having the impression that the bank was not successful in remitting it.

The parties' pleadings and position papers submitted before the Metropolitan Trial Court raised the factual issue of whether petitioner had complied with its obligation to remit the funds of the respondent to his intended beneficiary's account with Citibank-Cairo. They likewise raised the legal issue of whether respondent was entitled to rescind the contract.

Furthermore, during the preliminary conference, the following issues were defined: (a) "whether or not the amount was remitted to the correct beneficiary's account," and (b) "whether or not the parties are entitled to their respective claims."[58] This does not include the issue of negligence on the part of petitioner in attending to respondent's queries or the purported one (1)-month delay in the confirmation of the remittance.

The case was decided by the Metropolitan Trial Court pursuant to the Revised Rules on Summary Procedure.[59] Accordingly,

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[56] *Id*. at 83.

[57] *Id*. at 105-117.

[58] *Id*. at 166.

[59] *Id*. at 171.

no trial was conducted as, after the conduct of a preliminary conference, the parties were made to submit their position papers.[60] There was, thus, no opportunity to present witnesses during an actual trial. However, Section 9 of the Revised Rules on Summary Procedure calls for the submission of witnesses' affidavits together with a party's position paper after the conduct of a preliminary conference:

> Section 9. *Submission of Affidavits and Position Papers*. — Within ten (10) days from receipt of the order mentioned in the next preceding section, the parties shall submit the affidavits of their witnesses and other evidence on the factual issues defined in the order, together with their position papers setting forth the law and the facts relied upon by them.

The determination of issues at the preliminary conference bars the consideration of other questions on appeal.[61] This is

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[60] *Id*. at 166.

[61] See *Land Bank of the Phils. v. Oñate,* 724 Phil. 564 (2014) [Per *J*. Del Castillo, Second Division].

REV. SUMMARY PROC. RULE, Secs. 7 and 8 provides:

Section 7. Preliminary conference; Appearance of parties. — Not later than thirty (30) days after the last answer is filed, a preliminary conference shall be held. The rules on pre-trial in ordinary cases shall be applicable to the preliminary conference unless inconsistent with the provisions of this Rule.

. . . . . .

Section 8. Record of Preliminary Conference. — Within five (5) days after the termination of the preliminary conference, the court shall issue an order stating the matters taken up therein, including but not limited to:

a) Whether the parties have arrived at an amicable settlement, and if so, the terms thereof;
b) The stipulations or admissions entered into by the parties;
c) Whether, on the basis of the pleadings and the stipulations and admissions made by the parties, judgment may be rendered without the need of further proceedings, in which event the judgment shall be rendered within thirty (30) days from issuance of the order;
d) A clear specification of material facts which remain controverted; and
e) Such other matters intended to expedite the disposition of the case.

See *Spouses Martinez v. De la Merced,* 255 Phil. 871, 877 (1989) [Per *J*. Gancayco, First Division]). The preliminary conference under the Rule on

because under Section 9 above, the parties were required to submit their affidavits and other evidence *on the factual issues as defined in the preliminary conference order*. Thus, either of the parties cannot raise a new factual issue on appeal, otherwise it would be unfair to the adverse party, who had no opportunity to present evidence against it.

II

The Metropolitan Trial Court correctly absolved petitioner from liability and dismissed the complaint upon its finding that the bank had duly proven that it had complied with its obligation under the telegraphic transfer. It found that despite the earlier advice of Citibank-Cairo that the beneficiary name did not match their files, Chinatrust and respondent Turner were subsequently informed that the amount sent had been credited to the account of the beneficiary as early as September 15, 2004.[62]

However, on appeal, the Regional Trial Court reversed the dismissal of the complaint. While the Regional Trial Court affirmed the court *a quo*'s ruling that indeed the funds were credited to the intended beneficiary's account, it went further and touched upon an issue that was beyond the cause of action framed by the respondent. It adjudged petitioner liable not because it failed to perform its obligation to remit the funds but because it purportedly did not exercise due diligence in attending to respondent's queries and demands with regard to the telegraphic funds transfer. Specifically, it found petitioner negligent in its failure to promptly inform respondent that the money was, in fact, credited to the account of the beneficiary.[63] According to the Regional Trial Court, "it is but right that the [petitioner] bank be held liable for the monetary loss, as well as the emotional stresses and mental anguish that [respondent]

Summary Procedure is similar to the provision on "pre-trial" under the Rules of Court in that "both provisions are essentially designed to promote amicable settlement or to avoid or simplify the trial."

[62] *Rollo,* pp. 166-167.

[63] *Id*. at 178-179.

Turner had to go through as a result thereof."[64] Hence, the Regional Trial Court awarded respondent's claims for refund and damages.

The Regional Trial Court also faulted the petitioner for not submitting in evidence the "discrepancy notice," which according to the trial court "puts the . . . bank's position in a cloud of doubt."[65]

Contrary to the observation of the Regional Trial Court, however, the discrepancy notice's existence and content were not the core of the controversy. In fact, they were never put in issue. The discrepancy notice only came up because it was the basis for Turner's claim for refund insisting that the funds were not credited to his travel agency's account. Hence, it is understandable that both parties did not present it in evidence.

Similarly, the purported negligence of the bank personnel in attending to his concerns was neither raised by respondent in any of his pleadings nor asserted as an issue in the preliminary conference. Hence, it was improper for the Regional Trial Court to consider this issue on negligence in determining the respective claims of the parties.

Basic rules of fair play, justice, and due process require that arguments or issues not raised in the trial court may not be raised for the first time on appeal.[66]

In *Philippine Ports Authority v. City of Iloilo:*[67]

As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be

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[64] *Id*. at 180.

[65] *Id*. at 175.

[66] *Vitug v. Abuda,* G.R. No. 201264, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/201264.pdf> 7 [Per *J*. Leonen, Second Division]; *Maxicare PCIB CIGNA Healthcare v. Contreras,* 702 Phil. 688, 696 (2013) [Per *J*. Mendoza, Third Division].

[67] 453 Phil. 927 (2003) [Per *J*. Azcuna, First Division].

permitted to change theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. Basic considerations of due process underlie this rule. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court. To permit petitioner in this case to change its theory on appeal would thus be unfair to respondent, and offend the basic rules of fair play, justice and due process.[68] (Citations omitted)

There is more reason for a reviewing court to refrain from resolving *motu proprio* an issue that was not even raised by a party. This Court has previously declared that:

"[C]ourts of justice have no jurisdiction or power to decide a question not in issue" and that a judgment going outside the issues and purporting to adjudicate something upon which the parties were not heard is not merely irregular, but extrajudicial and invalid.[69] (Citations omitted)

As pointed out earlier, respondent's cause of action was anchored on the alleged non-remittance of the funds to his travel agency's account or *based on a breach of contract.*

On appeal, however, the Regional Trial Court *motu proprio* found that petitioner was negligent in addressing respondent's concerns, which justified the award of damages against it. This was unfair to petitioner who had no opportunity to introduce evidence to counteract this new issue. The factual bases of this change of theory would certainly require presentation of further evidence by the bank in order to enable it to properly meet the issue raised.

III

The Regional Trial Court and the Court of Appeals erred in awarding damages to respondent.

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[68] *Id.* at 934-935.

[69] *Bernas v. Court of Appeals,* 296-A Phil. 90, 140 (1993) [Per *J.* Padilla, *En Banc*].

Petitioner was not remiss in the performance of its contractual obligation to remit the funds. It was established that the funds were credited to the account of Min Travel on September 15, 2004, or two (2) days from respondent's application.[70]

Petitioner cannot likewise be faulted for the discrepancy notice sent by Citibank-Cairo, assuming there was a mistake in its sending. It merely relayed its contents to respondent. Citibank-Cairo is not an agent of petitioner but a beneficiary bank designated by respondent, upon the instruction of the beneficiary, Min Travel.

The Regional Trial Court, as affirmed by the Court of Appeals, found petitioner negligent in addressing the concerns and queries of respondent. It specifically faulted petitioner for failure to submit any letters, tracers, cables, or other evidence of communication sent to Citibank-Cairo to inquire about the status of the remittance and adjudged petitioner liable for the anxieties suffered by respondent.[71]

The rule that factual findings of the Court of Appeals are not reviewable by this Court is subject to certain exceptions such as when there is a misapprehension of facts and when the conclusions are contradicted by the evidence on record.[72] Here,

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[70] *Id*. at 175.

[71] *Id*. at 177-178.

[72] THE INTERNAL RULES OF THE SUPREME COURT, Rule 3, Sec. 4 enumerates the following exceptions:

Section 4. *Cases when the Court May Determine Factual Issues.* – The Court shall respect the factual findings of lower courts, unless any of the following situations is present:

(a) the conclusion is a finding grounded entirely on speculation, surmise and conjecture;
(b) the inference made is manifestly mistaken;
(c) there is grave abuse of discretion;
(d) the judgment is based on a misapprehension of facts;
(e) the findings of fact are conflicting;
(f) the collegial appellate courts went beyond the issues of the case, and their findings are contrary to the admissions of both appellant and appellee;

there is insufficient evidence to show negligence on the part of petitioner.

The one (1)-month delay in receiving the telex reply from Citibank-Cairo does not sufficiently prove petitioner's fault or negligence, especially since "[p]etitioner's communications were coursed thru a third-party-correspondent bank, Union Bank of California."[73]

Furthermore, the lower courts overlooked the fact that respondent knew all along, or as early as September 22, 2004, that his funds were already received by his beneficiary. Despite this, he insisted on demanding the retrieval of the funds after he opted not to pursue with his travel abroad.

Respondent did not specifically deny paragraphs 8 and 9 of petitioner's Answer with Counterclaims, which alleged the following:

> 8. However, on September 22, 2004, the Plaintiff, despite being aware that his foregoing remittance was already received by the beneficiary MIN TRAVEL, changed his mind, and stated that he will no longer push though with his tour travel, and thus, requested for the retrieval of said funds. Defendant relayed said request through the foregoing channel to Citibank-Cairo. Considering that said fund was already transferred, Citibank-Cairo refused to honor said request, and consider the transmittal closed and accomplished;

(g) the findings of fact of the collegial appellate courts are contrary to those of the trial court;
(h) said findings of fact are conclusions without citation of specific evidence on which they are based;
(i) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents;
(j) the findings of fact of the collegial appellate courts are premised on the supposed evidence, but are contradicted by the evidence on record; and
(k) all other similar and exceptional cases warranting a review of the lower courts' findings of fact. (Emphasis supplied)

See *Bank of the Philippine Islands v. Suarez,* 629 Phil. 305 (2010) [Per *J.* Carpio, Second Division].

[73] *Rollo*, p. 32.

> 9. Plaintiff, however, insisted on demanding refund of said amount from the Defendant, who politely denied such demand, and repeatedly explained to the Plaintiff that Citibank-Cairo will not honor such request, and that there is nothing that the Defendant can do under the circumstances[.][74]

The Affidavit of Rosario C. Astrologo (Astrologo), Branch Service Head, Chinatrust-Ayala Branch, was never rebutted by respondent by submitting his counter evidence. Portions of it stated:

> 7. On September 22, 2004, when he visited our branch office, which he has been doing almost everyday, he mentioned to our Ms. Rina Chua, the bank's Senior Service Assistant, Ayala Branch, that he [was] able to contact Mr. Esmat Azmy who already confirmed having received the said remittance;
>
> 8. When I also talked to him, also on the same date, he, stated that he changed his mind and will no longer push through with his said travel because his wife, who is supposed to accompany him, became sick, injured, or something to such effect. He also mentioned that if he will cancel his travel agreement, the travel agency will only return to him fifty [percent] (50%) of his foregoing down-payment, but if he will be able to retrieve and withdraw such remittance from the bank, he will only pay the bank charges, which is minimal. He, therefore, insisted, that said fund be withdrawn and returned to him by the bank;
>
> 9. He was also told that if such fund was already received by the travel agency and credited to its bank account of said travel agency at Citibank, it cannot be returned anymore, and I advised him to contact his travel agency and negotiate for the refund of his entire proceeds. I do not know if he later made such plea to his travel agency for we were not told what happened later. I promised, however, that we will relay his request for its retrieval of such fund to Citibank, which we did thru various telexes[.][75]

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[74] *Id*. at 89.

[75] *Id*. at 163.

The successful remittance was later confirmed by the telex-reply from Citibank-Cairo on October 28, 2004, stating that the funds were credited to the account of Min Travel on September 15, 2004.[76] This telex-reply confirms that petitioner indeed made a follow up with Citibank-Cairo regarding the status of respondent's funds.

Moreover, the refusal of petitioner's personnel to accede to respondent's demand for a refund cannot be considered an actionable wrong. Their refusal was due primarily to lack of information or knowledge of the effective cancellation of the remittance and not from a deliberate intent to ignore or disregard respondent's rights. When respondent insisted on asking for the refund, he was repeatedly requested to submit a certification or, at least, a written denial from his beneficiary that the funds were not in fact received. They cannot be faulted for wanting to verify with Citibank-Cairo the status of the remittance before acting upon his request, especially since the funds have actually been received by Citibank-Cairo. The written denial would also be the basis for petitioner's demand upon Citibank-Cairo.

The Court of Appeals erred in ruling that petitioner had the duty to immediately return the money to Turner together with the service fee upon the first instance that it relayed the discrepancy notice to him. Turner could no longer rescind the telegraphic transfer agreement.

In *Republic of the Philippines v. Philippine National Bank,*[77] this Court described the nature of a telegraphic transfer agreement:

> "[C]redit" in its usual meaning is a sum credited on the books of a company to a person who appears to be entitled to it. It presupposes a creditor-debtor relationship, and may be said to imply ability, by reason of property or estates, to make a promised payment.
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> . . . . . .

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[76] *Id*. at 12 and 175.

[77] 113 Phil. 828 (1961) [Per *J.* Bautista Angelo, Second Division].

> [A]s the transaction is for the establishment of a telegraphic or cable transfer, the agreement to remit creates a contractual obligation and has been termed a purchase and sale transaction (9 C.J.S. 368). The purchaser of a telegraphic transfer upon making payment completes the transaction insofar as he is concerned, *though insofar as the remitting bank is concerned the contract is executory until the credit is established.*[78]

Thus, once the amount represented by the telegraphic transfer order is credited to the account of the payee or appears in the name of the payee in the books of the receiving bank, the ownership of the telegraphic transfer order is deemed to have been transmitted to the receiving bank. The local bank is deemed to have fully executed the telegraphic transfer and is no longer the owner of this telegraphic transfer order.

It is undisputed that on September 13, 2004, the funds were remitted to Citibank-New York through petitioner's paying bank, Union Bank of California. Citibank-New York, in turn, credited Citibank-Cairo, Egypt, Heliopolis Branch.

Moreover, it was established that the amount of US$430.00 was actually credited to the account of Min Travel on September 15, 2004,[79] or merely two (2) days after respondent applied for the telegraphic transfer and even before petitioner received its "discrepancy notice" on September 17, 2004. Chinatrust is, thus, deemed to have fully executed the telegraphic transfer agreement and its obligation to respondent was extinguished.[80] Hence, respondent could no longer ask for rescission of the agreement on September 22, 2004.

When the funds were credited to the account of Min Travel at Citibank-Cairo, ownership and control of these funds were transferred to Min Travel. Thus, the funds could not be withdrawn without its consent.

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[78] *Id*. at 830-831 and 833-834.

[79] *Id*. at 12 and 175.

[80] CIVIL CODE, Art. 1231.

The Court of Appeals, in affirming the decision of the Regional Trial Court, held that petitioner was obliged to immediately return the money to respondent as early as September 17, 2004 when it received the "discrepancy notice" from Citibank-Cairo.[81] It held that petitioner's failure to do so even upon respondent's demand constituted an actionable negligence under Article 1172.[82]

The Court of Appeals misappreciated the true import of the discrepancy notice when it held that the notice was an "effective cancellation of the remittance by the Citibank-Cairo"[83] that gave rise to the legal obligation of petitioner to return the funds to respondent.

The discrepancy notice does not mean that the funds were not received by the beneficiary bank. On the contrary, what it implies is that these funds were actually received by Citibank-Cairo but it could not apply it because the account name of the beneficiary indicated in the telex instruction does not match the account name in its books. In short, it cannot find in its file the beneficiary account name "Min Travel/Esmat Azmy" pursuant to the telex instruction, for which reason, Citibank-Cairo asked for clarifications. Petitioner, in turn, had to clarify from respondent, because it was respondent himself, upon instruction of his travel agency, who indicated such beneficiary's name in his telegraphic transfer form. True enough, as later shown, the beneficiary account name was not "Min Travel/ Esmat Azmy" but only "Min Travel." Petitioner, therefore, had nothing to do with the mismatch of the beneficiary name and could not be made liable for it.

The information initially relayed by Citibank-Cairo and received by petitioner on September 17, 2004—that the funds were not applied to the intended account because the beneficiary name did not match its books—proved to be no longer true.

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[81] *Rollo,* p. 46.

[82] *Id.* at 49.

[83] *Id.* at 46.

This is because Citibank-Cairo later confirmed that respondent's remittance was duly credited to the account of Min Travel on September 15, 2004.

As stated earlier, respondent's request for retrieval of the funds was because he changed his mind about the travel rather than the discrepancy notice sent by Citibank-Cairo. The Affidavit of Astrologo was never refuted.

The tour travel arrangement, which brought about the remittance of the funds, is a separate and private arrangement between respondent and Min Travel. Respondent's change of mind and claim for refund, therefore, should have been properly addressed to Min Travel, which already had possession of the funds and not to petitioner, who was not privy to the arrangement.

WHEREFORE, the Petition is **GRANTED**. The Court of Appeals' Decision dated December 14, 2009 and Resolution dated March 2, 2010 are set aside and the Decision dated January 15, 2006 of the Metropolitan Trial Court, Branch 61, Makati City is reinstated.

SO ORDERED.

Peralta[*] *(Acting Chairperson), Mendoza,* and *Martires, JJ.,* concur.

Carpio, J., on official leave.

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[*] Designated Acting Chairperson per S.O. No. 2445 dated June 16, 2017.

SECOND DIVISION

[G.R. No. 204544. July 3, 2017]

MARLON BACERRA *y* TABONES, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE, DISTINGUISHED.— Direct evidence and circumstantial evidence are classifications of evidence with legal consequences. The difference between direct evidence and circumstantial evidence involves the relationship of the fact inferred to the facts that constitute the offense. Their difference does not relate to the probative value of the evidence. Direct evidence proves a challenged fact without drawing any inference. Circumstantial evidence, on the other hand, "indirectly proves a fact in issue, such that the factfinder must draw an inference or reason from circumstantial evidence."

2. ID.; ID.; ID.; DIRECT EVIDENCE; NOT GREATER OR SUPERIOR TO CIRCUMSTANTIAL EVIDENCE AS TO PROBATIVE VALUE.— The probative value of direct evidence is generally neither greater than nor superior to circumstantial evidence. The Rules of Court do not distinguish between "direct evidence of fact and evidence of circumstances from which the existence of a fact may be inferred." The same quantum of evidence is still required. Courts must be convinced that the accused is guilty beyond reasonable doubt. A number of circumstantial evidence may be so credible to establish a fact from which it may be inferred, beyond reasonable doubt, that the elements of a crime exist and that the accused is its perpetrator. There is no requirement in our jurisdiction that only direct evidence may convict. After all, evidence is always a matter of reasonable inference from any fact that may be proven by the prosecution provided the inference is logical and beyond reasonable doubt.

3. ID.; ID.; ID.; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT FOR CONVICTION.— Rule 113, Section 4

of the Rules on Evidence provides three (3) requisites that should be established to sustain a conviction based on circumstantial evidence: "Section 4. *Circumstantial evidence, when sufficient*. — Circumstantial evidence is sufficient for conviction if: (a) There is more than one circumstance; (b) The facts from which the inferences are derived are proven; and (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt."

4. **ID.; ID.; ID.; ID.; THE DETERMINATION OF WHETHER CIRCUMSTANTIAL EVIDENCE IS SUFFICIENT TO SUPPORT A FINDING OF GUILT IS A QUALITATIVE TEST NOT A QUANTITATIVE ONE.—** The commission of a crime, the identity of the perpetrator, and the finding of guilt may all be established by circumstantial evidence. The circumstances must be considered as a whole and should create an unbroken chain leading to the conclusion that the accused authored the crime. The determination of whether circumstantial evidence is sufficient to support a finding of guilt is a qualitative test not a quantitative one. The proven circumstances must be "consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt."

5. **CRIMINAL LAW; REVISED PENAL CODE; MITIGATING CIRCUMSTANCES; INTOXICATION; TO BE APPRECIATED, THERE MUST BE PROOF OF THE FACT OF INTOXICATION AND THE EFFECT OF INTOXICATION ON THE ACCUSED.—** For intoxication to be appreciated as a mitigating circumstance, the intoxication of the accused must neither be "habitual [n]or subsequent to the plan to commit [a] felony." Moreover, it must be shown that the mental faculties and willpower of the accused were impaired in such a way that would diminish the accused's capacity to understand the wrongful nature of his or her acts. The bare assertion that one is inebriated at the time of the commission of the crime is insufficient. There must be proof of the fact of intoxication and the effect of intoxication on the accused. There is no sufficient evidence in this case that would show that petitioner was intoxicated at the time of the commission of the crime. A considerable amount of time had lapsed from petitioner's drinking spree up to the burning of the nipa hut

within which he could have regained control of his actions. Hence, intoxication cannot be appreciated as a mitigating circumstance in this case.

6. **ID.; ID.; ID.; VOLUNTARY SURRENDER; THE ACCUSED'S ACT OF SURRENDERING TO THE AUTHORITIES MUST HAVE BEEN IMPELLED BY THE ACKNOWLEDGMENT OF GUILT OR A DESIRE TO SAVE THE AUTHORITIES THE TROUBLE AND EXPENSE THAT MAY BE INCURRED FOR HIS SEARCH AND CAPTURE.—** Voluntary surrender, as a mitigating circumstance, requires an element of spontaneity. The accused's act of surrendering to the authorities must have been impelled by the acknowledgment of guilt or a desire to "save the authorities the trouble and expense that may be incurred for his [or her] search and capture. Based on the evidence on record, there is no showing that petitioner's act of submitting his person to the authorities was motivated by an acknowledgement of his guilt.

7. **CIVIL LAW; CIVIL CODE; DAMAGES; TEMPERATE DAMAGES; MAY BE AWARDED WHEN THERE IS A FINDING THAT SOME PECUNIARY LOSS HAS BEEN SUFFERED BUT ITS AMOUNT CANNOT, FROM THE NATURE OF THE CASE, BE PROVED WITH CERTAINTY.—** Under Article 2224 of the Civil Code, temperate damages may be awarded when there is a finding that "some pecuniary loss has been suffered but its amount [cannot], from the nature of the case, be proved with certainty." The amount of temperate damages to be awarded in each case is discretionary upon the courts as long as it is "reasonable under the circumstances." Private complainant clearly suffered some pecuniary loss as a result of the burning of his nipa hut. However, private complainant failed to substantiate the actual damages that he suffered. Nevertheless, he is entitled to be indemnified for his loss. The award of temperate damages amounting to ₱50,000.00 is proper and reasonable under the circumstances.

APPEARANCES OF COUNSEL

Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

The identity of the perpetrator of a crime and a finding of guilt may rest solely on the strength of circumstantial evidence.

This resolves the Petition for Review[1] assailing the Decision[2] dated August 30, 2012 and the Resolution[3] dated October 22, 2012 of the Court of Appeals in CA-G.R. CR No. 32923, which upheld the conviction of Marlon Bacerra y Tabones (Bacerra) for the crime of simple arson punished under Section 1 of Presidential Decree No. 1613.[4]

In the Information dated January 12, 2006, Bacerra was charged with violation of Section 1 of Presidential Decree No. 1613:

> That on or about 4:00 o'clock in the morning of November 15, 2005, at Brgy. San Pedro Ili, Alcala, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, with intent to cause damage to another, did then and theres [sic], willfully, unlawfully and feloniously set fire to the rest house of Alfredo Melegrito y Galamay, to his damage and prejudice in the amount of Php70,000.00, more or less.
>
> Contrary to Sec. 1, 1st par. of P.D. 1613.[5]

Bacerra pleaded not guilty to the charge.[6]

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[1] *Rollo*, pp. 8-35.

[2] *Id*. at 36-51. The Decision was penned by Associate Justice Michael P. Elbinias and concurred in by Associate Justices Isaias P. Dicdican and Nina G. Antonio-Valenzuela of the Thirteenth Division, Court of Appeals, Manila.

[3] *Id*. at 65.

[4] Pres. Decree No. 1613, Sec. 1 provides:

> Section 1. *Arson*. – Any person who burns or sets fire to the property of another shall be punished by *Prision Mayor*.
>
> The same penalty shall be imposed when a person sets fire to his own property under circumstances which expose to danger the life or property of another.

[5] *Id*. at 37.

[6] *Id*.

During trial, the prosecution presented private complainant Alfredo Melegrito (Alfredo), Edgar Melegrito (Edgar), Toni Rose dela Cruz, and PO3 Marcos Bautista, Jr. to testify on the alleged incident.[7] Their collective testimonies produced the following facts for the prosecution:

Alfredo and his family[8] were sound asleep in their home on November 15, 2005.[9] At about 1:00 a.m., he was roused from sleep by the sound of stones hitting his house. Alfredo went to the living room[10] and peered through the jalousie window. The terrace light allowed him to recognize his neighbor and co-worker,[11] Bacerra.[12]

Bacerra threw stones at Alfredo's house while saying, "Vulva of your mother."[13] Just as he was about to leave, Bacerra exclaimed, "[V]ulva of your mother, Old Fred, I'll burn you now."[14] Bacerra then left.[15] Alfredo's son, Edgar, also witnessed the incident through a window in his room.[16]

Troubled by Bacerra's threat, Alfredo waited for him to return. Alfredo sat down beside the window.[17] At around 4:00 a.m.,[18] he heard dogs barking outside.[19] Alfredo looked out the window

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[7] *Id*.

[8] *Id*. at 130-131, TSN dated January 15, 2007.

[9] *Id*. at 37.

[10] *Id*. at 132.

[11] *Id*.

[12] *Id*. at 37.

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id*. at 160, TSN dated October 23, 2006.

[17] *Id*. at 137-138.

[18] *Id*. at 37.

[19] *Id*. at 138.

and saw Bacerra walking towards their nipa hut,[20] which was located around 10 meters from their house.[21]

Bacerra paced in front of the nipa hut and shook it.[22] Moments later, Alfredo saw the nipa hut burning.[23]

Alfredo sought help from his neighbors to smother the fire.[24] Edgar contacted the authorities for assistance[25] but it was too late. The nipa hut and its contents were completely destroyed.[26] The local authorities conducted an investigation on the incident.[27]

The defense presented Bacerra, Alex Dacanay (Dacanay), and Jocelyn Fernandez (Fernandez) as witnesses. Their collective testimonies yielded the defense's version of the incident:

At around 11:00 p.m. of November 14, 2005, Bacerra was at the house of his friend, Ronald Valencia. The two (2) engaged in a drinking session with Dacanay and a certain Reyson until 1:00 a.m. of November 15, 2005.[28]

Bacerra asked Dacanay to take him to his grandmother's house. Dacanay conceded but they found the gate closed.[29] Embarrassed to disturb his grandmother,[30] Bacerra asked Dacanay to bring

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[20] *Id*. at 37.

[21] *Id*. at 37-38.

[22] *Id*. at 38.

[23] *Id*.

[24] *Id*.

[25] *Id*. at 139, TSN dated January 15, 2007.

[26] *Id*. at 38. The following items were inside the nipa hut at the time that it was burned: a television set, an electric fan, a mountain bike, catering items, and an antique sala set. The estimated value of these items was ₱70,000.00.

[27] *Id*.

[28] *Id*.

[29] *Id*. at 38-39.

[30] *Id*. at 202, TSN dated May 18, 2009.

him to Fernandez's house instead.[31] However, Dacanay was already sleepy at that time.[32] Hence, Bacerra requested his brother-in-law, Francisco Sadora (Sadora), to accompany him to Fernandez's house, which was located one (1) kilometer away.[33]

Bacerra and Sadora arrived at Fernandez's house at around 1:30 a.m. Fernandez told Bacerra to sleep in the living room. She checked on Bacerra every hour.[34] At around 7:00 a.m., police officers who were looking for Bacerra arrived at Fernandez's house.[35] Knowing that he did not do anything wrong,[36] Bacerra voluntarily went to the police station with the authorities.[37]

In the Decision dated October 6, 2009, Branch 50 of the Regional Trial Court in Villasis, Pangasinan[38] found Bacerra guilty beyond reasonable doubt of arson:

> WHEREFORE, judgment is hereby rendered finding accused Marlon Bacerra *y* Tabones *GUILTY* beyond reasonable doubt of the crime of Simple Arson defined and penalized in Section 1 of Presidential Decree No. 1613 and, there being no modifying circumstance, is sentenced to suffer an indeterminate penalty of *six (6) years of prision correccional, as minimum, to ten (10) years of prision mayor, as maximum*, together with all the accessory penalties provided by law.
>
> The accused is likewise ordered to pay the private complainant ₱50,000.00 as temperate damages.
>
> SO ORDERED.[39] (Emphasis in the original)

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[31] *Id*. at 39.

[32] *Id*.

[33] *Id*.

[34] *Id*.

[35] *Id*.

[36] *Id*. at 206, TSN dated May 18, 2009.

[37] *Id*. at 39.

[38] *Id*. at 36.

[39] *Id*. at 39-40.

Bacerra appealed the Decision of the Regional Trial Court.[40] He argued that none of the prosecution's witnesses had positively identified him as the person who burned the nipa hut.[41]

In the Decision[42] dated August 30, 2012, the Court of Appeals affirmed the Decision dated October 6, 2009 of the Regional Trial Court *in toto*.[43]

Bacerra moved for reconsideration[44] but the Motion was denied in the Resolution[45] dated October 22, 2012.

On January 15, 2013, Bacerra filed a Petition for Review on Certiorari[46] assailing the Decision dated August 30, 2012 and Resolution dated October 22, 2012 of the Court of Appeals.

In the Resolution dated January 30, 2013, this Court required the People of the Philippines to comment on the petition for review.[47]

On June 18, 2013, the People of the Philippines, through the Office of the Solicitor General, filed a Comment on the Petition[48] to which petitioner filed a Reply[49] on January 27, 2014.

Petitioner argues that the Court of Appeals erred in upholding his conviction based on circumstantial evidence, which, being merely based on conjecture, falls short of proving his guilt beyond reasonable doubt.[50] No direct evidence was presented to prove

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[40] *Id*. at 66-84, Appeal Brief for the Accused-Appellant.

[41] *Id*. at 72.

[42] *Id*. at 36-51.

[43] *Id*. at 50.

[44] *Id*. at 52-64, Motion for Reconsideration of the Court of Appeals Decision.

[45] *Id*. at 65.

[46] *Id*. at 8-35.

[47] *Id*. at 283-284.

[48] *Id*. at 297-336.

[49] *Id*. at 343-354.

[50] *Id*. at 11.

that petitioner actually set fire to private complainant's nipa hut.[51] Moreover, there were two (2) incidents that occurred, which should be taken and analyzed separately.[52]

Petitioner adds that there were material inconsistencies in the testimonies of the prosecution's witnesses.[53] Petitioner also points out that private complainant acted contrary to normal human behavior, placing great doubt on his credibility.[54] Persons whose properties are being destroyed should immediately confront the perpetrator.[55] Private complainant and his family, however, merely stayed inside their house throughout the entire incident.[56]

Petitioner argues in the alternative that the mitigating circumstances of intoxication and voluntary surrender should have been appreciated by the lower tribunals in computing the imposable penalty.[57] Petitioner was drunk at the time of the alleged incident.[58] In addition, he voluntarily surrendered to the authorities despite the absence of an arrest warrant.[59] Lastly, petitioner asserts that temperate damages should not have been awarded because private complainant could have proven actual damages during trial.[60]

In its Comment, respondent asserts that direct evidence is not the only means to establish criminal liability.[61] An accused

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[51] *Id*. at 21.

[52] *Id*. at 22.

[53] *Id*. at 11.

[54] *Id*. at 25-27.

[55] *Id*. at 26.

[56] *Id*.

[57] *Id*. at 11.

[58] *Id*. at 27-28.

[59] *Id*. at 29-30.

[60] *Id*. at 12.

[61] *Id*. at 306.

may be convicted based on circumstantial evidence as long as the combination of circumstances leads to the conclusion that the accused is guilty beyond reasonable doubt.[62]

Respondent argues that the Court of Appeals correctly affirmed the trial court's decision. For intoxication to be considered as a mitigating circumstance, it must be shown that it is not habitual.[63] The state of drunkenness of the accused must be of such nature as to affect his or her mental faculties.[64] Voluntary surrender cannot likewise be considered as a mitigating circumstance because there is no showing of spontaneity on the part of the accused.[65]

Lastly, respondent argues that temperate damages amounting to ₱50,000.00 was properly awarded because the burning of private complainant's nipa hut brought some pecuniary loss.[66]

This case presents the following issues for this Court's resolution:

First, whether petitioner's guilt was proven beyond reasonable doubt based on the circumstantial evidence adduced during trial;[67]

Second, whether the mitigating circumstances of intoxication and voluntary surrender may properly be appreciated in this case to reduce the imposable penalty;[68] and

Finally, whether the award of temperate damages amounting to ₱50,000.00 was proper.[69]

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[62] *Id*. at 306-307.

[63] *Id*. at 331.

[64] *Id*. at 331-332.

[65] *Id*. at 332-333.

[66] *Id*. at 333-334.

[67] *Id*. at 11.

[68] *Id*.

[69] *Id*. at 12.

This Court affirms petitioner's conviction for the crime of simple arson.

I

Direct evidence and circumstantial evidence are classifications of evidence with legal consequences.

The difference between direct evidence and circumstantial evidence involves the relationship of the fact inferred to the facts that constitute the offense. Their difference does not relate to the probative value of the evidence.

Direct evidence proves a challenged fact without drawing any inference.[70] Circumstantial evidence, on the other hand, "indirectly proves a fact in issue, such that the factfinder must draw an inference or reason from circumstantial evidence."[71]

The probative value of direct evidence is generally neither greater than nor superior to circumstantial evidence.[72] The Rules of Court do not distinguish between "direct evidence of fact and evidence of circumstances from which the existence of a fact may be inferred."[73] The same quantum of evidence is still required. Courts must be convinced that the accused is guilty beyond reasonable doubt.[74]

A number of circumstantial evidence may be so credible to establish a fact from which it may be inferred, beyond reasonable doubt, that the elements of a crime exist and that the accused is its perpetrator.[75] There is no requirement in our jurisdiction

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[70] *People v. Ramos,* 310 Phil. 186, 195 (1995) [Per *J.* Puno, Second Division].

[71] *People v. Villaflores*, 685 Phil. 595, 614 (2012) [Per *J.* Bersamin, First Division].

[72] *People v. Fronda*, 384 Phil. 732, 744 (2000) [Per *C.J.* Davide, First Division].

[73] *Id*.

[74] *Id*.

[75] See *People v. Villaflores*, 685 Phil. 595, 613-618 (2012) [Per *J.* Bersamin, First Division]; *People v. Whisenhunt*, 420 Phil. 677, 696-699 (2001) [Per *J.* Ynares-Santiago, First Division].

that only direct evidence may convict.[76] After all, evidence is always a matter of reasonable inference from any fact that may be proven by the prosecution provided the inference is logical and beyond reasonable doubt.

Rule 113, Section 4 of the Rules on Evidence provides three (3) requisites that should be established to sustain a conviction based on circumstantial evidence:

> Section 4. *Circumstantial evidence, when sufficient.* — Circumstantial evidence is sufficient for conviction if:
>
> (a) There is more than one circumstance;
> (b) The facts from which the inferences are derived are proven; and
> (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[77]

The commission of a crime, the identity of the perpetrator,[78] and the finding of guilt may all be established by circumstantial evidence.[79] The circumstances must be considered as a whole and should create an unbroken chain leading to the conclusion that the accused authored the crime.[80]

The determination of whether circumstantial evidence is sufficient to support a finding of guilt is a qualitative test not a quantitative one.[81] The proven circumstances must be "consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with

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[76] See *People v. Villaflores,* 685 Phil. 595, 614 (2012) [Per *J.* Bersamin, First Division]; *People v. Whisenhunt,* 420 Phil. 677, 696 (2001) [Per *J.* Ynares-Santiago, First Division].

[77] RULES OF COURT, Rule 133, Sec. 4.

[78] *Cirera v. People*, 739 Phil. 25, 41 (2014) [Per *J.* Leonen, Third Division].

[79] *People v. Villaflores*, 685 Phil. 595, 615-617 (2012) [Per *J.* Bersamin, First Division].

[80] *People v. Whisenhunt,* 420 Phil. 677, 696 (2001) [Per *J.* Ynares-Santiago, First Division].

[81] See *People v. Ludday,* 61 Phil. 216, 221 (1935) [Per *J.* Vickers, *En Banc*].

the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt."[82]

The crime of simple arson was proven solely through circumstantial evidence in *People v. Abayon*.[83] None of the prosecution's witnesses actually saw the accused start the fire.[84] Nevertheless, the circumstantial evidence adduced by the prosecution, taken in its entirety, all pointed to the accused's guilt.[85]

In *People v. Acosta,*[86] there was also no direct evidence linking the accused to the burning of the house.[87] However, the circumstantial evidence was substantial enough to convict the accused.[88] The accused had motive and previously attempted to set a portion of the victim's house on fire.[89] Moreover, he was present at the scene of the crime before and after the incident.[90]

Similarly, in this case, no one saw petitioner actually set fire to the nipa hut. Nevertheless, the prosecution has established multiple circumstances, which, after being considered in their entirety, support the conclusion that petitioner is guilty beyond reasonable doubt of simple arson.

First, the evidence was credible and sufficient to prove that petitioner stoned private complainant's house and threatened to burn him.[91] Private complainant testified that he saw petitioner

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[82] *Id*. at 221-222.

[83] G.R. No. 204891, September 14, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/september2016/204891.pdf> [Per *J*. Brion, Second Division].

[84] *Id*. at 4.

[85] *Id*. at 5-6.

[86] 382 Phil. 810, 820 (2000) [Per *J*. Quisumbing, Second Division].

[87] *Id*. at 820.

[88] *Id*. at 823.

[89] *Id*. at 821.

[90] *Id*. at 822.

[91] *Rollo*, p. 44.

throwing stones at his house and heard petitioner say, *"okinam nga Lakay Fred, puuran kayo tad ta!*"[92] (Vulva of your mother, Old Fred, I'll burn you now.)[93] Petitioner's threats were also heard by private complainant's son[94] and grandchildren.[95]

Second, the evidence was credible and sufficient to prove that petitioner returned a few hours later and made his way to private complainant's nipa hut.[96] Private complainant testified that at 4:00 a.m.,[97] he saw petitioner pass by their house and walk towards their nipa hut.[98] This was corroborated by private complainant's son who testified that he saw petitioner standing in front of the nipa hut moments before it was burned.[99]

Third, the evidence was also credible and sufficient to prove that petitioner was in close proximity to the nipa hut before it caught fire.[100] Private complainant testified that he saw petitioner walk to and fro in front of the nipa hut and shake its posts just before it caught fire.[101] Private complainant's son likewise saw petitioner standing at the side of the nipa hut before it was burned.[102]

The stoning incident and the burning incident cannot be taken and analyzed separately. Instead, they must be viewed and considered as a whole. Circumstantial evidence is like a "tapestry made up of strands which create a pattern when

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[92] *Id*. at 182, TSN dated September 3, 2007.

[93] *Id*. at 136-137, TSN dated January 15, 2007.

[94] *Id*. at 160, TSN dated October 23, 2006.

[95] *Id*. at 182, TSN dated September 3, 2007.

[96] *Id*. at 44.

[97] *Id*. at 37.

[98] *Id*. at 138, TSN dated January 15, 2007.

[99] *Id*. at 167, TSN dated October 23, 2006.

[100] *Id*. at 44.

[101] *Id*. at 138, TSN dated January 15, 2007.

[102] *Id*. at 167, TSN dated October 23, 2006.

interwoven."[103] Each strand cannot be plucked out and scrutinized individually because it only forms part of the entire picture.[104] The events that transpired prior to the burning incident cannot be disregarded. Petitioner's threat to burn occurred when he stoned private complainant's house.

Also, there is no other reasonable version of the events which can be held with reasonable certainty.

Private complainant could have actually seen petitioner burn the nipa hut by stepping outside of his house. However, behavioral responses of individuals confronted with strange, startling, or frightful experiences vary.[105] Where there is a perceived threat or danger to survival, some may fight, others might escape.[106] Private complainant's act of remaining inside his house during the incident is not contrary to human behavior. It cannot affect his credibility as a witness.

Furthermore, "the assessment of the credibility of witnesses is a function . . . of the trial courts."[107] It is a factual matter that generally cannot be reviewed in a Rule 45 petition.[108] Petitioner failed to prove, much less allege, any of the exceptions to the general rule that only questions of law may be raised in a petition for review brought under Rule 45 of the Rules of Court.[109] Hence, this Court will not disturb the trial court's findings on the matter.

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[103] *People v. Ragon*, 346 Phil. 772, 785 (1997) [Per *J.* Panganiban, Third Division].

[104] *Id*.

[105] *People v. Mactal*, 449 Phil. 653, 661 (2003) [Per *J.* Corona, *En Banc*].

[106] Thierry Steimer, *The biology of fear-and anxiety-related behaviors,* NATIONAL CENTER FOR BIOTECHNOLOGY INFORMATION <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3181681/> (last visited on May 16, 2017).

[107] *Torres v. People*, G.R. No. 206627, January 18, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/january2017/206627.pdf> 6 [Per *J.* Leonen, Second Division].

[108] *Id*.

[109] RULES OF COURT, Rule 45, Sec. 1.

II

For intoxication to be appreciated as a mitigating circumstance, the intoxication of the accused must neither be "habitual [n]or subsequent to the plan to commit [a] felony."[110]

Moreover, it must be shown that the mental faculties and willpower of the accused were impaired in such a way that would diminish the accused's capacity to understand the wrongful nature of his or her acts.[111] The bare assertion that one is inebriated at the time of the commission of the crime is insufficient.[112] There must be proof of the fact of intoxication and the effect of intoxication on the accused.[113]

There is no sufficient evidence in this case that would show that petitioner was intoxicated at the time of the commission of the crime. A considerable amount of time had lapsed from petitioner's drinking spree up to the burning of the nipa hut within which he could have regained control of his actions. Hence, intoxication cannot be appreciated as a mitigating circumstance in this case.

Neither can voluntary surrender be appreciated as a mitigating circumstance.

Voluntary surrender, as a mitigating circumstance, requires an element of spontaneity. The accused's act of surrendering to the authorities must have been impelled by the acknowledgment of guilt or a desire to "save the authorities the trouble and expense that may be incurred for his [or her] search and capture."[114]

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[110] REV. PEN. CODE, Art. 15, par. 3.

[111] *People v. Bautista,* 468 Phil. 173, 180 (2004) [Per *J.* Carpio-Morales, Third Division]; *Licyayo v. People*, 571 Phil. 310, 327 (2008) [Per *J.* Chico-Nazario, Third Division]; *People v. Nimuan*, 665 Phil. 728, 736 (2011) [Per *J.* Brion, Third Division].

[112] *People v. Nimuan*, 665 Phil. 728, 736-737 (2011) [Per *J.* Brion, Third Division].

[113] *Id*. at 736.

[114] *People v. Garcia,* 577 Phil. 483, 505 (2008) [Per *J.* Brion, *En Banc*], citing *People v. Acuram,* 387 Phil. 142 (2000) [Per *J.* Quisumbing, Second Division].

Based on the evidence on record, there is no showing that petitioner's act of submitting his person to the authorities was motivated by an acknowledgement of his guilt.

Considering that no mitigating circumstances attended the commission of the crime, the indeterminate sentence of six (6) years of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum, imposed by the trial court, stands.

III

Under Article 2224 of the Civil Code, temperate damages may be awarded when there is a finding that "some pecuniary loss has been suffered but its amount [cannot], from the nature of the case, be proved with certainty." The amount of temperate damages to be awarded in each case is discretionary upon the courts[115] as long as it is "reasonable under the circumstances."[116]

Private complainant clearly suffered some pecuniary loss as a result of the burning of his nipa hut. However, private complainant failed to substantiate the actual damages that he suffered. Nevertheless, he is entitled to be indemnified for his loss. The award of temperate damages amounting to ₱50,000.00 is proper and reasonable under the circumstances.

WHEREFORE, the Petition for Review is **DENIED**. The Decision dated August 30, 2012 and the Resolution dated October 22, 2012 of the Court of Appeals in CA-G.R. CR No. 32923, finding petitioner Marlon Bacerra y Tabones guilty beyond reasonable doubt for the crime of arson is **AFFIRMED**.

SO ORDERED.

Peralta[*] *(Acting Chairperson), Mendoza,* and *Martires, JJ.,* concur.

Carpio, J., on official leave.

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[115] CIVIL CODE, Art. 2216.

[116] CIVIL CODE, Art. 2225.

[*] Designated Acting Chairperson per S.O No. 2445 dated June 16, 2017.

SECOND DIVISION

[G.R. No. 206916. July 3, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSEPH SAN JOSE *y* GREGORIO and JONATHAN SAN JOSE *y* GREGORIO,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PROOF BEYOND REASONABLE DOUBT; THE QUANTUM OF EVIDENCE REQUIRED TO OVERCOME THE PRESUMPTION OF INNOCENCE.— It is a basic right of the accused under our Constitution to be presumed innocent until the contrary is proven. Thus, the quantum of evidence required to overcome this presumption is proof beyond reasonable doubt x x x [, pursuant to] Rule 133, Section 2 of the Rules of Court x x x. The burden of proving the accused's guilt rests with the prosecution. A guilty verdict relies on the strength of the prosecution's evidence, not on the weakness of the defense. If the prosecution's evidence produces even an iota of reasonable doubt, courts would have no choice but to rule for the accused's acquittal.

2. ID.; ID.; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT ARE USUALLY ACCORDED GREAT RESPECT BECAUSE OF THE OPPORTUNITY OF THE TRIAL COURT TO OBSERVE THE DEMEANOR OF THE WITNESSES ON THE STAND AND ASSESS THEIR TESTIMONY; EXCEPTION.— The determination of guilt requires courts to evaluate the evidence presented in relation to the elements of the crime charged. The finding of guilt is fundamentally a factual issue. Considering that this Court is not a trier of facts, factual findings of the trial court are usually accorded great respect "because of the opportunity enjoyed by the [trial court] to observe the demeanor of the witnesses on the stand and assess their testimony." Nevertheless, this Court is not precluded from reviewing these findings or even arriving at a different conclusion "if it is not convinced that [the findings] are conformable to the evidence of record and to its own impressions of the credibility of the

witnesses." The factual findings of the trial court will not bind this Court if "significant facts and circumstances were overlooked and disregarded . . . which if properly considered affect the result of the case."

3. **CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS.—** In order to secure a conviction for murder under Article 248 of the Revised Penal Code, the prosecution must prove "[*first*,] that a person was killed; [*second*,] that the accused killed that person; [*third*,] that the killing was committed with the attendant circumstances stated in Article 248; and [*finally*,] that the killing was neither parricide nor infanticide."

4. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT IMPAIRED BY DELAY *PER SE*, BUT DOUBT ARISES WHEN THE DELAY REMAINS UNEXPLAINED.—** Here, the prosecution has an eyewitness account in the victim's brother Jilito. The victim's family remained in the same barangay. The accused-appellants did not live anywhere else but were arrested in the same barangay they had been residing. It is highly unusual for the victim's family to have taken three (3) years to have the alleged perpetrators arrested. While delay *per se* may not impair a witness's credibility, doubt arises when the delay remains unexplained. The delay in this case becomes significant when pitted against Jilito's *Kusang-loob na Salaysay*, where he admits that he merely heard about the incident from other people x x x. [T]he unexplained delay and the *Kusang-loob na Salaysay* lead this Court to the possibility that Jilito's supposedly positive identification of the accused-appellants as the perpetrators of the crime was a mere afterthought.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

LEONEN, *J.*:

The prosecution has the burden to prove the accused's guilt beyond reasonable doubt. If it fails to discharge this burden, courts have the duty to render a judgment of acquittal.

This is an appeal from the Decision[1] dated August 31, 2012 of the Court of Appeals in CA-G.R. CR-H.C. No. 04821.

Joseph San Jose y Gregorio and Jonathan San Jose y Gregorio (the San Jose brothers) were charged with murder under Article 248 of the Revised Penal Code. The Information[2] dated September 30, 2002 against them read:

> That on or about the 2nd day of June 2002 at Rodriguez, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, along with Jonathan San Jose y Gregorio, a minor, 17 years of age, in conspiracy with one another, armed with kitchen knives, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab with said knives one CARLITO ESPINO y OREO, thereby inflicting upon the latter mortal wounds which caused his death, the said killing having been attended by the qualifying circumstances of treachery and abuse of superior strength which qualify it to murder.
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> CONTRARY TO LAW.[3]

In an Order[4] dated May 27, 2003, the San Jose brothers were considered at large despite the warrants of arrest issued on October 30, 2002. The case against them was considered

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[1] *Rollo*, pp. 2-29. The Decision was penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Samuel H. Gaerlan of the Third Division, Court of Appeals, Manila.

[2] RTC records, pp. 1-2.

[3] *Id*. at 1.

[4] *Id*. at 14. The Order was penned by Judge Jose C. Reyes, Jr. of Branch 76, Regional Trial Court, San Mateo, Rizal.

archived.[5] Sometime in 2005, they were arrested.[6] Jonathan San Jose y Gregorio (Jonathan) was arraigned on April 25, 2005 and Joseph San Jose y Gregorio (Joseph) was arraigned on August 24, 2005. Both pleaded not guilty.[7] Trial on the merits ensued.

Jilito O. Espino (Jilito) testified that on June 2, 2002, around 6:30 p.m., there was a baptismal celebration held on a vacant lot[8] beside their residence in Riverside, Manggahan, Rodriguez, Rizal. His brother Carlito Espino y Oreo (Carlito) and his friends were drinking when Jilito saw the San Jose brothers enter the house. The San Jose brothers then started punching Carlito, who tried to run to a nearby store. However, his assailants caught up with him.[9]

The prosecution presented Jilito's testimony that Jonathan embraced Carlito from behind and while punching him, stabbed him on the side of his body while Joseph stabbed Carlito in the front. Thereafter, the San Jose brothers ran away. Carlito's friends also ran away out of fear. Jilito ran after the San Jose brothers for about 100 meters but failed to catch up to them. When he returned to the vacant lot,[10] he was told that Carlito had already been brought to the hospital, where he was pronounced dead on arrival.[11]

Jilito likewise attested that this was not the first incident between Carlito and the San Jose brothers. He recalled that on New Year's Day, the San Jose brothers used a lead pipe to hit Carlito.[12]

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[5] *Id*.

[6] *Id*. at 17 and 53.

[7] CA *rollo*, p. 12, RTC Decision.

[8] This is referred to as "vacant house" in CA *rollo*, p. 13.

[9] *Id*. at 12-13, RTC Decision.

[10] This is referred to as "vacant lot" in CA *rollo*, p. 12.

[11] *Id*.

[12] *Id*. at 13.

The autopsy revealed that the victim sustained "one fatal injury at the abdomen, at the right hypochondriac and multiple abrasions at the lower extremities."[13] The examination also showed that "the stab wound located at the right hypochondriac or in the abdomen caused an injury lacerating the pericardial sac, the right ventricle of the heart and the lower lobe of the right lung."[14] Dr. Pierre Paul Carpio (Dr. Carpio), the Chief of Forensic Autopsy of the Philippine National Police Crime Laboratory, further testified that it was possible for the assailant to have been at the victim's back.[15] He stated that the stab wound at the right hypochondriac (*tagiliran*) was fatal and that there were no defense wounds on the victim.[16]

For their defense, Joseph testified that on June 2, 2002, he and his brother Jonathan were at home eating with a childhood friend, Leo Narito, when a commotion occurred outside the house. People were shouting and when he went outside, he saw a person running away. He asked that person what was going on and was told that someone had been stabbed. Joseph returned to his house and continued eating. Sometime in 2005, while he was at work at a hardware store, police officers arrested him for the killing of a certain Joselito. He denied the charges against him.[17]

Jonathan asserted that he was 16 years old in 2002, having been born on September 2, 1985. His testimony corroborated that of his brother Joseph. Sometime in 2005, he was about to go to work when some barangay tanods came to arrest him for the killing of Carlito.[18]

Jocelyn Espino (Jocelyn) also testified on the San Jose brothers' behalf, claiming that she was Jilito and Carlito's sister.

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[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id*. at 14, RTC Decision.

[17] *Id*.

[18] *Id*.

She stated that at the time of the incident, Carlito was outside the house. Their neighbors later informed them of the commotion outside their house involving Carlito. She claimed that Jilito only learned of the incident when he went outside of their house. When cross-examined, Jocelyn failed to present evidence to show that she was Jilito and Carlito's sister.[19]

On May 12, 2010, Branch 76, Regional Trial Court of San Mateo, Rizal, rendered a Decision[20] finding the San Jose brothers guilty as charged. The dispositive portion of the Decision read:

> WHEREFORE, judgment is hereby rendered, finding both accused(s) Joseph San Jose y Gregorio and Jonathan San Jose y Gregorio GUILTY of the crime of Murder punishable under Article 248 of the Revised Penal Code as amended.
>
> Accordingly, accused Joseph San Jose y Gregorio is hereby sentenced to suffer the penalty of *Reclusion Perpetua* and accused Jonathan San Jose y Gregorio, being entitled to the privilege[d] mitigating circumstance of minority under Article 68 of the Revised Penal Code and applying the Indeterminate Sentence Law is hereby sentenced to suffer the penalty of Ten (10) years and One (1) day of *Prision Mayor* as minimum to Seventeen (17) years, Four (4) months and One (1) day of *Reclusion Temporal* as maximum; and, both accused are ordered to indemnify the heirs of the victim in the amount of Php 50,000.00 as death indemnity and Php 50,000.00 as moral damages. No pronouncement as to costs.
>
> Both accused(s) are to be credited for the time spent for their preventive detention in accordance with Art[icle] 29 of the Revised Penal Code as amended by R.A[.] 6127 and E.O. 214.
>
> Accused(s) Joseph San Jose and Jonathan San Jose are hereby ordered committed to the National Bilibid Prisons in Muntinlupa City for service of sentence.
>
> SO ORDERED.[21]

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[19] *Id*. at 15, RTC Decision.

[20] *Id*. at 12-17. The Decision was penned by Judge Josephine Zarate Fernandez of Branch 76, Regional Trial Court, San Mateo, Rizal.

[21] *Id*. at 16-17.

Joseph and Jonathan appealed to the Court of Appeals.[22]

In a Decision[23] dated August 31, 2012, the Court of Appeals affirmed the trial court's Decision. The Court of Appeals relied heavily on Jilito's positive identification of the San Jose brothers as the perpetrators of the crime. It found that the inconsistencies and variances in Jilito's testimony referred only to minor details and proved that his testimony was not rehearsed.[24]

The Court of Appeals found the defense of non-flight from the barangay after the incident unmeritorious since non-flight is not indicative of a clear conscience. It also affirmed the finding of conspiracy since Jonathan's act of holding the victim from behind and stabbing him on the right side of his torso gave Joseph the opportunity to assault and to stab the victim from the front.[25] However, it agreed with the Office of the Solicitor General's view that abuse of superior strength, and not treachery, qualified the crime as murder since there was gross inequality of forces between the assailants and the unarmed victim.[26]

The Court of Appeals also modified Jonathan's penalty to seventeen (17) years and four (4) months since the penalty imposable under the Indeterminate Sentence Law is *prision mayor* in any of its periods as minimum and *reclusion temporal* in its medium period as maximum.[27] It added exemplary damages in the amount of ₱30,000.00 and temperate damages in the amount of ₱25,000.00 with interest of six percent (6%) per annum.[28] The dispositive portion of the Decision read:

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[22] CA *rollo*, pp. 19-20.

[23] *Rollo,* pp. 2-29. The Decision was penned by Associate Justice Rebecca De Guia-Salvador (Chair) and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Samuel H. Gaerlan of the 3rd Division, Court of Appeals, Manila.

[24] *Id*. at 14-19.

[25] *Id*. at 21-22.

[26] *Id*. at 22-23.

[27] *Id*. at 25.

[28] *Id*. at 24-27.

WHEREFORE, the appealed decision dated 12 May 2010 in Criminal Case No. 6453 is AFFIRMED with the following MODIFICATIONS:

(1) The maximum period of appellant Jonathan San Jose's indeterminate sentence is fixed at (17) years and four (4) months; hence, he is sentenced to suffer an indeterminate penalty of imprisonment of 10 years and 1 day of *pris[i]on mayor* as minimum to 17 years and 4 months of *reclusion temporal* as maximum;

(2) Exemplary damages of Php30,000.00, and temperate damages in the amount of Php25,000.00, are additionally AWARDED to the heirs of Carlito Espino; and

(3) The total amount of damages awarded to the heirs of the victim shall earn interest at the legal rate of 6% per annum reckoned from the finality of this judgment until fully paid.

SO ORDERED.[29]

Jonathan and Joseph (accused-appellants) filed a Notice of Appeal[30] manifesting their intention to appeal to this Court, which was given due course by the Court of Appeals.[31] The Office of the Solicitor General manifested to this Court that it was no longer filing a supplemental brief and would be adopting the brief it filed before the Court of Appeals.[32] Accused-appellants, on the other hand, submitted a Supplemental Brief.[33]

The Office of the Solicitor General argues that Jilito was consistent in his testimony on how accused-appellants killed his brother, Carlito. It maintains that he was able to positively

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[29] *Id*. at 27-28.

[30] *Id*. at 30-33.

[31] *Id*. at 34. The Resolution was penned by Associate Justice Rebecca De Guia-Salvador (Chair) and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Samuel H. Gaerlan of the Third Division, Court of Appeals, Manila.

[32] *Id*. at 37-39.

[33] *Id*. at 44-52.

identify accused-appellants since all of them were residents of the same barangay. The autopsy report likewise corroborates Jilito's testimony that Carlito was stabbed at the right side of his torso.[34]

The Office of the Solicitor General further argues that Jocelyn's testimony cannot overcome Jilito's testimony since Jocelyn did not categorically state that Jilito was not able to see the incident. Their late father's affidavit of desistance likewise cannot overturn the prosecution's "overwhelming evidence" against the accused-appellants.[35]

Accused-appellants, on the other hand, counter that there is no qualifying circumstance of abuse of superior strength since the presence of one (1) stab wound on the victim indicates that the victim was not really taken advantage of.[36] They argue that Jilito's testimony on the presence of two (2) mortal wounds on the victim is directly contradicted by the autopsy report.[37] They also point out that a substantial portion of Jilito's testimony is hearsay since Jocelyn testified that at the time of the incident, Jilito was inside their house.[38]

The sole issue to be resolved by this Court is whether accused-appellants are guilty beyond reasonable doubt for the murder of Carlito Espino.

It is a basic right of the accused under our Constitution to be presumed innocent until the contrary is proven.[39] Thus, the quantum of evidence required to overcome this presumption is proof beyond reasonable doubt. Rule 133, Section 2 of the Rules of Court provides:

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[34] CA *rollo*, pp. 70-76.

[35] *Id*. at 77-78.

[36] *Rollo*, p. 47.

[37] *Id*. at 47-48.

[38] *Id*. at 49-50.

[39] CONST., Art. III, Sec. 14(2).

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

The burden of proving the accused's guilt rests with the prosecution. A guilty verdict relies on the strength of the prosecution's evidence, not on the weakness of the defense.[40] If the prosecution's evidence produces even an iota of reasonable doubt, courts would have no choice but to rule for the accused's acquittal. In *People v. Capili*:[41]

Proof beyond reasonable doubt is needed to overcome the presumption of innocence . . . Accused-appellant's guilt must be proved beyond reasonable doubt . . . otherwise, the Court would be left without any other recourse but to rule for acquittal. Courts should be guided by the principle that it would be better to set free ten men who might be probably guilty of the crime charged than to convict one innocent man for a crime he did not commit.[42]

The determination of guilt requires courts to evaluate the evidence presented in relation to the elements of the crime charged.[43] The finding of guilt is fundamentally a factual issue.[44]

Considering that this Court is not a trier of facts, factual findings of the trial court are usually accorded great respect "because of the opportunity enjoyed by the [trial court] to observe the demeanor of the witnesses on the stand and assess their

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[40] See *People v. Macasinag*, 255 Phil. 279 (1989) [Per *J.* Cruz, First Division].

[41] 388 Phil. 1026 (2000) [Per *J.* Melo, *En Banc*].

[42] *Id.* at 1037, citing *People v. Reyes*, 158 Phil. 342 (1974) [Per *J.* Fernando, Second Division] and *People v. Maliwanag*, 157 Phil. 313 (1974) [Per *J.* Esguerra, First Division].

[43] See *Macayan v. People*, 756 Phil. 202, 214 (2015) [Per *J.* Leonen, Second Division].

[44] *Id*.

testimony."[45] Nevertheless, this Court is not precluded from reviewing these findings or even arriving at a different conclusion "if it is not convinced that [the findings] are conformable to the evidence of record and to its own impressions of the credibility of the witnesses."[46] The factual findings of the trial court will not bind this Court if "significant facts and circumstances were overlooked and disregarded . . . which if properly considered affect the result of the case."[47]

This is also an appeal under Rule 122, Section 2(c) of the Rules of Court, where the entire records of the case are thrown open for review. In *Ferrer v. People*:[48]

> It is a well-settled rule that an appeal in a criminal case throws the whole case wide open for review and that it becomes the duty of the Court to correct such errors as may be found in the judgment appealed from, whether they are assigned as errors or not.[49] (Citation omitted)

In this case, the trial court and the Court of Appeals placed heavy reliance on the testimony of the prosecution's lone eyewitness, Jilito Espino, and his positive identification of the accused-appellants as the assailants who murdered his brother. Thus, the review of finding of guilt necessarily involves a re-evaluation of Jilito's testimony.

In order to secure a conviction for murder under Article 248 of the Revised Penal Code,[50] the prosecution must prove "[*first*,]

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[45] *People v. Macasinag*, 255 Phil. 279, 281 (1989) [Per *J.* Cruz, First Division].

[46] *Id.*

[47] *People v. Ortiz*, 334 Phil. 590, 601 (1997) [Per *J.* Francisco, Third Division].

[48] 518 Phil. 196 (2006) [Per *J.* Austria-Martinez, First Division].

[49] *Id*. at 220 citing *Aradillos v. Court of Appeals*, 464 Phil. 650, 659 (2004) [Per *J.* Austria-Martinez, Second Division].

[50] REV. PEN. CODE, Art. 248 provides:

> Article 248. Murder. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished

that a person was killed; [*second*,] that the accused killed that person; [*third*,] that the killing was committed with the attendant circumstances stated in Article 248; and [*finally*,] that the killing was neither parricide nor infanticide."[51]

Jilito testified before the trial court that he saw accused-appellant Jonathan holding the victim from behind and stabbing him on the side of his body. He also testified seeing accused-appellant Joseph stab his brother in the chest.[52] The trial court found his testimony "to be credible and trustworthy and supported by the testimony of Dr. Carpio, an expert witness who conducted the autopsy."[53]

A review of Jilito's testimony, however, when placed against the other pieces of evidence, reveals numerous material inconsistencies that cannot be ignored.

First, it was unclear where the stabbing actually occurred. During the direct examination, Jilito testified:

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by *reclusión temporal* in its maximum period to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
2. In consideration of a price, reward or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[51] See *People v. Obosa*, 429 Phil. 522, 537 (2002) [Per *J.* Sandoval-Gutierrez, *En Banc*].

[52] CA *rollo*, p. 15.

[53] *Id*.

Q: When you saw your brother being stabbed, was it in front of that house or at the side of that house?
A: In front of the house, sir.[54]

During the cross-examination, Jilito testified that the stabbing happened in front of a store:

Q: According to you, you really saw what transpired or what was the incident all about, could you tell us if there was someone who was an arm's length away from your brother when the two (2) assailants stabbed your brother?
A: There was, sir.

Q: Is he a male or a female?
A: A female, sir.

Q: According to you, when the San Jose brothers attacked your brother all the people who were there got scared and ran away?
A: Yes, sir.

Q: And still there was this female who was near your brother?
A: She did not go near my brother she just went outside the store.

Q: I thought the stabbing happened in the place where the four (4[)] persons were drinking?
A: Yes, sir.

Q: You mean to say that before your brother was stabbed he had managed to run away from the said assailants?
A: Yes, sir, he was able to run away.

Q: So it is different from what you have told the Hon. Court awhile ago. Which is which, you saw what transpired at the "silong" or the other version that your brother managed to run away?
A: When he was boxed he was able to run away up to the store and it was at the store where he [sic] the assailants were able to catch up with him and the brothers embraced him and stabbed him, sir.[55]

Jilito stated that he was able to witness the incident because he was located only "20 arms length" away from the scene of

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[54] TSN dated January 24, 2006, p. 7.

[55] TSN dated January 24, 2006, pp. 14-15.

the crime.[56] Jilito initially testified that he saw his brother stabbed in front of the vacant house. Later, he testified that his brother was able to run away from the vacant house to a store where he was stabbed. The Court of Appeals considered the change of location a "clarification" that the victim was able to run away during the commotion.[57]

Rather than clarifying the situation, Jilito's testimony raises even more questions that the trial court and the Court of Appeals ignored. A point of interest, for example, would have been how far the store was from where Jilito was located that he was still able to witness the stabbing. Another query would have been how the female could have gone outside the store during the incident without coming near the victim considering that the stabbing occurred at the store.

There were also material inconsistencies between Jilito's testimony and the autopsy report submitted by the prosecution. Jilito repeatedly stated to the trial court that his brother was stabbed twice:

COURT:

Q: You stated that Jonathan San Jose embraced him and stabbed him, I am referring to the victim, what about the other one, what was his participation, Joseph San Jose?
A: He stabbed my brother in front, your Honor.

Q: On the chest?
A: Yes, your Honor.

Q: And Jonathan San Jose, where did he stab your brother?
A: On his side, sir.

Q: How many times did each one stab your brother?
A: One (1) each, sir.

. . . . . .

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[56] *Rollo*, p. 12.

[57] *Id*. at 16. The "vacant house" is also referred to as "vacant lot" in CA *rollo*, p. 12.

[Atty. Censon:]

Q: According to you, Joseph San Jose embraced your brother, how did he embrace your brother?
A: It was Jonathan who embraced my brother from behind and it was Joseph who went in front of my brother and stabbed him, sir.

Q: Could you demonstrate how Jonathan embraced your brother, did he use both hands?

Pros. Gonzales:
Witness demonstrating that he had used the left arm to embrace the upper left shoulder of the victim and using the right hand with a weapon to stab the victim on the side.

Atty. Censon:
Q: And the other San Jose stabbed your brother on the chest?
A: Yes, sir.

Q: And you saw it clearly?
A: Yes, sir.[58]

However, Dr. Carpio, testified that the victim sustained "one fatal stab wound on the abdomen or at the right hypochondriac."[59] Otherwise stated, Jilito testified that the victim was stabbed *twice*, but there was only *one* (1) stab wound found on the body.

The doubt created by Jilito's testimony is magnified by the testimony of Jocelyn, Jilito and the victim's sister. Jocelyn testified that at the time of the incident, Jilito was inside their house eating:

Q: Where were you when your brother died, Madam Witness?

A: I was inside our house, sir.

Q: And who were with you at the said house on the said date?

A: My elder brother, sir.

Q: How about your parents, where were they at that time?

A: They were there in our house eating, sir.

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[58] TSN dated January 24, 2006, pp. 10-12.

[59] RTC Decision, p. 2, CA *rollo*, p. 14.

Q: And why was Carlito Espino not with you at that time?

A: He was outside the house, sir.

Q: So how were you able to know the incident that caused the death of your brother Carlito Espino?

A: From our neighbors because there was a commotion outside, sir.

Q: Did you personally know what really transpired or who allegedly stabbed your brother Carlito Espino?

A: No, sir.

Q: Jolito [sic] Espino, according to you, was with you at that time, Madam Witness?

A: Yes, sir.

Q: So when did he learn of this incident or when did he know of the incident[,] Madam Witness?

A: When he went outside of the house, sir.

Q: When did he go outside your house[,] Madam Witness?

A: When there was a commotion outside, sir.[60]

The prosecution tried to discredit her testimony by questioning her relationship with the victim and the eyewitness[61] but the Office of the Solicitor General eventually conceded that she was indeed Carlito and Jilito's sister.[62] The Court of Appeals, on the other hand, disregarded her testimony on the ground that she did not categorically state that Jilito was unable to see the incident:

> Nowhere in her affidavit did Jocelyn categorically say that Jilito did not actually see the events that transpired. Her testimony revolved more on what she perceived and failed to see at the time Carlito was stabbed, rather than what Jilito perceived, because, naturally, only Jilito can testify on that.[63] (Citations omitted)

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[60] TSN dated September 16, 2009, pp. 3-4.

[61] TSN dated September 16, 2009, pp. 6-7.

[62] CA *rollo*, p. 77.

[63] *Rollo*, p. 19.

On the contrary, Jocelyn categorically stated that Jilito was inside the house when they were informed by a neighbor that there was a commotion outside involving their brother. She stated that Jilito only learned about the incident when he went out of the house. Learning about an incident after it occurs is the same as not having witnessed it.

The trial court and the Court of Appeals likewise failed to note that the victim's sister was a witness for the defense and the victim's late father signed an affidavit of desistance[64] in the accused-appellants' favor. It is consistent with the human experience for the victim's relatives to seek justice.[65] An unusual detail, such as two (2) immediate family members of the victim testifying on behalf of the accused-appellants, forces this Court to take a second hard look at the prosecution's evidence.

The delayed arrests of the accused-appellants likewise cast doubt on their guilt. The crime occurred on June 2, 2002. Accused-appellant Jonathan was arrested on April 1, 2005[66] and accused-appellant Joseph was arrested on August 3, 2005,[67] or about three (3) years after the crime was committed.

Accused-appellants remained residents of Barangay Manggahan, Rodriguez, Rizal from the occurrence of the crime in 2002 until their arrests in 2005:

PROS. GONZALES:

. . . .

Q How long have you stayed at Riverside, Brgy. Manggahan, Rodriguez, Rizal?

A Since 1994 to 2005, sir.[68]

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[64] RTC records, p. 251.

[65] See *People v. Capili*, 388 Phil. 1026, 1036 (2000) [Per *J*. Melo, *En Banc*].

[66] RTC records, p. 17.

[67] *Id*. at 53.

[68] TSN dated February 12, 2009, pp. 11-12.

. . . . . .

Q When were you arrested, Mr. Witness?

A March 25, 2005, sir.

Q Where were you when you were arrested?

A I was in our place in Manggahan, sir.

Q After June 2, 2002, or after the alleged incident, where did you go, if you have gone to another place else [sic]?

A None, sir.

Q You mean to say, you remained residing in your house located in Manggahan?

A Yes, sir.[69]

In *People v. Capili*,[70] this Court was inclined to question the credibility of the supposed eyewitness who only reported the crime a week after it occurred, leading to the accused's acquittal:

> The Court finds significance in the accuracy of the time when witness Badua really reported the matter to the brother or father of the victim considering that said victim Alberto Capili was Badua's relative. It is but logical for a relative who was an eyewitness to a crime to promptly and audaciously take the necessary steps to bring the culprit into the hands of the law and seek justice for the poor victim. There is greater probability that Badua only reported the matter, if at all he actually did, to the victim's brother on October 11, 1994 because the latter only went to the authorities to report the matter on October 13, 1994. If we consider this unexplained delay in reporting a crime together with the supposed behavior of accused-appellant and the principal witnesses which we find rather unnatural, it would be rather risky and hazardous to pronounce accused-appellant guilty of the crime charged . . .
>
> In fact, there is even some possibility that Badua's identification of accused-appellant as the perpetrator was a mere afterthought, there being no definite lead as to the identity of the author of the crime

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[69] TSN dated May 11, 2009, pp. 5-6.

[70] 388 Phil. 1026, 1036-1037 (2000) [Per *J.* Melo, *En Banc*].

even after the lapse of several days following the finding of the cadaver of the victim by the riverbank on October 7, 1994. The foregoing considerations taken together cast reasonable doubt on the culpability of accused-appellant as killer of Alberto Capili. The evidence which stands on record does not eliminate the possibility of absence of foul-play, i.e., that there had been only an accidental death by drowning. Striking a rock after accidentally slipping could cause contusions similar to those found at the back of the victim's head and shoulders and result in the loss of consciousness leading to drowning. Only by proof beyond reasonable doubt, which requires moral certainty, may the presumption of innocence be overcome . . . Moral certainty has been defined as "a certainty that convinces and satisfies the reason and conscience of those who are to act upon it" . . . Absent the moral certainty that accused-appellant caused the death of the victim, acquittal perforce follows.[71]

This case may be factually different from *Capili* in that there were warrants of arrest as early as October 2002.[72] However, this Court finds echoes of the same unnatural behaviors of the victim's relatives as in *Capili*. Here, the prosecution has an eyewitness account in the victim's brother Jilito. The victim's family remained in the same barangay.[73] The accused-appellants did not live anywhere else but were arrested in the same barangay they had been residing. It is highly unusual for the victim's family to have taken three (3) years to have the alleged perpetrators arrested.

While delay *per se* may not impair a witness's credibility, doubt arises when the delay remains unexplained. The delay in this case becomes significant when pitted against Jilito's *Kusang-loob na Salaysay*, where he admits that he merely heard about the incident from other people:

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[71] *Id*. citing *People v. Vergara*, 82 Phil. 207 (1948) [Per *J.* Perfecto, *En Banc*]; *People v. Custodio*, 150-C Phil. 84 (1972) [Per *J.* Antonio, *En Banc*]; and *People v. Lavarias*, 132 Phil. 766 (1967) [Per *J.* Fernando, *En Banc*].

[72] RTC records, pp. 10-11.

[73] *See* TSN dated January 24, 2006, p. 2 and TSN dated September 16, 2009, p. 2.

16.T– *Nalaman mo ba kung bakit pinagtulungang suntukin nitong sina Joseph at Jonathan hanggang sa saksakin ang iyong kapatid na si Carlito*?

S– Ang sabi po ng ilang nakasaksi *ay bigla na lamang po raw pumasok doon sa grupo ng nag-iinuman itong sina Joseph at Jonathan at biglang pinagsusuntok hanggang sa . . . pagtulungan saksakin ang aking kapatid na si Carlito*.[74] (Emphasis supplied)

As in *Capili*, the unexplained delay and the *Kusang-loob na Salaysay* lead this Court to the possibility that Jilito's supposedly positive identification of the accused-appellants as the perpetrators of the crime was a mere afterthought.

Here, both the victim's father and sister are convinced that accused-appellants are not guilty of the crime. The prosecution's lone eyewitness could not even give a clear and categorical narrative of the events. There were several unusual circumstances during the prosecution of the case that he has not adequately explained. The prosecution having failed to discharge its burden to prove guilt *beyond* reasonable doubt, this Court is constrained to acquit accused-appellants.

WHEREFORE, the appeal is **GRANTED**. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 04821 is **REVERSED** and **SET ASIDE**. Accused-appellants Joseph San Jose y Gregorio and Jonathan San Jose y Gregorio are hereby **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt. They are ordered immediately **RELEASED** unless they are confined for any other lawful cause.

Let entry of judgment be issued immediately.

SO ORDERED.

Peralta[*] *(Acting Chairperson), Mendoza,* and *Martires, JJ.,* concur.

Carpio, J., on official leave.

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[74] RTC records, pp. 203-204.

[*] Designated Acting Chairperson per S.O. No. 2445 dated June 16, 2017.

SECOND DIVISION

[G.R. No. 208013. July 3, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDGAR ALLAN CORPUZ *y* FLORES,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE; HOW COMMITTED.— To warrant a rape conviction under Article 266-A, it should be shown that "a man had carnal knowledge with a woman, or a person sexually assaulted another, under any of the following circumstances:" "a) Through force, threat or intimidation; b) The victim is deprived of reason; c) The victim is unconscious; d) By means of fraudulent machination; e) By means of grave abuse of authority; f) When the victim is under 12 years of age; or g) When the victim is demented."

2. ID.; ID.; ID.; FORCE OR INTIMIDATION; CARNAL KNOWLEDGE OF A WOMAN WHOSE MENTAL AGE IS THAT OF A CHILD BELOW TWELVE YEARS CONSTITUTES RAPE, AND PROOF OF FORCE AND INTIMIDATION BECOMES NEEDLESS AS THE VICTIM IS INCAPABLE OF GIVING CONSENT TO THE ACT.— The gravamen of rape under Article 266-A (1) is carnal knowledge of "a woman against her will or without her consent." Undoubtedly, sexual intercourse with an intellectually disabled person is rape since proof of force or intimidation becomes needless as the victim is incapable of giving consent to the act. AAA's intellectual disability was undisputed and well substantiated by the testimonies of Tablizo and Dr. Acosta. The defense did not even contest her condition. AAA was 14 years old when she had her neuropsychiatric examination with Tablizo. The examination revealed that at the time of examination, AAA's Intelligence Quotient was 42 and her level of intelligence was equal to Moderate Mental Retardation. Also, she had a mental age of a five (5)-year-and-eight (8)-month-old child. AAA underwent another mental status examination with Dr. Acosta before being presented as a witness. The examination revealed that she had a "mild degree of mental

retardation." AAA "belonged to sub-average intellectual with an IQ of 70." Although AAA was already 19 years old at that time, her mental age was that of a child aged five (5) to seven (7) years. For this reason, Allan's acts amounted to rape under Article 266-A 1(d) of the Revised Penal Code, as amended. x x x If a woman above 12 years old has a mental age of a child below 12, the accused remains liable for rape even if the victim acceded to the sordid acts. The reason behind the rule "is simply that if sexual intercourse with a victim under twelve years of age is rape, it must thereby follow that carnal knowledge of a woman whose mental age is that of a child below twelve years should likewise be constitutive of rape."

3. **REMEDIAL LAW; EVIDENCE; TESTIMONIAL EVIDENCE; QUALIFICATION OF WITNESSES; AN INTELLECTUALLY DISABLED PERSON IS NOT, SOLELY BY THIS REASON, INELIGIBLE FROM TESTIFYING IN COURT, AND IF HIS TESTIMONY IS COHERENT, IT IS ADMISSIBLE IN COURT.—** To qualify as a witness, the basic test is "whether he [or she] can perceive and, perceiving, can make known his [or her] perception to others x x x" [, pursuant to] Rule 130 of the Rules of Court x x x. Therefore, an intellectually disabled person is not, solely by this reason, ineligible from testifying in court. "He or she can be a witness, depending on his or her ability to relate what he or she knows." If an intellectually disabled victim's testimony is coherent, it is admissible in court. Notwithstanding AAA's intellectual disability, she is qualified to take the witness stand. A person with low Intelligence Quotient may still perceive and is capable of making known his or her perception to others. x x x The credibility as a witness of an intellectually disabled person is upheld provided that she is capable and consistent in narrating her experience.

4. **ID.; ID.; CREDIBILITY OF WITNESSES; THE FINDINGS OF THE TRIAL COURT THEREON IN RAPE CASES ARE NOT DISTURBED, ABSENT A STRONG AND COGENT REASON TO DISREGARD THEM BECAUSE OF THE OPPORTUNITY OF JUDGES TO EXAMINE THE WITNESSES' DEMEANOR DURING TRIAL.—** In sustaining a conviction for rape, "the victim's testimony must be clear and free from contradictions." This is indispensable because in this kind of offenses, "conviction or acquittal virtually depends

entirely on the credibility of the complainant's narration since usually, only the participants can testify as to its occurrence." Generally, the issue in rape cases involves credibility. As "regards the credibility of witnesses, th[is] Court usually defers to the findings of the trial court, absent a strong and cogent reason to disregard [them]." Examination of the witnesses' demeanor during trial is essential "especially in rape cases because it helps establish the moral conviction that an accused is guilty beyond reasonable doubt of the crime charged." In trial, judges are given the opportunity "to detect, consciously or unconsciously, observable cues and microexpressions that could, more than the words said and taken as a whole, suggest sincerity or betray lies and ill will." These indispensable matters can never be mirrored in documents, as well as in objects used as proof.

5. ID.; ID.; ID.; NOT IMPAIRED BY DISCREPANCIES PERTAINING TO MINOR DETAILS AND NOT TOUCHING UPON THE CENTRAL FACT OF THE CRIME.— The discrepancies pertaining to "minor details and not in actuality touching upon the central fact of the crime" do not prejudice AAA's credibility. Thus, "[i]nstead of weakening [her] testimonies, such inconsistencies tend to strengthen [her] credibility because they discount the possibility of their being rehearsed." Admittedly, based on Dr. Acosta's findings, AAA was "not oriented to time, date and place." For this reason, it is expected that there might be slight contradictions in her testimony as a result of her intellectual disability. A perusal of the alleged contradictions in AAA's testimony shows that they merely pertain to trivial details.

6. ID.; EVIDENCE; RULE ON DNA EVIDENCE; DNA TESTING; NATURE.— "DNA is the fundamental building block of a person's entire genetic make-up. [It] is found in all human cells and is the same in every cell of the same person. Genetic identity is [however] unique. Hence, a person's DNA profile can determine his identity." In resolving a crime, an evidence sample is "collected from the scene of the crime or from the victim's body for the suspect's DNA." This sample is "then matched with the reference sample taken from the suspect and the victim." DNA testing is made to "ascertain whether an association exists between the evidence sample and the reference sample." Hence, the collected samples "are subjected to various chemical processes to establish their profile" which may provide

any of these three (3) possible results: "1) The samples are different and therefore must have originated from different sources (exclusion). This conclusion is absolute and requires no further analysis or discussion; 2) It is not possible to be sure, based on the results of the test, whether the samples have similar DNA types (inconclusive). This might occur for a variety of reasons including degradation, contamination, or failure of some aspect of the protocol. Various parts of the analysis might then be repeated with the same or a different sample, to obtain a more conclusive result; or 3) The samples are similar, and could have originated from the same source (inclusion). In such a case, the samples are found to be similar, the analyst proceeds to determine the statistical significance of the similarity."

7. **ID.; ID.; DENIAL; CANNOT PREVAIL OVER THE VICTIM'S POSITIVE IDENTIFICATION OF THE ACCUSED.—** Allan's defense of denial cannot overcome AAA's positive identification of the accused. A denial is "inherently weak and crumbles in the light of positive declarations of truthful witnesses who testified on affirmative matters that appellant was at the scene of the crime and was the victim's assailant."

8. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; QUALIFYING CIRCUMSTANCE OF MENTAL DEFICIENCY; MUST BE PARTICULARLY ALLEGED IN THE INFORMATION.—** Rape is punishable by *reclusion perpetua*. Under Article 266(10) of the Revised Penal Code, rape is qualified "when the offender **knew** of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime." This qualifying circumstance should be particularly alleged in the Information. A mere assertion of the victim's mental deficiency is not enough. For this reason, Allan can only be convicted of four (4) counts of rape under Article 266-A 1(d) of the Revised Penal Code, as amended.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

LEONEN, *J.*:

An intellectually disabled person is not, solely by this reason, ineligible from testifying in court.[1] "He or she can be a witness, depending on his or her ability to relate what he or she knows."[2] If an intellectually disabled victim's testimony is coherent, it is admissible in court.[3]

This Court resolves this appeal[4] filed by Edgar Allan Corpuz y Flores (Allan)[5] from the November 9, 2012 Decision[6] of the Court of Appeals in CA-G.R. CR HC No. 04977.

The assailed Decision affirmed the Regional Trial Court's ruling that Allan was guilty beyond reasonable doubt of four (4) counts of Simple Rape of AAA[7], a mental retardate (intellectually disabled) with a mental age of five (5) years and eight (8) months.[8]

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[1] *People v. Padilla,* 361 Phil. 216, 222 (1999) [Per Justice Mendoza, *En Banc*].

[2] *Id*.

[3] *Id*.

[4] CA *rollo,* pp. 181-183.

[5] *See* CA *rollo,* p.147, wherein the victim's mother testified that Allan is her brother-in-law. Hence, the victim's uncle. *See,* CA *rollo,* p. 88, where the victim, however, testified that Allan is her cousin.

[6] *Id*. at 142-159. The Decision was penned by Associate Justice Marlene Gonzales-Sison of the Sixth Division of the Court of Appeals, Manila and concurred in by Associate Justices Hakim S. Abdulwahid and Edwin D. Sorongon of the 6th Division, Court of Appeals, Manila.

[7] Pursuant to Supreme Court Adm. Circular No. 83-15, or the Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names, the names of the victims and her relatives were replaced with fictitious names.

[8] *Id*. at 80-91. The Joint Decision was penned by Judge Manuel F. Pastor, Jr. of Branch 50, Regional Trial Court, Villasis, Pangasinan.

Allan was charged with four (4) counts of rape in Branch 50, Regional Trial Court, Villasis, Pangasinan.[9] The charging portions of the Informations read:

Criminal Case No. V-1123

That sometime in November, 2002 at Brgy. Puelay, Villasis, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA, 14 years old, with a mental age of a 5[-]year[-]old [child], against her will and without her consent, to her damage and prejudice.

CONTRARY to Art. 266-A, par. 1, in rel. to Art. 266-B, 6th par., as amended by R.A. 8353.

Criminal Case No. V-1134

That sometime in October, 2002 at Brgy. Puelay, Villasis, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA, 14 years old, with a mental age of a 5[-]year[-]old [child], against her will and without her consent, to her damage and prejudice.

CONTRARY to Art. 266-A, par. 1, in rel. to Art. 266-B, 6th par., as amended by R.A. 8353.

Criminal Case No. V-1135

That sometime before November 1, 2002 at Brgy. Puelay, Villasis, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA, 14 years old, with a mental age of a 5[-]year[-]old [child], against her will and without her consent, to her damage and prejudice.

CONTRARY to Art. 266-A, par. 1, in rel. to Art. 266-B, 6th par., as amended by R.A. 8353.

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[9] *Id*. at 143.

Criminal Case No. V-1136

That sometime in December, 2002 at Brgy. Puelay, Villasis, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA, 14 years old, with a mental age of a 5[-]year[-]old [child], against her will and without her consent, to her damage and prejudice.

CONTRARY to Art. 266-A, par. 1, in rel. to Art. 266-B, 6th paragraph, as amended by R.A. 8353.[10] (Emphasis in the original, citation omitted)

Upon arraignment, Allan pleaded not guilty to the charges.[11]

Joint trial on the merits ensued.[12] The prosecution presented the following as witnesses: AAA's mother, BBB; AAA's older sister, CCC; AAA's uncle, GGG; AAA's aunt by affinity, EEE; Dr. Gloria Araos-Liberato (Dr. Araos-Liberato); Brenda Tablizo (Tablizo); SPO1 Diosdado Macaraeg (SPO1 Macaraeg); Dr. Rachel Acosta (Dr. Acosta); and AAA.

BBB testified that her sister-in law, DDD, told her on March 2, 2003 that AAA was raped.[13] BBB found out from a psychiatrist that it was Allan who raped her daughter.[14] She revealed that Allan had also raped CCC.[15] However, that case was settled since Allan was her brother-in-law.[16]

CCC affirmed that sometime in 2002, AAA allegedly informed her that she was not having her period. She advised AAA to "drink something bitter" and to ask their aunt EEE about her condition. At that time, CCC found out that AAA was pregnant.[17]

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[10] *Id*. at 143-144.

[11] *Id*. at 144.

[12] *Id*.

[13] *Id*. at 147.

[14] *Id*.

[15] *Id*.

[16] *Id*.

[17] *Id*.

EEE[18] who lived near AAA's house,[19] averred that in the morning of February 14, 2003, AAA entered her house while drinking from a cup.[20] EEE asked what AAA was consuming.[21] AAA responded that it *"was something to induce menstruation."*[22]

AAA then asked EEE to massage her aching stomach.[23] When EEE was about to do so, she observed that it was noticeably bulging.[24] AAA began to cry, confessing that she thought she was pregnant.[25]

At that time, AAA's parents were in Baguio City, so EEE called AAA's uncle GGG instead.[26] When GGG arrived, AAA was still crying[27] when she told them, *"Inkastanak ni Allan,"* pertaining to Allan.[28]

GGG brought AAA to Asingan Community Hospital[29] and to the police station to enter the incident in the police blotter.[30]

GGG attested that his sister-in-law EEE called him on February 14, 2003.[31] When he arrived at EEE's house, he saw AAA crying.[32] He found out that AAA was pregnant.[33]

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[18] *Id*. at 145.

[19] *Id*.

[20] *Id*.

[21] *Id*.

[22] *Id*.

[23] *Id*.

[24] *Id*.

[25] *Id*.

[26] *Id*.

[27] *Id*.

[28] *Id*.

[29] *Id*.

[30] *Id*.

[31] *Id*.

[32] *Id*.

[33] *Id*.

When he confirmed AAA's pregnancy through a medical examination, EEE told him that AAA was raped by Allan.[34]

After entering the incident in the police blotter, he also reported it to the National Bureau of Investigation, Dagupan City.[35]

Dr. Araos-Liberato, the Medical Officer III of Medicare Community Hospital in Asingan, Pangasinan issued the Medico Legal Certificate, which stated that AAA was 14 years old on February 14, 2003 when she was examined. Her findings provided:

1. Healed hymenal lacerations at 11:00, 5:00 and 2:00 o'clock position. *(sic)*
2. Hymenal orifice admits two (2) fingertips.
3. Pregnancy test (+) corresponds to three (3) to four (4) months [a]ge of gestation.[36]

Since the defense stipulated to admit her purported statements and the existence of the Medico Legal Certificate, her testimony was dispensed with.[37]

Brenda Tablizo, a Psychologist II of the National Bureau of Investigation, Manila, testified that she conducted AAA's neuropsychiatric examination and evaluation on February 26, 2003 upon the request of Agent Gerald Geralde (Agent Geralde) of the National Bureau of Investigation, Dagupan City.[38]

Tablizo identified the March 6, 2003 Report that she had sent to Agent Geralde,[39] which stated that:

AAA had a mental age of five (5) years and eight (8) months and an IQ of 42. Her intelligence level was equivalent to Moderate Mental Retardation.

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[34] *Id*.

[35] *Id*. at 146.

[36] *Id*.

[37] *Id*.

[38] *Id*.

[39] *Id*.

She also found AAA to be an egocentric and self-centered individual and had difficulty in her interpersonal relations. Poor impulse control was likewise evident in her.[40]

Tablizo testified that AAA told her that Allan "inserted his penis into her organ" *(inserrek na dadiay boto na kaniak)*[41] during an interview.

SPO1 Diosdado Macaraeg was a policeman in Villasis, Pangasinan, who presented an excerpt from the police blotter.[42]

AAA underwent another neuropsychiatric examination before taking the witness stand.[43]

Dr. Rachel Acosta testified that she had examined AAA's mental status including her "mental, behavioral and emotional conditions and her manner of communicati[on]." She found that AAA had a "mild degree of mental retardation" and an Intelligence Quotient of 70.[44]

Although AAA was already 19 years old at the time of examination, her mental age was that of a child aged five (5) to seven (7) years.[45] She observed that:

AAA's "manner of speech is quite incomprehensible in some words only but most of the simple words are well spoken but some words that are being spoken with slur and slang manner and defective phonation. It seems that there is an air coming out from the nose when she talks."

[She] concluded that AAA was ***fit to testify as a witness*** depending on her emotional condition when she testifies although she was "not oriented to time, date and place." Her degree of honesty was great

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[40] *Id*.

[41] *Id*.

[42] *Id*. at 147.

[43] *Id*.

[44] *Id*.

[45] *Id*.

because, with mental age of 5 to 7 years old, she does not know what is right or wrong.[46] (Emphasis supplied)

AAA was already 20 years old on May 21, 2008 when she testified.[47] She confirmed that XXX was her four (4)-year-old child.[48]

She identified Allan as XXX's father. She also confirmed that Allan was the man she was referring to when the prosecutor pointed at Allan.[49]

AAA was asked how Allan became XXX's father. She responded, "*Iniyot nak, sir.*" *(He had sex with me, sir.)* She attested that when she was 13 years old, Allan had sex with her on four (4) occasions, each of which he gave her money.[50]

On the other hand, Allan and his daughter, Almeda Corpuz-Generosa (Almeda), testified for the defense.[51] The testimony of Almeda was dispensed with after the prosecution agreed to accept her proposed testimony.[52] She testified that when she asked AAA about her pregnancy, AAA failed to disclose who impregnated her.[53]

Allan denied the accusations and insisted that all the charges against him were merely fabricated by AAA's father, FFF.[54] He allegedly sacked FFF as a truck driver in his sand and gravel business in 2001 for allowing his son to drive the truck that led to an accident.[55]

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[46] *Id*. at 148.

[47] *Id*.

[48] *Id*.

[49] *Id*.

[50] *Id*. Allan gave her "[₱]100.00, [₱]150.00, sometimes [₱]250.000."

[51] *Id*. at 149.

[52] *Id*.

[53] *Id*.

[54] *Id*. at 148.

[55] *Id*.

FFF allegedly also reported to the police that Allan had illegal drugs in his place,[56] which caused his incarceration for illegal possession of dangerous drugs on January 2, 2002.[57] He was later acquitted of the charge.[58]

Upon motion before the trial court, the defense applied for Deoxyribonucleic Acid (DNA) paternity test, which was granted on April 20, 2009.[59]

Forensic Biologist III Demelen dela Cruz (Dela Cruz) and Forensic Chemist I Gemma Shiela Orbeta of the National Bureau of Investigation, Manila, took biological samples such as buccal swab and blood from Allan, AAA, and XXX in open court. This was done in the presence of Assistant Provincial Prosecutor Rodelle T. Beltran and defense counsel Atty. Cecile S. Tomboc on May 19, 2009. Frederick Panlilio of the National Bureau of Investigation Photo Laboratory took photos of the whole proceedings.[60]

On March 3, 2010, the defense presented Dela Cruz as an expert witness. She testified that part of her duties as a forensic biologist was to conduct DNA paternity tests.[61]

Dela Cruz detailed every procedure that she followed beginning with DNA extraction and analysis using "a fully automated genetic analyzer (ABI 310 genetic analyzer)" until the printing of the resulting electropherogram, which had the DNA profiles of Allan, AAA, and XXX. She affirmed that the comparison of their DNA profiles revealed a "100% proof that the accused is the biological father of XXX."[62]

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[56] *Id*.

[57] *Id*.

[58] *Id*.

[59] *Id*. at 149.

[60] *Id*.

[61] *Id*.

[62] *Id*.

Forensic Chemist Mary Ann Aranas conducted a confirmatory test, which affirmed the test result of the DNA paternity test.[63]

Through a Joint Decision,[64] the Regional Trial Court convicted Allan of four (4) counts of Simple Rape on March 29, 2011.

The trial court ruled that AAA's testimony was "categorical, straight forward and credible."[65] Since it was already established that the victim was intellectually disabled,[66] it would be unlikely for her to fabricate the accusations against Allan.[67]

As confirmed by Dr. Acosta, AAA's degree of honesty was great. Considering her mental age, she did not know how to decipher right from wrong. Thus, her simple recount of events showed her "honesty and naivet[é]."[68]

The trial court also ruled that AAA's healed hymenal lacerations, pregnancy, and delivery of a child adequately substantiated carnal knowledge. Similarly, AAA's categorical identification of Allan as the offender was corroborated by the testimonies of EEE, GGG, and Tablizo.[69]

Furthermore, the DNA paternity test result "sealed the case for the prosecution."[70] The dispositive portion of the decision read:

> WHEREFORE, premises considered, judgment is hereby rendered finding accused Edgar Allan Corpuz GUILTY beyond reasonable doubt of the four (4) counts of simple rape charged, committed against [AAA], a mental retardate with a mental age equivalent to a five

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[63] *Id*.

[64] *Id*. at 80-91.

[65] *Id*. at 89.

[66] *Id*. at 86.

[67] *Id*. at 89.

[68] *Id*.

[69] *Id*.

[70] *Id*.

(5)[-]year[-]and[-] eight (8)[-]month[-]old child, and is hereby sentenced to suffer the penalty of reclusion perpetua for each count and to pay the offended party ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages in each case.

SO ORDERED.[71]

In his appeal, Allan insisted that his guilt was not proven beyond reasonable doubt because the records were bereft of any credible proof indicating that he raped AAA four (4) times. AAA failed to testify when and where she was raped as she was not oriented with place, date, and time.[72]

In its November 9, 2012 Decision, the Court of Appeals affirmed Allan's conviction.[73] The Court of Appeals held that carnal knowledge of an intellectually disabled person is rape under paragraph 1 of Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353.[74] Evidence of force or intimidation is not important since the victim is incapable of giving her consent.[75]

It affirmed the trial court's ruling that AAA's testimony was credible. Her positive identification of the accused and the narration of the sordid acts committed against her sufficed.[76]

Additionally, the testimonies of the prosecution witnesses adequately supported Allan's conviction. Even without the results of the DNA paternity test, "the degree of proof to convict [him] beyond reasonable doubt was sufficiently established by the prosecution."[77] Thus,

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[71] *Id*. at 91.

[72] *Id*. at 150.

[73] *Id*. at 142-159.

[74] *Id*. at 155.

[75] *Id*.

[76] *Id*. at 157.

[77] *Id*.

WHEREFORE, the Decision of the Regional Trial Court of Villasis, Pangasinan, Branch 50 in Criminal Cases Nos. V-1123, V-1134, V-1135 & V-1136 is hereby **AFFIRMED *in toto***.

Costs *de oficio*.

SO ORDERED.[78] (Emphasis in the original)

Hence, an appeal before this Court was filed.

On July 1, 2013,[79] the Court of Appeals elevated to this Court the records of this case pursuant to its Resolution[80] dated January 2, 2013, which gave due course to the Notice of Appeal[81] filed by Allan.

In the Resolution[82] dated September 4, 2013, this Court noted the records of the case forwarded by the Court of Appeals. The parties were then ordered to file their supplemental briefs, should they so desired, within 30 days from notice.

On November 5, 2013, the Office of the Solicitor General filed a Manifestation on behalf of the People of the Philippines stating that it would no longer file a supplemental brief.[83] A similar Manifestation[84] was filed by the Public Attorney's Office on behalf of Allan.

The sole issue for resolution is whether Allan's guilt was proven beyond reasonable doubt.

Allan insists that he could not have impregnated AAA because, as she has testified, she was raped when she was 13 years old but her first menstrual period was when she was 14 years old.[85]

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[78] *Id*. at 158.

[79] *Rollo*, p. 1.

[80] CA *rollo*, p. 184.

[81] *Id*. at 181-183.

[82] *Rollo*, p. 25.

[83] *Id*. at 35-36.

[84] *Id*. at 26-28.

[85] *Id*. at 74.

Allegedly, AAA was inconsistent in her testimony because when she was interviewed, she did not know who raped her.[86] Despite this, however, the trial court still relied on AAA's testimony.[87]

He argues that the DNA paternity test result's confirmation that he is the father of AAA's child is insufficient on its own for his conviction.[88] He then assails the accuracy of the DNA test result claiming that:

> The record shows that Forensic Biologist, Delemen Dela Cruz did not state that she personally collected the biological specimens and neither did she mention that she put tamper tape on the collected specimens. She merely stated that they used mask and gloves when they collected the specimens; placed the same in a tube; put it inside a white envelope; and thereafter sealed it to [e]nsure that the specimens will not be contaminated. There was no showing that she thoroughly inspected the samples for tampering nor was there explanation as to what she did with the specimens while these were in their custody.
>
> Forensic chemist Gemma Madera, who collected biological samples from their subjects and examined the same was not presented by the prosecution. There is, thus, uncertainty in the DNA evidence and the probability of contamination and error is great.[89] (Citations omitted)

He concludes that since his guilt was not established with moral certainty, he should be presumed innocent.[90]

On the other hand, the Office of the Solicitor General contends that the prosecution was able to prove Allan's guilt beyond reasonable doubt.[91] Dr. Acosta's testimony on AAA's healed lacerations, as well as AAA's pregnancy and consequent delivery, conclusively confirmed that Allan had carnal knowledge of AAA.[92]

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[86] *Id*.

[87] *Id*. at 75.

[88] *Id*. at 76.

[89] *Id*.

[90] *Id*. at 77.

[91] *Id*. at 121, Brief for the Appellee.

[92] *Id*. at 116-117, Brief for the Appellee.

This is substantiated by AAA's "clear, straightforward and categorical testimony," and her positive identification of the offender.[93]

AAA's mental state was also undisputed.[94] Hence, it is unlikely that AAA would fabricate the charges against Allan.[95] Thus,

> A young girl would not usually concoct a tale of defloration; publicly admit having been ravished and her honor tainted; allow the examination of her private parts; and undergo all the trouble and inconvenience, not to mention the trauma and the scandal of a public trial, had she not in fact been raped and been truly moved to protect and preserve her honor, and motivated by the desire to obtain justice for the wicked acts committed against her. Moreover, the court has repeatedly held that the lone testimony of the victim in a rape case, if credible, is enough to sustain a conviction.[96] (Citation omitted)

The Office of the Solicitor General underscores that Allan's denial of the charges cannot subdue the prosecution's positive and direct testimonies.[97] His allegation that AAA's father fabricated the charges against him is "merely self-serving and absurd."[98] As found by the trial court, there were no apparent indications that AAA's father had ill-feelings against Allan since AAA's father was able to buy a truck for his own business.[99] Even assuming that AAA's father had ill motives against Allan, it is still unbelievable for him to make a story "that will expose his own daughter to public ridicule just to exact vengeance."[100]

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[93] *Id*. at 117, Brief for the Appellee.

[94] *Id*. at 116, Brief for the Appellee.

[95] *Id*. at 122, Brief for the Appellee.

[96] *Id*. at 123-124, Brief for the Appellee.

[97] *Id*. at 125, Brief for the Appellee.

[98] *Id*. at 126, Brief for the Appellee.

[99] *Id*. at 127, Brief for the Appellee.

[100] *Id*.

Furthermore, the defense cannot question the results of the DNA paternity test.[101] Its failure to question the dependability of the DNA testing's methodology is deemed a waiver on its part.[102]

The appeal lacks merit.

I

Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353,[103] provides:

> Article 266-A. *Rape*; *When And How Committed*. — Rape is Committed —
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
>
> b) When the offended party is deprived of reason or otherwise unconscious;
>
> c) By means of fraudulent machination or grave abuse of authority; and
>
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
>
> 2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

To warrant a rape conviction under Article 266-A, it should be shown that "a man had carnal knowledge with a woman, or a person sexually assaulted another, under any of the following circumstances:"[104]

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[101] *Id*. at 120, Brief for the Appellee.

[102] *Id*. at 119, Brief for the Appellee.

[103] The Anti-Rape Law of 1997.

[104] *People v. Quintos y Badilla,* 749 Phil. 809, 821 (2014) [Per *J*. Leonen, Second Division].

a) Through force, threat or intimidation;
b) The victim is deprived of reason;
c) The victim is unconscious;
d) By means of fraudulent machination;
e) By means of grave abuse of authority;
f) When the victim is under 12 years of age; or
g) When the victim is demented.[105]

In this case, the sexual congresses between Allan and AAA were clearly established by the victim's testimony. Apart from identifying her offender, AAA was also able to recount the sordid acts committed against her.

Q At the present time how old are you?
A I'm 20 years old[,] sir.
Q Do you have a child?
A Yes, sir.
Q What is the name of your child?
A [XXX],[106] sir.
Q By the way, is your child a male or a female?
A Female[,] sir.
Q And how old is she now?
A She is now four (4) years old[,] sir.
Q Who is the father of [XXX]?
A Allan[,] sir.
Q When you say Allan, are you referring to Allan Corpuz the accused in these cases?
A Yes, sir.
Q And the Allan whom you are referring to is he? (the government prosecutor pointing to accused Allan Corpuz).
A Yes, sir.
Q You said last time that Allan is your cousin?
A Yes, sir.
Q ***Now, what did Allan do to you that made (him) the father of your daughter?***
A ***"Iniyot nak[,] sir" (he had sex with me).***
Q ***How many times did Allan ha[ve] sex with you?***
A ***Four (4) times, sir.***

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[105] *Id*. at 821-822.

[106] Child's true name is concealed.

Q How old were you then when Allan had sex with you?
A I was 13 years old, sir.
Q And he had sex with you according to you for four (4) times?
A Yes, sir.
Q And because Allan had sex with you 4 times that is the reason why you gave birth to your daughter [XXX]?
A Yes, sir, for 3 months.
Q Your daughter [XXX] has resemblance with Allan?
A Yes, sir.
Q Where is [XXX] now?
A At home[,] sir.
Q How old is [XXX] now?
A She is 4 years old[,] sir.
Q You said a while ago that Allan had sex with you. My question is, did you consent to have sex with Allan?
A Yes, sir.
Q You consented because he gave you money then?
A Yes, sir.
Q And do you recall how much he gave you when he had sex with you?
A [₱]100.00, [₱]150.00[,] sometimes [₱]250.00[,] sir.[107]
(Emphasis provided)

Moreover, the sexual congresses between Allan and AAA was corroborated by the Medico Legal Certificate issued by Dr. Araos-Liberato which showed the presence of healed hymenal lacerations at 11:00, 5:00, and 2:00 positions.[108] Healed or fresh hymenal lacerations "are the best physical evidence of forcible defloration."[109]

The gravamen of rape under Article 266-A (1) is carnal knowledge of "a woman against her will or without her consent."[110]

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[107] CA *rollo*, pp. 87-89.

[108] *Id*. at 146.

[109] *People v. Rodriguez y Grajo,* G.R. No. 208406, February 29, 2016 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/february2016/208406.pdf> 6 [Per *J.* Peralta, Third Division].

[110] *People v. Monticalvo y Magno,* 702 Phil. 643, 659-660 (2013) [Per *J*. Perez, Second Division].

Undoubtedly, sexual intercourse with an intellectually disabled person is rape since proof of force or intimidation becomes needless as the victim is incapable of giving consent to the act.[111]

AAA's intellectual disability was undisputed and well substantiated by the testimonies of Tablizo and Dr. Acosta.[112] The defense did not even contest her condition.[113]

AAA was 14 years old when she had her neuropsychiatric examination with Tablizo. The examination revealed that at the time of examination, AAA's Intelligence Quotient was 42 and her level of intelligence was equal to Moderate Mental Retardation.[114] Also, she had a mental age of a five (5)-year-and-eight (8)-month-old child.[115]

AAA underwent another mental status examination with Dr. Acosta before being presented as a witness. The examination revealed that she had a "mild degree of mental retardation."[116] AAA "belonged to sub-average intellectual with an IQ of 70."[117] Although AAA was already 19 years old at that time, her mental age was that of a child aged five (5) to seven (7) years.[118]

For this reason, Allan's acts amounted to rape under Article 266-A 1(d) of the Revised Penal Code, as amended.[119]

Article 266-A. *Rape*; *When And How Committed.*— Rape is Committed—

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

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[111] *Id*. at 660.

[112] CA *rollo,* p. 86.

[113] *Id.* at 87.

[114] *Id*. at 86.

[115] *Id*.

[116] *Id*. at 87.

[117] *Id*.

[118] *Id*.

[119] Rep. Act No. 8353 (1997).

. . . . . .

d) When the offended party is ***under twelve (12) years of age*** or is demented, even though none of the circumstances mentioned above be present. (Emphasis provided)

In *People v. Quintos y Badilla*,[120] this Court emphasized that the conditions under Article 266-A should be construed in the light of one's capacity to give consent.[121] Similarly, this Court clarified that an intellectually disabled person is not automatically deprived of reason.[122] Thus,

> We are aware that the terms, "mental retardation" or "intellectual disability," had been classified under "deprived of reason." The terms, "deprived of reason" and "demented", however, should be differentiated from the term, "mentally retarded" or "intellectually disabled." ***An intellectually disabled person is not necessarily deprived of reason or demented. This court had even ruled that they may be credible witnesses. However, his or her maturity is not there despite the physical age. He or she is deficient in general mental abilities and has an impaired conceptual, social, and practical functioning relative to his or her age, gender, and peers. Because of such impairment, he or she does not meet the "socio-cultural standards of personal independence and social responsibility***."[123] (Emphasis provided, citations omitted)

In *Quintos,* this Court also clarified that one's capacity to give consent depends upon his or her mental age and not on his or her chronological age.[124]

> Thus, a person with a chronological age of 7 years and a normal mental age is as capable of making decisions and giving consent as a person with a chronological age of 35 and a mental age of 7. Both

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[120] 749 Phil. 809 (2014) [Per Justice Leonen, Second Division].

[121] *Id*. at 828-829.

[122] *Id*. at 829-830.

[123] *Id*. at 830.

[124] *Id*. at 830-831.

are considered incapable of giving rational consent because both are not yet considered to have reached the level of maturity that gives them the capability to make rational decisions, especially on matters involving sexuality. Decision-making is a function of the mind. ***Hence, a person's capacity to decide whether to give consent or to express resistance to an adult activity is determined not by his or her chronological age but by his or her mental age.*** Therefore, in determining whether a person is "twelve (12) years of age" under Article 266-A (1) (d), the interpretation should be in accordance with either the chronological age of the child if he or she is not suffering from intellectual disability, or the mental age if intellectual disability is established.[125] (Emphasis provided)

If a woman above 12 years old has a mental age of a child below 12, the accused remains liable for rape even if the victim acceded to the sordid acts.[126] The reason behind the rule "is simply that if sexual intercourse with a victim under twelve years of age is rape, it must thereby follow that carnal knowledge of a woman whose mental age is that of a child below twelve years should likewise be constitutive of rape."[127]

II

To qualify as a witness, the basic test is "whether he [or she] can perceive and, perceiving, can make known his [or her] perception to others."[128] Rule 130 of the Rules of Court provides:

Section 20. *Witnesses; their qualifications.* — Except as provided in the next succeeding section, all persons who ***can perceive, and perceiving, can make known their perception to others, may be witnesses***.

. . . . . .

Section 21. ***Disqualification by reason of mental incapacity or immaturity***. — The following persons cannot be witnesses:

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[125] *Id*.

[126] *People v. Bulaybulay,* 318 Phil. 714, 715 (1995) [Per *J.* Vitug, Third Division].

[127] *Id*.

[128] *People v. Padilla,* 361 Phil. 216, 221 (1999) [Per *J.* Mendoza, *En Banc*].

(a) Those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others;

(b) Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully. (Emphasis provided)

Therefore, an intellectually disabled person is not, solely by this reason, ineligible from testifying in court.[129] "He or she can be a witness, depending on his or her ability to relate what he or she knows."[130] If an intellectually disabled victim's testimony is coherent, it is admissible in court.[131]

Notwithstanding AAA's intellectual disability, she is qualified to take the witness stand. A person with low Intelligence Quotient may still perceive and is capable of making known his or her perception to others.

Given that AAA's qualification as a witness is already settled, AAA's mental state also does not prevent her from being a credible witness.[132]

The credibility as a witness of an intellectually disabled person is upheld provided that she is capable and consistent in narrating her experience. In *People v. Monticalvo y Magno*:[133]

Emphasis must be given to the fact that the competence and credibility of mentally deficient rape victims as witnesses have been upheld by this Court where it is shown that they can ***communicate their ordeal capably and consistently***. Rather than undermine the gravity of the complainant's accusations, it even lends greater credence

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[129] *Id*. at 222.

[130] *Id*.

[131] *Id*.

[132] *People v. Alipio,* 618 Phil. 38, 50 (2009) [Per *J*. Velasco, Jr., Third Division].

[133] 702 Phil. 643 (2013) [Per *J*. Perez, Second Division].

to her testimony, that, someone as feeble-minded and guileless could speak so tenaciously and explicitly on the details of the rape if she has not in fact suffered such crime at the hands of the accused.[134] (Emphasis provided)

Furthermore, Dr. Acosta explicitly stated that "[AAA's] degree of honesty is great" despite her condition.

> [AAA's] degree of honesty is "great" because, with her mental age, she does not know what is right or wrong. Indeed, in light of her mental state, [AAA's] simple narration of what happened to her is indicative of her honesty and naivet[é].[135] (Citation omitted)

Moreover, it would be unlikely for AAA to fabricate charges against Allan.[136] When there is no proof showing that the witness was moved by any improper motive, his or her identification of the offender as the perpetrator of the crime shall be upheld.[137]

In affirming the finding of the accused's guilt, this Court is aware that "when a woman says that she has been raped, she says, in effect, all that is necessary to show that she had indeed been raped."[138] If her testimony withstands the test of credibility, like in this case, "the rapist may be adjudged guilty solely on that basis."[139]

Therefore, Allan cannot exculpate himself, claiming that his guilt was not proven beyond reasonable doubt since AAA was allegedly not oriented to date, time, and place. AAA's failure to offer any testimony as to when and where she was

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[134] *Id*. at 662.

[135] CA *rollo*, p. 89.

[136] *Id*.

[137] *People v. Pascua y Teope,* 462 Phil. 245, 255 (2003) [Per *J.* Ynares-Santiago, First Division].

[138] *People v. Arlee,* 380 Phil. 164, 176 (2000) [Per *J.* Purisima, Third Division].

[139] *Id*.

raped[140] does not matter. This Court underscores that the date, place, and time of the incidents need not be accurately established since these are not elements of rape.

III

In sustaining a conviction for rape, "the victim's testimony must be clear and free from contradictions."[141] This is indispensable because in this kind of offenses, "conviction or acquittal virtually depends entirely on the credibility of the complainant's narration since usually, only the participants can testify as to its occurrence."[142]

Generally, the issue in rape cases involves credibility.[143] As "regards the credibility of witnesses, th[is] Court usually defers to the findings of the trial court, absent a strong and cogent reason to disregard [them]."[144]

Examination of the witnesses' demeanor during trial is essential "especially in rape cases because it helps establish the moral conviction that an accused is guilty beyond reasonable doubt of the crime charged."[145] In trial, judges are given the opportunity "to detect, consciously or unconsciously, observable cues and microexpressions that could, more than the words said and taken as a whole, suggest sincerity or betray lies and ill will."[146] These indispensable matters can never be mirrored in documents, as well as in objects used as proof.[147]

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[140] CA *rollo*, p. 74.

[141] *People v. Arlee,* 380 Phil. 164, 175 (2000) [Per *J.* Purisima, Third Division].

[142] *Id*.

[143] *Id*.

[144] *Id*.

[145] *People v. Quintos y Badilla,* 749 Phil. 809, 819-820 (2014) [Per *J.* Leonen, Second Division].

[146] *Id*. at 820.

[147] *Id*.

In this case, the trial court found AAA's testimony as "categorical, straightforward and credible."[148] Similarly, the Court of Appeals emphasized that it was already enough that AAA was able to identify her offender, as well as the sordid acts committed against her.[149] Thus, this Court has no reason to disturb these findings. The evaluation of the credibility of a witness is "best left to the trial court because it has the opportunity to observe the witnesses and their demeanor during the trial."[150] This Court gives great respect to the findings of trial courts, and more so when they are affirmed by the Court of Appeals.[151]

IV

The discrepancies pertaining to "minor details and not in actuality touching upon the central fact of the crime" do not prejudice AAA's credibility.[152] Thus, "[i]nstead of weakening [her] testimonies, such inconsistencies tend to strengthen [her] credibility because they discount the possibility of their being rehearsed."[153]

Admittedly, based on Dr. Acosta's findings, AAA was "not oriented to time, date and place."[154] For this reason, it is expected that there might be slight contradictions in her testimony as a result of her intellectual disability.

A perusal of the alleged contradictions in AAA's testimony shows that they merely pertain to trivial details. Hence, whether Allan impregnated AAA does not matter since the elements of

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[148] CA *rollo*, p. 89.

[149] *Id*. at 157.

[150] *People v. Quintos y Badilla,* 749 Phil. 809, 820 (2014) [Per *J*. Leonen, Second Division].

[151] *Id*.

[152] *People v. Pascua y Teope,* 462 Phil. 245, 254 (2003) [Per *J*. Ynares-Santiago, First Division].

[153] *Id*.

[154] CA *rollo,* p. 84, Brief for the Accused-Appellant.

rape were already proven. Assailing AAA's pregnancy does not disprove that he had carnal knowledge of her.

V

"DNA is the fundamental building block of a person's entire genetic make-up. [It] is found in all human cells and is the same in every cell of the same person. Genetic identity is [however] unique. Hence, a person's DNA profile can determine his identity."[155]

In resolving a crime, an evidence sample is "collected from the scene of the crime or from the victim's body for the suspect's DNA."[156] This sample is "then matched with the reference sample taken from the suspect and the victim."[157] DNA testing is made to "ascertain whether an association exists between the evidence sample and the reference sample."[158] Hence, the collected samples "are subjected to various chemical processes to establish their profile" which may provide any of these three (3) possible results:[159]

1) The samples are different and therefore must have originated from different sources (exclusion). This conclusion is absolute and requires no further analysis or discussion;

2) It is not possible to be sure, based on the results of the test, whether the samples have similar DNA types (inconclusive). This might occur for a variety of reasons including degradation, contamination, or failure of some aspect of the protocol. Various parts of the analysis might then be repeated with the same or a different sample, to obtain a more conclusive result; or

3) The samples are similar, and could have originated from the same source (inclusion). In such a case, the samples are

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[155] *Herrera v. Alba,* 499 Phil. 185, 196 (2005) [Per *J.* Carpio, First Division].

[156] *People v. Vallejo y Samartino,* 431 Phil. 798, 816 (2002) [*Per Curiam, En Banc*].

[157] *Id*.

[158] *Id*.

[159] *Id*.

> found to be similar, the analyst proceeds to determine the statistical significance of the similarity.[160]

The nature of a DNA analysis in determining paternity is explained in *Herrera v. Alba:*[161]

> How is DNA typing performed? From a DNA sample obtained or extracted, a molecular biologist may proceed to analyze it in several ways. There are five (5) techniques to conduct DNA typing. They are: the *RFLP (restriction fragment length polymorphism); "reverse dot blot"* or HLA DQ a/Pm loci which was used in 287 cases that were admitted as evidence by 37 courts in the U.S. as of November 1994; mtDNA process; VNTR (variable number tandem repeats); and the most recent which is known as the PCR-([polymerase] chain reaction) based STR (short tandem repeats) method which, as of 1996, was availed of by most forensic laboratories in the world. PCR is the process of replicating or copying DNA in an evidence sample a million times through repeated cycling of a reaction involving the so-called DNA polymerize enzyme. *STR*, on the other hand, takes measurements in 13 separate places and can match two (2) samples with a reported theoretical error rate of less than one (1) in a trillion.
>
> Just like in fingerprint analysis, in DNA typing, "*matches"* are determined. To illustrate, when DNA or fingerprint tests are done to identify a suspect in a criminal case, the evidence collected from the crime scene is compared with the "*known"* print. If a substantial amount of the identifying features are the same, the DNA or fingerprint is deemed to be a match. But then, even if only one feature of the DNA or fingerprint is different, it is deemed not to have come from the suspect.
>
> As earlier stated, certain regions of human DNA show variations between people. In each of these regions, a person possesses two genetic types called "*allele"*, one inherited from each parent. ***In [a] paternity test, the forensic scientist looks at a number of these variable regions in an individual to produce a DNA profile. Comparing next the DNA profiles of the mother and child, it is possible to determine which half of the child's DNA was inherited from the mother. The other half must have been inherited from the biological***

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[160] *Id*.

[161] 499 Phil. 185 (2005) [Per *J.* Carpio, First Division].

father. The alleged father's profile is then examined to ascertain whether he has the DNA types in his profile, which match the paternal types in the child. If the man's DNA types do not match that of the child, the man is **excluded** as the father. If the DNA types match, then he is ***not excluded*** as the father.[162] (Emphasis provided, citations omitted)

Based on the result of the DNA test conducted in this case, Allan is disputably presumed to be the child's father.

The DNA testing result shows that "[t]here is a **COMPLETE MATCH** in all of the fifteen (15) loci tested using the Powerflex 16 System between the alleles of Edgar Allan F. Corpuz and [XXX]." Based on the findings, "there is a ***99.9999%*** Probability of Paternity that Edgar Allan F. Corpuz is the biological father of [XXX].[163] (Emphasis provided, citation omitted)

This is in conformity with Section 9 of the Rule on DNA Evidence which reads:

Section 9. *Evaluation of DNA Testing Results*. — In evaluating the results of DNA testing, the court shall consider the following:

(a) The evaluation of the weight of matching DNA evidence or the relevance of mismatching DNA evidence;

(b) The results of the DNA testing in the light of the totality of the other evidence presented in the case; and that

(c) DNA results that exclude the putative parent from paternity shall be conclusive proof of non-paternity. If the value of the Probability of Paternity is less than 99.9%, the results of the DNA testing shall be considered as corroborative evidence. ***If the value of the Probability of Paternity is 99.9% or higher, there shall be a disputable presumption of paternity.*** (Emphasis provided)

However, the court should still assess the probative value of the DNA evidence considering, among others, the following:

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[162] *Id*. at 197.

[163] CA *rollo*, p. 89.

[H]ow the samples were collected, how they were handled, the possibility of contamination of the samples, the procedure followed in analyzing the samples, whether the proper standards and procedures were followed in conducting the tests, and the qualification of the analyst who conducted the tests.[164]

Hence, Sections 7 and 8 of the Rule on DNA Evidence[165] specifically provide for the considerations in assessing the probative value of DNA evidence:

Section 7. *Assessment of Probative Value of DNA Evidence*. — In assessing the probative value of the DNA evidence presented, the court shall consider the following:

(a) The chain of custody, including how the biological samples were collected, how they were handled, and the possibility of contamination of the samples;

(b) The DNA testing methodology, including the procedure followed in analyzing the samples, the advantages and disadvantages of the procedure, and compliance with the scientifically valid standards in conducting the tests;

(c) The forensic DNA laboratory, including accreditation by any reputable standards-setting institution and the qualification of the analyst who conducted the tests. If the laboratory is not accredited, the relevant experience of the laboratory in forensic casework and credibility shall be properly established; and

(d) The reliability of the testing result, as hereinafter provided.

The provisions of the Rules of Court concerning the appreciation of evidence shall apply suppletorily.

Section 8. *Reliability of DNA Testing Methodology*. — In evaluating whether the DNA testing methodology is reliable, the court shall consider the following:

(a) The falsifiability of the principles or methods used, that is, whether the theory or technique can be and has been tested;

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[164] *People v. Vallejo y Samartino,* 431 Phil. 798, 817 (2002) [*Per Curiam, En Banc*].

[165] Adm. Matter No. 06-11-5-SC (2007).

(b) The subjection to peer review and publication of the principles or methods;

(c) The general acceptance of the principles or methods by the relevant scientific community;

(d) The existence and maintenance of standards and controls to ensure the correctness of data generated;

(e) The existence of an appropriate reference population database; and

(f) The general degree of confidence attributed to mathematical calculations used in comparing DNA profiles and the significance and limitation of statistical calculations used in comparing DNA profiles.

To emphasize, it is the defense that moved for a DNA testing.[166] It failed to assail the result and the dependability of the procedure before the trial court.[167] It is only now that it is questioning the test's accuracy given that the results are not favorable to it. For this reason, this Court agrees with the Court of Appeals that the defense is already "estopped from questioning, much less, objecting the reliability of the DNA testing methodology conducted on the specimens submitted."[168]

The testimonies of the victim and other prosecution witnesses have sufficiently established Allan's guilt. Even without the favorable results of the DNA test, which simply corroborated the fact that Allan had carnal knowledge of the victim, there was enough proof to convict Allan of the charges.[169]

Furthermore, Allan's defense of denial cannot overcome AAA's positive identification of the accused.[170] A denial is

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[166] CA *rollo*, p. 157.

[167] *Id*. at 90.

[168] *Id*. at 157.

[169] *Id*.

[170] *People v. Andaya y Flores,* 365 Phil. 654, 668 (1999)[Per *J*. Gonzaga-Reyes, *En Banc*].

"inherently weak and crumbles in the light of positive declarations of truthful witnesses who testified on affirmative matters that appellant was at the scene of the crime and was the victim's assailant."[171]

Rape is punishable by *reclusion perpetua*.[172] Under Article 266(10) of the Revised Penal Code, rape is qualified "when the offender ***knew*** of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime."[173] This qualifying circumstance should be particularly alleged in the Information.[174] A mere assertion of the victim's mental deficiency is not enough.[175] For this reason, Allan can only be convicted of four (4) counts of rape under Article 266-A 1(d) of the Revised Penal Code, as amended.[176]

In accordance with *People v. Jugueta*,[177] where this Court clarified that "when the circumstances of the crime call for the imposition of *reclusion perpetua* only, the civil indemnity and moral damages should be ₱75,000.00 each, as well as exemplary damages in the amount of ₱75,000.00."[178] Hence, the award of civil indemnity, moral damages, and exemplary damages are each increased to ₱75,000.00 for each count of rape.

WHEREFORE, Edgar Allan Corpuz *y* Flores is found **GUILTY** beyond reasonable doubt of four (4) counts of rape

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[171] *People v. Dela Paz,* 569 Phil. 684, 700 (2008) [Per *J.* Chico-Nazario, Third Division].

[172] *People v. Pascua y Teope,* 462 Phil. 245, 255 (2003) [Per *J.* Ynares-Santiago, First Division].

[173] *Id*.

[174] *Id.*

[175] *Id*.

[176] *Id*.

[177] G.R. No. 202124, April 12, 2016 < sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/202124.pdf> [Per *J*. Peralta, *En Banc*].

[178] *Id*. at 27.

under Article 266-A 1(d) of the Revised Penal Code, as amended. He is sentenced to suffer the penalty of *reclusion perpetua* for each count of rape. He is ordered to pay AAA the awards of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages for each count of rape.

Interest at the rate of six percent (6%) per annum shall be imposed on all damages awarded from the date of the finality of this judgment until fully paid.[179]

SO ORDERED.

Peralta[*] *(Acting Chairperson)*, *Mendoza,* and *Martires, JJ.,* concur.

Carpio, J., on official leave.

SECOND DIVISION

[G.R. No. 211170. July 3, 2017]

SPOUSES MAXIMO ESPINOZA and WINIFREDA DE VERA, *petitioners, vs.* **SPOUSES ANTONIO MAYANDOC and ERLINDA CAYABYAB MAYANDOC,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FINDINGS OF THE COURT OF APPEALS, WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE, ARE CONCLUSIVE AND BINDING ON THE SUPREME COURT.— The findings of facts of the Court of Appeals are

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[179] See *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 458 [Per *J.* Peralta, *En Banc*].

[*] Designated Acting Chairperson per S.O. No. 2445 dated June 16, 2017.

conclusive and binding on this Court and they carry even more weight when the said court affirms the factual findings of the trial court. Stated differently, the findings of the Court of Appeals, by itself, which are supported by substantial evidence, are almost beyond the power of review by this Court. Although this rule is subject to certain exceptions, this Court finds none that is applicable in this case.

2. **CIVIL LAW; CIVIL CODE; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; OWNERSHIP; BUILDER IN GOOD FAITH; OPTIONS OF THE OWNER OF THE LAND ON WHICH ANYTHING HAS BEEN BUILT IN GOOD FAITH.—** To be deemed a builder in good faith, it is essential that a person asserts title to the land on which he builds, i.e., that he be a possessor in the concept of owner, and that he be unaware that there exists in his title or mode of acquisition any flaw which invalidates it. The RTC, as affirmed by the CA, found respondents to be builders in good faith x x x. As such, Article 448 of the Civil Code must be applied. It applies when the builder believes that he is the owner of the land or that by some title he has the right to build thereon, or that, at least, he has a claim of title thereto. In *Tuatis v. Spouses Escol, et al.,* this Court ruled that the seller (the owner of the land) has two options under Article 448: (1) he may appropriate the improvements for himself after reimbursing the buyer (the builder in good faith) the necessary and useful expenses under Articles 546 and 548 of the Civil Code; or (2) he may sell the land to the buyer, unless its value is considerably more than that of the improvements, in which case, the buyer shall pay reasonable rent x x x.

3. **REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; THE LAW ALWAYS PRESUMES GOOD FAITH, SUCH THAT ANYONE WHO CLAIMS THAT SOMEONE IS IN BAD FAITH HAS THE DUTY TO PROVE SUCH BY CLEAR AND CONVINCING EVIDENCE.—** The settled rule is bad faith should be established by clear and convincing evidence since the law always presumes good faith. In this particular case, petitioners were not able to prove that respondents were in bad faith in constructing the house on the subject land. Bad faith does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong. It means breach of a known duty

through some motive, interest or ill will that partakes of the nature of fraud. For anyone who claims that someone is in bad faith, the former has the duty to prove such.

4. ID.; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; INAPPLICABLE WHEN THERE IS NO IDENTITY OF SUBJECT MATTER AND CAUSE OF ACTION BETWEEN THE PRIOR AND THE PRESENT CASE.— As to the issue of *res judicata*, the CA is correct in its ruling that there is no identity of subject matter and cause of action between the prior case of annulment of document and the present case x x x. The well-settled rule is that the principle or rule of *res judicata* is primarily one of public policy. It is based on the policy against multiplicity of suits, whose primary objective is to avoid unduly burdening the dockets of the courts. In this case, however, such principle is inapplicable.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Emilio V. Angeles for respondents.

D E C I S I O N

PERALTA,[*] *J.*:

Before this Court is the Petition for Review on *Certiorari* under Rule 45, dated March 21, 2014, of petitioners-spouses Maximo Espinoza and Winifreda De Vera, that seeks to reverse and set aside the Decision[1] dated September 17, 2013 and Resolution dated January 28, 2014, both of the Court of Appeals (*CA*) which, in turn, affirmed with modifications the Decision[2] dated February 18, 2011 of the Regional Trial Court (*RTC*), Branch 42, Dagupan City, in a complaint for useful expenses

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[*] Acting Chairperson, per Special Order No. 2445 dated June 16, 2017.

[1] Penned by Associate Justice Danton Q. Bueser, with the concurrence of Associate Justices Amelita G. Tolentino and Ramon R. Garcia; *rollo*, pp. 34-43.

[2] Penned by Presiding Judge A. Florentino R. Dumlao, Jr.; *id*. at 118-125.

under Articles 448[3] and 546[4] of the New Civil Code of the Philippines.

The facts follow.

A parcel of land located in Dagupan City was originally owned by Eusebio Espinoza. After the death of Eusebio, the said parcel of land was divided among his heirs, namely: Pastora Espinoza, Domingo Espinoza and Pablo Espinoza. Petitioner Maximo is the son of Domingo Espinoza, who died on November 3, 1965, and Agapita Cayabyab, who died on August 11, 1963.

Thereafter, on May 25, 1972, Pastora Espinoza executed a Deed of Sale conveying her share of the same property to respondents and Leopoldo Espinoza. However, on that same date, a fictitious deed of sale was executed by petitioner Maximo's father, Domingo Espinoza, conveying the three-fourth (3/4) share in the estate in favor of respondent Erlinda Cayabyab Mayandoc's parents; thus, TCT No. 28397 was issued in the names of the latter.

On July 9, 1977, a fictitious deed of sale was executed by Nemesio Cayabyab, Candida Cruz, petitioners-spouses Maximo Espinoza and Winifreda De Vera and Leopoldo Espinoza over

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[3] Art. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

[4] Art. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

the land in favor of respondents-spouses Antonio and Erlinda Mayandoc; thus, TCT No. 37403 was issued under the names of the latter.

As a result of the foregoing, petitioners filed an action for annulment of document with prayer for the nullification of TCT No. 37403 and, on August 16, 1999, the RTC, Branch 40, Dagupan City rendered a Decision in favor of petitioners and ordering respondents to reconvey the land in dispute and to pay attorney's fees and the cost of the suit.

Respondents appealed, but the CA, in its Decision dated February 6, 2004, affirmed the RTC with modifications that the award of attorney's fees and litigation expenses be deleted for lack of factual basis. The said CA Decision became final and executory on March 8, 2004.

Thus, respondents filed a complaint for reimbursement for useful expenses, pursuant to Articles 448 and 546 of the New Civil Code, alleging that the house in question was built on the disputed land in good faith sometime in 1995 and was finished in 1996. According to respondents, they then believed themselves to be the owners of the land with a claim of title thereto and were never prevented by the petitioners in constructing the house. They added that the new house was built after the old house belonging to respondent Erlinda Mayandoc's father was torn down due to termite infestation and would not have reconstructed the said house had they been aware of the defect in their title. As such, they claimed that they are entitled to reimbursement of the construction cost of the house in the amount of ₱800,000.00. They further asserted that at the time that their house was constructed, they were possessors in good faith, having lived over the land in question for many years and that petitioners questioned their ownership and possession only in 1997 when a complaint for nullity of documents was filed by the latter.

Petitioners, in their Answer, argued that respondents can never be considered as builders in good faith because the latter were aware that the deeds of sale over the land in question were fictitious and, therefore, null and void; thus, as builders in bad

faith, they lose whatever has been built over the land without right to indemnity.

Respondents, on January 5, 2011, manifested their option to buy the land where the house stood, but petitioners expressed that they were not interested to sell the land or to buy the house in question.

The RTC, on February 18, 2011, rendered its Decision with the following dispositive portion:

> WHEREFORE, judgment is hereby rendered requiring the defendants to sell the land, where the plaintiffs' house stands, to the latter at a reasonable price based on the zonal value determined by the Bureau of Internal Revenue (BIR).
>
> SO ORDERED.[5]

Petitioners appealed to the CA, but the latter, in its Decision dated September 17, 2013, affirmed the decision of the RTC with modifications. The dispositive portion of the Decision reads:

> WHEREFORE, the Decision dated February 18, 2011 by the Regional Trial Court, Branch 42 of Dagupan City, in Civil Case No. 2005-0271-D is hereby AFFIRMED with MODIFICATIONS.
>
> Let the case be REMANDED to the aforementioned trial court for further proceedings consistent with the proper application of Articles 448, 546 and 548 of the New Civil Code and to render a complete judgment of the case.
>
> SO ORDERED.[6]

The motion for reconsideration of petitioners were subsequently denied by the CA in its Resolution dated January 28, 2014.

Hence, the present petition.

Petitioners raise the following issues:

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[5] *Rollo*, p. 125.

[6] *Id*. at 42-43.

I.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE PETITIONERS WERE NOT ABLE TO PROVE BAD FAITH ON THE PART OF THE RESPONDENTS.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT *RES JUDICATA* DOES NOT APPLY IN THE INSTANT CASE.

According to petitioners, whether or not respondents were in bad faith in introducing improvements on the subject land is already moot, since the judgment rendered by the RTC of Dagupan City, Branch 40 and affirmed by the CA, that declared the two Deeds of Definite/Absolute Sale dated May 25, 1972 and July 9, 1977 as null and void, had long become final and executory on March 8, 2004. They also argue that respondents had not successfully shown any right to introduce improvements on the said land as their claim of laches and acquisitive prescription have been rejected by the CA on appeal; thus, it follows that the respondents were builders in bad faith because knowing that the land did not belong to them and that they had no right to build thereon, they still caused the house to be erected. They further insist that respondents are deemed builders in bad faith because their house has been built and reconstructed into a bigger one after respondent Erlinda's parents forged a fictitious sale. Finally, they claim that the principle of *res judicata* in the mode of "conclusiveness of judgment" applies in this case.

The petition lacks merit.

The findings of facts of the Court of Appeals are conclusive and binding on this Court[7] and they carry even more weight when the said court affirms the factual findings of the trial court.[8]

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[7] *Security Bank and Trust Company v. Triumph Lumber and Construction Corporation*, 361 Phil. 463, 474 (1999); *American Express International, Inc. v. Court of Appeals*, 367 Phil. 333, 339 (1999).

[8] *Borromeo v. Sun*, 375 Phil. 595, 602 (1999); *Boneng v. People*, 363 Phil. 594, 600 (1999).

Stated differently, the findings of the Court of Appeals, by itself, which are supported by substantial evidence, are almost beyond the power of review by this Court.[9] Although this rule is subject to certain exceptions, this Court finds none that is applicable in this case. Nevertheless, the petition still fails granting that an exception obtains.

To be deemed a builder in good faith, it is essential that a person asserts title to the land on which he builds, *i.e.*, that he be a possessor in the concept of owner, and that he be unaware that there exists in his title or mode of acquisition any flaw which invalidates it.[10] The RTC, as affirmed by the CA, found respondents to be builders in good faith, thus:

> The plaintiffs are builders in good faith. As asserted by plaintiffs and not rebutted by defendants, the house of plaintiffs was built on the lot owned by defendants in 1995. The complaint for nullity of documents and reconveyance was filed in 1997, about two years after the subject conjugal house was constructed. Defendants-spouses believed that at the time when they constructed their house on the lot of defendants, they have a claim of title. Art. 526, New Civil Code, states that a possessor in good faith is one who has no knowledge of any flaw or defect in his title or mode of acquisition. This determines whether the builder acted in good faith or not. Surely, plaintiffs would not have constructed the subject house which plaintiffs claim to have cost them ₱800,000.00 to build if they knew that there is a flaw in their claim of title. Nonetheless, Art. 527, New Civil Code, states clearly that good faith is always presumed, and upon him who alleges bad faith on the part of the possessor lies the burden of proof. The records do not show that the burden of proof was successfully discharged by the defendants.
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> x x x x x x x x x
>
> Plaintiffs are in good faith in building their conjugal house in 1995 on the lot they believed to be their own by purchase. They also have in their favor the legal presumption of good faith. It is the

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[9] *Pimentel v. Court of Appeals*, 366 Phil. 494, 501 (1999).

[10] *Department of Education v. Delfina C. Casibang, et al.*, G.R. No. 192268, January 27, 2016, citing *Heirs of Victorino Sarili v. Lagrosa*, 724 Phil. 608, 623 (2014).

defendants who had the burden to prove otherwise. They failed to discharge such burden until the Regional Trial Court, Br. 40, Dagupan City, promulgated an adverse ruling in Civil Case No. 97-0187-D. Thus, Art. 448 comes in to protect the plaintiffs-owners of their improvement without causing injustice to the lot owner. Art. 448 comes in to protect the plaintiff-owners of their improvement without causing injustice to the lot owner. Art. 448 provided a just resolution of the resulting "forced-ownership" by giving the defendants lot owners the option to acquire the conjugal house after payment of the proper indemnity or to oblige the builder plaintiffs to pay for the lot. It is the defendants-lot owners who are authorized to exercise the option as their right is older, and under the principle of accession where the accessory (house) follows the principal. x x x.[11]

The settled rule is bad faith should be established by clear and convincing evidence since the law always presumes good faith.[12] In this particular case, petitioners were not able to prove that respondents were in bad faith in constructing the house on the subject land. Bad faith does not simply connote bad judgment or negligence.[13] It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong.[14] It means breach of a known duty through some motive, interest or ill will that partakes of the nature of fraud.[15] For anyone who claims that someone is in bad faith, the former has the duty to prove such. Hence, petitioners err in their argument that respondents failed to prove that they are builders in good faith in spite of the findings of the RTC and the CA that they are.

As such, Article 448[16] of the Civil Code must be applied. It applies when the builder believes that he is the owner of the

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[11] *Id*. at 120-121. (Citations omitted)

[12] *Ford Philippines, Inc. v. Court of Appeals*, 335 Phil. 1, 9-10 (1997).

[13] *Id*. at 9.

[14] *Id*.

[15] *Id*.

[16] Art. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in

land or that by some title he has the right to build thereon,[17] or that, at least, he has a claim of title thereto.[18] In *Tuatis v. Spouses Escol, et al.*,[19] this Court ruled that the seller (the owner of the land) has two options under Article 448: (1) he may appropriate the improvements for himself after reimbursing the buyer (the builder in good faith) the necessary and useful expenses under Articles 546[20] and 548[21] of the Civil Code; or (2) he may sell the land to the buyer, unless its value is considerably more than that of the improvements, in which case, the buyer shall pay reasonable rent, thus:

> The rule that the choice under Article 448 of the Civil Code belongs to the owner of the land is in accord with the principle of accession, *i.e.*, that the accessory follows the principal and not the other way around. Even as the option lies with the landowner, the grant to him, nevertheless, is preclusive. The landowner cannot refuse to exercise either option and compel instead the owner of the building to remove it from the land.

Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof. (361a)

[17] *Rosales v. Castelltort*, 509 Phil. 137, 147 (2005).

[18] *Briones v. Macabagdal*, 640 Phil. 343, 352 (2010).

[19] 619 Phil. 465, 483 (2009), cited in *Communities Cagayan, Inc. v. Spouses Arsenio and Angeles Nanol, et al.*, 698 Phil. 648, 663-664 (2012).

[20] ART. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

[21] ART. 548. Expenses for pure luxury or mere pleasure shall not be refunded to the possessor in good faith; but he may remove the ornaments with which he has embellished the principal thing if it suffers no injury thereby, and if his successor in the possession does not prefer to refund the amount expended.

The *raison d'etre* for this provision has been enunciated thus: Where the builder, planter or sower has acted in good faith, a conflict of rights arises between the owners, and it becomes necessary to protect the owner of the improvements without causing injustice to the owner of the land. In view of the impracticability of creating a state of forced co-ownership, the law has provided a just solution by giving the owner of the land the option to acquire the improvements after payment of the proper indemnity, or to oblige the builder or planter to pay for the land and the sower the proper rent. He cannot refuse to exercise either option. It is the owner of the land who is authorized to exercise the option, because his right is older, and because, by the principle of accession, he is entitled to the ownership of the accessory thing.[22]

The CA, therefore, did not err in its ruling that instead of requiring the petitioners to sell the land, the RTC must determine the option which the petitioners would choose. As aptly ruled by the CA:

The rule that the right of choice belongs to the owner of the land is in accordance with the principle of accession. However, even if this right of choice is exclusive to the land owner, he cannot refuse to exercise either option and demand, instead for the removal of the building.

Instead of requiring defendants-appellants to sell the land, the court *a quo* must determine the option which they would choose. The first option to appropriate the building upon payment of indemnity or the second option, to sell the land to the plaintiffs-appellees. Moreover, the court *a quo* should also ascertain: (a) under the first option, the amount of indemnification for the building; or (b) under the second option, the value of the subject property *vis-à-vis* that of the building, and depending thereon, the price of, or the reasonable rent for, the subject property.

Hence, following the ruling in the recent case of *Briones v. Macabagdal*, this case must be remanded to the court *a quo* for the conduct of further proceedings to assess the current fair market of the land and to determine other matters necessary for the proper

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[22] *Tuatis v. Spouses Escol, et al., supra* note 19, at 488-489. (Citations omitted)

application of Article 448, in relation to Articles 546 and 548 of the New Civil Code.[23]

Therefore, this Court agrees with the CA that there is a need to remand the case to the RTC for further proceedings, specifically, in assessing the current fair market value of the subject land and other matters that are appropriate in the application of Article 448, in relation to Articles 546 and 548 of the New Civil Code.

As to the issue of *res judicata*, the CA is correct in its ruling that there is no identity of subject matter and cause of action between the prior case of annulment of document and the present case, thus:

> In the instant case, *res judicata* will not apply since there is no identity of subject matter and cause of action. The first case is for annulment of document, while the instant case is for reimbursement of useful expenses as builders in good faith under article 448 in relation to Articles 546 and 548 of the New Civil Code.
>
> Moreover, We are not changing or reversing any findings of the RTC and by this Court in Our 6 February 2004 decision. The Court is still bound by this judgment insofar as it found the Deeds of Absolute Sale null and void, and that defendants-appellants are the rightful owners of the lot in question.
>
> However, if the court *a quo* did not take cognizance of the instant case, plaintiffs-appellees shall lose ownership of the building worth Php316,400.00 without any compensation. While, the defendant-appellants not only will recover the land but will also acquire a house without payment of indemnity. The fairness of the rules enunciated in Article 448 is explained by the Supreme Court in the case of Depra v. Dumlao, *viz*.:
>
> > Where the builder, planter or sower has acted in good faith, a conflict of rights arises between the owners, and it becomes necessary to protect the owner of the improvements without causing injustice to the owner of the land. In view of the impracticability of creating a state of forced ownership, the law has provided a just solution by giving the owner of the

[23] *Rollo*, p. 40. (Citation omitted).

> land the option to acquire the improvements after payment of the proper indemnity, or to oblige the builder or planter to pay for the land and the sower to pay the proper rent. It is the owner of the land who is authorized to exercise the option, because his right is older, and because, by the principle of accession, he is entitled to the ownership of the accessory thing.

Finally, "*the decision of the court a quo should not be viewed as a denigration of the doctrine of immutability of final judgments, but a recognition of the equally sacrosanct doctrine that a person should not be allowed to profit or enrich himself inequitably at another's expense*."[24]

The well-settled rule is that the principle or rule of *res judicata* is primarily one of public policy. It is based on the policy against multiplicity of suits,[25] whose primary objective is to avoid unduly burdening the dockets of the courts.[26] In this case, however, such principle is inapplicable.

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45, dated March 21, 2014, of petitioners-spouses Maximo Espinoza and Winifreda De Vera, is **DENIED.** Consequently, the Decision dated September 17, 2013 and Resolution dated January 28, 2014, both of the Court of Appeals are **AFFIRMED**.

SO ORDERED.

Mendoza, Leonen, and *Martires, JJ.,* concur.

Carpio, J., on wellness leave.

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[24] *Id*. at 41-42. (Italics in the original)

[25] *Cruz v. Court of Appeals*, 369 Phil. 161, 170-171 (1999).

[26] *Riviera Golf Club, Inc. v. CCA Holdings, B.V.*, G.R. No. 173783, June 17, 2015, 758 SCRA 691, 707.

SECOND DIVISION

[G.R. No. 211947. July 3, 2017]

HEIRS OF CAYETANO CASCAYAN, represented by LA PAZ MARTINEZ, *petitioners, vs.* **SPOUSES OLIVER and EVELYN GUMALLAOI, and the MUNICIPAL ENGINEER OF BANGUI, ILOCOS NORTE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; PERTAINS ONLY TO QUESTIONS OF LAW, FOR THE FACTUAL FINDINGS OF THE COURT OF APPEALS BIND THE SUPREME COURT.— Petitions for review on certiorari under Rule 45 shall pertain only to questions of law. x x x Thus, as a general rule, the factual findings of the Court of Appeals bind this Court. x x x The Court of Appeals' appreciation of the evidence on the possession of Lot No. 20028 and the weight to be given to the parties' Tax Declarations and affidavits, which is consistent with the Regional Trial Court findings, is binding on this Court and there is no cogent reason to review it.

2. ID.; EVIDENCE; FRAUD; MUST BE ESTABLISHED THROUGH CLEAR AND CONVINCING EVIDENCE.— The presence of fraud is a factual question. It must be established through clear and convincing evidence, though the circumstances showing fraud may be varied x x x. Here, the Court of Appeals' and the Regional Trial Court's conclusion that petitioners obtained the free patent fraudulently was based on several findings. They determined that petitioners were never in possession of Lot No. 20028. Even the documents submitted to support their application were flawed: the tax declarations were inconsistent and the affidavits and Certifications were subsequently retracted. Considering that the Regional Trial Court and the Court of Appeals uniformly determined that fraud existed in the free patent application based on the evidence presented, there is no reason for this Court to delve into this issue.

APPEARANCES OF COUNSEL

Garces Law Office for petitioners.
Eric Garvida for respondents.

R E S O L U T I O N

LEONEN, *J.*:

This resolves a Petition for Review on Certiorari[1] filed under Rule 45 of the Rules of Court praying that the Court of Appeals Decision[2] dated July 31, 2013 and Resolution[3] dated February 25, 2014 in CA-G.R. CV No. 96900 be reversed and set aside.

On September 10, 2007, La Paz Cascayan-Martinez, Elpidio Cascayan, Evangeline Cascayan-Siapco, Flor Cascayan, Nene Cascayan-Alupay, and Virginia Cascayan-Avida (the Cascayan Heirs),[4] all heirs of Cayetano Cascayan (Cayetano), filed a complaint for Recovery of Possession, Demolition, and Damages against the spouses Oliver and Evelyn Gumallaoi (Spouses Gumallaoi) before Branch 19, Regional Trial Court, Bangui, Ilocos Norte.[5] The Cascayan Heirs alleged that by virtue of a free patent application, they were co-owners of a parcel of land covered by Original Certificate of Title (OCT) No. P-78399,[6] denominated as Lot No. 20028, described as follows:

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[1] *Rollo*, pp. 7-29.

[2] *Id*. at 31-45. The Decision was penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Normandie B. Pizarro and Florito S. Macalino of the Special Seventeenth Division, Court of Appeals, Manila.

[3] *Id*. at 78-79. The Resolution was penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Normandie B. Pizarro and Florito S. Macalino of the Former Special Seventeenth Division, Court of Appeals, Manila.

[4] The Cascayan Heirs are represented by La Paz Martinez.

[5] *Rollo*, pp. 31-32.

[6] *Id*. at 32.

A parcel of cornland (Lot No. 20028, Cad. 734-D, Bangui Cadastre), bounded on the Northeast by Lot No. 20026; on the Southeast by an Alley; and on the Southwest by Lots Nos. 20029 and 20027 of Cad. 734-D, containing an aggregate area of 1,083 sq. mts., more or less, covered under Katibayan ng Orihinal na Titulo Blg. No. P-78399 with Tax Declaration No. 03-006-00652 with Market Value of Php 3,510.00.[7]

The Cascayan Heirs affirmed that the Spouses Gumallaoi bought Lot No. 20029, an adjacent lot, described as follows:

A parcel of land (Lot No. 20029, Cad. 734-D, Bangui Cadastre), bounded on the Northeast by Lot No. 20028; on the Southeast by an Alley; and on the Southwest by Lot No. 20030; and on the Northwest by Lot No. 20027 of Cad. 734-D, containing an aggregate area of 999 sq. mts., more or less, covered under Tax Declaration No. 03-006-00673.[8]

The Spouses Gumallaoi built a residential house on Lot No. 20029 which the Cascayan Heirs alleged encroached on Lot No. 20028 after renovations and improvements.[9] The Spouses Gumallaoi ignored the notifications that they had encroached into Lot No. 20028.[10] On May 31, 2001, the Spouses Gumallaoi applied for a Building Permit. Due to renovations on their residential house, they further encroached on Lot No. 20028.[11] Thus, the Cascayan Heirs prayed that the Spouses Gumallaoi be directed to vacate Lot No. 20028 and to restore it to their possession. They likewise prayed that the municipal engineer of Bangui issue the necessary demolition permit as well as cause the demolition of the portion of the house that encroached on Lot No. 20028. Finally, they prayed to be paid damages.[12]

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[7] CA *rollo*, p. 64, Complaint.

[8] *Id*.

[9] *Id*. at 65.

[10] *Id*.

[11] *Id*.

[12] *Id*. at 66.

In response, and by way of counterclaim, the Spouses Gumallaoi maintained that they were the true owners of both Lot Nos. 20029 and 20028.[13] They claimed that the Cascayan Heirs secured a free patent to Lot No. 20028 through manipulation. They asserted that the supporting affidavits for the Cascayan Heirs' free patent application were obtained through fraud and deception. They attached in their Amended Answer the affidavits by the same affiants disowning the latter's previous affidavits.[14] Thus, the Spouses Gumallaoi prayed that they be declared the legal owners of Lot No. 20028, that OCT No. P-78399 be annulled, and that they be paid damages.[15]

By agreement of the parties, Engr. Gregorio Malacas was appointed to determine whether Lot No. 20028 was included in the lot claimed by the Spouses Gumallaoi. In his report, he said:

> From the datas (sic) of the verification survey that was executed over the premises of the subject, it appears that a two (2)[-]storey residential [b]uilding owned by the defendants was erected partly on Lot 20028 and partly on Lot 20029.[16]

The parties decided to submit the case for resolution with the position papers and the evidence on record as bases.[17]

On January 21, 2010, the Regional Trial Court[18] rendered a Decision declaring the Spouses Gumallaoi the legal owners of Lot No. 20028. It ruled that petitioners did not prove that they or their predecessor-in-interest had been in possession of it. Conversely, noting that the bigger portion of the Spouses Gumallaoi's residence had been constructed on this land, the

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[13] RTC records, p. 34, Amended Answer.

[14] *Id*.

[15] *Id*. at 34-35.

[16] *Rollo,* p. 33.

[17] *Id*.

[18] Acting Presiding Judge Philip G. Salvador.

Regional Trial Court found that it was more likely that the residence was intended to be constructed on Lot No. 20028.[19] The Regional Trial Court found inconsistencies between the claims of the Cascayan Heirs and the evidence they presented in support of their free patent application. It concluded that OCT No. P-78399 had been secured through fraud, without legal and proper basis, and hence, disregarded it:

> It can be gleaned from the documentary evidence of the plaintiffs that their predecessor Cayetano Cascayan was the declared owner of a parcel of sugarland with an area of 1,600 square meters under Tax Declaration No. 28278-A, series of 1926 which cancelled Tax Declaration No. 28278. Tax Declaration No. 28278-A was later cancelled by Tax Declaration No. 28278-B which was issued in 1932, also covering the same area. Later, it was revised in 1949 under Tax Declaration No. 005179, this time covering a bigger area of 1,950 square meters. As per the plaintiffs, the same parcel of land was issued Tax Declaration No. 601683, series of 1985 although the land area is indicated only to be 1,940 square meters.
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> Sometime in the year 1984, a parcel of land designated as Lot No. 20028 consisting of 1,083 square meters was surveyed for Marcelino Alupay as shown in the technical description issued by the Community Environment and Natural Resources Office (CENRO), Bangui, Ilocos Norte which conducted the survey from November 2 to 25, 2002 and approved the said technical description on October 12, 1984. Almost 20 years after the said survey or on February 25, 2004, plaintiffs through La Paz Cascayan filed an Application for Free Patent over Lot No. 20028. In support of the application, said plaintiff submitted as one of the requirements an Affidavit executed by Marcelino Alupay dated March 24, 2004 stating that there was a mistake in placing his name as survey claimant over the said lot. The applicant also submitted, among others, the Affidavit of Estrelita Balbag and Jalibert Malapit who then attested that plaintiffs as heirs of Cayetano Cascayan have continuously occupied and cultivated Lot No. 20028; the Affidavit of Isauro Pinget, Elvira Pinget and Sixto Rigates stating that the lot was declared in the name of Cayetano Cascayan under Tax Declaration No. 03-006-00652, series of 2003; and a Certification from Christopher Malapit, Barangay Chairman

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[19] RTC records, p. 208.

of Brgy. Dadaor, Bangui that the notice of application for free patent was posted from February 24 to March 24, 2004. As per an Order issued on July 1, 2004, the CENRO approved the application and Katibayang ng Orighinal na Titulo Blg. P-78399 was issued on the same date.

From these evidences of the plaintiffs, there is clear and serious disconnect in their claim that the parcel of land declared earlier in the name of their predecessor is the same as Lot No. 20028. The Court notes that indeed the tax declarations issued in the name of Cayetano Cascayan in 1926, 1932, 1949 and 1985 bear the same boundaries – Florencio Molina on the north, Bernardo Acido on the East and Pedro Corpuz on the south and west. It also notes that as shown at the back of the tax declaration issued in 1985, it cancelled Tax Declaration No. 501883 and not the tax declaration issued in 1949. At any rate, granting that said tax declaration issued in 1985 refers to the same lot mentioned in the tax declarations issued in 1926, 1932 and 1949 because of the similar boundaries indicated, there is simply no basis to show that it is the same as Lot No. 20028. The Court even wonders why the 1985 tax declaration still refer[red] to a lot with an area of 1,940 square meters if it was already surveyed earlier in 1982 and was found to have an area of only 1,083 square meters. Not only that, if the plaintiffs were the owners of Lot No. 20028, it also wonders why the survey thereof was conducted for Marcelino Alupay and not for Cayetano Cascayan who, as per another technical description also issued by the CENRO, was the claimant in the survey also conducted in 1982 of Lot No. 20033 which is just adjacent to the lot in question. It further wonders in the absence of any explanation how it came about that Lot No. 20028 consisted of only 1,083 square meters which is substantially different to its area th[a]n as originally declared in the name of Cayetano Cascayan.

At this juncture, it is noteworthy that Tax Declaration No. 03-006-00652, series of 2003 in the name of the Heirs of Cayetano Cascayan who obviously secured the same for purposes [of] their application for free patent, was not also earlier declared in the name of either Marcelino Alupay or Cayetano Cascayan. A perusal of the evidences of the defendants spouses . . . show that the owner was unknown. In fact, as shown in Tax Declaration No. 97-006-00654, it preceded Tax Declaration No. 03-006-00652 which is the same tax declaration issued to the plaintiffs in 2003 before they applied for the free patent. It is thus clear that, the lot being declared then to an unknown person, plaintiffs took it upon themselves and claimed

it, secured a tax declaration in their name in 2003 and applied thereafter for a free patent therefor the following year.

In other words, plaintiffs obviously applied for a free patent without any basis. It is clear from their evidence that they were never in possession of the property in suit before they applied for the free patent. While plaintiffs submitted affidavits to show that they have occupied and cultivated Lot No. 20028 and that it was declared in the name of the heirs of Cayetano Cascayan in support of their application for free patent, it appears that such evidences have been manipulated. It appears that while they were not in fact cultivating the property and that it was declared in the name of the heirs of Cayetano Cascayan only in 2003, they were able to present false information about their true status as claimants. In fact, Estrelita Balbag and Jalibert Malapit, who then in the year 2004 attested in support of plaintiffs' application for free patent that plaintiffs and their predecessor have been in continuous possession of Lot No. 20028 since 1944 or 1945, have retracted their said Affidavits. Thus, in the subsequent Affidavits they have executed on September 19, 2007 which defendants spouses submitted in support of their claim, Estrelita Balbag on her part alleged that she has no knowledge about the contents of her earlier affidavit which was not explained to her and that she is not aware of the matters concerning Lot No. 20028 while Jalibert Malapit stated that his signature on the Affidavit is not his real signature.

Likewise, Barangay Chairman Christopher Malapit also retracted the Certification he issued on March 24, 2004 in support [of] the application of the plaintiffs for free patent by stating in his subsequent Affidavit dated September 19, 2007 also submitted by the defendants spouses that there was no posting made of the notice of application for free patent and that when he was asked to sign by Elsa Martinez, daughter of La Paz Martine[z], he was not aware of the contents of the Certification and that he was made to believe that it will be used for another purpose than an application for free patent . . .

Also, Marcelino Alupay retracted the Affidavit which he executed on March 24, 2004 in favor of the plaintiffs in connection with their application for free patent, stating that there was a mistake in placing his name as survey claimant and that the lot applied for is in the actual possession and cultivation of the heirs of Cayetano Cascayan. Thus in another Affidavit he executed on September 19, 2007, he alleged that he had no knowledge of the contents of what he signed and that it was not explained to him.

In any case, contrary to the claim of plaintiffs that they were in possession of Lot No. 20028, it appears that even by the year 2004 when plaintiffs applied for a free patent, defendants spouses have already been in possession of Lot No. 20028 together with the adjacent Lot No. 20029. This is clear from the fact that the bigger portion of their house was constructed over the lot in dispute. By constructing their house both on the two lots, it is unthinkable that they would have done so under notice or threat that they will eventually be evicted and a substantial part of their house demolished. Under the circumstances, the Court cannot believe the claim of the plaintiffs that they have repeatedly warned the defendants spouses about the encroachment. If this were true, it is surprising that when the defendants spouses supposedly extended their house, they did not file a case to immediately stop the construction.

. . . . . .

In fact, all these observations lead the Court to believe that the issuance of the free patent was not made in accordance with the procedure laid down by Commonwealth Act No. 141, otherwise known as the Public Land Act. As provided in Section 91 thereof, an investigation should be conducted for the purpose of ascertaining whether the material facts set out in the application are true. In this case, it appears more likely that there was never any investigation or any verification made by the CENRO as to the actual status of the land in suit at the time the application of plaintiffs for a free patent was processed and before the free patent was approved and issued. Otherwise, they would have known that defendants spouses have constructed the bigger part of their house on Lot No. 20028. More significantly, when Marcelino Alupay, the original survey claimant of Lot No. 20028 in 1982, executed his Affidavit supporting the application for free patent on March 24, 2004, he was immediately dropped on the same day as survey claimant as shown in [the] Order issued by the CENRO. If it is any indication, it was only on the basis of the Affidavit of Marcelino Alupay stating that his name was erroneously declared as survey claimant to the property that the dropping of his name as such was made and not by virtue of any verification or investigation.[20] (Citations omitted)

The dispositive portion of the Regional Trial Court Decision read:

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[20] RTC records, pp. 205-209.

WHEREFORE, the instant complaint is DISMISSED and the defendants spouses Oliver and Evelyn Gumallaoi are declared owners of Lot No. 20028 of the Bangui Cadastre. Consequently, it having been issued fraudulently and without legal and proper basis, Katibayang [sic] ng Orighinal [sic] na Titulo Blg. P-78399 issued in the name of Heirs of Cayetano Cascayan, represented by La Paz Martinez, is hereby ordered cancelled. For want of basis, no damages are awarded.

SO ORDERED.[21]

The Cascayan Heirs filed a Motion for New Trial[22] dated February 19, 2010, citing mistake as a ground. They claimed that despite the agreement for the trial court to consider only the Commissioner's Report to resolve the case,[23] it also examined fraudulent affidavits.[24] Thus, the Cascayan Heirs prayed that the Regional Trial Court Decision be set aside and a new trial be conducted.

In an Order[25] dated March 21, 2011, the Regional Trial Court denied the Motion for New Trial:

Mistake as a ground for new trial under Section 1, Rule 37 of the Rules of Court must be a mistake of fact, not of law, which relates to the case. Here, plaintiffs claim to have committed mistake in perceiving that the case was submitted merely on the basis of the Commissioner's Report is unavailing. The Commissioner's Report containing the findings on the relocation survey was never meant to be crucial in determining the issue in this case. As per Order of the Court issued on July 10, 2008, the relocation survey was commissioned upon agreement of the parties to determine in the first place if the plaintiffs and the defendants refer to one and the same identifiable property or if the lot being claimed by the plaintiff is one and the same as or is included in the lot being claimed by the defendants. It is therefore erroneous on the part of the plaintiffs to now claim that they thought that the case was submitted for resolution only [on] the

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[21] *Id*. at 211.

[22] CA *rollo*, pp. 50-52.

[23] *Id*. at 50-51.

[24] *Id*. at 51.

[25] *Id*. at 58-59.

basis of the results of the relocation survey, particularly the finding in the Commissioner's Report which is quoted as follows:

> "From the datas [sic] of the verification survey that was executed over the premises of the subject, it appears that a two (2)[-]storey residential building owned by the defendants was erected partly on Lot 20028 and partly on Lot 20029".

More significantly, it is clear on record contrary to the supposed mistaken perception of the plaintiffs that in the Order dated November 5, 2009, that parties, meaning with the concurrence of both plaintiffs and defendants, agreed to submit the case for resolution "on the basis of their position papers and the evidence already on record" . . . This plaintiffs cannot deny. Lest they have forgotten, their cause of action is reconveyance based on their claim that they owned the property upon which defendants had partly built their house. They are also too aware that if their action is for reconveyance based on their claim of ownership, it is in the same vein that defendants lay claim to the property. They are thus likewise aware that a resolution of the case cannot be made merely on the basis of the Commissioner's Report but must be on the basis of the whole evidence on record.

A party who moves for a new trial on the ground of "honest mistake" must show that ordinary prudence could not have guarded against it. A new trial is not a refuge for the obstinate. In this case, plaintiffs' assertion that they thought that the case was submitted for resolution only on the basis of the Commissioner's Report is but a pretentious and unfounded mistake. Having been assisted by counsel, such mistake could not have happened had ordinary prudence been exercised.[26] (Citations omitted)

The Cascayan Heirs appealed the Regional Trial Court Decision to the Court of Appeals. They argued that the Regional Trial Court could not order the cancellation of the patent because they had already been issued a certificate of title pursuant to a public land patent.[27] Furthermore, under the Public Land Act, it is only the Solicitor General who could institute an action for reversion of Lot No. 20028.[28] Petitioners also insisted that

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[26] *Id*.

[27] *Id*. at 35.

[28] *Id*. at 35-36.

their Motion for New Trial should have been granted because of their mistake in believing that the position paper would be the basis of the Regional Trial Court's decision and because respondents committed fraud in submitting irrelevant documents.[29]

The Court of Appeals denied the petition and affirmed the Regional Trial Court Decision. It held that the action was in the nature of an *accion reivindicatoria*, wherein the plaintiffs claim ownership over a land and seek recovery of full possession over it.[30] Thus, the main issue for resolution was who had a better claim over Lot No. 20028, based on the parties' evidence.[31] Consequently, pursuant to Article 434 of the Civil Code, the plaintiffs had to prove the identity of the land claimed and their title to it.[32] The Court of Appeals found that OCT No. P-78399 was not conclusive proof of their title to Lot No. 20028 as titles secured by fraud and misrepresentation are not indefeasible. Quoting the Regional Trial Court, the Court of Appeals found that the evidence proved that the Cascayan Heirs obtained their title through fraud and misrepresentation. Additionally, it ruled that the Spouses Gumallaoi proved their title as well as the identity of the land pursuant to Article 434 of the Civil Code. The dispositive portion of the decision read:

> WHEREFORE, the instant appeal is DENIED. The January 21, 2010 Decision of Regional Trial Court, Branch 19, Bangui, Ilocos Norte in Civil Case No. 944-19 is hereby AFFIRMED.[33]

In a Resolution[34] dated February 25, 2014, the Court of Appeals also denied the Cascayan Heirs' motion for reconsideration for lack of merit.

On April 10, 2014, the Cascayan Heirs filed a petition before this Court assailing the Court of Appeals Decision and Resolution.

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[29] *Id*. at 38.

[30] *Rollo*, pp. 36-37.

[31] *Id*. at 37.

[32] *Id*.

[33] *Id*. at 44.

[34] *Id*. at 78-79.

Petitioners argue that regardless of any application for free patent that may have been filed, Lot No. 20028 had long been owned by Cayetano since 1925.[35] This is shown by evidence submitted to the Regional Trial Court, namely, a Tax Declaration for the year 1925 and the presence of the debris of his residence, still intact on Lot No. 20028.[36] Moreover, petitioners insist that it has been proven that they have possessed Lot No. 20028 since time immemorial.[37] They also claim that none of the evidence shows that respondents own Lot No. 20028. They point out that affidavits retracting the affidavits of waiver have been submitted to the Court of Appeals,[38] explaining that the signatories of the affidavits of waiver did not understand what they signed.[39]

On September 22, 2015, respondents manifested that in lieu of filing a comment on the Petition, they are adopting the rulings of the Court of Appeals and of the Regional Trial Court.[40]

The sole issue for resolution is whether the Court of Appeals properly appreciated the evidence presented by the parties.

The petition is denied.

Petitions for review on certiorari under Rule 45 shall pertain only to questions of law.[41] In *Pascual v. Burgos:*[42]

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[35] *Id*. at 12.

[36] *Id*.

[37] *Id*. at 15.

[38] *Id*. at 22.

[39] *Id*. at 22-23.

[40] *Id*. at 100.

[41] RULES OF COURT, Rule 45, Sec. 1 provides:

Section 1. Filing of Petition with Supreme Court. — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

[42] G.R. No. 171722, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/171722.pdf> [Per *J.* Leonen, Second Division].

Review of appeals filed before this court is "not a matter of right, but of sound judicial discretion[.]" This court's action is discretionary. Petitions filed "will be granted only when there are special and important reasons[.]" This is especially applicable in this case, where the issues have been fully ventilated before the lower courts in a number of related cases.

The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45. This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt" when supported by substantial evidence. Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.[43] (Citations omitted)

Thus, as a general rule, the factual findings of the Court of Appeals bind this Court.

Quoting the Regional Trial Court, the Court of Appeals determined, based on the evidence presented, that petitioners obtained their title to Lot No. 20028 through fraud and misrepresentation:

In this case, Spouses Gumallaoi presented sufficient evidence to show that the Heirs of Cascayan obtained their title through fraud and misrepresentation. We quote with approval the following observations of the RTC, viz.:

> At this juncture, it is noteworthy that Tax Declaration No. 03-006-00652, series of 2003 in the name of the Heirs of Cayetano Cascayan who obviously secured the same for purposes (of) their application for free patent, was not also earlier declared in the name of either Marcelino Alupay or Cayetano Cascayan. A perusal of the evidences [sic] of the defendants spouses . . . show that the owner was unknown. In fact, as shown in Tax Declaration No. 97-006-00654, it preceded Tax Declaration No. 03-006-00652 which is the same tax declaration issued to the plaintiffs in 2003 before they applied for the free patent. It is thus clear that, the lot being declared then to an unknown person, plaintiffs took it upon themselves and claimed it, secured

[43] *Id*. at 10-11.

a tax declaration in their name in 2003 and applied thereafter for a free patent therefor the following year.

In other words, plaintiffs obviously applied for a free patent without any basis. It is clear from their evidence that they were never in possession of the property in suit before they applied for the free patent. While plaintiffs submitted affidavits to show that they have occupied and cultivated Lot No. 20028 and that it was declared in the name of the heirs of Cayetano Cascayan in support of their application for free patent, it appears that such evidences (sic) have been manipulated. It appears that while they were not in fact cultivating the property and that it was declared in the name of the heirs of Cayetano Cascayan only in 2003, they were able to present false information about their true status as claimants. In fact, Estrelita Balbag and Jalibert Malapit, who then in the year 2004 attested in support of plaintiffs' application for free patent that plaintiffs and their predecessor have been in continuous possession of Lot No. 20028 since 1944 or 1945, have retracted their said Affidavits. Thus, in the subsequent Affidavits they have executed on September 19, 2007 which defendants spouses submitted in support of their claim, Estrelita Balbag on her part alleged that she has no knowledge about the contents of her earlier affidavit which was not explained to her and that she is not aware of the matters concerning Lot No. 20028 while Jalibert Malapit stated that his signature on the Affidavit is not his real signature.

Likewise, Barangay Chairman Christopher Malapit also retracted the Certification he issued on March 24, 2004 in support [of] the application of the plaintiffs for free patent by stating in his subsequent Affidavit dated September 19, 2007 also submitted by defendants spouses that there was no posting made of the notice of application for free patent and that when he was asked to sign by Elsa Martinez, daughter of La Paz Martine[z], he was not aware of the contents of the Certification and that he was made to believe that it will be used for another purpose than an application for free patent . . .

Also, Marcelino Alupay retracted the Affidavit which he executed on March 24, 2004 in favor of the plaintiffs in connection with their application for free patent stating that there was mistake in placing his name as survey claimant and that the lot applied for is in the actual possession and cultivation of the heirs of Cayetano Cascayan. Thus, in another Affidavit

> he executed on September 19, 2007, he alleged that he had no knowledge of the contents of what he signed and that it was not explained to him.[44]

However, petitioners ask that this Court reverse the Court of Appeals' determination, insisting that regardless of any impropriety in the filing of an application for a free patent, they have proven that they owned Lot No. 20028. They assert that they have established that Lot No. 20028 had long been owned by Cayetano since 1925[45] and that they have possessed it since time immemorial,[46] whereas none of the evidence shows that respondents ever owned it. Petitioners also insist that the affidavits of waiver should not have been given weight by the Court of Appeals, considering that affidavits retracting the affidavits of waiver have been submitted to it.[47]

These issues require this Court to review the Court of Appeals' appreciation of evidence. The Court of Appeals found that the evidence did not sufficiently prove petitioners' claims of possession or ownership over Lot No. 20028:

> The records are also bereft of evidence showing that the Heirs of Cascayan or their predecessor-in-interest had been in possession of Lot No. 20028. There was not even an allegation on how Cayetano took possession of the land and in what way he derived his title thereto. Interestingly, the Heirs of Cascayan merely based their claim of possession on a series of tax declarations purportedly showing that Cayetano, their predecessor-in-interest, had been religiously paying the taxes thereof and even built a residential house thereon. However, and as aptly noted by the RTC, these tax declarations are full of inconsistent entries that were never explained and only cast doubt as to the identity of the land being claimed by the Heirs of Cascayan.[48]

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[44] *Rollo,* pp. 38-39.

[45] *Id*. at 12.

[46] *Id*. at 15.

[47] *Id*. at 22.

[48] *Id*. at 40.

The Court of Appeals noted that the only basis for the petitioners' claim of possession was tax declarations, which the Court of Appeals scrutinized:

> A careful perusal of the tax declarations bearing the name of Cayetano and having similar boundaries reveal that TD No. 601683 (series of 1985) covered 1,940 sq. m. It cancelled TD No. 501883, not TD No. 005179. On the other hand, TD No. 005179 (series of 1949), stating an area of 1,950 sq. m., cancelled TD No. 28278-B (series of 1932) that has an area of 1,600 sq. m. TD No. 28278-B cancelled TD No. 28278-A (series of 1926) which bore the same dimension and had cancelled TD No. 28278. We emphasize that TD No. 03-006-00652 (series of 2003) in the name of the Heirs of Cascayan covers an area of 1,083 sq. m. and was not earlier declared in the name of either Cayetano or even Marcelino who allegedly applied, though erroneously, a patent for Lot No. 20028. Obviously, its area is substantially different from that originally declared in the name of Cayetano . . .
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> . . . . . .
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> However, TD No. 97-006-00654 was declared to an unknown owner in 1997 and it cancelled TD No. 94-006-00651 which was likewise declared to an unknown owner in 1994, and both covered an area of 1,803 sq. m. The Heirs of Cascayan never bothered to explain why Lot No. 20028 was declared to an unknown owner despite their claim that they had been in possession of the same since 1942. It is also intriguing that despite the resurvey of the land in 1982, which was used by the Heirs of Cascayan in their free patent application, showing an area of 1,083 sq. m., the land was allegedly declared in the name of Cayetano in 1985 but still bearing an area of 1,940 sq. m. The 1985 tax declaration in the name of Cayetano was likewise silent as to the lot number of the land being declared for tax purposes and it appears therefrom that said lot was bounded on the south and west by the land owned by Pedro and on the east by the land owned by Bernardo Acido. In contrast thereto, the survey conducted in 1982 showed that Lot No. 20028 is bounded on the east by an alley and not by any private land. It is quite plain from the foregoing observations, and as correctly pointed out by the court a quo, that "there is clear and serious disconnect in their claim that the parcel of land declared earlier in the name of Cayetano, is the same as Lot No. 20028."[49]

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[49] *Id*. at 40-41.

The Court of Appeals thoroughly examined the evidence submitted by petitioners and found it lacking in probative value to prove petitioners' ownership over Lot No. 20028. Rather than prove their ownership, it cast doubt on the title over Lot No. 20028.

Petitioners attempt to address the foregoing inconsistencies:

> As to the discrepancy of the area, and which also bothered the Honorable Court of Appeals, it must be noted that indeed the survey was conducted in the year 1982 (November 2-25, 1982), but it was only approved in October 12, 1984. There was as yet no ROAD then, as it could be seen in the boundaries of the earlier issued Tax Declarations, but it is still within the allowable area of relevance and proximity. The present area could be properly explained with the existence of a road therein as shown in the Survey Plan submitted by the Commissioner of the case, but the debris of the improvements — "House and Kitchen" having been put up by Cayetano Cascayan in his lifetime, could not be denied, which serves as a monument of ownership in fee simple.[50]

The assertions that a road may explain the inconsistencies are mere factual allegations, not well-substantiated or adequately discussed fact. They are insufficient to compel this Court to review the Court of Appeals' appreciation of the evidence as to the identity of the property covered by the tax declarations in relation to Lot No. 20028.

The Court of Appeals also considered the waivers submitted in evidence by the parties:

> The Court cannot also close its eyes to the Waiver of Rights executed by some of the Heirs of Cascayan, particularly Virginia Abida, Irineo Tolentino, Nena Valiente Alupay, Orlino Valinete and Eden Jacinto, recognizing Jose and Spouses Gumallaoi's ownership over Lot No. 20028 and admitting that it was erroneous on their part to apply for a free patent over the said lot. Also worthy of note is the statement by the Heirs of Cascayan in their application alleging that the land was public and that no person was claiming or occupying the same notwithstanding that Spouses Gumallaoi's house was already visibly

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[50] *Id*. at 21.

erected therein even before the application was filed in 2003. With these striking misrepresentations, We uphold the court a quo's findings that the application for free patent by the Heirs of Cascayan was not supported by any valid basis warranting the cancellation of their title over the subject property.[51]

Petitioners insist that the Court of Appeals should have considered the new affidavits submitted by petitioners, retracting the affidavits of waiver it previously appreciated.[52] Again, this is a matter of appreciation of evidence, not a question of law, and not a proper subject of review.

The Court of Appeals found that respondents, on the other hand, sufficiently identified Lot No. 20028 and proved their title thereto:

> In contrast, the right to possession of Spouses Gumallaoi of the subject property is hinged on the "*Recibo Ti Pinaglako Ti Daga"* (Receipt for the Sale of Land) dated January 3, 2002. The boundaries stated in the said receipt are more in accord with TD Nos. 97-006-00654 and 94-006-00651 as well as with the resurvey of the lot as it appears in the description stated in OCT No. P-78399. Also bolstering Spouses Gumallaoi's claim of ownership over the subject property pursuant to the said sale are the waiver of rights and the acknowledgment of Spouses Gumallaoi's ownership by the grandchildren of Cayetano earlier mentioned, and the Affidavit of Barangay Chairman Christopher stating that Spouses Gumallaoi's predecessor-in-interest, Raymundo, was the actual possessor and occupant of Lot No. 20028 since 1940 up to the time that Jose questioned the legality of his possession. The Heirs of Cascayan did not bother to rebut these allegations and during the March 8, 2008 hearing, their lawyer brought to the attention of the RTC Raymundo's possession of the subject lot, thus:
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> The Court: That's why the Court is asking the plaintiffs to submit the complete records of the application for registration and for the defendants to show documents of

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[51] *Id*. at 42.

[52] *Id*. at 22-24.

	ownership of their predecessors-in-interest, meaning Jose Corpuz and Pedro Corpuz.
Atty. Guillermo: (Counsel for the Heirs of Cascayan)	Yes[,] your honor. And this controversy arisen (sic) when Mr. Raymundo Garcia left for Hawaii and the son-in-law came in and possessed the property in 1997 and a residential . . .
The Court:	Raymundo Garcia?
Atty. Guillermo:	Yes[,] your Honor, Raymundo Garcia.
The Court:	The father of Evelyn Garcia?
Atty. Guillermo:	Yes[,] your Honor, and it was only in 2002 that they got married with said Gumallaoi and that was the starting point of this controversy . . .
Atty. Garvida:	We would like to manifest[,] your Honor[,] that Raymundo Garcia is the tenant of Jose Corpuz[.]
The Court:	Tenant?
Atty. Garvida:	Yes[,] your Honor. And he is already tilling a portion of said lot, the subject of this case since Jose Corpuz . . . It's been a long time[,] your [H]onor[,] that he has been tilling the said parcel of land. So he knows very well that it belongs to Jose Corpuz.
. . .	. . . . .

Hence, considering the foregoing, it behooves Us to concur with the declaration of the court *a quo* that Spouses Gumallaoi are the lawful owners of the subject property.[53] (Citations omitted)

The Court of Appeals' appreciation of the evidence on the possession of Lot No. 20028 and the weight to be given to the parties' Tax Declarations and affidavits, which is consistent with the Regional Trial Court findings, is binding on this Court and there is no cogent reason to review it.

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[53] *Id*. at 42-44.

Although not raised as an issue before this Court, it nonetheless bears emphasizing that when a complaint for recovery of possession is filed against a person in possession of a parcel of land under claim of ownership, he or she may validly raise nullity of title as a defense and, by way of counterclaim, seek its cancellation. In *Heirs of Santiago v. Heirs of Santiago:*[54]

> A certificate of title issued under an administrative proceeding pursuant to a homestead patent covering a disposable public land within the contemplation of the Public Land Law or Commonwealth Act No. 141 is as indefeasible as a certificate of title issued under a judicial registration proceeding. Under the Land Registration Act, title to the property covered by a Torrens certificate becomes indefeasible after the expiration of one year from the entry of the decree of registration. Such decree of registration is incontrovertible and becomes binding on all persons whether or not they were notified of, or participated in, the *in rem* registration process. There is no specific provision in the Public Land Law or the Land Registration Act (Act 496), now Presidential Decree 1529, fixing a similar one-year period within which a public land patent can be considered open to review on the ground of actual fraud (such as that provided for in Section 38 of the Land Registration Act, and now Section 32 of Presidential Decree 1529), and clothing a public land patent certificate of title with indefeasibility. Nevertheless, this Court has repeatedly applied Section 32 of Presidential Decree 1529 to a patent issued by the Director of Lands, approved by the Secretary of Natural Resources, under the signature of the President of the Philippines. The date of the issuance of the patent corresponds to the date of the issuance of the decree in ordinary cases. Just as the decree finally awards the land applied for registration to the party entitled to it, the patent issued by the Director of Lands equally and finally grants and conveys the land applied for to the applicant.
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> The one-year prescriptive period, however, does not apply when the person seeking annulment of title or reconveyance is in possession of the lot. This is because the action partakes of a suit to quiet title which is imprescriptible. In *David v. Malay*, we held that a person in actual possession of a piece of land under claim of ownership may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right, and his undisturbed possession

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[54] 452 Phil. 238 (2003) [Per *J.* Ynares-Santiago, First Division].

gives him the continuing right to seek the aid of a court of equity to ascertain and determine the nature of the adverse claim of a third party and its effect on his title.

. . . . . .

In the case at bar, inasmuch as respondents are in possession of the disputed portions of Lot 2344, their action to annul Original Certificate of Title No. P-10878, being in the nature of an action to quiet title, is therefore not barred by prescription.

Section 48 of P.D. 1529, the Property Registration Decree, provides that a certificate of title shall not be subject to collateral attack and [cannot] be altered, modified, or canceled except in a direct proceeding. An action is an attack on a title when the object of the action is to nullify the title, and thus challenge the judgment or proceeding pursuant to which the title was decreed. The attack is direct when the object of an action is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment or proceeding is nevertheless made as an incident thereof.

In this case, while the original complaint filed by the petitioners was for recovery of possession, or *accion publiciana,* and the nullity of the title was raised merely as respondents' defense, we can rule on the validity of the free patent and OCT No. P-10878 because of the counterclaim filed by respondents. A counterclaim can be considered a direct attack on the title. In *Development Bank of the Philippines v. Court of Appeals,* we ruled on the validity of a certificate of title despite the fact that the nullity thereof was raised only as a counterclaim. It was held that a counterclaim is considered a complaint, only this time, it is the original defendant who becomes the plaintiff. It stands on the same footing and is to be tested by the same rules as if it were an independent action. Moreover, since all the facts necessary in the determination of the title's validity are now before the Court, it would be in the best interest of justice to settle this issue which has already dragged on for 19 years.[55] (Emphasis in the original, citations omitted)

In *Firaza, Sr. v. Spouses Ugay*,[56] this Court explained:

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[55] *Id.* at 251-253.

[56] 708 Phil. 24 (2013) [Per *J.* Reyes, First Division].

In *Arangote v. Maglunob*, the Court, after distinguishing between direct and collateral attack, classified a counterclaim under former, *viz.*:

> The attack is considered direct when the object of an action is to annul or set aside such proceeding, or enjoin its enforcement. Conversely, an attack is indirect or collateral when, in an action to obtain a different relief, an attack on the proceeding is nevertheless made as an incident thereof. **Such action to attack a certificate of title may be an original action or a counterclaim, in which a certificate of title is assailed as void**.

In the recent case of *Sampaco v. Lantud,* the Court applied the foregoing distinction and *held* that a counterclaim, specifically one for annulment of title and reconveyance based on fraud, is a direct attack on the Torrens title upon which the complaint for quieting of title is premised. Earlier in, *Development Bank of the Philippines v. CA,* the Court ruled similarly and explained thus:

> Nor is there any obstacle to the determination of the validity of TCT No. 10101. It is true that the indefeasibility of torrens title cannot be collaterally attacked. In the instant case, the original complaint is for recovery of possession filed by petitioner against private respondent, not an original action filed by the latter to question the validity of TCT No. 10101 on which petitioner bases its right. To rule on the issue of validity in a case for recovery of possession is tantamount to a collateral attack. However, it should not [b]e overlooked that private respondent filed a counterclaim against petitioner, claiming ownership over the land and seeking damages. Hence, we could rule on the question of the validity of TCT No. 10101 for the counterclaim can be considered a direct attack on the same[.]

The above pronouncements were based on the well-settled principle that a counterclaim is essentially a *complaint* filed by the defendant against the plaintiff and stands on the same footing as an independent action.[57] (Emphasis in the original and supplied, citations omitted)

Thus, this Court reiterated *Heirs of Santiago*[58] in the case of *Sampaco v. Hadji Serad Mingca Lantud*:[59]

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[57] *Id*. at 29-30.

[58] 452 Phil. 238 (2003) [Per *J.* Ynares-Santiago, First Division].

[59] 669 Phil. 304 (2011) [Per *J.* Peralta, Third Division].

Further, petitioner contends that the Court of Appeals erred in ruling that petitioner's counterclaim is time-barred, since the one-year prescriptive period does not apply when the person seeking annulment of title or reconveyance is in possession of the lot, citing ***Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago***. Petitioner also contends that the Court of Appeals erred in ruling that the counterclaim in this case is a collateral attack on respondent's title, citing ***Cimafranca v. Intermediate Appellate Court***. Petitioner cites the case of ***Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago***, which held that a counterclaim can be considered a direct attack on the title.

The Court notes that the case of ***Cimafranca v. Intermediate Appellate Court***, cited by the Court of Appeals to support its ruling that the prayer for the cancellation of respondent's title through a counterclaim included in petitioner's Answer is a collateral attack on the said title, is inapplicable to this case. In ***Cimafranca***, petitioners therein filed a complaint for Partition and Damages, and respondents therein indirectly attacked the validity of the title involved in their counterclaim. Hence, the Court ruled that a Torrens title cannot be attacked collaterally, and the issue on its validity can be raised only in an action expressly instituted for that purpose.

Here, the case cited by petitioner, ***Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago***, declared that the one-year prescriptive period does not apply when the party seeking annulment of title or reconveyance is in possession of the lot, as well as distinguished a collateral attack under Section 48 of PD No. 1529 from a direct attack, and held that a counterclaim may be considered as a complaint or an independent action and can be considered a direct attack on the title, thus:

> **The one-year prescriptive period, however, does not apply when the person seeking annulment of title or reconveyance is in possession of the lot**. This is because the action partakes of a suit to quiet title which is imprescriptible. In *David v. Malay*, we held that a person in actual possession of a piece of land under claim of ownership may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right, and his undisturbed possession gives him the continuing right to seek the aid of a court of equity to ascertain and determine the nature of the adverse claim of a third party and its effect on his title.

. . . . . .

> Section 48 of P.D. 1529, the Property Registration Decree, provides that a certificate of title shall not be subject to collateral attack and cannot be altered, modified, or canceled **except in a direct proceeding. An action is an attack on a title when the object of the action is to nullify the title, and thus challenge the judgment or proceeding pursuant to which the title was decreed. The attack is direct when the object of an action is to annul or set aside such judgment, or enjoin its enforcement**. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment or proceeding is nevertheless made as an incident thereof.
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> **A counterclaim can be considered a direct attack on the title**. In *Development Bank of the Philippines v. Court Appeals*, we ruled on the validity of a certificate of title despite the fact that the nullity thereof was raised only as a counterclaim. **It was held that a counterclaim is considered a complaint, only this time, it is the original defendant who becomes the plaintiff. It stands on the same footing and is to be tested by the same rules as if it were an independent action**[.]

The above ruling of the court on the definition of collateral attack under Section 48 of P.D. No. 1529 was reiterated in ***Leyson v. Bontuyan***, ***Heirs of Enrigrre Diaz v. Virata***, ***Arangote v. Maglunob***, and ***Catores v. Afidchao***.[60] (Emphasis in the original, citations omitted)

Thus, the Court of Appeals did not commit an error of law in sustaining the cancellation of OCT No. P-78399, pursuant to respondents' counterclaim, and in its determination that petitioners obtained it fraudulently.

The presence of fraud is a factual question. It must be established through clear and convincing evidence, though the circumstances showing fraud may be varied:[61]

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[60] *Id*. at 320-322.

[61] *Republic v. Heirs of Alejaga Sr.*, 441 Phil. 656 (2002) [Per *J.* Panganiban, Third Division].

We begin our resolution of this issue with the well-settled rule that the party alleging fraud or mistake in a transaction bears the burden of proof. The circumstances evidencing fraud are as varied as the people who perpetrate it in each case. It may assume different shapes and forms; it may be committed in as many different ways. Thus, the law requires that it be established by clear and convincing evidence.[62]

In *Republic v. Heirs of Alejaga, Sr.,*[63] this Court considered several circumstances as evidence that a free patent had been obtained through fraud. It noted the discrepancy between the date the application was filed and the date the investigation and verification were done. Also, the verification and investigation report supposedly conducted by the Land Inspector was not signed. Finally, a special investigator testified that the Land Inspector admitted to not actually conducting an investigation or an ocular inspection of the land, and this testimony remained unrebutted.[64]

Here, the Court of Appeals' and the Regional Trial Court's conclusion that petitioners obtained the free patent fraudulently was based on several findings. They determined that petitioners were never in possession of Lot No. 20028. Even the documents submitted to support their application were flawed: the tax declarations were inconsistent and the affidavits and Certifications were subsequently retracted. Considering that the Regional Trial Court and the Court of Appeals uniformly determined that fraud existed in the free patent application based on the evidence presented, there is no reason for this Court to delve into this issue.

Thus, the Court of Appeals did not commit any error of law in affirming the Regional Trial Court Decision, which declared respondents as the legal owners of Lot No. 20028, and in cancelling petitioners' title to it.

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[62] *Id*. at 668.

[63] 441 Phil. 656 (2002) [Per *J.* Panganiban, Third Division].

[64] *Id*. at 668-673.

WHEREFORE, the petition for review on certiorari dated April 10, 2014 is **DENIED** and the Court of Appeals Decision dated July 31, 2013 and Resolution dated February 25, 2014 in CA-G.R. No. 96900 are **AFFIRMED**.

SO ORDERED.

Peralta[*] *(Acting Chairperson), Mendoza,* and *Martires, JJ.,* concur.

Carpio, J., on official leave.

FIRST DIVISION

[G.R. No. 218384. July 3, 2017]

JOHN L. BORJA AND AUBREY L. BORJA/ DONG JUAN, *petitioners, vs.* **RANDY B. MIÑOZA and ALAINE S. BANDALAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO REVIEWING ERRORS OF LAW THAT MAY HAVE BEEN COMMITTED BY THE LOWER COURT; EXCEPTIONS.— Well-settled is the rule in this jurisdiction that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court, this Court being bound by the findings of fact made by the appellate court. The Court's jurisdiction is limited to reviewing errors of law that may have been committed by the lower court. The rule, however, is not without exception. In *New City Builders, Inc. v. NLRC*, the Court recognized the following exceptions to the general rule, to wit: (1) when the findings are grounded entirely

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[*] Designated Acting Chairperson per S.O. No. 2445 dated June 16, 2017.

on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

2. LABOR AND SOCAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL, WHEN PRESENT; THE TEST OF CONSTRUCTIVE DISMISSAL IS WHETHER A REASONABLE PERSON IN THE EMPLOYEE'S POSITION WOULD HAVE FELT COMPELLED TO GIVE UP HIS JOB UNDER THE CIRCUMSTANCES.— Constructive dismissal exists when an act of clear discrimination, insensibility, or disdain on the part of the employer has become so unbearable as to leave an employee with no choice but to forego continued employment, or when there is cessation of work because continued employment is rendered impossible, unreasonable, or unlikely, as an offer involving a demotion in rank and a diminution in pay. The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his job under the circumstances.

3. ID.; ID.; ID.; JUST CAUSES; ABANDONMENT; ELEMENTS. — To constitute abandonment, two (2) elements must concur: (a) the failure to report for work or absence without valid or justifiable reason, and (b) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts. Mere absence is not sufficient. The employer has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning. Abandonment is incompatible with constructive dismissal.

4. ID.; ID.; EMPLOYER-EMPLOYEE RELATIONSHIP; IN A CASE WHERE THE EMPLOYEE'S FAILURE TO WORK WAS OCCASIONED NEITHER BY HIS ABANDONMENT NOR BY A TERMINATION, THE BURDEN OF ECONOMIC LOSS IS NOT SHIFTED TO THE EMPLOYER AND EACH PARTY MUST BEAR HIS OWN LOSS.— [S]ince respondents were not dismissed and that they were not considered to have abandoned their jobs, it is only proper for them to report back to work and for petitioners to reinstate them to their former positions or substantially-equivalent positions. In this regard, jurisprudence provides that in instances where there was neither dismissal by the employer nor abandonment by the employee, the proper remedy is to reinstate the employee to his former position, but without the award of backwages. However, since reinstatement was already impossible due to strained relations between the parties, as found by the NLRC, each of them must bear their own loss, so as to place them on equal footing. At this point, it is well to emphasize that "in a case where the employee's failure to work was occasioned neither by his abandonment nor by a termination, the burden of economic loss is not rightfully shifted to the employer; each party must bear his own loss."

APPEARANCES OF COUNSEL

Avito C. Cahig, Jr. for petitioners.
Guiller Y. Ceniza for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated August 29, 2014 and the Resolution[3] dated May 13, 2015 rendered by the Court of Appeals (CA) in CA-G.R.

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[1] *Rollo*, pp. 9-30.

[2] *Id.* at 35-51. Penned by Associate Justice Jhosep Y. Lopez with Associate Justices Edgardo L. Delos Santos and Marilyn B. Lagura-Yap concurring.

[3] *Id*. at 54-56.

SP No. 07103, which set aside the Decision[4] dated March 30, 2012 and the Resolution[5] dated June 29, 2012 of the National Labor Relations Commission (NLRC) in NLRC Case No. VAC-12-000893-2011 (RAB Case No. VII-05-0827-2011) and, thereby, reinstated the Decision[6] dated September 7, 2011 of the Labor Arbiter, finding respondents Randy B. Miñoza (Miñoza) and Alaine S. Bandalan (Bandalan; collectively, respondents) to have been constructively dismissed and entitled to backwages, separation pay, 13th month pay, service incentive leave pay, moral and exemplary damages, and attorney's fees.

The Facts

Respondents were employed as cooks of Dong Juan, a restaurant owned and operated by petitioners John L. Borja (John) and Aubrey L. Borja (Aubrey; collectively, petitioners) located in Cebu City. Miñoza and Bandalan were respectively hired on September 23, 2009 and September 14, 2010.[7]

Respondents alleged that on April 1, 2011, a Friday, Miñoza was absent from work. Because the company implements a "double-absent" policy, which considers an employee absent for two (2) days without pay if he/she incurs an absence on a Friday, Saturday, or Sunday, the busiest days for the restaurant, he chose not to report for work the next day, or on April 2, 2011.[8]

On the other hand, Bandalan reported for work on April 2, 2011, a Saturday, but was later advised by John to go home and take a rest, with which he complied. Bandalan discovered thereafter that John was angry at him for having drinking sessions after work on April 1, 2011. Because of the "double-absent" policy, Bandalan purposely absented himself from work on April 3, 2011.[9]

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[4] *Id*. at 182-197A. Penned by Presiding Commissioner Violeta Ortiz-Bantug with Commissioner Julie C. Rendoque concurring.

[5] *Id*. at 198-199.

[6] *Id*. at 128-145. Penned by Labor Arbiter Emiliano C. Tiongco, Jr.

[7] See *id*. at 36.

[8] See *id*. at 37.

[9] *Id*.

On April 3, 2011, at around ten o' clock in the morning, the company called a meeting of its employees, including respondents. When asked about his absence on April 1, 2011, Miñoza explained that he had an argument with his wife, who had been demanding for his payslips. As for Bandalan, who managed to be present at the meeting despite his intention to be absent from work, he answered that it would be pointless to report for work that day, as he would not be paid anyway, considering that he was not allowed to work the day before.[10]

The following day, or on April 4, 2011, petitioners summoned respondents once again. Angrily, John accused respondents of planning to extort money from the company and told them that if they no longer wish to work, they should resign. He then gave them blank sheets of paper and pens and ordered them to write their own resignation letters. Respondents replied that they will decide the next day.[11]

On April 5, 2011, the day after, respondents alleged that they reported for work but were barred from entering the restaurant. Instead, petitioners brought them to another restaurant where they were forced to receive separate memoranda asking them to justify their unexplained absences. Thereat, a certain "Mark" was present, who appeared to respondents as an intimidating and ominous person.[12]

When respondents reported for work on April 6, 2011, they were purportedly refused entry once more. At closing time that day, respondents were invited to go inside the restaurant and were subjected to an on-the-spot drug test, the results of which yielded negative. To his humiliation, Bandalan had to undergo a second test, which also came out negative.[13]

Thereafter, when Bandalan went outside to buy food, he saw "Mark" and a group of unfamiliar people standing in a dark

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[10] *Id*.

[11] *Id*. at 37-38.

[12] See *id*. at 38.

[13] See *id*.

area near the restaurant. Later, when he and Miñoza were on their way home, they heard some people, presumably "Mark" and his hired goons, shouting at them, "*[y]ou fools, do not come back here as something bad will happen to you.*"[14]

Out of fear, respondents no longer reported for work the following day, April 7, 2011, and instead, filed a complaint[15] for illegal dismissal, with claim for monetary benefits, against petitioners, docketed as RAB-VII-05-0827-2011.[16]

In defense, petitioners explained that the "double-absent" policy was actually proposed by respondents themselves, in reaction to the absences incurred by one of their co-employees, Josephus Sablada (Sablada), who failed to report for work on two (2) busy weekends. On March 14, 2011, after explaining the "double-absent" policy to the restaurant employees, who were all amenable thereto, petitioners enforced the said policy.[17]

Petitioners likewise claimed that from April 1 to 3, 2011, Miñoza failed to report for work. Thus, in a memorandum[18] dated April 4, 2011, Aubrey sought an explanation for his absences. Miñoza justified his absence on April 1 by explaining that he had a quarrel with his wife. The following day, he opted not to report for work anymore on account of the "double-absent" policy. On April 3, he claimed that he was allowed to skip work.[19]

As for Bandalan, petitioners averred that he was absent on April 3, 2011, a Sunday, and when required[20] to explain, he clarified that he opted not to report for work anymore because he will no longer receive any salary for that day on account of

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[14] *Id*.

[15] Respondents' complaint was subsequently amended on June 15, 2011; *id*. at 103-104, including dorsal portions.

[16] See *id*. at 39.

[17] See *id*.

[18] *Id*. at 66.

[19] See letter dated April 6, 2011; *id*. at 67. See also *id*. at 39.

[20] See memorandum dated April 4, 2011; *id*. at 72.

the "double-absent" policy, having been absent on March 25, 2011 and asked to go home on April 2, 2011.[21]

On April 4, 2011, when respondents were summoned for a meeting, they expressed their intention to resign. However, the following day, they arrived at the restaurant and insisted that they wanted to work. To maintain order in the restaurant and to keep the other employees from being harassed, petitioners called on a certain Mark Opura (Opura) to stay in the restaurant and keep watch.[22]

Petitioners further claimed that respondents worked undertime on April 5, 2011. Then, Miñoza stopped reporting for work on April 7, 2011, while Bandalan ceased working on April 8, 2011.[23] Thus, Aubrey sent separate memoranda[24] to respondents on April 18, 2011 requiring them to explain their absence without official leave (AWOL), which they both failed to do. Subsequently, they were dismissed from employment.[25]

The Labor Arbiter's Ruling

In a Decision[26] dated September 7, 2011, the Labor Arbiter (LA) found respondents to have been illegally and constructively dismissed and ordered petitioners to pay them the total amount of ₱169,077.20,[27] inclusive of backwages, separation pay, 13th month pay, service incentive leave pay, moral and exemplary damages, and attorney's fees.[28]

Giving more credence to respondents' version of the facts, the LA found that Miñoza and Bandalan were placed in a difficult

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[21] See letter dated April 6, 2011; *id*. at 73. See also *id*. at 40.

[22] *Id*. at 40.

[23] *Id*.

[24] *Id*. at 70 and 76.

[25] See separate memoranda dated May 2, 2011; *id*. at 71 and 77.

[26] *Id*. at 128-145.

[27] See computation of monetary awards, *id*. at 146-147.

[28] *Id*. at 144-145.

situation and left with no choice but to leave their employment on April 7 and 8, 2011, respectively.[29] Respondents were brought to another restaurant on April 5, 2011 merely for the purpose of handing to them the memoranda despite evidence showing that they reported for work at the restaurant on said day. Thereat, they first encountered Opura, who they claimed was a dubious and intimidating person. Likewise, respondents were singled out to undergo an on-the-spot drug test, which yielded negative results. Respondents also decided to forego their employment when they were threatened by Opura's group.[30] As such, the LA found that respondents were able to establish the existence of threats to their security and safety, which were the bases for the finding of constructive dismissal.[31]

Furthermore, the LA rejected the assertion that respondents went on AWOL beginning April 7, 2011 for Miñoza and April 8, 2011 for Bandalan, considering that they already filed the instant complaint on April 7, 2011. As such, the memoranda dated April 18, 2011, which required them to justify their unexplained absences was a mere afterthought.[32]

Having been constructively dismissed, respondents are entitled to reinstatement to their former positions with backwages from April 7, 2011. However, as reinstatement is no longer feasible, the LA instead awarded separation pay equivalent to one month pay for every year of service with a fraction of at least six (6) months service to be credited as a full year service.[33]

Likewise, the LA awarded 13th month pay and service incentive leave pay to which respondents were entitled but were not paid. It also awarded moral and exemplary damages on the ground that petitioners created a hostile work environment that was

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[29] *Id*. at 139.

[30] See *id*. at 139-140.

[31] *Id*. at 142.

[32] See *id*. at 141-142.

[33] *Id*. at 143.

detrimental to respondents' security of tenure, as well as attorney's fees, since respondents were compelled to engage the services of counsel to protect their rights.[34] As to the other monetary claims sought by respondents, the same were dismissed for lack of basis.[35]

Dissatisfied, petitioners appealed[36] to the NLRC, docketed as NLRC Case No. VAC-12-000893-2011.

The NLRC's Ruling

In a Decision[37] dated March 30, 2012, the NLRC reversed and set aside the LA's Decision and entered a new one finding neither constructive dismissal nor abandonment in this case.[38] Accordingly, it directed petitioners to pay: (*a*) Miñoza the amounts of ₱14,820.00 as separation pay, ₱10,983.05 as 13th month pay, and ₱2,194.50 as service incentive leave pay; and (*b*) Bandalan the amounts of ₱7,410.00 as separation pay, and ₱4,199.00 as 13th month pay.[39]

The NLRC found that respondents were not constructively dismissed on the basis of the following circumstances: *first*, there was nothing wrong or irregular for an employer to hold meetings with its employees if only to monitor their performance or allow them an avenue to air their grievances; *second*, there was likewise nothing wrong if an employer issues memoranda to its employees, as a means of exercising control over them; and *third*, similarly, the conduct of a drug test is within the prerogative of the employer in order to ensure that its employees are fit to remain in its employ. The NLRC stressed that petitioners also have a business interest to protect and recognized that

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[34] See *id*. at 144.

[35] See *id*. at 143.

[36] See Notice of Appeal and Memorandum of Appeal dated November 21, 2011; *id*. at 148-161.

[37] *Id*. at 182-197A.

[38] *Id*. at 195.

[39] See *id*. at 196-197.

employers have free rein to regulate all aspects of employment including the prerogative to instill discipline and to impose penalties on errant employees.[40]

As regards respondents' allegations that they were threatened, intimidated, and barred entry into the restaurant, the NLRC rejected them for lack of substantiation.[41] The presence of Opura was a preventive measure that the NLRC found justified to avert possible harassment in the work premises which cannot be construed as a means to specifically threaten or intimidate respondents. The NLRC noted the evidence[42] presented by petitioners that Bandalan had previously burned and threatened a co-employee; hence, petitioners cannot be blamed for wanting to ensure a safe and orderly work place. Thus, the NLRC concluded that Opura's presence did not create a hostile work environment for respondents; neither was it proven that they hurled threats against respondents, having been rebutted by evidence presented by petitioners.[43] Perforce, no constructive dismissal transpired in this case.

However, the NLRC held that respondents did not go on AWOL beginning April 7, 2011. Citing jurisprudence, the NLRC ruled that a charge of abandonment is inconsistent with the filing of a complaint for constructive dismissal. Moreover, respondents' prayer for reinstatement belies petitioners' claim of abandonment.[44]

Considering that neither constructive dismissal nor abandonment existed in this case, the NLRC held that reinstatement is in order. However, under the doctrine of strained relations, separation pay may be awarded in lieu of reinstatement, as in this case.[45]

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[40] See *id*. at 193.

[41] See *id*. at 193-194.

[42] See various affidavits; *id*. at 78-82.

[43] See *id*. at 194.

[44] See *id*. at 195.

[45] See *id*. at 195-196.

Finally, finding the absence of constructive dismissal, the NLRC deleted the award of moral and exemplary damages and attorney's fees. However, it affirmed the awards for 13th month pay for both respondents and service incentive leave pay for Miñoza alone.[46]

Respondents moved for reconsideration,[47] which the NLRC denied in a Resolution[48] dated June 29, 2012; hence, the recourse to the CA *via* petition for *certiorari*,[49] docketed as CA-G.R. SP No. 07103.

The CA's Ruling

In a Decision[50] dated August 29, 2014, the CA set aside the NLRC issuances and reinstated the LA's Decision, finding respondents to have been constructively dismissed, with the modification imposing interest at the rate of six percent (6%) per annum on the monetary awards granted in respondents' favor, computed from the finality of the CA Decision until full payment.[51]

Contrary to the NLRC's findings, the CA held that petitioners made employment unbearable for respondents on account of the following circumstances: *first*, petitioners formulated and implemented a "double-absent" policy, which is offensive to sound labor-related management prerogative and actually deters employees from reporting to work;[52] *second*, respondents did not resign or go on AWOL — instead, they reported for work, showing their intention to keep their employment;[53] and *finally*,

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[46] *Id*. at 196-197.

[47] Not attached to the *rollo*.

[48] *Rollo*, pp. 198-199.

[49] Dated September 28, 2012. *Id*. at 201-229.

[50] *Id*. at 35-51.

[51] *Id*. at 51.

[52] See *id*. at 47-48.

[53] See *id*. at 49.

the hiring of Opura caused a hostile and antagonistic environment for respondents.[54]

Petitioners' motion for reconsideration[55] was denied in a Resolution[56] dated May 13, 2015; hence, this petition.

The Issue Before the Court

The issue to be resolved by the Court is whether or not the CA erred in setting aside the NLRC's issuances and reinstating the LA's Decision, which found respondents to have been constructively dismissed.

The Court's Ruling

The petition has merit.

Well-settled is the rule in this jurisdiction that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court, this Court being bound by the findings of fact made by the appellate court.[57] The Court's jurisdiction is limited to reviewing errors of law that may have been committed by the lower court.[58] The rule, however, is not without exception. In *New City Builders, Inc. v. NLRC,*[59] the Court recognized the following exceptions to the general rule, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the CA went beyond

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[54] See *id*.

[55] Not attached to the *rollo*.

[56] *Rollo*, pp. 54-56.

[57] *AMA Computer College-East Rizal v. Ignacio,* 608 Phil. 436, 454 (2009).

[58] *Nicolas v. CA*, 238 Phil. 622, 630 (1987); *Tiongco v. De la Merced*, 157 Phil. 92, 96 (1974).

[59] 499 Phil. 207 (2005).

the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[60]

The exception, rather than the general rule, applies in the present case. When the findings of fact of the CA are contrary to those of the NLRC, which findings also differ from those of the LA, the Court retains its authority to pass upon the evidence and, perforce, make its own factual findings based thereon.[61]

In this case, the CA, concurring with the LA, found that respondents were constructively dismissed. The Court is not convinced.

Constructive dismissal exists when an act of clear discrimination, insensibility, or disdain on the part of the employer has become so unbearable as to leave an employee with no choice but to forego continued employment,[62] or when there is cessation of work because continued employment is rendered impossible, unreasonable, or unlikely, as an offer involving a demotion in rank and a diminution in pay.[63] The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his job under the circumstances.[64]

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[60] *Id*. at 212-213.

[61] *Tatel v. JLFP Investigation Security Agency, Inc.*, G.R. No. 206942, February 25, 2015, 752 SCRA 55, 65.

[62] *Id*. at 67, citing *Soliman Security Services, Inc. v. CA*, 433 Phil. 902, 910 (2002) and *Blue Dairy Corporation v. NLRC*, 373 Phil. 179, 186 (1999).

[63] *MegaForce Security and Allied Services, Inc. v. Lactao*, 581 Phil. 100, 107 (2008).

[64] *Madrigalejos v. Geminilou Trucking Service*, 595 Phil. 1153, 1157 (2008).

After a punctilious examination of this case, the Court finds that respondents — as correctly concluded by the NLRC — were not constructively dismissed, in view of the glaring dearth of evidence to corroborate the same. Despite their allegations, respondents failed to prove through substantial evidence that they were discriminated against, or that working at the restaurant had become so unbearable that they were left without any choice but to relinquish their employment. Neither were they able to prove that there was a demotion in rank or a diminution in pay such that they were forced to give up their work.

In its reversed decision, the NLRC pointed out that respondents claimed to have been constructively dismissed when petitioners called several meetings where they inquired about respondents' absences, for which the latter were issued separate memoranda; they were subjected to an on-the-spot drug test; they were barred entry into the restaurant; and they were threatened and intimidated by the presence of Opura, a stranger, in the restaurant. The foregoing circumstances, however, do not constitute grounds amounting to constructive dismissal. As the NLRC correctly opined, petitioners were validly exercising their management prerogative when they called meetings to investigate respondents' absences, gave them separate memoranda seeking explanation therefor, and conducted an on-the-spot drug test on its employees, including respondents. Likewise, respondents failed to substantiate their allegation that they were prohibited from entering the restaurant, or that they were threatened and intimidated by Opura as to keep them away from the premises. Instead, and as the NLRC aptly observed, respondents failed to prove that Opura's presence created a hostile work environment, or that the latter threatened and intimidated them so much as to convince them to leave their employment. As the Court sees it, petitioners found it necessary to enforce the foregoing measures to control and regulate the conduct and behavior of their employees, to maintain order in the work premises, and ultimately, preserve their business.

Be that as it may, however, the Court finds that respondents did not go on AWOL, or abandon their employment, as petitioners claimed. To constitute abandonment, two (2) elements must

concur: (a) the failure to report for work or absence without valid or justifiable reason, and (b) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts. Mere absence is not sufficient. The employer has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning.[65] Abandonment is incompatible with constructive dismissal.[66]

In this case, records show that respondents wasted no time in filing a complaint against petitioners to protest their purported illegal dismissal from employment. As the filing thereof belies petitioners' charge of abandonment, the only logical conclusion, therefore, is that respondents had no such intention to abandon their work.

Therefore, since respondents were not dismissed and that they were not considered to have abandoned their jobs, it is only proper for them to report back to work and for petitioners to reinstate them to their former positions or substantially-equivalent positions. In this regard, jurisprudence provides that in instances where there was neither dismissal by the employer nor abandonment by the employee, the proper remedy is to reinstate the employee to his former position, but without the award of backwages.[67] However, since reinstatement was already impossible due to strained relations between the parties, as found by the NLRC, each of them must bear their own loss, so as to place them on equal footing. At this point, it is well to emphasize that "in a case where the employee's failure to work was occasioned neither by his abandonment nor by a termination, the burden of economic loss is not rightfully shifted to the employer; each party must bear his own loss."[68]

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[65] *RBC Cable Master System and/or Cinense v. Baluyot*, 596 Phil. 729, 739-740 (2009).

[66] *Veterans Security Agency, Inc. v. Gonzalvo, Jr.*, 514 Phil. 488, 497 (2005).

[67] *Mallo v. Southeast Asian College, Inc.*, G.R. No. 212861, October 14, 2015, 772 SCRA 657, 669.

[68] *MZR Industries v. Colambot*, 716 Phil. 617, 628 (2013).

In sum, the NLRC ruling holding that respondents were not constructively dismissed and that they did not abandon their jobs must be reinstated, subject to the modification that the award of separation pay in their favor must be deleted.

WHEREFORE, the instant petition is **GRANTED**. The Decision dated August 29, 2014 and Resolution dated May 13, 2015 rendered by the Court of Appeals in CA-G.R. SP No. 07103 are hereby **REVERSED** and **SET ASIDE**. The Decision dated March 30, 2012 and the Resolution dated June 29, 2012 of the National Labor Relations Commission in NLRC Case No. VAC-12-000893-2011 (RAB Case No. VII-05-0827-2011) are **REINSTATED**, with **MODIFICATIONS**: (*a*) deleting the awards of separation pay in favor of respondents Randy B. Miñoza and Alaine S. Bandalan (respondents) in the amounts of ₱14,820.00 and ₱7,410.00, respectively; and (*b*) imposing interest at the rate of six percent (6%) per annum on the remaining monetary awards granted in respondents' favor, computed from the finality of this Decision until full payment.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 224395. July 3, 2017]

DISCIPLINARY BOARD, LAND TRANSPORTATION OFFICE; ATTY. TEOFILO E. GUADIZ, Chairman; ATTY. NOREEN BERNADETTE SAN LUIS-LUTEY; and PUTIWAS MALAMBUT, Members; ATTY. MERCY JANE B. PARAS-LEYNES, Special Prosecutor; and ATTY. ROBERTO P. CABRERA III, Assistant Secretary of the Land Transportation Office, *petitioners, vs.* **MERCEDITA E. GUTIERREZ,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; PROCEDURAL DUE PROCESS; MEANS THE OPPORTUNITY TO EXPLAIN ONE'S SIDE OR THE OPPORTUNITY TO SEEK A RECONSIDERATION OF THE ACTION OR RULING COMPLAINED OF.— "The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. **In administrative proceedings, as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of.** 'To be heard' does not mean only verbal arguments in court; one may also be heard thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process." x x x In this case, records show that the Formal Charge against Gutierrez was issued following the LTO's issuance of a Show Cause Memorandum. Under Section 16 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), a Show Cause Memorandum emanating from the disciplining authority or its authorized representative is sufficient to institute preliminary investigation proceedings x x x. A reading of the Show Cause Memorandum issued by the LTO shows that Gutierrez was directed to explain why no disciplinary action should be taken against her. The latter then duly complied therewith by submitting her letter-reply pursuant thereto. Evidently, Gutierrez was accorded her right to procedural due process when she was given an opportunity to be heard before the LTO found a *prima facie* case against her, which thus, necessitated the issuance of the Formal Charge. In fact, even after the issuance of a Formal Charge, the LTO continued to respect Gutierrez's right to procedural due process as it allowed her to file an Answer to refute the charges of Gross Insubordination, Refusal to Perform Official Duties, and Conduct Prejudicial to the Best Interest of the Service against her.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Hernandez Benedicto Oliveros & Associates for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated January 7, 2016 and the Resolution[3] dated April 26, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 139436, which set aside the Decision dated November 11, 2014 and the Resolution dated January 29, 2015[4] of the Civil Service Commission (CSC) in NDC-2014-09053 and, accordingly, remanded the case to petitioner Land Transportation Office (LTO) for its Disciplinary Board to conduct a preliminary investigation on the alleged offenses of respondent Mercedita E. Gutierrez (Gutierrez).

The Facts

Pursuant to Administrative Order No. AVT-2014-023[5] implementing the "Do-It-Yourself" Program in the LTO, Gutierrez, Chief of the LTO Registration Section, received a Memorandum[6] dated February 11, 2014, instructing her to temporarily relocate her Section's equipment to the Bulwagang R.F. Edu in order to accommodate the renovation of the work stations in the said program. On even date, Gutierrez sent a reply-Memorandum[7] which, *inter alia*, raised concerns about the safety and integrity

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[1] *Rollo*, pp. 10-33.

[2] *Id*. at 36-47. Penned by Associate Justice Priscilla J. Baltazar-Padilla with Associate Justices Remedios A. Salazar-Fernando and Socorro B. Inting concurring.

[3] *Id*. at 58-59.

[4] The CSC issuances were not attached to the *rollo*.

[5] Entitled "Revised Rules and Regulations on the Accreditation and Stock Reporting of Manufacturers, Assemblers, Importers, Rebuilders, Dealers, and Other Entities Authorized to Import Motor Vehicles and/or its Components" dated January 23, 2014.

[6] *Rollo*, p. 60. Signed by OIC-Operations Division Menelia C. Mortel and noted by OIC-Office of the Executive Director Atty. Emiliano T. Bantog, Jr.

[7] Received by the Office of the Executive Director and LTO Administrative Division on February 12, 2014. *Id*. at 65-67.

of the records kept at her office during the transfer; and at the same time, asked the role of the Registration Section once the aforesaid program kicks off. This prompted the LTO to issue a Memorandum[8] dated February 20, 2014 directing Gutierrez to show cause why no disciplinary action should be taken against her for non-compliance with the relocation directive (Show Cause Memorandum). In response, Gutierrez sent a letter-reply[9] dated February 25, 2014, maintaining that the Registration Section is ready and willing to comply with the relocation directive and that their equipment is ready for pick-up whenever the LTO may see fit. Further, Gutierrez reiterated the various concerns she raised in her earlier reply-Memorandum.[10]

Finding that there is a *prima facie* case against Gutierrez, the LTO issued a Formal Charge[11] dated June 2, 2014 charging her of Gross Insubordination, Refusal to Perform Official Duties, and Conduct Prejudicial to the Best Interest of the Service, giving her five (5) days from receipt thereof to file her Answer and supporting affidavits, and preventively suspending her for a period of ninety (90) days.[12] On even date, the LTO issued Office Order No. AVT-2014-89[13] constituting a Disciplinary Board composed of Atty. Teofilo E. Guadiz, Atty. Noreen Bernadette S. San Luis-Lutey, and Mr. Putiwas M. Malambut, and directing them to conduct a formal investigation in connection with the aforesaid Formal Charge.[14]

Consequently, Gutierrez filed her Answer[15] dated June 5, 2014 and a Manifestation[16] dated August 20, 2014, which, *inter*

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[8] *Id*. at 68. Signed by Assistant Secretary Atty. Alfonso V. Tan, Jr.

[9] *Id*. at 69-70.

[10] See *id*.

[11] *Id*. at 226-227.

[12] See *id*.

[13] *Id*. at 228.

[14] See *id*.

[15] *Id*. at 229-236.

[16] *Id*. at 237-251.

alia, contested the validity of the Formal Charge against her on the ground of lack of due process. According to Gutierrez, she was deprived of procedural due process as the LTO issued the Formal Charge against her without the requisite preliminary investigation.[17]

The LTO and CSC Rulings

In two (2) separate Orders[18] both dated August 22, 2014, the LTO found Gutierrez's claim untenable and, accordingly, directed the parties to prepare for the pre-hearing conference.[19] It found that the Show Cause Memorandum already takes the place of a preliminary investigation and, thus, she was not deprived of procedural due process.[20] The foregoing was reiterated in the LTO's Order[21] dated September 4, 2014 where it was held that the Formal Charge against Gutierrez was issued following the issuance of the Show Cause Memorandum, as well as the conduct of a preliminary or fact-finding investigation. On appeal to the CSC, the foregoing LTO Orders were affirmed by the CSC's Decision dated November 11, 2014 and Resolution dated January 29, 2015.[22]

Aggrieved, Gutierrez filed a petition for review[23] before the CA.

The CA Ruling

In a Decision[24] dated January 7, 2016, the CA set aside the rulings of the LTO and the CSC and, accordingly, directed the

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[17] See *id*. at 230 and 243-251.

[18] *Id*. at 252-255 and 257-261. Both signed by Chairman Atty. Teofile E. Guadiz III with members Atty. Noreen Bernadette S. San Luis-Lutey and Mr. Putiwas M. Malambut concurring.

[19] See *id*. at 255 and 260.

[20] See *id*. at 253-255 and 258-260.

[21] *Id*. at 94-95.

[22] The CSC issuances were not attached to the *rollo*. See *id*. at 37-38.

[23] Not attached to the *rollo*.

[24] *Rollo*, pp. 36-47.

LTO to conduct a preliminary investigation on the alleged offenses committed by Gutierrez.[25] It held that according to the Formal Charge, the administrative case was instituted against Gutierrez because of her: (*a*) defiance of a Memorandum[26] dated January 28, 2014 regarding the order of construction; (*b*) non-compliance with the Memorandum dated February 11, 2014 directing the transfer of equipment; and (*c*) refusal to and preventing the transfer of computers at the Registration Section to the Bulwagang R.F. Edu as per the Report dated February 17, 2014. However, the Show Cause Memorandum only covered Gutierrez's alleged non-compliance with the Memorandum dated February 11, 2014. Thus, the CA opined that Gutierrez was not able to explain her side with respect to the two (2) other acts she was accused of committing, thereby constituting a violation of her right to procedural due process.[27]

Undaunted, the LTO moved for reconsideration,[28] which was, however, denied in a Resolution[29] dated April 26, 2016; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly ruled that Gutierrez was deprived of her right to procedural due process in connection with the Formal Charge issued against her.

The Court's Ruling

The petition is meritorious.

"The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. **In administrative proceedings, as in the case at bar,**

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[25] See *id*. at 46.

[26] *Id*. at 205-207.

[27] See *id*. at 42-44.

[28] See motion for reconsideration dated February 9, 2016; *id*. at 48-57.

[29] *Id*. at 58-59.

procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. 'To be heard' does not mean only verbal arguments in court; one may also be heard thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process."[30] This was extensively discussed in *Vivo v. Philippine Amusement and Gaming Corporation*[31] as follows:

> The observance of fairness in the conduct of any investigation is at the very heart of procedural due process. The essence of due process is to be heard, and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Administrative due process cannot be fully equated with due process in its strict judicial sense, for in the former a formal or trial-type hearing is not always necessary, and technical rules of procedure are not strictly applied. *Ledesma v. Court of Appeals* [(565 Phil. 731, 740 [2007])] elaborates on the well-established meaning of due process in administrative proceedings in this wise:
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> > x x x Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. **Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself.** In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. **The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of**.[32] (Emphases and underscoring supplied)

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[30] *Ebdane, Jr. v. Apurillo*, G.R. No. 204172, December 9, 2015, 777 SCRA 324, 332, citing *Department of Agrarian Reform v. Samson*, 577 Phil. 370, 380 (2008); emphasis and underscoring supplied.

[31] 721 Phil. 34 (2013).

[32] *Id*. at 39-40.

In this case, records show that the Formal Charge against Gutierrez was issued following the LTO's issuance of a Show Cause Memorandum. Under Section 16 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), a Show Cause Memorandum emanating from the disciplining authority or its authorized representative is sufficient to institute preliminary investigation proceedings, to wit:

> Section 16. *How conducted.* — Within five (5) days from receipt of the complaint sufficient in form and substance, the person/s complained of shall be required to submit his/her/their counter-affidavit/comment. **Where the complaint is initiated by the disciplining authority, the disciplining authority or his authorized representative shall issue a show-cause memorandum directing the person/s complained of to explain why no administrative case should be filed against him/her/them.** The latter's failure to submit the comment/counter-affidavit/explanation shall be considered a waiver thereof and the preliminary investigation may be completed even without his/her counter-affidavit/comment.
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> x x x x x x x x x
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> (Emphasis and underscoring supplied)

A reading of the Show Cause Memorandum issued by the LTO shows that Gutierrez was directed to explain why no disciplinary action should be taken against her. The latter then duly complied therewith by submitting her letter-reply pursuant thereto. Evidently, Gutierrez was accorded her right to procedural due process when she was given an opportunity to be heard before the LTO found a *prima facie* case against her, which thus, necessitated the issuance of the Formal Charge. In fact, even after the issuance of a Formal Charge, the LTO continued to respect Gutierrez's right to procedural due process as it allowed her to file an Answer to refute the charges of Gross Insubordination, Refusal to Perform Official Duties, and Conduct Prejudicial to the Best Interest of the Service against her.

In light of the foregoing, the CA erred in finding that Gutierrez's right to procedural due process was violated. To recapitulate, the CA anchored such finding on the fact that the administrative case was instituted against Gutierrez because

of her defiance of the Memoranda dated January 28, 2014 and February 11, 2014, and her refusal to transfer the computers of the Registration Section as per the Report dated February 17, 2014; whereas the Show Cause Memorandum only referenced one of the aforesaid Memoranda. However, a closer scrutiny of the Show Cause Memorandum and the Formal Charge reveals that their main subject is Gutierrez's continuous failure and/or refusal to temporarily relocate the equipment of the Registration Section to the Bulwagang R.F. Edu pursuant to Administrative Order No. AVT-2014-023 implementing the LTO's "Do-It-Yourself" Program, with the mention of the aforesaid Memoranda — whether in the Show Cause Memorandum or the Formal Charge — merely exhibiting such defiance.

Irrefragably, Gutierrez was amply accorded her rights to procedural due process and, thus, there is no more need to conduct another preliminary investigation on her administrative case.

WHEREFORE, the petition is **GRANTED**. The Decision dated January 7, 2016 and the Resolution dated April 26, 2016 of the Court of Appeals in CA-G.R. SP No. 139436 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Land Transportation Office is **DIRECTED** to resolve the administrative case against respondent Mercedita E. Gutierrez on the merits with reasonable dispatch.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 224515. July 3, 2017]

REMEDIOS V. GEÑORGA, *petitioner, vs.* **HEIRS OF JULIAN MELITON, Represented by ROBERTO MELITON as Attorney-in-Fact, IRENE MELITON, HENRY MELITON, ROBERTO MELITON, HAIDE[*] MELITON, and MARIA FE MELITON ESPINOSA,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); PROVIDES FOR THE REGISTRATION OF DEEDS OR CONVEYANCES INVOLVING ONLY PORTIONS OF A REGISTERED LAND AND IT REQUIRES THE PRESENTATION OF THE OWNER'S DUPLICATE TITLE FOR THE ANNOTATION OF DEEDS OF SALE.— [I]t is well to point out that the subject land was an undivided co-owned property when Julian sold different portions thereof to various persons. However, a perusal of the pertinent deeds of absolute sale reveals that definite portions of the subject land were eventually sold, and the buyers took possession and introduced improvements thereon, declared the same in their names, and paid the realty taxes thereon, all without any objection from respondents who never disputed the sales in favor of the buyers. Consequently, the Court finds that there is, in this case, a partial factual partition or termination of the co-ownership, which entitles the buyers to the segregation of their respective portions, and the issuance of new certificates of title in their names upon compliance with the requirements of law. Section 58 of PD 1529, otherwise known as the "Property Registration Decree," provides the procedure for the registration of deeds or conveyances, and the issuance of new certificates of titles involving only certain portions of a registered land, as in this case. x x x In this relation, Section 53 of PD 1529 requires the presentation of the owner's duplicate title for the annotation of deeds of sale.

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[*] Haidi in some portions of the records.

2. ID.; ID.; REGISTER OF DEEDS; PERFORMS ONLY A MINISTERIAL FUNCTION WITH REFERENCE TO THE REGISTRATION OF DEEDS.— [T]he function of a Register of Deeds with reference to the registration of deeds is only ministerial in nature. Thus, the RD-Naga cannot be expected to retain possession of the subject owner's duplicate title longer than what is reasonable to perform its duty. In the absence of a verified and approved subdivision plan and technical description duly submitted for registration on TCT No. 8027, it must return the same to the presenter, in this case, petitioner who, as aforesaid, failed to establish a better right to the possession of the said owner's duplicate title as against respondents.

APPEARANCES OF COUNSEL

Grace C. De La Torre for petitioner.
Dante C. Castillo for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a Petition for Review[1] on *certiorari* assailing the Decision[2] dated October 7, 2015 and the Resolution[3] dated April 12, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 103591, which affirmed the Decision[4] dated July 28, 2014 of the Regional Trial Court (RTC) of Naga City, Branch 24 (court *a quo*) in Civil Case No. 2013-0036, directing petitioner and/or the Register of Deeds of Naga City (RD-Naga) to deliver or surrender possession of the owner's duplicate copy of Transfer Certificate of Title (TCT) No. 8027 to respondents.

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[1] *Rollo*, pp. 5-14.

[2] *Id*. at 15-21. Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Ramon A. Cruz and Melchor Quirino C. Sadang concurring.

[3] *Id*. at 22-23.

[4] *Id*. at 158-162. Penned by Presiding Judge Bernhard B. Beltran.

The Facts

Julian Meliton (Julian), Isabel Meliton, and respondents Irene, Henry, Roberto, Haide, all surnamed Meliton, and Ma. Fe Meliton Espinosa (Ma. Fe; respondents) are the registered owners of a 227,270-square meter parcel of land, identified as Lot No. 1095-C located in Concepcion Pequeña, Naga City, covered by TCT No. 8027[5] (subject land).[6] Julian owns 8/14 portion of the land, while the rest of the co-owners own 1/14 each.[7] During his lifetime, Julian sold portions of the subject land to various persons, among others, to petitioner Remedios V. Geñorga's (petitioner) husband,[8] Gaspar Geñorga, who took possession and introduced improvements on the portions respectively sold to them.[9]

However, Julian failed to surrender the owner's duplicate copy of TCT No. 8027 to enable the buyers, including petitioner's husband, to register their respective deeds of sale, which eventually led to the filing of a Petition[10] for the surrender of the owner's duplicate copy of TCT No. 8027 and/or annulment thereof, and the issuance of new titles pursuant to Section 107 of Presidential Decree No. (PD) 1529[11] before Branch 23 of the RTC of Naga City, docketed as Civil Case No. RTC '96-3526.

In a Decision[12] dated July 17, 1998, the RTC of Naga City decided in favor of the buyers. Accordingly, it ordered the

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[5] Records, pp. 302-333.

[6] See also Exhibit "F", Folder of Exhibits in Civil Case No. 96-3526.

[7] Records, p. 303.

[8] See *rollo*, pp. 16, 101. See also Deed of Absolute Sale dated June 19, 1978; *id*. at 55.

[9] *Id*. at 58.

[10] Dated March 18, 1996. *Id*. at 56-61.

[11] Entitled "AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES," otherwise known as the "PROPERTY REGISTRATION DECREE" (June 11, 1978).

[12] *Rollo*, pp. 99-103; records of Civil Case No. RTC '96-3526, pp. 89-94. Penned by Judge Ernesto A. Miguel.

administratrix of the estate of Julian, Ma. Fe, or any of Julian's heirs or any person holding the owner's duplicate of TCT No. 8027 (holder) to surrender possession thereof to the RD-Naga; and the RD-Naga to enter on the said title the buyers' respective deeds of sale, and to issue the corresponding certificates of title after compliance with the requirements of the law.[13] It further held that should the holder fail or refuse to comply with the court's directive: (*a*) TCT No. 8027 shall be declared null and void; and (*b*) the RD-Naga shall issue a new certificate of title in lieu thereof, enter the deeds of sale, and issue certificates of title in favor of the buyers.[14]

The said decision became final and executory on September 10, 2006 but remained unexecuted due to the sheriff's failure to locate and serve the writ of execution on Ma. Fe despite diligent efforts.[15] Thus, in an Order[16] dated October 2, 2008, the RTC declared TCT No. 8027 null and void, resulting in the issuance of a new one, bearing annotations of the buyers' adverse claims. The new owner's duplicate copy of TCT No. 8027 (subject owner's duplicate title) was given to petitioner in 2009.[17]

On April 22, 2013, respondents filed a Complaint[18] against petitioner before the court *a quo*, seeking the surrender of the subject owner's duplicate title with damages, docketed as Civil Case No. 2013-0036. They claimed that they are entitled to the possession thereof as registered owners, and suffered damages as a consequence of its unlawful withholding, compelling them to secure the services of counsel to protect their interests.[19]

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[13] *Rollo*, pp. 102-103.

[14] *Id*. at 103.

[15] *Id*. at 105.

[16] *Id*. at 105-106. Issued by Presiding Judge Valentin E. Pura, Jr.

[17] *Id*. at 7 and 17.

[18] Dated April 8, 2013. *Id*. at 24-29.

[19] *Id*. at 27-28.

In her Answer,[20] petitioner averred that she and the other buyers are in the process of completing all the requirements for the registration of the sales in their favor, and have paid the estate taxes thereon. They had likewise caused the survey of the land but the first geodetic engineer they hired to conduct the same failed to deliver his services, prompting them to file a complaint against him, and to hire another geodetic engineer. Considering that their possession of the subject owner's duplicate title was by virtue of a court decision, and for the legitimate purpose of registering the sales in their favor and the issuance of titles in their names, they should be allowed to retain possession until the completion of the requirements therefor.[21] The said title was eventually submitted to the RD-Naga[22] on September 13, 2013.[23]

The RTC Ruling

In a Decision[24] dated July 28, 2014, the RTC granted respondents' petition, and ordered petitioner and/or the RD-Naga to deliver or surrender possession of the subject owner's duplicate title to respondents, considering the long period of time that had lapsed for the annotation of the buyers' deeds of sale.[25]

Dissatisfied, petitioner filed a motion for reconsideration[26] which was denied in an Order[27] dated September 11, 2014, and, thereafter, appealed to the CA, docketed as CA-G.R. CV No. 103591.

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[20] Dated May 30, 2013. *Id*. at 32-38.

[21] See *id*. at 34-36.

[22] *Id*. at 17.

[23] See *id*. at 48 and 127.

[24] *Id*. at 158-162.

[25] See *id*. at 161-162.

[26] Dated August 11, 2014. See *id.* at 163-166.

[27] *Id*. at 167-169.

The CA Ruling

In a Decision[28] dated October 7, 2015, the CA affirmed the RTC ruling. It noted the long length of time that had lapsed for the annotation of the buyers' deeds of sale and the issuance of the corresponding certificates of title, and found no valid and plausible reason to further withhold custody and possession of the subject owner's duplicate title from respondents. Thus, it adjudged respondents to have the preferential right to the possession of the said title, considering that the bigger portion of the subject property belongs to them.[29]

Petitioner moved for reconsideration[30] but the same was denied in a Resolution[31] dated April 12, 2016; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA correctly affirmed the court *a quo's* Decision directing the surrender and delivery of possession of the subject owner's duplicate title to respondents.

The Court's Ruling

The petition lacks merit.

Preliminarily, it is well to point out that the subject land was an undivided co-owned property when Julian sold different portions thereof to various persons. However, a perusal of the pertinent deeds of absolute sale[32] reveals that definite portions of the subject land were eventually sold, and the buyers took possession and introduced improvements thereon,[33] declared the same in their names, and paid the realty taxes thereon,[34] all

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[28] *Id*. at 15-21.

[29] *Id*. at 19-20.

[30] Dated November 5, 2015. See *id*. at 193-195.

[31] *Id*. at 22-23.

[32] *Id*. at 55, 131, 133, 135, 137, 139, 141, 143, 145, 149, and 151.

[33] *Id*. at 59.

[34] See Folder of Exhibits in Civil Case No. 96-3526.

without any objection from respondents who never disputed the sales in favor of the buyers. Consequently, the Court finds that there is, in this case, a partial factual partition or termination of the co-ownership, which entitles the buyers to the segregation of their respective portions, and the issuance of new certificates of title in their names[35] upon compliance with the requirements of law.

Section 58 of PD 1529, otherwise known as the "Property Registration Decree," provides the procedure for the registration of deeds or conveyances, and the issuance of new certificates of titles involving only certain portions of a registered land, as in this case. Said provision reads:

> Section 58. *Procedure Where Conveyance Involves Portion of Land.* — If a deed or conveyance is for a part only of the land described in a certificate of title, the Register of Deeds shall not enter any transfer certificate to the grantee until a **plan of such land showing all the portions or lots into which it has been subdivided and the corresponding technical descriptions shall have been verified and approved** pursuant to Section 50 of this Decree. Meanwhile, such **deed may only be annotated by way of memorandum upon the grantor's certificate of title, original and duplicate, said memorandum to serve as a notice to third persons of the fact that certain unsegregated portion of the land described therein has been conveyed, and every certificate with such memorandum shall be effectual for the purpose of showing the grantee's title to the portion conveyed to him, pending the actual issuance of the corresponding certificate in his name.**
>
> Upon the approval of the plan and technical descriptions, the original of the plan, together with a certified copy of the technical descriptions shall be filed with the Register of Deeds for annotation in the corresponding certificate of title and thereupon said officer shall issue a new certificate of title to the grantee for the portion conveyed, and at the same time cancel the grantor's certificate partially with respect only to said portion conveyed, or, if the grantor so desires, his certificate may be cancelled totally and a new one issued to him describing therein the remaining portion: Provided, however, that **pending**

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[35] See *Pamplona v. Moreto,* 185 Phil. 556, 564-566 (1980).

approval of said plan, no further registration or annotation of any subsequent deed or other voluntary instrument involving the unsegregated portion conveyed shall be effected by the Register of Deeds, except where such unsegregated portion was purchased from the Government or any of its instrumentalities. If the land has been subdivided into several lots, designated by numbers or letters, the Register of Deeds may, if desired by the grantor, instead of cancelling the latter's certificate and issuing a new one to the same for the remaining unconveyed lots, enter on said certificate and on its owner's duplicate a memorandum of such deed of conveyance and of the issuance of the transfer certificate to the grantee for the lot or lots thus conveyed, and that the grantor's certificate is canceled as to such lot or lots. (Emphases supplied)

In this relation, Section 53[36] of PD 1529 requires the presentation of the owner's duplicate title for the annotation of deeds of sale.

Records show that the subject owner's duplicate title had already been surrendered to the RD-Naga on September 13, 2013, and some of the buyers had secured Certificates Authorizing Registration[37] and paid the corresponding fees[38] for the registration of the sales in their favor. Nonetheless, while the rights of the buyers over the portions respectively sold to

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[36] Section 53. *Presentation of Owner's Duplicate Upon Entry of New Certificate.* — **No voluntary instrument shall be registered by the Register of Deeds, unless the owner's duplicate certificate is presented with such instrument, except in cases expressly provided for in this Decree or upon order of the court, for cause shown**.

The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the Register of Deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchases for value and in good faith.

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(Emphases supplied)

[37] *Rollo*, pp. 130, 132, 134, 136, 138, 140, 142, 144, and 148.

[38] *Id*. at 126.

them had already been recognized by the RTC of Naga City in its July 17, 1998 Decision in Civil Case No. RTC '96-3526 which had attained finality on September 10, 2006,[39] there is no showing that the other affected buyers have similarly complied with the necessary registration requirements.

Notably, from the time petitioner received possession of the subject owner's duplicate title in 2009, a considerable amount of time had passed until she submitted the same to the RD-Naga on September 13, 2013. But even up to the time she filed the instant petition before the Court on May 6, 2016,[40] she failed to show any sufficient justification for the continued failure of the concerned buyers to comply with the requirements for the registration of their respective deeds of sale and the issuance of certificates of title in their names to warrant a preferential right to the possession of the subject owner's duplicate title as against respondents who undisputedly own the bigger portion of the subject land. Consequently, the Court finds no reversible error on the part of the CA in affirming the RTC Decision directing petitioner or the RD-Naga to deliver or surrender the subject owner's duplicate title to respondents.

Moreover, it bears to stress that the function of a Register of Deeds with reference to the registration of deeds is only ministerial in nature.[41] Thus, the RD-Naga cannot be expected to retain possession of the subject owner's duplicate title longer than what is reasonable to perform its duty. In the absence of a verified and approved subdivision plan and technical description duly submitted for registration on TCT No. 8027, it must return the same to the presenter, in this case, petitioner who, as aforesaid, failed to establish a better right to the possession of the said owner's duplicate title as against respondents.

As a final point, it must, however, be clarified that the above-pronounced delivery or surrender is without prejudice to the

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[39] *Id*. at 105.

[40] The Petition was posted on May 6, 2016. *Id*. at 5.

[41] See *Baranda v. Gustilo*, 248 Phil. 205, 219 (1988).

rights of the concerned buyers who would be able to subsequently complete the necessary registration requirements and thereupon, duly request the surrender of the subject owner's duplicate title anew to the RD-Naga.

WHEREFORE, the petition is **DENIED.** The Decision dated October 7, 2015 and the Resolution dated April 12, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 103591 are **AFFIRMED.** Petitioner Remedios V. Geñorga or the Register of Deeds of Naga City is hereby **DIRECTED** to deliver or surrender the owner's duplicate copy of Transfer Certificate of Title No. 8027 to respondents Heirs of Julian Meliton, through their attorney-in-fact, Roberto Meliton, within sixty (60) days from notice of this Decision.

Let a copy of this Decision be furnished the Register of Deeds of Naga City.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Caguioa, JJ.,* concur.

SECOND DIVISION

[G.R. No. 224974. July 3, 2017]

MARVIN CRUZ and FRANCISCO CRUZ, in his capacity as Bondsman, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ISSUED TO PREVENT LOWER COURTS AND TRIBUNALS FROM COMMITTING GRAVE ABUSE OF DISCRETION IN EXCESS OF THEIR

JURISDICTION.— The writ of certiorari is not issued to correct every error that may have been committed by lower courts and tribunals. It is a remedy specifically to keep lower courts and tribunals within the bounds of their jurisdiction. In our judicial system, the writ is issued to prevent lower courts and tribunals from committing grave abuse of discretion in excess of their jurisdiction. Further, the writ requires that there is no appeal or other plain, speedy, and adequate remedy available to correct the error. Thus, certiorari may not be issued if the error can be the subject of an ordinary appeal.

2. **ID.; ID.; ID.; ID.; THE ESSENTIAL REQUISITE THEREOF IS THE ALLEGATION THAT THE JUDICIAL TRIBUNAL ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION; GRAVE ABUSE OF DISCRETION, DEFINED.—** An essential requisite for filing a petition for *certiorari* is the allegation that the judicial tribunal acted with grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion has been defined as a "capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law."

3. **ID.; CRIMINAL PROCEDURE; BAIL; WHEN DEEMED AUTOMATICALLY CANCELLED.—** Bail shall be deemed automatically cancelled in three (3) instances: (1) the acquittal of the accused, (2) the dismissal of the case, or (3) the execution of the judgment of conviction. The Rules of Court do not limit the cancellation of bail only upon the acquittal of the accused.

4. **ID.; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NON-COMPLIANCE WITH THE RULES OF COURT CONSTITUTES GRAVE ABUSE OF DISCRETION AND THE REMEDY IS THE FILING OF A PETITION FOR *CERTIORARI* WITH THE PROPER COURT.—** Non-compliance with the Rules of Court is not x x x a mere error of judgment. It constitutes grave abuse of discretion. x x x When a court or tribunal renders a decision tainted with grave abuse of discretion, the proper remedy is to file a petition for certiorari under Rule 65 of the Rules of Court. x x x Considering that the trial court blatantly disregarded Rule 114, Section 22 of the Rules of Court, petitioners' remedy was the filing of a petition for certiorari with the proper court.

5. ID.; CRIMINAL PROCEDURE; BAIL; THE AUTOMATIC CANCELLATION OF BAIL DOES NOT ALWAYS RESULT IN THE IMMEDIATE RELEASE OF THE BAIL BOND TO THE ACCUSED.— The automatic cancellation of bail x x x does not always result in the immediate release of the bail bond to the accused. A cash bond, unlike a corporate surety or a property bond, may be applied to fines and other costs determined by the court. The excess shall be returned to the accused or to the person who deposited the money on the accused's behalf. x x x There was no fine imposed on Cruz. The Order does not specify any costs of court that he must answer for. There was, thus, no lien on the bond that could prevent its immediate release. Considering these circumstances, petitioners could not have been faulted for filing a petition for *certiorari* before the Court of Appeals since there was no legal basis for the Regional Trial Court to deny their Motion to Release Cash Bond.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

The trial court's failure to comply with procedural rules constitutes grave abuse of discretion and may be the subject of a petition for certiorari before the Court of Appeals.

This is a Petition for Review on Certiorari[1] assailing the Decision[2] dated January 18, 2016 and Resolution[3] dated June 1, 2016 of

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[1] *Rollo,* pp. 12-29.

[2] *Id*. at 34-37. The Decision, docketed as CA-G.R. SP No. 141009, was penned by Associate Justice Agnes Reyes-Carpio and concurred in by Presiding Justice Andres B. Reyes, Jr. and Associate Justice Romeo F. Barza of the First Division, Court of Appeals, Manila.

[3] *Id*. at 31-32. The Resolution was penned by Associate Justice Agnes Reyes-Carpio and concurred in by Presiding Justice Andres B. Reyes, Jr.

the Court of Appeals, which dismissed the Petition for Certiorari filed by Marvin Cruz (Cruz) and his bondsman, Francisco Cruz (Francisco) for being the wrong remedy. They filed the Petition before the Court of Appeals to assail the Regional Trial Court's denial of their Motion to Release Cash Bond after the criminal case against Cruz was dismissed.

In an Information[4] dated September 19, 2013, Cruz, along with seven (7) others, was charged with Robbery in an Uninhabited Place and by a Band for unlawfully taking four (4) sacks filled with scraps of bronze metal and a copper pipe worth ₱72,000.00 collectively.[5] Cruz posted bail through a cash bond in the amount of ₱12,000.00.[6]

The private complainant in the criminal case subsequently filed an Affidavit of Desistance[7] stating that he was no longer interested in pursuing his complaint against Cruz.[8] On October 23, 2014, Assistant City Prosecutor Deborah Marie Tan filed a Motion to Dismiss,[9] which was granted by Branch 170, Regional Trial Court, City of Malabon in an Order[10] dated October 24, 2014.

Cruz, through his bondsman Francisco, filed a Motion to Release Cash Bond.[11] In an Order[12] dated January 7, 2015, the Regional Trial Court denied the Motion on the ground that the case was dismissed through desistance and not through acquittal.

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and Associate Justice Romeo F. Barza of the First Division, Court of Appeals, Manila.

[4] *Id*. at 62.

[5] *Id*.

[6] *Id*. at 35.

[7] *Id*. at 64.

[8] *Id*. at 35.

[9] *Id*. at 63.

[10] *Id*. at 65.

[11] *Id*. at 57.

[12] *Id*. at 56.

The Motion for Reconsideration[13] filed by Francisco was likewise denied in an Order[14] dated April 6, 2015.

Cruz and Francisco filed a Petition for Certiorari[15] with the Court of Appeals, arguing that the Regional Trial Court committed grave abuse of discretion in dismissing the Motion to Release Cash Bond.

On January 18, 2016, the Court of Appeals rendered a Decision[16] dismissing the Petition.

The Court of Appeals anchored its dismissal on the ground that Cruz and Francisco should have filed an appeal, instead of a petition for certiorari, to question the denial of their Motion to Release Cash Bond.[17] The Court of Appeals further stated that it could not treat the Petition for Certiorari as an appeal since the period for appeal had lapsed before its filing.[18]

Cruz and Francisco filed a Motion for Reconsideration but this was denied in the Resolution[19] dated June 1, 2016. Hence, this Petition[20] was filed.

Petitioners Cruz and Francisco insist that the filing of a petition for certiorari was proper since the Regional Trial Court's denial of their Motion to Release Cash Bond amounted to grave abuse of discretion. They point out that under Rule 114, Section 22[21]

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[13] *Id*. at 59-60.

[14] *Id*. at 55.

[15] *Id*. at 38-54.

[16] *Id*. at 34-37.

[17] *Id*. at 36.

[18] *Id*. at 36-37.

[19] *Id*. at 31-32.

[20] *Id*. at 12-29.

[21] RULES OF COURT, Rule 114, Sec. 22 provides:

Section 22. Cancellation of bail. — Upon application of the bondsmen, with due notice to the prosecutor, the bail may be cancelled upon surrender of the accused or proof of his death.

of the Rules of Court, bail is deemed automatically cancelled upon the dismissal of the case regardless of whether the case was dismissed through acquittal or desistance.[22]

The Office of the Solicitor General, however, points out that while Rule 114, Section 22 calls for automatic cancellation, the cancellation is without prejudice to any liabilities on the bond.[23] Thus, it posits that while the cancellation is automatic, the release of the bond is still subject to further proceedings. It adds that if the trial court erred in dismissing petitioners' Motion to Release Cash Bond, the error is "perhaps . . . a mistake in the application of the law" and not grave abuse of discretion, which should not be the subject of a petition for certiorari.[24]

Considering the parties' arguments, the sole issue to be resolved is whether the Court of Appeals erred in dismissing the petition for certiorari for being the wrong remedy to question the denial of a motion to release cash bond.

The writ of certiorari is not issued to correct every error that may have been committed by lower courts and tribunals. It is a remedy specifically to keep lower courts and tribunals within the bounds of their jurisdiction. In our judicial system, the writ is issued to prevent lower courts and tribunals from committing grave abuse of discretion in excess of their jurisdiction. Further, the writ requires that there is no appeal or other plain, speedy, and adequate remedy available to correct the error. Thus, certiorari may not be issued if the error can be the subject of an ordinary appeal. As explained in *Delos Santos v. Metrobank*:[25]

The bail shall be deemed automatically cancelled upon acquittal of the accused, dismissal of the case, or execution of the judgment of conviction.

In all instances, the cancellation shall be without prejudice to any liability on the bail.

[22] *Rollo*, pp. 18-19.

[23] *Id*. at 105.

[24] *Id*. at 106-108.

[25] 698 Phil. 1 (2012) [Per *J*. Bersamin, Second Division].

We remind that the writ of certiorari — being a remedy narrow in scope and inflexible in character, whose purpose is to keep an inferior court within the bounds of its jurisdiction, or to prevent an inferior court from committing such grave abuse of discretion amounting to excess of jurisdiction, or to relieve parties from arbitrary acts of courts (i.e., acts that courts have no power or authority in law to perform) — is not a general utility tool in the legal workshop, and cannot be issued to correct every error committed by a lower court.

In the common law, from which the remedy of certiorari evolved, the writ of certiorari was issued out of Chancery, or the King's Bench, commanding agents or officers of the inferior courts to return the record of a cause pending before them, so as to give the party more sure and speedy justice, for the writ would enable the superior court to determine from an inspection of the record whether the inferior court's judgment was rendered without authority. The errors were of such a nature that, if allowed to stand, they would result in a substantial injury to the petitioner to whom no other remedy was available. If the inferior court acted without authority, the record was then revised and corrected in matters of law. The writ of certiorari was limited to cases in which the inferior court was said to be exceeding its jurisdiction or was not proceeding according to essential requirements of law and would lie only to review judicial or quasi-judicial acts.

The concept of the remedy of certiorari in our judicial system remains much the same as it has been in the common law. In this jurisdiction, however, the exercise of the power to issue the writ of certiorari is largely regulated by laying down the instances or situations in the Rules of Court in which a superior court may issue the writ of certiorari to an inferior court or officer. Section 1, Rule 65 of the Rules of Court compellingly provides the requirements for that purpose[.]

. . . . . .

Pursuant to Section 1, supra, the petitioner must show that, one, the tribunal, board or officer exercising judicial or quasi-judicial functions acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction, and, two, there is neither an appeal nor any plain, speedy and adequate remedy in the ordinary course of law for the purpose of amending or nullifying the proceeding.[26] (Citations omitted)

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[26] *Id*. at 14-16; citing *Estares v. Court of Appeals*, 498 Phil. 640 (2005) [Per *J*. Austria-Martinez, Second Division]; *Cushman v. Commissioners*'

An essential requisite for filing a petition for certiorari is the allegation that the judicial tribunal acted with grave abuse of discretion amounting to lack or excess of jurisdiction.[27] Grave abuse of discretion has been defined as a "capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law."[28] In order to determine whether the Court of Appeals erred in dismissing the Petition for Certiorari for being the wrong remedy, it is necessary to find out whether the Regional Trial Court acted with grave abuse of discretion as to warrant the filing of a petition for certiorari against it.

Rule 114, Section 22 of the Rules of Court states:

> Section 22. Cancellation of bail. — Upon application of the bondsmen, with due notice to the prosecutor, the bail may be cancelled upon surrender of the accused or proof of his death.
>
> The bail shall be deemed automatically cancelled upon acquittal of the accused, dismissal of the case, or execution of the judgment of conviction.
>
> In all instances, the cancellation shall be without prejudice to any liability on the bail.

The provisions of the Rules of Court are clear. Bail shall be deemed automatically cancelled in three (3) instances: (1) the acquittal of the accused, (2) the dismissal of the case, or (3) the execution of the judgment of conviction. The Rules of Court

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Court of Blount County, 49 So. 311, 312, 160 Ala. 227 (1909); *Ex parte Hennies*, 34 So.2d 22, 23, 33 Ala. App. 377 (1948); *Schwander v. Feeney's Del. Super.*, 29 A.2d 369, 371 (1942); *Worcester Gas Light Co. v. Commissioners of Woodland Water Dist. in Town of Auburn*, 49 N.E.2d 447, 448, 314 Mass. 60 (1943); *Toulouse v. Board of Zoning Adjustment*, 87 A.2d 670, 673, 147 Me. 387 (1952); *Greater Miami Development Corp. v. Pender*, 194 So. 867, 868, 142 Fla. 390 (1940).

[27] See RULES OF COURT, Rule 65, Sec.1.

[28] *Rodriguez v. Hon. Presiding Judge of the Regional Trial Court of Manila, Branch 17, et al*., 518 Phil. 455, 462 (2006) [Per *J.* Quisumbing, *En Banc*] citing *Zarate v. Maybank Philippines, Inc*., 498 Phil. 825 (2005) [Per *J*. Callejo, Sr., Second Division].

do not limit the cancellation of bail only upon the acquittal of the accused.

The Office of the Solicitor General made the same observation in its Comment[29] before the Court of Appeals:

> The trial court denied the motion to release cash bond on the ground that the dismissal was only due to the desistance of the complainant and not because the accused was acquitted or that the crime was not proved beyond reasonable doubt.
>
> Such ruling, however, has no legal basis. In fact, the provision of Section 22, Rule 114 is clear: the dismissal of the criminal case results to the automatic cancellation of the bail bond.[30] (Citation omitted)

Non-compliance with the Rules of Court is not, as the Office of the Solicitor General asserts, a mere error of judgment. It constitutes grave abuse of discretion. In *Crisologo v. JEWM Agro-Industrial Corporation*:[31]

> This manifest disregard of the basic rules and procedures constitutes a grave abuse of discretion.
>
> In *State Prosecutors II Comilang* and *Lagman v. Judge Medel Belen*, the Court held as inexcusable abuse of authority the trial judge's "obstinate disregard of basic and established rule of law or procedure." Such level of ignorance is not a mere error of judgment. It amounts to "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law," or in essence, grave abuse of discretion amounting to lack of jurisdiction.
>
> Needless to say, judges are expected to exhibit more than just a cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in good faith as judicial competence requires no less.[32] (Citations omitted)

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[29] *Rollo*, pp. 66-72.

[30] *Id*. at 68.

[31] 728 Phil. 315 (2014) [Per *J*. Mendoza, Third Division].

[32] *Id*. at 328 citing *State Prosecutors II Comilang and Lagman v. Judge Medel Belen*, 689 Phil. 134 (2012) ,[*Per Curiam, En Banc*]; *Nationwide*

When a court or tribunal renders a decision tainted with grave abuse of discretion, the proper remedy is to file a petition for certiorari under Rule 65 of the Rules of Court. Rule 65, Section 1 states:

> Section 1. Petition for certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

Considering that the trial court blatantly disregarded Rule 114, Section 22 of the Rules of Court, petitioners' remedy was the filing of a petition for certiorari with the proper court.

The Court of Appeals, however, focused on the Office of the Solicitor General's argument that petitioners availed the wrong remedy. It cited *Belfast Surety and Insurance Company, Inc. v. People*[33] and *Babasa v. Linebarger*[34] as bases to rule that appeal was the proper remedy for a denial of a motion to release cash bond.

Security and Allied Services, Inc. v. Court of Appeals, 580 Phil. 135, 140 (2008) [Per *J.* Quisumbing, Second Division]; *Enriquez v. Judge Caminade*, 519 Phil. 781 (2006) [Per *C.J.* Panganiban, First Division], and *Abbariao v. Beltran*, 505 Phil. 510 (2005) [Per *J.* Panganiban, Third Division].

[33] 197 Phil. 361 (1982) [Per *J.* Concepcion, Jr., Second Division].

[34] 12 Phil. 766 (1906) [Per *J.* Torres, *En Banc*].

In *Belfast Surety*,[35] the trial court declared a forfeiture of cash bond under Rule 114, Section 15[36] of the 1964 Rules of Criminal Procedure[37] for failure of the accused to appear on trial. This Court stated that while appeal would be the proper remedy from a judgment of forfeiture of bond, certiorari is still available if the judgment complained of was issued in lack or excess of jurisdiction:

> While appeal is the proper remedy from a judgment of forfeiture, nevertheless, certiorari is available despite the existence of the remedy of appeal where the judgment or order complained of was either issued in excess of or without jurisdiction. Besides, appeal under the circumstances of the present case is not an adequate remedy since the trial court had already issued a writ of execution. Hence, the rule that certiorari does not lie when there is an appeal is relaxed where, as in the present case, the trial court had already ordered the issuance of a writ of execution.[38] (Citations omitted)

Babasa, meanwhile, states that an appeal should be available in denials of petitions for the cancellation of a bond. Nothing in *Babasa*, however, limits the remedy to an appeal only:

> Inasmuch as the said petition to procure the cancellation of the bond was denied without further process of law, it is unquestionable

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[35] 197 Phil. 361 (1982) [Per *J.* Concepcion, Jr., Second Division].

[36] 1964 RULES OF COURT, Rule 114, Sec. 15 provides:

> Section 15. Forfeiture of bail. — When the appearance of the defendant is required by the court, his sureties shall be notified to produce him before the court on a given date. If the defendant fails to appear as required, the bond is declared forfeited and the bondsmen are given thirty (30) days within which to produce their principal and to show cause why a judgment should not be rendered against them for the amount of their bond. Within the said period of thirty (30) days, the bondsmen (a) must produce the body of their principal or give the reason for its non-production; and (b) must explain satisfactorily why the defendant did not appear before the court when first required so to do. Failing in these two requisites, a judgment shall be rendered against the bondsmen.

[37] See RULES OF COURT, Rule 114, Section 15.

[38] *Id*. at 371-372.

that the order of court denying it could be appealed from, for the reason that if this last decision were not appealable, it would become final, without ulterior remedy, and would work irreparable injury to the petitioner.[39]

Thus, a party may still file a petition for certiorari in instances where the lower court commits grave abuse of discretion in excess of jurisdiction.

The automatic cancellation of bail, however, does not always result in the immediate release of the bail bond to the accused. A cash bond, unlike a corporate surety or a property bond, may be applied to fines and other costs determined by the court.[40] The excess shall be returned to the accused or to the person who deposited the money on the accused's behalf.[41] Here, the Order dated October 24, 2014 reads:

> Acting on the Motion to Dismiss filed by Assistant City Prosecutor Deborah Marie O. Tan, based on the Affidavit of Desistance executed by private complainant Efren C. Ontog, which states, among others, that he is no longer interested in the further prosecution of this case, hence, without the active participation of the said private complainant, the prosecution could no longer effectively obtain the required evidence to sustain the conviction of the accused, the motion to dismiss is granted.
>
> WHEREFORE, this case of "Robbery in Uninhabited Place and by a Band" against Marvin Cruz (MNU) is hereby DISMISSED.
>
> SO ORDERED.
>
> City of Malabon, October 24, 2014.[42]

There was no fine imposed on Cruz. The Order does not specify any costs of court that he must answer for. There was,

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[39] *Babasa v. Linebarger*, 12 Phil. 766, 769 (1906) [Per *J*. Torres, *En Banc*].

[40] See RULES OF COURT, Rule 114, Sec. 14. See also *Esteban v. Hon. Alhambra*, 481 Phil. 162 (2004) [Per *J*. Sandoval-Gutierrez, Third Division].

[41] See RULES OF COURT, Rule 114, Sec. 14.

[42] *Rollo*, p. 65.

thus, no lien on the bond that could prevent its immediate release. Considering these circumstances, petitioners could not have been faulted for filing a petition for certiorari before the Court of Appeals since there was no legal basis for the Regional Trial Court to deny their Motion to Release Cash Bond.

Instead of addressing the merits of the case, the Court of Appeals instead chose to focus on procedural technicalities, dismissing the petition for certiorari based on cases that did not actually prohibit the filing of a petition for certiorari. While procedural rules are necessary for the speedy disposition of justice, its indiscriminate application should never be used to defeat the substantial rights of litigants.[43]

WHEREFORE, the Decision dated January 18, 2016 and Resolution dated June 1, 2016 in CA-G.R. SP No. 141009 are **REVERSED** and **SET ASIDE**. The case is hereby **REMANDED** to the Court of Appeals for a resolution on the merits of the case.

SO ORDERED.

Peralta[*] *(Acting Chairperson), Mendoza,* and *Martires, JJ.,* concur.

Carpio, J., on official leave.

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[43] See *A-One Feeds v. Court of Appeals*, 188 Phil. 577 (1980) [Per *J*. De Castro, First Division].

[*] Designated Acting Chairperson per S.O. No. 2445 dated June 16, 2017.

EN BANC

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

REPRESENTATIVES EDCEL C. LAGMAN, TOMASITO S. VILLARIN, GARY C. ALEJANO, EMMANUEL A. BILLONES, AND TEDDY BRAWNER BAGUILAT, JR., *petitioners, vs.* **HON. SALVADOR C. MEDIALDEA, EXECUTIVE SECRETARY; HON. DELFIN N. LORENZANA, SECRETARY OF THE DEPARTMENT OF NATIONAL DEFENSE AND MARTIAL LAW ADMINISTRATOR; AND GEN. EDUARDO AÑO, CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES AND MARTIAL LAW IMPLEMENTOR,** *respondents*.

[G.R. No. 231771. July 4, 2017]

EUFEMIA CAMPOS CULLAMAT, VIRGILIO T. LINCUNA, ATELIANA U. HIJOS, ROLAND A. COBRADO, CARL ANTHONY D. OLALO, ROY JIM BALANGHIG, RENATO REYES, JR., CRISTINA E. PALABAY, AMARYLLIS H. ENRIQUEZ, ACT TEACHERS' REPRESENTATIVE ANTONIO L. TINIO, GABRIELA WOMEN'S PARTY REPRESENTATIVE ARLENE D. BROSAS, KABATAAN PARTY-LIST REPRESENTATIVE SARAH JANE I. ELAGO, MAE PANER, GABRIELA KRISTA DALENA, ANNA ISABELLE ESTEIN, MARK VINCENT D. LIM, VENCER MARI CRISOSTOMO, JOVITA MONTES, *petitioners, vs.* **PRESIDENT RODRIGO DUTERTE, EXECUTIVE SECRETARY SALVADOR MEDIALDEA, DEFENSE SECRETARY DELFIN LORENZANA, ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF LT. GENERAL EDUARDO AÑO, PHILIPPINE NATIONAL POLICE DIRECTOR-GENERAL RONALD DELA ROSA,** *respondents*.

[G.R. No. 231774. July 4, 2017]

NORKAYA S. MOHAMAD, SITTIE NUR DYHANNA S. MOHAMAD, NORAISAH S. SANI, ZAHRIA P. MUTI-MAPANDI, *petitioners, vs*. **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, DEPARTMENT OF NATIONAL DEFENSE (DND) SECRETARY DELFIN N. LORENZANA, DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT (DILG) SECRETARY (OFFICER-IN-CHARGE) CATALINO S. CUY, ARMED FORCES OF THE PHILIPPINES (AFP) CHIEF OF STAFF GEN. EDUARDO M. AÑO, PHILIPPINE NATIONAL POLICE (PNP) CHIEF DIRECTOR GENERAL RONALD M. DELA ROSA, NATIONAL SECURITY ADVISER HERMOGENES C. ESPERON, JR.,** *respondents*.

SYLLABUS

1. POLITICAL LAW; 1987 CONSTITUTION; SECTION 18, ARTICLE VII THEREOF (EXECUTIVE DEPARTMENT); EXTRAORDINARY POWERS OF THE PRESIDENT AS COMMANDER-IN-CHIEF SUSPENDING THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* AND IMPOSING MARTIAL LAW; THE SUPREME COURT MAY REVIEW, IN AN APPROPRIATE PROCEEDING FILED BY ANY CITIZEN, THE SUFFICIENCY OF THE FACTUAL BASIS OF THE PROCLAMATION OF MARTIAL LAW OR THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OR THE EXTENSION THEREOF, AND MUST PROMULGATE ITS DECISION THEREON WITHIN THIRTY DAYS FROM ITS FILING.— [In the instant case], [a]ll three petitions beseech the cognizance of this Court based on the third paragraph of Section 18, Article VII (Executive Department) of the 1987 Constitution which provides: The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing. x x x Section 18, Article VII is meant to provide

additional safeguard against possible abuse by the President in the exercise of his power to declare martial law or suspend the privilege of the writ of *habeas corpus*. x x x The jurisdiction of this Court is not restricted to those enumerated in Sections 1 and 5 of Article VIII. For instance, its jurisdiction to be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President can be found in the last paragraph of Section 4, Article VII. The power of the Court to review on *certiorari* the decision, order, or ruling of the Commission on Elections and Commission on Audit can be found in Section 7, Article IX(A). x x x The unique features of the third paragraph of Section 18, Article VII clearly indicate that it should be treated as *sui generis* separate and different from those enumerated in Article VIII. Under the third paragraph of Section 18, Article VII, a petition filed pursuant therewith will follow a different rule on standing as any citizen may file it. Said provision of the Constitution also limits the issue to the sufficiency of the factual basis of the exercise by the Chief Executive of his emergency powers. The usual period for filing pleadings in Petition for *Certiorari* is likewise not applicable under the third paragraph of Section 18, Article VII considering the limited period within which this Court has to promulgate its decision. A proceeding "[i]n its general acceptation, [is] the form in which actions are to be brought and defended, the manner of intervening in suits, of conducting them, the mode of deciding them, of opposing judgments, and of executing." In fine, the phrase "in an appropriate proceeding" appearing on the third paragraph of Section 18, Article VII refers to any action initiated by a citizen for the purpose of questioning the sufficiency of the factual basis of the exercise of the Chief Executive's emergency powers, as in these cases. It could be denominated as a complaint, a petition, or a matter to be resolved by the Court.

2. ID.; ID.; ID.; ID.; ID.; THE POWER OF THE COURT TO REVIEW THE SUFFICIENCY OF THE FACTUAL BASIS OF THE PROCLAMATION OF MARTIAL LAW OR THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* CAN BE EXERCISED INDEPENDENTLY FROM THE CONGRESSIONAL POWER TO REVOKE THE SAME.— The framers of the 1987 Constitution reformulated the scope of the extraordinary powers of the President as Commander-in-Chief and the review of the said

presidential action. In particular, the President's extraordinary powers of suspending the privilege of the writ of *habeas corpus* and imposing martial law are subject to the veto powers of the Court and Congress. x x x The Court may strike down the presidential proclamation in an appropriate proceeding filed by any citizen on the ground of lack of sufficient factual basis. On the other hand, Congress may revoke the proclamation or suspension, which revocation shall not be set aside by the President. In reviewing the sufficiency of the factual basis of the proclamation or suspension, the Court considers only the information and data available to the President prior to or at the time of the declaration; it is not allowed to "undertake an independent investigation beyond the pleadings." On the other hand, Congress may take into consideration not only data available prior to, but likewise events supervening the declaration. Unlike the Court which does not look into the absolute correctness of the factual basis x x x, Congress could probe deeper and further; it can delve into the accuracy of the facts presented before it. In addition, the Court's review power is passive; it is only initiated by the filing of a petition "in an appropriate proceeding" by a citizen. On the other hand, Congress' review mechanism is automatic in the sense that it may be activated by Congress itself at any time after the proclamation or suspension was made. Thus, the power to review by the Court and the power to revoke by Congress are not only totally different but likewise independent from each other although concededly, they have the same trajectory, which is, the nullification of the presidential proclamation. Needless to say, the power of the Court to review can be exercised independently from the power of revocation of Congress.

3. **ID.; ID.; ID.; ID.; ID.; THE JUDICIAL POWER TO REVIEW DOES NOT EXTEND TO THE CALIBRATION OF THE PRESIDENT'S DECISION OF WHICH AMONG HIS GRADUATED POWERS HE WILL AVAIL OF IN A GIVEN SITUATION.—** The President as the Commander-in-Chief wields the extraordinary powers of: a) calling out the armed forces; b) suspending the privilege of the writ of *habeas corpus*; and c) declaring martial law. x x x Among the three extraordinary powers, the calling out power is the most benign and involves ordinary police action. The President may resort to this extraordinary power *whenever it becomes necessary* to prevent or suppress lawless violence, invasion, or rebellion. "[T]he

power to call is fully discretionary to the President;" the only limitations being that he acts within permissible constitutional boundaries or in a manner not constituting grave abuse of discretion. In fact, "the *actual use* to which the President puts the armed forces is x x x not subject to judicial review." The extraordinary powers of suspending the privilege of the writ of *habeas corpus* and/or declaring martial law may be exercised only when there is actual invasion or rebellion, and public safety requires it. The 1987 Constitution imposed the following limits in the exercise of these powers: "(1) a time limit of sixty days; (2) review and possible revocation by Congress; [and] (3) review and possible nullification by the Supreme Court." x x x It must be stressed, however, that the [President's] graduation [of powers] refers only to hierarchy based on scope and effect. It does not in any manner refer to a sequence, arrangement, or order which the Commander-in-Chief must follow. This so-called "graduation of powers" does not dictate or restrict the manner by which the President decides which power to choose. These extraordinary powers are conferred by the Constitution with the President as Commander-in-Chief; it therefore necessarily follows 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. The power to choose, initially, which among these extraordinary powers to wield in a given set of conditions is a judgment call on the part of the President. As Commander-in-Chief, his powers are broad enough to include his prerogative to address exigencies or threats that endanger the government, and the very integrity of the State. It is thus beyond doubt that the power of judicial review does *not* extend to calibrating the President's decision pertaining to which extraordinary power to avail given a set of facts or conditions.

4. ID.; ID.; ID.; ID.; ID.; IN ANY EVENT, THE PRESIDENT INITIALLY EMPLOYED THE MOST BENIGN OF HIS EXTRAORDINARY POWERS — THE CALLING OUT POWER — BEFORE HE DECLARED MARTIAL LAW AND SUSPENDED THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IN CASE AT BAR.— At this juncture, it must be stressed that prior to Proclamation No. 216 or the declaration of martial law on May 23, 2017, the President had

already issued Proclamation No. 55 on September 4, 2016, declaring a state of national emergency on account of lawless violence in Mindanao. This, in fact, is extant in the first Whereas Clause of Proclamation No. 216. Based on the foregoing presidential actions, it can be gleaned that although there is no obligation or requirement on his part to use his extraordinary powers on a graduated or sequential basis, still the President made the conscious and deliberate effort to first employ the most benign from among his extraordinary powers. As the initial and preliminary step towards suppressing and preventing the armed hostilities in Mindanao, the President decided to use his calling out power first. Unfortunately, the situation did not improve; on the contrary, it only worsened. Thus, exercising his sole and exclusive prerogative, the President decided to impose martial law and suspend the privilege of the writ of *habeas corpus* on the belief that the armed hostilities in Mindanao already amount to actual rebellion and public safety requires it.

5. ID.; ID.; ID.; ID.; ID.; PROCLAMATION NO. 216 DECLARING A STATE OF MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IN THE WHOLE OF MINDANAO CANNOT BE FACIALLY CHALLENGED USING THE VOID-FOR-VAGUENESS DOCTRINE; CASE AT BAR.— Proclamation No. 216 is being facially challenged on the ground of "vagueness" by the insertion of the phrase "other rebel groups" in its Whereas Clause and for lack of available guidelines specifying its actual operational parameters within the entire Mindanao region, making the proclamation susceptible to broad interpretation, misinterpretation, or confusion. This argument lacks legal basis. The void-for-vagueness doctrine holds that a law is facially invalid if "men of common intelligence must necessarily guess at its meaning and differ as to its application." "[A] statute or act may be said to be vague when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ in its application. [In such instance, the statute] is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle." x x x The vagueness doctrine is an analytical tool developed for testing "on their faces" statutes in free speech

cases x x x [T]he vagueness doctrine has a special application only to free-speech cases. They are not appropriate for testing the validity of penal statutes. x x x [F]acial review of Proclamation No. 216 on the grounds of vagueness is unwarranted. Proclamation No. 216 does not regulate speech, religious freedom, and other fundamental rights that may be facially challenged. What it seeks to penalize is conduct, not speech. x x x The term "other rebel groups" in Proclamation No. 216 is not at all vague when viewed in the context of the words that accompany it. Verily, the text of Proclamation No. 216 refers to "other rebel groups" found in Proclamation No. 55 [Declaring a State of National Emergency on account of lawless violence in Mindanao], which it cited by way of reference in its Whereas clauses. x x x Neither could Proclamation No. 216 be described as vague, and thus void, on the ground that it has no guidelines specifying its actual operational parameters within the entire Mindanao region. Besides, operational guidelines will serve only as mere tools for the implementation of the proclamation.

6. ID.; ID.; ID.; ID.; ID.; THE PRESIDENT'S POWER TO DECLARE MARTIAL LAW AND TO SUSPEND THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* (PROCLAMATION NO. 216) IS IN A DIFFERENT CATEGORY FROM THE CALLING OUT POWER (PROCLAMATION NO. 55); NULLIFICATION OF THE FORMER WILL NOT AFFECT THE LATTER.— The Court's ruling in these cases will **not**, in any way, affect the President's declaration of a state of national emergency on account of lawless violence in Mindanao through Proclamation No. 55 dated September 4, 2016, where he called upon the Armed Forces and the Philippine National Police (PNP) to undertake such measures to suppress any and all forms of lawless violence in the Mindanao region, and to prevent such lawless violence from spreading and escalating elsewhere in the Philippines. In *Kulayan v. Tan,* the Court ruled that the President's calling out power is in a *different category* from the power to suspend the privilege of the writ of *habeas corpus* and the power to declare martial law: x x x [T]he President may exercise the power to call out the Armed Forces **independently** of the power to suspend the privilege of the writ of *habeas corpus* and to declare martial law, although, of course, it may also be a prelude to a possible future exercise of the latter powers, as in this case. Even so, the Court's review

of the President's declaration of martial law and his calling out the Armed Forces necessarily entails *separate proceedings* instituted for that particular purpose. As explained in *Integrated Bar of the Philippines v. Zamora*, the President's exercise of his power to call out the armed forces to prevent or suppress lawless violence, invasion or rebellion may only be examined by the Court as to whether such power was exercised within permissible constitutional limits or in a manner constituting **grave abuse of discretion**. x x x Neither would the nullification of Proclamation No. 216 result in the nullification of the acts of the President done pursuant thereto. Under the "operative fact doctrine," the unconstitutional statute is recognized as an "operative fact" before it is declared unconstitutional. x x x However, it must also be stressed that this "operative fact doctrine" is not a fool-proof shield that would repulse any challenge to acts performed during the effectivity of martial law or suspension of the privilege of the writ of *habeas corpus*, purportedly in furtherance of quelling rebellion or invasion, and promotion of public safety, when evidence shows otherwise.

7. ID.; ID.; ID.; ID.; ID.; THE COURT'S POWER OF REVIEW REFERS ONLY TO THE DETERMINATION OF THE SUFFICIENCY OF THE FACTUAL BASIS OF THE DECLARATION OF MARTIAL LAW AND SUSPENSION OF THE PRIVILEGE OF *HABEAS CORPUS*; DISCUSSED. — [T]he phrase "sufficiency of factual basis" in Section 18, Article VII of the Constitution should be understood as the only test for judicial review of the President's power to declare martial law and suspend the privilege of the writ of *habeas corpus* under Section 18, Article VII of the Constitution. The Court does not need to satisfy itself that the President's decision is correct, rather it only needs to determine whether the President's decision had sufficient factual bases. x x x Since the exercise of these powers is a judgment call of the President, the determination of this Court as to whether there is sufficient factual basis for the exercise of such, must be based only on facts or information known by or available to the President at the time he made the declaration or suspension, which facts or information are found in the proclamation as well as the written Report submitted by him to Congress. x x x In determining the sufficiency of the factual basis of the declaration and/or the suspension, the Court should look into the full complement or totality of the factual basis, and not piecemeal or individually.

Neither should the Court expect absolute correctness of the facts stated in the proclamation and in the written Report as the President could not be expected to verify the accuracy and veracity of all facts reported to him due to the urgency of the situation. x x x Thus, our review would be limited to an examination on whether the President acted within the bounds set by the Constitution, *i.e.*, whether the facts in his possession prior to and at the time of the declaration or suspension are sufficient for him to declare martial law or suspend the privilege of the writ of *habeas corpus*.

8. ID.; ID.; ID.; ID.; ID.; ID.; THE PARAMETERS FOR DETERMINING THE SUFFICIENCY OF THE FACTUAL BASIS ARE THE CONCURRENCE OF ACTUAL REBELLION OR INVASION AND PUBLIC SAFETY REQUIRES IT, AND THAT THERE IS PROBABLE CAUSE FOR THE PRESIDENT TO BELIEVE THERE IS ACTUAL REBELLION OR INVASION.— Section 18, Article VII itself sets the parameters for determining the sufficiency of the factual basis for the declaration of martial law and/or the suspension of the privilege of the writ of *habeas corpus*, "namely (1) actual invasion or rebellion, and (2) public safety requires the exercise of such power." x x x Since the Constitution did not define the term "rebellion," it must be understood to have the same meaning as the crime of "rebellion" in the Revised Penal Code (RPC). x x x Thus, for rebellion to exist, the following elements must be present, to wit: "(1) there is a (a) public uprising and (b) taking arms against the Government; and (2) the 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." x x x In determining the existence of rebellion, the President only needs to convince himself that there is probable cause or evidence showing that more likely than not a rebellion was committed or is being committed.

9. ID.; ID.; ID.; ID.; ID.; ID.; THERE IS SUFFICIENT FACTUAL BASIS FOR THE DECLARATION OF MARTIAL LAW AND THE SUSPENSION OF THE WRIT OF *HABEAS CORPUS* IN CASE AT BAR.— Since the President supposedly signed Proclamation No. 216 on May 23, 2017 at 10:00 PM,

the Court will consider only those facts and/or events which were known to or have transpired on or before that time, consistent with the scope of judicial review. x x x [T]he President deduced from the facts available to him that there was an armed public uprising, the culpable purpose of which was to remove from the allegiance to the Philippine Government a portion of its territory and to deprive the Chief Executive of any of his powers and prerogatives, leading the President to believe that there was probable cause that the crime of rebellion was and is being committed and that public safety requires the imposition of martial law and suspension of the privilege of the writ of *habeas corpus.* A review of the x x x facts similarly leads the Court to conclude that the President, in issuing Proclamation No. 216, had sufficient factual bases tending to show that actual rebellion exists. The President's conclusion x x x was reached after a tactical consideration of the facts. In fine, the President satisfactorily discharged his burden of proof.

10. ID.; ID.; ID.; ID.; ID.; THE CONSTITUTION GRANTS THE PRESIDENT THE DISCRETION TO DETERMINE THE TERRITORIAL COVERAGE THEREOF.— Section 18, Article VII of the Constitution states that "[i]n case of invasion or rebellion, when the public safety requires it, [the President] may x x x suspend the privilege of writ of *habeas corpus* or place **the Philippines or any part thereof under** martial law." Clearly, the Constitution grants to the President the discretion to determine the territorial coverage of martial law and the suspension of the privilege of the writ of *habeas corpus*. He may put the entire Philippines or only a part thereof under martial law. This is both an acknowledgement and a recognition that it is the Executive Department, particularly the President as Commander-in-Chief, who is the repository of vital, classified, and live information necessary for and relevant in calibrating the territorial application of martial law and the suspension of the privilege of the writ of *habeas corpus.* It, too, is a concession that the President has the tactical and military support, and thus has a more informed understanding of what is happening on the ground. x x x [I]t 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. Moreover, the President's duty to maintain peace and public safety is not limited only to the place where there is actual rebellion; it extends to other areas where the present hostilities are in danger of spilling over. [Here,] [it] is not intended merely to prevent the escape of lawless elements from Marawi City, but also to avoid enemy reinforcements and to cut their supply lines coming from different parts of Mindanao. Thus, limiting the proclamation and/or suspension to the place where there is actual rebellion would not only defeat the purpose of declaring martial law, it will make the exercise thereof ineffective and useless.

VELASCO, JR., *J.*, *separate concurring opinion*:

1. POLITICAL LAW; 1987 CONSTITUTION; SECTION 18, ARTICLE VII THEREOF; EMERGENCY POWERS OF THE PRESIDENT AS COMMANDER-IN-CHIEF; PROCLAMATION NO. 216 DECLARING A STATE OF MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IN THE WHOLE OF MINDANAO; JUSTIFIED ON THE GROUND THAT THE PRESIDENT CORRECTLY FOUND PROBABLE CAUSE OF THE EXISTENCE OF REBELLION AND THAT THE PUBLIC SAFETY REQUIRES IT.— On the ground that the President correctly found probable cause of the existence of rebellion and that the public safety requires it, I concur in the *ponencia* sustaining the validity of Proclamation No. 216, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao." x x x Certainly, the urgency of the circumstances envisioned under Section 18, Article VII of the Constitution requires the President to act with promptness and deliberate speed. He cannot be expected to check the accuracy of each and every detail of information relayed to him before he exercises any of the emergency powers granted to him by the Constitution. The window of opportunity to quell an actual rebellion or thwart an invasion is too small to admit delay. An expectation of infallibility on the part of the commander-in-chief may be at the price of our freedom. x x x [T]he President

did not commit a grave abuse of discretion in issuing Proclamation No. 216, given the facts he was confronted with, x x x I further lend my concurrence to the view sustaining the coverage of Proclamation No. 216 to the entirety of Mindanao. As pointed out by the *ponencia*, Marawi is in the heart of Mindanao and the rebels can easily join forces with the other rebel and terrorist groups and extend the scope of the theater of active conflict to other areas of Mindanao.

2. **ID.; ID.; ID.; ID.; ID.; ID.; INTRUSIONS INTO THE CIVIL RIGHTS MUST BE PROPORTIONAL TO THE REQUIREMENTS OF NECESSITY.—** Truly, in the occasion of a rebellion or invasion, **the paramount object of the State is the safety and interest of the public and the swift cessation of all hostilities**; it is neither the adjustment to nor the accommodation of the unbridled exercise of private liberties. x x x But **Martial Law is by no means an arbitrary license** conferred on the President and the armed forces. x x x **Intrusions into the civil rights must be proportional to the requirements of necessity**. Only such power as is necessary to achieve the object of quashing the rebellion or thwarting the invasion and restoring peace can be used. x x x Notably, while Section 18, Article VII of the 1987 Constitution provides that in times of public emergency, the privilege of the writ of habeas corpus may be suspended, **there is no express authority allowing the suspension of the other guarantees and civil liberties**.

3. **ID.; ID.; ID.; ID.; ID.; ID.; THE SUPREME COURT MAY REVIEW, IN AN APPROPRIATE PROCEEDING FILED BY ANY CITIZEN, THE SUFFICIENCY OF THE FACTUAL BASIS THEREOF; THE APPROPRIATE PROCEEDING IS *SUI GENERIS*, AND THE SUFFICIENCY OF THE FACTUAL BASIS MUST BE MEASURED NOT ACCORDING TO CORRECTNESS BUT ARBITRARINESS.—** Given the exigencies of the circumstances considered in Section 18, Article VII of the Constitution, I concede that there is wisdom in the position that a petition praying for an inquiry into the "sufficiency of the factual basis of the proclamation of martial law" is *sui generis*. This Court held in *David v. Macapagal-Arroyo*, however, that the sufficiency of the factual basis for an emergency power must be measured not according to correctness but arbitrariness. x x x In line with this, the yardstick available to this Court in gauging

"arbitrariness" is found in Section 1, Article VIII of 1987, which fortifies the expanded certiorari jurisdiction of this Court and, thus, allows it to "review what was before a forbidden territory, to wit, the discretion of the political departments of the government." x x x Thus, where a proclamation of Martial Law is bereft of sufficient factual basis, this Court can strike down the proclamation as having been made with "a grave abuse of discretion amounting to lack or excess of jurisdiction." Otherwise, the President's determination of the degree of power demanded by the circumstances must stand.

LEONARDO-DE CASTRO, *J.*, *separate concurring opinion*:

1. POLITICAL LAW; 1987 CONSTITUTION; SECTION 18, ARTICLE VII THEREOF; THE SUPREME COURT MAY REVIEW, IN AN APPROPRIATE PROCEEDING FILED BY ANY CITIZEN, THE SUFFICIENCY OF THE FACTUAL BASIS OF THE PROCLAMATION OF MARTIAL LAW OR THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*; NATURE OF THE "APPROPRIATE PROCEEDING".— [P]etitioners may file with this Court an action denominated as a petition under Section 18, Article VII for it is the Constitution itself that (a) grants a judicial remedy to any citizen who wishes to assail the sufficiency of the basis of a proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*; and (b) confers jurisdiction upon this Court to take cognizance of the same. The lack of any specific rules governing such a petition does not prevent the Court from exercising its constitutionally mandated power to review the validity or propriety of a declaration of martial law and/or the suspension of the privilege of the writ of *habeas corpus* as the Court may adopt in its discretion any rule or procedure most apt, just and expedient for this purpose. It is long settled in jurisprudence that independent of any statutory provision, every court has the inherent power to do all things reasonably necessary for the administration of justice within the scope of its jurisdiction. Relevantly, this doctrine is embodied in Section 6, Rule 135 of the Rules of Court, x x x Nonetheless, I must register my vigorous objection to the implication that a petition under Section 18, Article VII is the ***only*** appropriate proceeding wherein the issue of sufficiency of the factual basis of a declaration of martial

law and/or the suspension of the privilege of the writ of *habeas corpus* may be raised. It is my considered view that this issue may be raised in any action or proceeding where the resolution of such issue is germane to the causes of action of a party or the reliefs prayed for in the complaint or petition. The meaning and the import of the term "appropriate proceeding" are best understood in the context of the scope, extent, conditions and limitations of the exercise of governmental powers during martial law under Section 18, Article VII of the 1987 Constitution.

2. ID.; ID.; ID.; EMERGENCY POWERS OF THE PRESIDENT AS COMMANDER-IN-CHIEF; PROCLAMATION NO. 216 DECLARING A STATE OF MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IN THE WHOLE OF MINDANAO; SUFFICIENCY OF FACTUAL BASIS; CONCEPT OF REBELLION.— I find it crucial to point out at the outset the underlying rationale behind the constitutional provision conferring upon the President, as Commander-in-Chief of the Armed Forces of the Philippines, three levels of emergency powers, such as (1) whenever necessary to call out such armed forces to prevent lawless violence, invasion or rebellion; or (2) to suspend the privilege of the writ of *habeas corpus*; or (3) to place the Philippines or any part thereof under martial law both in case of invasion or rebellion. x x x Rebellion, which is directed against the sovereignty and territorial integrity of the state, is a ground for the exercise of the second and third levels of emergency powers of the President, the existence of which is now invoked by the issuance of Proclamation No. 216. x x x To determine the sufficiency or adequacy of the factual basis for the declaration of martial law and the suspension of the writ, an understanding of the concept of "rebellion" employed in Section 18, Article VII of the 1987 Constitution is necessary. The concept of rebellion in our penal law was explained in the leading case of *People v. Hernandez*, where the Court ruled that the word "rebellion" evokes, not merely a challenge to the constituted authorities, but, also, civil war, on a bigger or lesser scale, with all the evils that go with it; and that all other crimes, which are committed either **singly** or **collectively** and as a necessary means to attain the purpose of rebellion, or in connection therewith and in furtherance thereof, constitute only the simple, not complex, crime of rebellion. The Court also underscored that political crimes are those directly

aimed against the political order and that the decisive factor in determining whether a crime has been committed to achieve a political purpose is the **intent** or **motive** in its commission. x x x To construe the existence of rebellion in the strict sense employed in the Revised Penal Code to limit martial law to places where there are actual armed uprising will hamper the President from exercising his constitutional authority with foreseeable dire consequences to national security and at great peril to public safety.

3. ID.; ID.; ID.; ID.; ID.; STANDARD OF PROOF TO DETERMINE SUFFICIENCY OF FACTUAL BASIS THEREOF IS REASONABLENESS; MANNER BY WHICH THE STANDARD IS APPLIED.— I believe, with my view that the test to be applied to determine sufficiency of factual basis for the exercise of said Presidential power is **reasonableness** or the **absence of arbitrariness**. x x x [E]qually important is adopting the process or the **manner** by which the test or standard is properly applied. x x x While the Court should not pass upon whether the exercise of Presidential discretion is **correct**, we must nonetheless, as the present Constitution now demands, **carefully weigh the facts before us to determine whether there is real and rational basis for the President's action**. Hence, it is necessary for the Court to carefully examine the facts cited by the respondents as basis for issuing Proclamation No. 216 to determine whether or not the President acted arbitrarily or unreasonably or capriciously.

4. ID.; ID.; ID.; ID.; ID.; ARMED HOSTILITIES AVERRED IN PROCLAMATION NO. 216 AND IN THE REPORT OF THE PRESIDENT TO CONGRESS CHARACTERIZED AS ACTUAL REBELLION.— The facts relied upon by the President have demonstrated more than sufficient overt acts of armed public uprising in the island of Mindanao against the government. x x x The factual antecedents show that there is probable cause or reasonable ground to believe that the series of violent acts and atrocities committed by the Abu Sayyaf and Maute terrorist groups are directed against the political order in Mindanao with no other apparent purpose but to remove from the allegiance of the Republic of the Philippines the island 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 therein. x x x With regard to the contention

that since Marawi City is the epicenter of hostilities, it is therefore error on the part of the President to subject the entire Mindanao region under martial rule. Petitioners submit that the proper course of action should have been to declare martial law only in Marawi City and its immediate environs. This contention is misplaced. The 1987 Constitution concedes to the President, through Section 18, Article VII or the Commander-in-Chief clause, the discretion to determine the territorial coverage or application of martial law or suspension of the privilege of the writ of *habeas corpus.*

PERALTA, *J.*, *separate concurring opinion*:

1. POLITICAL LAW; 1987 CONSTITUTION; SECTION 18, ARTICLE VII THEREOF; EMERGENCY POWERS OF THE PRESIDENT AS COMMANDER-IN-CHIEF; UNDER THE THIRD PARAGRAPH OF SECTION 18, THE SUPREME COURT MAY REVIEW IN AN APPROPRIATE PROCEEDING FILED BY ANY CITIZEN, THE SUFFICIENCY OF THE FACTUAL BASIS OF THE PROCLAMATION OF MARTIAL LAW OR THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* OR THE EXTENSION THEREOF, AND MUST PROMULGATE ITS DECISION THEREON WITHIN THIRTY DAYS FROM ITS FILING; THE "APPROPRIATE PROCEEDING" REFERS TO THE *CERTIORARI* JURISDICTION OF THE COURT WHERE THE INQUIRY IS ON WHETHER THE PRESIDENT ACTED ARBITRARILY.— [T]he *"appropriate proceeding"* under paragraph 3, Section 18, Article VII of the Constitution refers to the *certiorari* jurisdiction of the Court where the inquiry is on whether the President acted arbitrarily. The proper role of the Supreme Court, in relation to what it has been given as a duty to perform whenever the Commander-in-Chief proclaims martial law or suspends the privilege of the writ of *habeas corpus,* is merely to determine whether he acted with grave abuse of discretion amounting to lack or excess of jurisdiction. It is not for Us to rule on whether he decided rightly or otherwise, but whether he acted without factual basis, hence, acted whimsically or capriciously.

2. CRIMINAL LAW; REBELLION; ELEMENTS.— The factual basis of the President in declaring martial law and suspending

the privilege of the writ of *habeas corpus* is the rebellion being committed by the Maute terrorist group. The elements of the crime are as follows: 1. That there be (a) public uprising, and (b) taking arms against the Government. 2. That the *purpose* of the uprising or movements is either – a. To remove from the allegiance to said Government or its laws: (1) The territory of the Philippines or any part thereof; or (2) Any body of land, naval or other armed forces; or b. To deprive the Chief Executive or Congress, wholly or partially, of any of their powers or prerogatives.

3. ID.; ID.; ID.; ID.; ID.; VALIDITY OF PROCLAMATION NO. 216 DECLARING A STATE OF MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IN THE WHOLE OF MINDANAO; UPHELD.— In view of President Duterte's possession of information involving public safety which are unavailable to us, the Court cannot interfere with the exercise of his discretion to declare martial law and suspend the privilege of the writ of *habeas corpus* in the whole of Mindanao. x x x Consistent with the nature of rebellion as a continuing crime and a crime without borders, the rebellion being perpetrated by the ISIS-linked rebel groups is not limited to the acts committed in Marawi City. The criminal acts done in furtherance of the purpose of rebellion, which are absorbed in the offense, even in places outside the City are necessarily part of the crime itself. **More importantly, the ISIS-linked rebel groups have a common goal of taking control of Mindanao from the government for the purpose of establishing the region as a *wilayah*. This political purpose, coupled with the rising of arms publicly against the government, constitutes the crime of rebellion and encompasses territories even outside Marawi City, endangering the safety of the public not only in said City but the entire Mindanao.**

BERSAMIN, *J.*, *separate opinion*:

1. POLITICAL LAW; 1987 CONSTITUTION; ARTICLE VII, EXECUTIVE DEPARTMENT; THE PRESIDENT AS COMMANDER-IN-CHIEF; PROCLAMATION NO. 216 DECLARING MARTIAL LAW OVER THE ENTIRE MINDANAO; DUTY OF THE COURT TO REVIEW THE FACTUAL SUFFICIENCY OF AND NECESSITY FOR

THE DECLARATION; THE APPROPRIATE PROCEEDING THEREIN IS A *SUI GENERIS* PROCEEDING.— Invoking the [third] paragraph [of Section 18, Article VII of the Constitution], the petitioners insist that the action they have initiated is a *sui generis* proceeding, different from the Court's *certiorari* powers stated in the second paragraph of Section 1, Article VIII of the 1987 Constitution and those enumerated under Section 5(1), Article VIII of the 1987 Constitution. x x x The majority opinion adopts the position of the petitioners. x x x I agree with the majority opinion. The third paragraph of Section 18 suffices to confer on the Court the exclusive and original jurisdiction to determine the sufficiency of the factual bases of the proclamation of martial law x x x upon the filing of the petition for the purpose by *any* citizen. The Court has then to discharge the duty. x x x My reading of the third paragraph of Section 18 tells me that the term *appropriate proceeding* is different from the proceedings or actions that the Court may take cognizance of under Section 5(1) or Section 1. My foremost reason for so holding is that the third paragraph of Section 18 textually mandates the Court to be a trier of facts, an office and function that the Court is not generally called upon to discharge under either Section 5(1) or Section 1.

2. ID.; ID.; ID.; ID.; ID.; ID.; THE COURT IS MANDATED TO EXAMINE AND SIFT THROUGH THE FACTUAL BASIS RELIED UPON BY THE PRESIDENT TO JUSTIFY HIS PROCLAMATION OF MARTIAL LAW AND TO DETERMINE WHETHER THE FACTUAL BASIS IS SUFFICIENT OR NOT.— Under [Section 18, Article VII of the 1987 Constitution,] the President has the leeway to choose his or her responses to any threat to the sovereignty of the State. He or she may call out the armed forces to prevent or suppress lawless violence, invasion or rebellion; or, in case of invasion or rebellion, when the public safety requires it, he or she may suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law for a period not exceeding 60 days. These consolidated cases focus on the proclamation of martial law by President Duterte over the entire Mindanao through Proclamation No. 216. The herein petitioners essentially seek the review by the Court, pursuant to the third paragraph of Section 18, of the "sufficiency of the factual basis of the proclamation of martial law." x x x The appropriate proceeding, once commenced, should not focus on whether the

President gravely abused his or her discretion or not in determining the necessity for proclaiming martial law. Instead, the 1987 Constitution mandates the Court to examine and sift through the factual basis relied upon by the President to justify his proclamation of martial law and to determine whether the factual basis is sufficient or not. x x x [T]he determination of sufficiency or insufficiency of the factual bases for the proclamation of martial law is usually a matter of validating the good judgment of the President of the facts or information known to or made available to him or her. This goes without saying that such facts must have occurred *prior to* or *about* the time the determination by the President is made. Whether or not such facts are later shown by subsequent events to be fabricated or false or inadequate is not a decisive factor unless the President is credibly shown to have known of the fabrication or falsity or inadequacy of the factual bases at the time he or she issued the proclamation of martial law. In that situation, the main consideration is definitely not whether or not grave abuse of discretion intervened.

3. **ID.; ID.; ID.; ID.; ID.; ID.; BURDEN OF PROOF THAT THE FACTUAL BASIS IN PROCLAIMING MARTIAL LAW WAS INSUFFICIENT FALLS ON THE SHOULDERS OF THE CITIZEN INITIATING THE PROCEEDING.—** [T]he burden of proof to show that the factual basis of the President in proclaiming martial law *was* insufficient has to fall on the shoulders of the citizen initiating the proceeding. Such laying of the burden of proof is constitutional, natural and practical — *constitutional*, because the President is entitled to the strong presumption of the constitutionality of his or her acts as the Chief Executive and head of one of the great branches of Government; *natural*, because the dutiful performance of an official duty by the President is always presumed; and *practical*, because the alleging party is expected to have the proof to substantiate the allegation. For purposes of this proceeding, President Duterte, by his proclamation of martial law, discharged an official act. He incorporated his factual bases in Proclamation No. 216 itself as well as in his written report to Congress. The petitioners have come forward to challenge the sufficiency of the factual bases for the existence of actual rebellion and for the necessity for martial law (*i.e.*, the public safety requires it). It was incumbent upon the petitioners to show why and how such factual bases were insufficient. x x x The Government

has convincingly shown that the President had sufficient factual bases for proclaiming martial law over the entire Mindanao. Indeed, the facts and events known to the President when he issued the proclamation provided sufficient basis for the conclusion that an actual rebellion existed.

MENDOZA, *J.*, *separate concurring opinion*:

1. **POLITICAL LAW; 1987 CONSTITUTION; ARTICLE VII, EXECUTIVE DEPARTMENT; SECTION 18 ON THE PROCLAMATION OF MARTIAL LAW.—** The power of the president to declare martial law is specifically provided under Section 18, Article 7 of the 1987 Constitution (*"Commander-in-Chief" Clause*). x x x It is to be noted that the **Constitution does not define what martial law is and what powers are exactly granted to the president** to meet the exigencies of the moment. x x x Thus, martial law is a fluid and flexible concept, which authorizes the president to issue orders as the situation may require. For said reason, it can be said that the president possesses broad powers, which he may exercise to the best of his discretion. To confine martial law to a particular definition would limit what the president could do in order to arrest the problem at hand. This is not to say, however, that the president has unrestricted powers whenever he declares martial law. Compared to the past constitutions, the president's discretion has been greatly diminished. In the exercise of his martial law powers, **he must at all times observe the constitutional safeguards**.

2. **ID.; ID.; ID.; ID.; MARTIAL LAW JUSTIFIED IN CASES OF REBELLION OR INVASION AND WHEN PUBLIC SAFETY REQUIRES IT.—** [A]t present, martial law may be declared only when following circumstances concur: (1) there is actual rebellion or invasion; (2) and the public safety requires it. The initial determination of the existence of actual rebellion and the necessity of declaring martial law as public safety requires rests with the president. x x x Rebellion, as understood in the Constitution, is similar to the rebellion contemplated under the Revised Penal Code (*RPC*). Thus, in order for the president to declare martial law, he must be satisfied that the following requisites concur: (1) there must be a public uprising; (2) there must be taking up arms against the government; (3) with the objective of removing from the allegiance to the government

or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval or other armed forces; (4) the Chief Executive or the Legislature, wholly or partially, is deprived of any of their powers or prerogatives; and (5) the public safety requires it. In turn, the initial determination of the president must be scrutinized by the Court if any citizen challenges said declaration.

3. ID.; ID.; ID.; SECTION 18 ON THE PRESIDENT'S GRADUATED POWER; THE CONSTITUTION DOES NOT REQUIRE THE POWERS TO BE EXERCISED SEQUENTIALLY.— The Commander-in-Chief Clause granted the president a sequence of graduated powers, from the least to the most benign, namely: (1) the calling out power; (2) the power to suspend the privilege of the writ of *habeas corpus*; and (3) the power to declare martial law. x x x It is not, however, required that the president must first resort to his calling out power before he can declare martial law. Although the Commander-in-Chief Clause grants him graduated powers, it merely pertains to the intensity of the different powers from the least benign (calling out powers) to the most stringent (the power to declare martial law), and the concomitant safeguards attached thereto. The Constitution does not require that the different powers under the Commander-in-Chief Clause be exercised sequentially. **So long as the requirements under the Constitution are met, the president may choose which power to exercise in order to address the issues arising from the emergency.**

4. ID.; ID.; ID.; SECTION 18 ON THE POWER OF THE COURT TO REVIEW THE SUFFICIENCY OF THE FACTUAL BASIS FOR THE DECLARATION OF MARTIAL LAW OR THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*; THE COURT CAN ACT ON ANY PETITION QUESTIONING SUCH SUFFICIENCY INDEPENDENTLY OF THE CONGRESSIONAL POWER TO REVOKE.— Another significant constitutional safeguard the Framers have installed is the power of the Court to review the sufficiency of the factual basis for the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus*. x x x The question as to the sufficiency of the factual basis for the declaration of martial law and the manner by which the president executes it pursuant to such declaration are entirely

different. The Court, upon finding that the factual basis is sufficient, cannot substitute the president's judgment for its own. "In times of emergencies, our Constitution demands that we repose a certain amount of faith in the basic integrity and wisdom of the Chief Executive, but at the same time, it obliges him to operate within carefully prescribed procedural limitations." x x x There is nothing in the constitutional provisions or the deliberations which provide that it is only after Congress fails or refuses to act can the Court exercise its power to review. I am of the position that the Court can act on any petition questioning such sufficiency independently of the congressional power to revoke.

5. ID.; ID.; ID.; ID.; ID.; BURDEN OF PROOF RE SUFFICIENCY OF FACTUAL BASIS RESTS ON THE GOVERNMENT.— In this appropriate proceeding to review the sufficiency of the factual basis for declaring martial law or suspending the privilege of the writ of *habeas corpus*, **the burden to prove the same lies with the government**. If it were otherwise, then, the judicial review safeguard would be rendered inutile considering that ordinary citizens have no access to the bulk of information and intelligence available only to the authorities.

6. ID.; ID.; ID.; ID.; ID.; THRESHOLD OF EVIDENCE FOR SUFFICIENCY OF THE FACTUAL BASIS IS REASONABLENESS.— I share the view of Justice Estela Perlas-Bernabe that x x x there is **no action, but a proceeding**, *a sui generis* one, **to ascertain the sufficiency of the factual bases of the proclamation**, and that the Constitution itself provided the parameter for review – ***sufficient factual basis***, which means that there exists clear and convincing proof (1) that there is invasion or rebellion; and (2) that public safety requires the proclamation of martial law. **The threshold is reasonableness.** x x x [T]he president establishes the existence of rebellion or invasion, not as a crime for purposes of prosecution against the accused, but merely as a factual occurrence to justify his declaration of martial law. If the president has sufficient and strong basis that a rebellion has been planned and the rebels had started to commit acts in furtherance thereof, he can already command the military to take action against the rebels. This is to say that the president is afforded much leeway in determining the sufficiency of the factual basis for the declaration of martial law. Unlike in the executive or judicial determination of probable

cause, the president may rely on information or intelligence even without personally examining the source. He may depend on the information supplied by his subordinates, and, on the basis thereof, determine whether the circumstances warrant the declaration of martial law. While the president is still required to faithfully comply with the twin requirements of actual rebellion and the necessity of public safety, he is not bound by the technical rules observed in the determination of probable cause. As to arbitrariness, suffice it to say that the Framers did not refer to it as one akin to a *certiorari* petition. They were silent on it because they really intended it to be a unique proceeding, a *sui generis* one, with a different threshold of evidence.

7. ID.; ID.; ID.; ID.; ID.; PROCLAMATION NO. 216 DECLARING MARTIAL LAW IN THE ENTIRE MINDANAO HAS SUFFICIENT FACTUAL BASIS.— I fully concur with the *ponencia* that the proclamation of martial law (Proclamation No. 216) by the President **has sufficient factual basis**. *First*, it has been unquestionably established that the ISIS—linked local groups had planned to, and did, invade Marawi City. *Second*, they were heavily armed and posed a dangerous threat against government forces. *Third*, the occupation by the ISIS-linked groups paralyzed the normal functions of Marawi and caused the death and displacement of several Marawi residents. *Fourth*, they sought to sever Marawi from the allegiance of the government with the goal of establishing a *wilayah* in the region. x x x Further, **the requirement of public safety has been met** considering the capability of the rebel group to wreak more havoc on the region.

8. ID.; ID.; ID.; ID.; ID.; ID.; THE PRESIDENT HAS THE DISCRETION TO DETERMINE THE TERRITORIAL COVERAGE OF THE PROCLAMATION AS LONG AS THE CONSTITUTIONAL REQUIREMENTS ARE MET.— Under the Commander-in-Chief Clause, the president may declare martial law in the Philippines or in any part thereof. Thus, it is understood that the president has the discretion to determine the territorial scope of the coverage as long as the constitutional requirements are met. In other words, there must be concurrence of an actual rebellion or invasion and the necessity for public safety. There is no constitutional provision suggesting that martial law may only be declared in areas where actual hostilities are taking place. The president must be given much

leeway in deciding what is reasonably necessary to successfully quash such rebellion or invasion. As Commander-in-Chief, he has under his command the various intelligence networks operating in the country and knows what is needed and where it is needed.

REYES, *J.*, *separate concurring opinion*:

1. POLITICAL LAW; 1987 CONSTITUTION; ARTICLE VII, EXECUTIVE DEPARTMENT; SECTION 18 ON THE PRESIDENT'S COMMANDER-IN-CHIEF POWERS; THE POWER TO DECLARE MARTIAL LAW OR SUSPEND THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IS A DISCRETIONARY POWER SOLELY VESTED IN THE PRESIDENT'S WISDOM.— At the center of the controversy in this case is a proper interpretation of Article VII, Section 18 of the 1987 Constitution, which outlines the President's Commander-in-Chief powers, *i.e., first*, the power to call out the armed forces; *second*, the power to declare martial law; and *third*, the power to suspend the privilege of the writ of *habeas corpus*. The power to call out the armed forces may only be exercised if it is necessary to prevent or suppress lawless violence, invasion or rebellion. On the other hand, the power to declare martial law and suspend the privilege of the writ of *habeas corpus* entails a more stringent requisite – it necessitates the existence of actual invasion or rebellion and may only be invoked when public safety necessitates it. x x x [W]hen the President declares martial law or suspends the privilege of the writ of *habeas corpus*, he is inevitably exercising a discretionary power solely vested in his wisdom. The President, as Commander-in-Chief and Chief Executive on whom is committed the responsibility of preserving the very survival of the State, is empowered, indeed obliged, to preserve the State against domestic violence and foreign attack. In the discharge of that duty, he necessarily is accorded a very broad authority and discretion in ascertaining the nature and extent of the danger that confronts the nation and in selecting the means or measures necessary for the preservation of the safety of the Republic. Indeed, whether actual invasion or rebellion exists is a question better addressed to the President, who under the Constitution is the authority vested with the power of ascertaining the existence of such exigencies and charged with the responsibility of

suppressing them. His actions in the face of such emergency must be viewed in the context of the situation as it then confronted him. In this regard, in declaring martial law and suspending the privilege of the writ of *habeas corpus*, the President only needs to be convinced that there is probable cause of the existence of an invasion or rebellion.

2. **ID.; ID.; ID.; ID.; ID.; THE COURT MAY REVIEW, IN AN APPROPRIATE PROCEEDING FILED BY ANY CITIZEN, THE SUFFICIENCY OF THE FACTUAL BASIS OF THE PROCLAMATION OF MARTIAL LAW OR THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*, OR THE EXTENSION THEREOF, AND MUST PROMULGATE ITS DECISION THEREON WITHIN 30 DAYS FROM ITS FILING; THE TERM "APPROPRIATE PROCEEDING" REFERS TO A *SUI GENERIS* PROCEEDING.—** [T]he Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, or the extension thereof, and must promulgate its decision thereon within 30 days from its filing. I agree with the majority opinion that the term "appropriate proceeding," refers to a *sui generis* proceeding, which is separate and distinct from the jurisdiction of the Court laid down under Article VIII of the Constitution.

3. **ID.; ID.; ID.; ID.; ID.; ID.; NEWSPAPER ARTICLES ARE HEARSAY EVIDENCE INADMISSIBLE AND WITHOUT ANY PROBATIVE VALUE AT ALL.—** The petitioners failed to prove that the President had insufficient basis in declaring martial law and suspending the privilege of the writ of *habeas corpus* in the whole of Mindanao. x x x [A] perusal of the petitioners' allegations shows that the same are merely based on various newspaper reports on the on-going armed fighting in Marawi City between the government forces and elements of the Maute group. However, newspaper articles amount to "hearsay evidence, twice removed" and are therefore not only inadmissible but without any probative value at all. A newspaper article is admissible only as evidence that such publication does exist with the tenor of the news therein stated, but not as to the truth of the matters stated therein.

4. **ID.; ID.; ID.; ID.; ID.; ID.; REBELLION PRESENT IN LIGHT OF THE FACTUAL MILIEU ON THE GROUND.—** The

petitioners' attempt to convince the Court that no rebellion is happening in Marawi City fails miserably in light of the factual milieu on the ground. The fact of the Maute group's uprising and armed hostility against the government is not disputed. x x x The supposed lack of culpable purpose behind a rebellion enumerated under Article 134 of the RPC is more apparent than real. It is a mere allegation unsupported by any evidence. The aforementioned culpable purpose, essentially, are the political motivation for the public uprising and taking arms against the Government. However, motive is a state of mind that can only be discerned through external manifestations, *i.e.*, acts and conduct of the malefactors at the time of the armed public uprising and immediately thereafter. x x x It cannot be emphasized enough that sovereignty and territorial integrity, which are in danger of being undermined in cases of invasion or rebellion, are indispensable to the very existence of the State. It is therefore the primordial duty of the President, within the limits prescribed by the Constitution, to exercise all means necessary and proper to protect and preserve the State's sovereignty and territorial integrity. The President should thus be allowed wide latitude of discretion dealing with extraordinary predicament such as invasion or rebellion.

JARDELEZA, *J.*, *separate opinion*:

1. POLITICAL LAW; 1987 CONSTITUTION; SECTION 18, ARTICLE VII THEREOF; THE SUPREME COURT MAY REVIEW, IN AN APPROPRIATE PROCEEDING FILED BY ANY CITIZEN, THE SUFFICIENCY OF THE FACTUAL BASIS OF THE PROCLAMATION OF MARTIAL LAW OR THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*; A CASE FILED THEREIN IS *SUI GENERIS*.— A proceeding under Article VII, Section 18 significantly differs from any other action falling within the Court's jurisdiction as specified under Article VIII, Section 5. First, x x x Article VII, Section 18 explicitly waives [legal standing] requirement by granting standing to "any citizen." x x x Second, Article VII, Section 18 textually calls for the Court to review facts. x x x Third, Article VII, Section 18 x x x mandates the Court to "promulgate its decision thereon within thirty days from its filing." x x x [T]here can be no question that the framers of the Constitution

intended the Court's power to revoke the President's action to be different from and supplemental to its primary judicial power x x x Article VII, Section 18's reference to an "appropriate proceeding" simply means that there must be a petition, sufficient in form and substance, filed by a Filipino citizen before the Court challenging the sufficiency of the factual basis of the President's proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*. x x x As a provision that confers jurisdiction, Article VII, Section 18 defines a demandable public right, the purpose of which is the vindication of the Constitution, and specifies which court has jurisdiction and the circumstances under which such jurisdiction may be invoked. The nature of an action is determined by the material allegations of the complaint, the applicable law, and the character of the relief prayed for. The substantive allegations for an action under Article VII, Section 18 would normally consist of (1) a presidential act declaring martial law and/or suspending the privilege of the writ and (2) the absence or falsity of the factual basis, and the relief to be sought is the revocation of the presidential act. An Article VII, Section 18 petition is therefore in the nature of a factual review unlike any other proceeding cognizable by the Court. x x x This leads me to conclude that the envisioned proceeding is *sui generis*.

2. **ID.; ID.; ID.; ID.; SUFFICIENCY OF THE FACTUAL BASIS SHOULD BE UNDERSTOOD IN THE SENSE THAT IT HAS IN COMMON USE AND GIVEN ITS ORDINARY MEANING.—** [T]he 1987 text empowered the Court to make an independent determination of whether the two conditions for the exercise of the extraordinary executive powers have been satisfied, *i.e*., whether there is in fact actual invasion and rebellion and whether public safety requires the proclamation of martial law or suspension of the privilege of the writ. The shift in focus of judicial review to determinable facts, as opposed to the manner or wisdom of the exercise of the power, created an objective test to determine whether the President has complied with the constitutionally prescribed conditions. x x x The phrase "sufficiency of the factual basis" should be understood in the sense that it has in common use and given its ordinary meaning. One does not always have to look for some additional meaning to an otherwise plain and clearly worded provision. Just as the Constitution set the limited conditions under which the President may exercise the power to declare martial law or suspend the

privilege of the writ, so did it set in no uncertain terms the parameters of the Court's review. We cannot expand these parameters by constitutional interpretation.

3. ID.; ID.; ID.; ID.; THE STANDARD REVIEW IN DETERMINING WHETHER ACTUAL REBELLION EXISTS AND WHETHER PUBLIC SAFETY REQUIRES THE EXTRAORDINARY PRESIDENTIAL ACTION SHOULD BE GUIDED BY REASONABLENESS.— [T]he standard of review in determining whether actual rebellion exists and whether public safety requires the extraordinary presidential action should be guided by reasonableness. x x x Since the objective of the Court's inquiry under Article VII, Section 18 is to verify the sufficiency of the factual basis of the President's action, the standard may be restated as *such evidence that is adequate to satisfy a reasonable mind seeking the truth (or falsity) of its factual existence*. This is a flexible test that balances the President's authority to respond to exigencies created by a state of invasion or rebellion and the Court's duty to ensure that the executive act is within the bounds set by the Constitution. The test does not require absolute truth of the facts alleged to have been relied upon by the President, but simply that the totality of facts and circumstances make the allegations more likely than not to be true. x x x The common theme [for rebellion] is that there is a *public, armed resistance to the government*. In my view, this definition is the most consistent with the purpose of the grant of martial law/suspension powers: to meet the exigencies of internal or external threats to the very existence of the Republic. The other condition for the proclamation of martial law or suspension of the privilege of the writ is the demands of public safety. Unlike rebellion, public safety is not as easily verifiable. Whether the exercise of the proclamation/suspension powers is required by public safety necessarily involves the prudential estimation of the President of the consequences of the armed uprising. x x x To me, the only requirement that can be logically imposed is that the threat to public safety must, applying the reasonableness test, more likely than not be genuine based on publicly available facts or military reports founded on verifiable facts.

4. ID.; ID.; ID.; ID.; THE COURT IS NOT BOUND BY THE STRICTURES OF THE RULES ON EVIDENCE; DISCUSSED.— [T]he Constitution vested upon the President

the *exclusive* authority to declare martial law or suspend the privilege of the writ of *habeas corpus*. However, when subsequently challenged by a citizen, as in this case, the President *must* satisfy the Court as to the sufficiency of the factual bases of his declaration of martial law or suspension of the privilege of the writ. As a *sui generis* proceeding, where the Court performs a function it normally leaves to trial courts, it is not bound by the strictures of the Rules on Evidence. x x x For the third paragraph of Article VII, Section 18 to operate as a meaningful check on the extraordinary powers of the executive, the better rule would be for the Government, at the first instance, to present to the Court and the public as much of the facts (or conclusions based on facts) which were considered by the President: x x x The Court shall weigh and consider the Government's evidence in conjunction with any countervailing evidence that may be presented by the petitioners. Applying the standard of reasonableness, we shall then decide whether the *totality* of the factual bases considered by the President was sufficient to warrant the declaration of martial law and/or suspension of the privilege of the writ of *habeas corpus*. Ideally, most of what the Government would present as evidence to justify the President's action can be set out in the Report he submits to the Congress. x x x Of course, it may well be that the President considered facts which, due to their nature or provenance, cannot be made public. x x x Still, in my view, the Government's presentation of its evidence should, *in the first instance*, be conducted publicly and in open court. x x x Certainly, information on the facts supporting a declaration of martial law or the lifting of the privilege of the writ of *habeas corpus* lie at the apex of any hierarchy of what can be considered as "matters of public concern." [I]t would ensure accountability by forcing the Government to make more diligent efforts to identify with specificity the particular pieces of evidence over which it would claim a privilege against public disclosure. [T]he conduct of proceedings in public would ultimately lend credibility to this Court's decision relative to the President's action.

5. ID.; ID.; ID.; ID.; PROCLAMATION NO. 216 DECLARING A STATE OF MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IN THE WHOLE OF MINDANAO IS JUSTIFIED BY THE EXISTENCE OF ACTUAL REBELLION.— The facts pertinent to rebellion, understood as a public, armed resistance

to the government, are publicly verifiable. x x x To me, the undisputed facts are decisive of the issue of rebellion: x x x The totality of these more than adequately satisfies the constitutional requirement of actual rebellion. Even when measured by the more rigid RPC definition, the siege of Marawi clearly constitutes rebellion. There is an armed public uprising against the government and, considering the terrorist groups' publicly avowed objective of establishing an Islamic province, their purpose is clearly to remove a part of the Philippine territory from the allegiance to the government. The events that happened before x x x the existence of which cannot be reasonably denied— exemplifies the essence of rebellion under the Constitution. Even granting the facts controverted by the petitioners to be true, these are minor details in the larger theater of war and do not alter the decisive facts necessary for determining the existence of rebellion.

6. ID.; ID.; ID.; ID.; ID.; JUSTIFIED BY NECESSITY OF PUBLIC SAFETY.— The siege of Marawi City and the recent increase in terrorist activities in Mindanao have, to my mind, reasonably established that there is sufficient factual basis that public safety requires the declaration of martial law for the entire Mindanao. x x x The guerilla tactics employed by these groups (ASG and the Mautes) and their familiarity with the terrain make it difficult to confine them to one area. We can take judicial notice of the fact that Marawi lies in central Mindanao, with access to other provinces in the Mindanao island, through nearby forests, mountains, and bodies of water. x x x The role of the Court is to determine whether, on the basis of the matters presented to us, the threat to public safety is genuine. I conclude that, more likely than not, it is.

MARTIRES, *J.*, *separate opinion*:

1. POLITICAL LAW; 1987 CONSTITUTION; SECTION 18, ARTICLE VII THEREOF; THE SUPREME COURT MAY REVIEW, IN AN APPROPRIATE PROCEEDING FILED BY ANY CITIZEN, THE SUFFICIENCY OF THE FACTUAL BASIS OF THE PROCLAMATION OF MARTIAL LAW OR THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* OR THE EXTENSION THEREOF; THE APPROPRIATE PROCEEDING IS ONE WITHIN THE EXPANDED

JUSRISDICTION OF THE COURT.— [W]hen the Constitutional Commission used the phrase "appropriate proceeding" in Section 18, Article VII, it actually acknowledged that there already exists an available route by which a citizen may attack the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* or the extension thereof. And by defining the extent of judicial power of the Court in Section 1, Article VIII, the Constitutional Commission clearly identified that the "appropriate proceeding" referred to in Section 18, Article VII is one within the expanded jurisdiction of the Court. A petition for certiorari x x x [and] prohibition x x x are the two modes, i.e., "appropriate proceedings," by which the Court exercises its judicial review to determine grave abuse of discretion. But it must be stressed that the petitions for certiorari and prohibition are not limited to correcting errors of jurisdiction of a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but extends to any branch or instrumentality of the government; thus, confirming that there are indeed available "appropriate proceedings" to invoke the Court's judicial review pursuant to Section 18, Article VII of the Constitution. x x x Thus, when petitioners claimed that their petitions were pursuant to Section 18, Article VII of the Constitution, they, in effect, failed to avail of the proper remedy, thus depriving the Court of its authority to grant the relief they pleaded. x x x But if only for the transcendental importance of the issues herein, I defer to the majority in taking cognizance of these petitions. After all, "[*t]his Court has in the past seen fit to step in and resolve petitions despite their being the subject of an improper remedy, in view of the public importance of the issues raised therein*."

2. ID.; ID.; ID.; PROCLAMATION NO. 216 DECLARING A STATE OF MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IN THE WHOLE OF MINDANAO; THE PRESIDENT DID NOT ACT WITH GRAVE ABUSE OF DISCRETION AS HE HAD SUFFICIENT FACTUAL BASIS IN ISSUING PROCLAMATION NO. 216.— In the resolution of these petitions, it should be noted that Section 1, Article VIII of the Constitution provides for a specific parameter by which the Court, in relation to Section 18, Article VII, should undertake its judicial review — it must be proven that grave abuse of

discretion attended the President's act in declaring martial law and in suspending the privilege of the writ of *habeas corpus* in Mindanao. Nothing short of grave abuse of discretion should be accepted by the Court. x x x "Rebellion," as stated in Section 18, Article VII of the Constitution refers to the crime of rebellion defined under Article 134 of the Revised Penal Code (*RPC*), x x x Petitioners capitalize, however, on the second requirement [thereon], insisting that there is no proof that the uprising was attended with the culpable intent inherent in the act of rebellion. It bears emphasis, however, that intent, which is a state of mind, can be shown only through overt acts that manifest such intent. x x x Proclamation No. 216 clearly stated overt acts manifesting the culpable intent of rebellion, x x x In the Report submitted by the President to Congress on 25 May 2017, he specifically chronicled the events which showed the group's display of force against the Government in Marawi City, x x x The circumstances, jointly considered by the President when he issued Proclamation No. 216, show that there was no arbitrariness in the President's decision to declare martial law and suspend the privilege of the writ of *habeas corpus* in Mindanao. x x x [T]he situation in Mindanao shows not just simple acts of lawless violence or terrorism confined in Marawi City. The widespread armed hostilities and atrocities are all indicative of a rebellious intent to establish Mindanao into an Islamic state or an ISIS *wilayah*, separate from the Philippines and away from the control of the Philippine Government. x x x For purposes of declaring martial law and suspending the privilege of the writ of *habeas corpus*, it is absurd to require that there be public uprising in every city and every province in Mindanao before rebellion can be deemed to exist in the whole island if there is already reason to believe that the rebel group's culpable intent is for the whole of Mindanao and that public uprising has already started in an area therein.

TIJAM, *J.*, *separate concurring opinion*:

1. POLITICAL LAW; 1987 CONSTITUTION; ARTICLE VII, EXECUTIVE DEPARTMENT; SECTION 18 ON THE PROCLAMATION OF MARTIAL LAW OR THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*; THE SUPREME COURT MAY REVIEW, IN AN APPROPRIATE PROCEEDING FILED

BY ANY CITIZEN, THE SUFFICIENCY OF THE FACTUAL BASIS THEREOF; ALTHOUGH MERE CITIZENSHIP GIVES *LOCUS STANDI,* THERE MUST BE *PRIMA FACIE* SHOWING OF INSUFFICIENCY OF THE FACTUAL BASIS FOR THE PROCLAMATION.— The Constitution, x x x with respect to petitions assailing the sufficiency of the factual basis of a proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, requires only that the petitioner be any Filipino citizen. x x x This is just one of the several safeguards placed in Section 18, Article VII of the Constitution to avert, check or correct any abuse of the extraordinary powers, lodged in the President, of imposing martial law and suspending the privilege of the writ of *habeas corpus*. Nevertheless, this should not result in the Court taking cognizance of every petition assailing such proclamation or suspension, if it appears to be *prima facie* unfounded. That the Court has the authority to outright deny patently unmeritorious petitions is clear from the provision, which uses the permissive term "may" in referring to the Court's exercise of its power of judicial review. x x x The requirement of a *prima facie* showing of insufficiency of the factual basis in the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* becomes even more important if, as the *ponencia* declares, this Court's review is to be confined only to the Proclamation, the President's Report to Congress, and the pleadings.

2. ID.; ID.; ID.; ID.; ID.; THE ACTION QUESTIONING THE SUFFICIENCY OF THE FACTUAL BASIS OF THE PROCLAMATION IS *SUI GENERIS*.— I am in agreement with the *ponente* in treating the proceedings filed pursuant to the third paragraph of Section 18, Rule VII of the 1987 Constitution as *sui generis*. The action questioning the sufficiency of the factual basis of the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* is neither a criminal nor a civil proceeding. Its subject is unique unto itself as it involves the use of an extraordinary power by the President as Commander-in-Chief and matters affecting national security. Furthermore, the exercise of such power involves not only the executive but also the legislative branch of the government; it is subject to automatic review by Congress which has the power to revoke the declaration or suspension. To ensure that any unwarranted use of the extraordinary power is promptly

discontinued, the Constitution limits the period for the Court to decide the case. And to facilitate a judicial inquiry into the declaration or suspension, the Constitution allows any citizen to bring the action. The Constitution likewise specifies the ground upon which this particular action can be brought, i.e. the sufficiency of the factual basis of the declaration or suspension. As an express exception to the rule that the Court is not a trier of facts, the Court is asked to make a factual determination, at the first instance, of whether the President had adequate reasons to justify the declaration or suspension. Moreover, as an exception to the doctrine of hierarchy courts, the Constitution provides that the case be filed directly with this Court. Finally, the Court's jurisdiction was conferred as an additional safeguard against any abuse of the extraordinary power to declare martial law and suspend the privilege of the writ of *habeas corpus*. Taken together, these elements make the Court's jurisdiction under Section 18 *sui generis*.

3. ID.; ID.; ID.; ID.; ID.; CONGRESS' ACTION PRECEDES THE COURT'S REVIEW BUT CONGRESSIONAL IMPRIMATUR IS NOT CONCLUSIVE ON THE COURT; SHOULD CONGRESS DEFAULT ON ITS DUTY TO REVIEW, THE COURT WILL PROCEED TO HEAR PETITIONS CHALLENGING THE PRESIDENT'S ACTION.— I agree with the *Fortun* [*v. Macapagal-Arroyo*] pronouncement insofar as it instructs that the Court must allow Congress to exercise its own review powers ahead of the Court's inquiry. I do not agree, however, that the Court can "step in" only when Congress **defaults** in its duty to review. The Court can inquire into the sufficiency of the factual basis of the proclamation or suspension not only when Congress fails to undertake such review, but also if it decides to support the proclamation or suspension as in this case. The Court is not bound by Congress' decision not to revoke the proclamation or suspension. The system of checks and balances as built in Section 18, Article VII demands that the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* be within reach of judicial scrutiny. It is only when Congress decides to revoke the proclamation or suspension that the Court shall withhold review as such revocation will render any prayer for the nullification of the proclamation or suspension moot; and, even if the Court finds the existence of the conditions for the proclamation or suspension, it cannot require or compel

the President to exercise his martial law or suspension power. The exercise by the President, Congress and the Court of their powers under Section 18, Article VII is sequential. Accordingly, Congress' review must precede judicial inquiry, x x x However, consistent with *Fortun*, should Congress procrastinate or default on its duty to review, the Court will proceed to hear petitions challenging the President's action.

4. ID.; ID.; ID.; SECTION 18 GIVES THE PRESIDENT THE POWERS TO CALL OUT THE ARMED FORCES, TO SUSPEND THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*, AND TO DECLARE MARTIAL LAW; THE COURT CANNOT SUPPLANT THE PRESIDENT'S CHOICE OF WHICH OF THE THREE POWERS TO USE.— Section 18, Article VII of the 1987 Constitution gives the President, under prescribed conditions, the powers to call out the armed forces, to suspend the privilege of the writ of *habeas corpus*, and to place the Philippines or any part thereof under martial law. I agree with the *ponente* in holding that this Court's review cannot extend to calibrating the President's decision pertaining to which of said powers to avail given a set of facts or conditions. x x x It is not this Court's duty to supplant the President's decision but merely to determine whether it satisfies the conditions prescribed in the Constitution for the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus*. The Court, in exercising its power of judicial review, is not imposing its own will upon a co-equal body but rather simply making sure that any act of government is done in consonance with the authorities and rights allocated to it by the Constitution.

5. ID.; ID.; ID.; SECTION 18 ON THE PROCLAMATION OF MARTIAL LAW OR THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*; THE CONSTITUTIONALITY OF THE PROCLAMATION IS DETERMINED UNDER THE SUFFICIENCY OF FACTUAL BASIS TEST.— Section 18 specifies the scope of this Court's judicial review, i.e., the determination of the sufficiency of the factual basis of the imposition of martial law or the suspension of the privilege of the writ of *habeas corpus*. The factual basis, as provided in the Constitution, lies in the existence of an actual rebellion or invasion where public safety requires the declaration of martial law or the suspension

of the privilege of the writ of *habeas corpus*. The Court's review is, thus, confined to the determination of whether the facts upon which the President relied in issuing such declaration or suspension show a case of actual rebellion or invasion that poses a danger to public safety. The Constitution does not require the Court to look into the fairness or arbitrariness of such imposition or suspension.

6. ID.; ID.; ID.; ID.; PETITIONERS HAVE THE BURDEN OF PROVING INSUFFICIENCY OF FACTUAL BASIS THEREOF.— Under our Rules of Court, it is presumed that an official duty has been regularly performed. It has likewise been held that a public officer is presumed to have acted in good faith in the performance of his duties. It is also a settled rule that he who alleges must prove, and the rule applies even to negative assertions. Thus, the burden of proving that the President's factual basis for declaring martial law and suspending the privilege of the writ of *habeas corpus* in Mindanao was insufficient, lies with the petitioners. x x x **Petitioners failed to discharge their burden of proof.**

7. ID.; ID.; ID.; ID.; PROCLAMATION NO. 216 AND THE PRESIDENT'S REPORT TO CONGRESS SUFFICIENTLY ESTABLISH THE EXISTENCE OF ACTUAL REBELLION THAT ENDANGERS PUBLIC SAFETY; PAST EVENTS RELATED TO THE SITUATION AND EVENTS SUBSEQUENT ARE CONSIDERED IN THE DETERMINATION OF THE FACTUAL BASIS.— The conditions prescribed in the Constitution for a valid proclamation of martial law or suspension of the privilege of the writ of *habeas corpus* are as follows: (1) there must be an actual invasion or rebellion; and (2) public safety requires the proclamation or suspension. I agree that considering the urgency of the situation, which may not give the President opportunity to verify with precision the facts reported to him, the President only needs to be satisfied that there is probable cause to conclude that the aforesaid conditions exist. x x x The facts, upon which the President based his Proclamation and which have not been satisfactorily controverted, show that more likely than not, there was rebellion and public safety required the exercise of the President's powers to declare martial law and to suspend the privilege of the writ of *habeas corpus* in Mindanao. x x x That there is an armed uprising in Marawi City is not disputed. The

bone of contention lies in the element of culpable purpose. However, the facts and incidents, as put forward by the President in his Proclamation and Report to Congress, show that there is probable cause to conclude that the uprising is aimed at removing Mindanao from its allegiance to the Philippine Government and depriving the President of his powers over the territory. x x x [B]y the standard of probable cause, the culpable purpose required under Article 134 of the Revised Penal Code has been shown to exist. x x x I agree that past events may be considered in justifying the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* if they are connected or related to the situation at hand. Such events may also be considered if material in assessing the extent and gravity of the current threat to national security. x x x Similarly, events subsequent to the issuance of the proclamation or suspension may be considered in the Court's determination of the sufficiency of the factual basis. Subsequent events confirm the existence or absence of the conditions for the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*.

8. ID.; ID.; ID.; ID.; ID.; PROCLAMATION COVERING THE ENTIRE MINDANAO HAS SUFFICIENT FACTUAL BASIS.— In arriving at the conclusions [in his Report to Congress], the President is presumed to have taken into account intelligence reports, including classified information, regarding the actual situation on the ground. Absent any countervailing evidence, these statements indicate a plan and an alliance among armed groups to take over and establish absolute control over the entire Mindanao. Thus, there appears to be sufficient basis for the imposition of martial law and the suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao. x x x As they stand, these findings will reasonably engender a belief that the rebel groups seek and intend to make Mindanao an ISIS *wilayah* or province, with Marawi City, given its strategic location and cultural and religious significance, as the starting point of their occupation in the name of ISIS. Considering the alliance of these rebel groups, the violent acts they have perpetrated in different parts of Mindanao for the shared purpose of establishing an ISIS *wilayah*, and the extent of the territory they intend to occupy in the name of ISIS, it cannot be said that the imposition of martial law over the entire Mindanao is without factual basis. The location of the armed uprising should not be the only basis for identifying the area or areas over which

martial law can be declared or the privilege of the *writ of habeas corpus* can be suspended. Thus, that the subject armed uprising appears to be taking place only in Marawi City should not be a reason to nullify the declaration or suspension over the rest of Mindanao. Foremost, it has been shown that there is factual basis to include the rest of Mindanao in the Proclamation. So also, the Constitution does not require that the place over which the martial law or suspension will be enforced, should be limited to where the armed uprising is taking place, thus, giving the President ample authority to determine its coverage. Furthermore, as noted in *Aquino, Jr. v. Enrile*, modern day rebellion has other facets than just the taking up of arms — including financing, recruitment and propaganda that may not necessarily be found or occurring in the place of the armed conflict.

PERLAS-BERNABE, *J.*, *separate opinion*:

1. POLITICAL LAW; 1987 CONSTITUTION; SECTION 18 OF ARTICLE VII THEREOF; THE SUPREME COURT HAS SPECIAL JURISDICTION TO REVIEW, IN AN APPROPRIATE PROCEEDING FILED BY ANY CITIZEN, THE SUFFICIENCY OF THE FACTUAL BASIS OF THE PROCLAMATION OF MARTIAL LAW; NATURE OF THE PROCEEDING/PARAMETER OF THE REVIEW.— Section 18, Article VII of the 1987 Constitution vests unto this Court special jurisdiction to review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law, x x x [I]t is clearly a jurisdiction-vesting provision, and not one that merely affects the exercise of jurisdiction. x x x It is my view that the term "appropriate proceeding" can only be classified as a *sui generis* proceeding that is exclusively peculiar to this Court's special jurisdiction to review the factual basis of a martial law declaration. x x x In fact, the textual placement of Section 18, Article VII fortifies the *sui generis* nature of this "appropriate proceeding." It may be readily discerned that Section 18, Article VII is only one of two provisions relative to a Supreme Court power that is found in Article VII (Article on the Executive Department), and not in Article VIII (on the Judicial Department) of the 1987 Constitution. x x x The provision's location in Article VII on the Executive Department reveals the correlative intent of the Framers to instill the proceeding as a specific check on a

particular power exercised by the President. x x x [T]he Court is called to exercise its special jurisdiction to determine the sufficiency of the President's factual basis in declaring martial law. This parameter of review is not only explicit in Section 18, Article VII; it is, in fact, self-evident [and]. x x x both conceptually novel and distinct. Not only does it defy any parallelism with any of the Court's usual modes of review, but it also obviates the usage of existing thresholds of evidence, x x x [Also] I submit that this Court should construe the term "sufficient factual basis" in its generic sense. x x x "Sufficient" commonly means "adequate"; it may also mean "enough to meet the needs of a situation or a proposed end." Logically, the "end" to be established in a petition under Section 18, Article VII is the factual basis of a proclamation of martial law. **Martial law can only be proclaimed legally under the 1987 Constitution upon the President's compliance of two (2) conditions, namely: (1) that there exists an actual invasion or rebellion; and (2) that the public safety so requires the same. Therefore, it is reasonable to conclude that "sufficient factual basis," as a parameter of review under Section 18, Article VII of the 1987 Constitution, should simply mean that this Court has been satisfied that there exists adequate proof of the President's compliance with these two (2) requirements to legally proclaim martial law**. x x x **Being a proceeding directly meant to establish the factual basis of a governmental action, it follows that the government bears the burden of proving compliance with the requirements of the Constitution for clearly, the petitioner, who may be any citizen, does not have possession of the information used by the President to justify the imposition of martial law**. Nonetheless, the petitioner has the burden of evidence to debunk the basis proffered by the government and likewise, prove its own affirmative assertions.

2. ID.; ID.; ID.; ID.; ACTUAL REBELLION AS FIRST REQUIREMENT TO PROCLAIM MARTIAL LAW; ONCE THE ELEMENTS OF REBELLION ARE ESTABLISHED, A STATE OF ACTUAL REBELLION ALREADY EXISTS AS A FACT.— Under Article 134 of the Revised Penal Code (RPC), as amended by Republic Act No. 6968, rebellion is committed in the following manner: [B]y 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 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. x x x [I] submit that, for the purposes of assessing compliance with the first requirement of Section 18, Article VII of the 1987 Constitution, this Court should ascertain whether there is adequate proof to conclude that a rebellion, in light of its elements under the RPC, has already been consummated. **Once these elements are established, a state of actual rebellion (and not merely an "imminent danger thereof") already exists as a fact, and thus, it may be concluded that the said first requisite has already been met**. Consequently, the President would then have ample discretion to determine the territorial extent of martial law, provided that the requirement of public safety justifies this extent. **Since as above-discussed rebellion, by nature, defies spatial limitability, the territorial scope of martial law becomes pertinent to Section 18, Article VII's second (when public safety requires) and not its first requirement (actual rebellion)**. By these premises, it is also erroneous to think that the territorial extent of martial law should be only confined to the area/s where the actual exchange of fire between the rebels and government forces is happening. To reiterate, rebellion is, by nature, a movement; it is much more than the actual taking up of arms. While the armed public uprising consummates the crime for purposes of prosecuting the accused under the RPC, its legal existence is not confined by it. It is a complex net of intrigues and plots, a movement that ceases only until the rebellion is quelled.

3. ID.; ID.; ID.; ID.; PUBLIC SAFETY AS SECOND REQUIREMENT TO PROCLAIM MARTIAL LAW; DETERMINES THE TERRITORIAL COVERAGE OF MARTIAL LAW.— [I]t is this second requirement of public safety which determines the territorial coverage of martial law. The phrase "when the public safety requires it" under Section 18, Article VII is similarly uncharted in our jurisprudence. Since it has not been technically defined, the term "public safety" may be likewise construed under its common acceptation – that is, "[t]he welfare and protection of the general public, usually expressed as a governmental responsibility." For its part, "public welfare" has been defined as "[a] society's well-being in matters of health, safety, order, morality, economics and politics." Under Section 18, Article VII, the obvious danger against public safety

and the society's well-being is the existence of an actual invasion or rebellion. Adopting the generic definition of the term "public safety," it may then be concluded that the phrase "when the public safety requires it" under Section 18, Article VII would refer to the government's responsibility to declare martial law in a particular territory as may be reasonably necessary to successfully quell the invasion or rebellion. In this sense, the territorial extent of martial law is therefore malleable in nature, as it should always be relative to the exigencies of the situation. Under our prevailing constitutional order, no one except the President is given the authority to impose martial law. By necessary implication, only he has the power to delimit its territorial bounds. x x x [T]his Court, in assessing compliance with Section 18, Article VII's public safety requisite, must give due deference to his prudential judgment x x x [but] our deference to the President must be circumscribed within the bounds of truth and reason. Otherwise, our constitutional authority to check the President's power to impose martial law would amount to nothing but an empty and futile exercise.

4. ID.; ID.; ID.; ID.; THE PRESIDENT HAD SUFFICIENT FACTUAL BASIS TO ISSUE PROCLAMATION NO. 216 AND THEREBY, LEGALLY PROCLAIMED MARTIAL LAW OVER THE WHOLE OF MINDANAO.— After a careful study of this case, it is my view that the President had sufficient factual basis to issue Proclamation No. 216 and thereby, legally proclaimed martial law over the whole of Mindanao. It is apparent that the tipping point for President Duterte's issuance of Proclamation No. 216 was the May 23, 2017 Marawi siege. The events leading thereto were amply detailed by the government x x x Petitioners attempted to debunk some of the factual details attendant to the foregoing events with counter-evidence: x x x However, the counter-evidence presented by petitioners largely consist of uncorroborated news reports, which are therefore inadmissible in evidence on the ground that they are hearsay.

SERENO, *C.J.*, *dissenting opinion*:

1. POLITICAL LAW; 1987 CONSTITUTION; ARTICLE VII, EXECUTIVE DEPARTMENT; THE PRESIDENT AS COMMANDER-IN-CHIEF; PROCLAMATION NO. 216 DECLARING A STATE OF MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF

***HABEAS CORPUS* IN THE WHOLE OF MINDANAO; SUFFICIENCY OF THE FACTUAL BASIS THEREOF; ACTUAL REBELLION; MARTIAL LAW CAN ONLY BE DECLARED WHERE THE ACTUAL REBELLION IS TAKING PLACE.—** The Court is unanimous that there must be an actual invasion or rebellion, and that public safety calls for the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus*, in order that the declaration or suspension can be constitutional. Article 134 of the Revised Penal Code defines rebellion as the act of rising publicly and taking arms against the government for the purpose of removing, from allegiance to that government or its laws, the territory of the Republic of the Philippines or any part thereof — any body of land, naval or other armed forces; or for the purpose of depriving the Chief Executive or the Legislature, wholly or partially, of any of its powers or prerogatives. Since the Court is unanimous in affirming that only actual rebellion and not the imminence of rebellion is required for the declaration of martial law, then it follows as a matter of course that martial law can only be declared where the actual rebellion is taking place. x x x It has only been in Marawi City where the element of rebellion that consists in the culpable purpose "of removing, from allegiance to that government or its laws, the territory of the Republic of the Philippines or any part thereof — any body of land, naval or other armed forces; or for the purpose of depriving the Chief Executive or the Legislature, wholly or partially, of any of its powers or prerogatives" has been indisputably proven in the record.

2. ID.; ID.; ID.; ID.; ID.; ID.; WHEN PUBLIC SAFETY REQUIRES IT; THE COURTS MUST ASK WHETHER THE POWERS BEING INVOKED IS PROPORTIONAL TO THE STATE OF THE REBELLION, AND CORRESPONDS WITH ITS PLACE OF OCCURENCE .— Public safety has been said to be the objective of martial law. However, unlike the traditional concept of martial law, the 1987 Constitution removes from the military the power to replace civilian government except in an area of combat where the civilian government is unable to function. Attention must be paid to the categorical unction of the Constitution that legislative assemblies and civil courts must continue to function even in a state of martial law. It is only when civil courts are unable to function that military courts and agencies can conceivably

acquire jurisdiction over civilians. Such is not the case here as civil courts in Marawi City continue to function from their temporary location in Iligan City. x x x The phraseology of the Constitution is purposive and directed. Martial law can only be declared: a) when there is actual invasion or rebellion; b) when public safety requires it; and c) over the entire Philippines or any part thereof. This Court cannot render inutile the second sentence of Article VII, Section 18 by refusing to review the presidential decision on the coverage of martial law *vis-a-vis* the place where actual rebellion is taking place, and the necessity to public safety of declaring martial law in such places. The use of the phrase "when public safety requires it" can only mean that the Court must ask whether the powers being invoked is proportional to the state of the rebellion, and corresponds with its place of occurrence.

3. ID.; ID.; ID.; ID.; ID.; STANDARDS UNDER THE FOURTH PARAGRAPH OF SECTION 18, ARTICLE VII OF THE CONSTITUTION MUST BE MET IN A MARTIAL LAW SETTING.— [T]he declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* appear to have sufficient factual basis in the following three provinces: Lanao del Sur, Maguindanao, and Sulu. Other than these provinces, the respondents have not alleged any other incident reasonably related to the Maute attack in Marawi City. x x x The validity of the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* in the three provinces specified does not vest the President and his officials with unhampered discretion to wield his powers in any way and whichever direction he desires. Their actions must meet legal standards even in a martial law setting. x x x At the very core, the bedrock of these standards is the fourth paragraph of Section 18, Article VII of the Constitution: A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.

CARPIO, *J., dissenting opinion*:

1. POLITICAL LAW; 1987 CONSTITUTION; SECTION 18, ARTICLE VII THEREOF; THE SUPREME COURT MAY

REVIEW, IN AN APPROPRIATE PROCEEDING FILED BY ANY CITIZEN, THE SUFFICIENCY OF THE FACTUAL BASIS OF THE PROCLAMATION OF MARTIAL LAW OR THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*; THE "APPROPRIATE PROCEEDING" IS A *SUI GENERIS* PETITION NOT FALLING UNDER ANY OF THE ACTIONS OR PROCEEDINGS UNDER THE RULES OF COURT.— According to the OSG, Section 18, Article VII of the 1987 Constitution must be construed in conjunction with the power of judicial review, and the original jurisdiction in petitions for *certiorari*, of the Court as defined under Sections 1 and 5, respectively, of Article VIII of the 1987 Constitution. x x x I disagree. x x x Based on this constitutional provision, the "appropriate proceeding" referred to is a *sui generis* petition not falling under any of the actions or proceedings in the Rules of Court x x x Contrary to the position of the OSG, the proceeding under paragraph 3, Section 18, Article VII of the 1987 Constitution cannot possibly refer to a petition for *certiorari*. x x x What is assailed in a petition for *certiorari* under Rule 65 of the Rules of Court are acts of government officials or tribunals exercising **judicial or quasi-judicial functions**. In contrast, what is assailed in a proceeding under paragraph 3, Section 18, Article VII of the 1987 Constitution is an **executive act of the President not involving judicial or quasi-judicial functions**. More importantly, *certiorari* is an extraordinary remedy designed for the correction of errors of jurisdiction. What is at issue in the present petitions, however, is not the jurisdiction of the President to declare martial law or suspend the privilege of the writ for the 1987 Constitution expressly grants him these powers. Rather, what is at issue is the sufficiency of his factual basis when he exercised these powers. **Simply put, the petition under paragraph 3, Section 18, Article VII of the 1987 Constitution does not involve jurisdictional but factual issues.** Under paragraph 2, Section 1, Article VIII of the Constitution, the Court exercises its expanded *certiorari* jurisdiction to review acts constituting "grave abuse of discretion amounting to lack or excess of jurisdiction" by any branch or instrumentality of Government. x x x the "sufficiency of the factual basis" standard, which applies **exclusively** to the review of the imposition of martial law or suspension of the privilege of the writ, is separate and distinct from the "grave abuse of discretion" standard.

2. ID.; ID.; ID.; ID.; THE BURDEN OF PROOF TO SHOW THE SUFFICIENCY OF THE FACTUAL BASIS OF THE DECLARATION OF MARTIAL LAW IS ON THE GOVERNMENT.— Being a *sui generis* petition intended as a checking mechanism against the abusive imposition of martial law or suspension of the privilege of the writ, the proceeding under paragraph 3, Section 18, Article VII of the 1987 Constitution places the burden of proof on the Government. It is the Government that must justify the resort to extraordinary powers that are subject to the extraordinary review mechanisms under the Constitution. This is only logical because it is the Government that is in possession of facts and intelligence reports justifying the declaration of martial law or suspension of the privilege of the writ. Ordinary citizens are not expected to be in possession of such facts and reports. **Hence, to place the burden of proof on petitioners pursuant to the doctrine of "he who alleges must prove" is to make this Constitutional checking mechanism a futile and empty exercise. The Court cannot interpret or apply a provision of the Constitution as to make the provision inutile or meaningless.** This is especially true to a constitutional provision designed to check the abusive use of emergency powers that could lead to the curtailment of the cherished Bill of Rights of the people.

3. ID.; ID.; ID.; ID.; MEANING OF TO "REVIEW" THE "SUFFICIENCY OF THE FACTUAL BASIS," DISCUSSED. — While the 1987 Constitution vests the totality of executive power in one person only, the same Constitution also specifically empowers the Court to "review" the "sufficiency of the factual basis" of the President's declaration of martial law or suspension of the privilege of the writ if it is subsequently questioned by any citizen. To "review" the "sufficiency of the factual basis" for the declaration of martial law or suspension of the privilege of the writ means: (1) to make a finding of fact that there is or there is no actual rebellion or invasion, and if there is, (2) to determine whether public safety requires the declaration of martial law or suspension of the privilege of the writ to suppress the rebellion or invasion. Applying these two elements, the Court's review power is to determine whether there are sufficient facts establishing rebellion and requiring, for the protection of public safety, the imposition of martial law or the suspension of the privilege of the writ. The Court is tasked by the 1987 Constitution to review an executive act of the President, an act

that involves discretion because the President has the prerogative to decide how to deal with the rebellion — whether only to call out the armed forces to suppress the rebellion, or to declare martial law — with or without the suspension of the privilege of the writ.

4. ID.; ID.; ID.; ID; THE QUANTUM OF EVIDENCE REQUIRED IS PROBABLE CAUSE.— Probable cause of the existence of either rebellion or invasion suffices and satisfies the standard of proof for a valid declaration of martial law or suspension of the privilege of the writ. Probable cause is the same amount of proof required for the filing of a criminal information by the prosecutor and for the issuance of an arrest warrant by a judge. Probable cause has been defined as a "set of facts and circumstances as would lead a reasonably discreet and prudent man to believe that the offense charged in the Information or any offense included therein has been committed by the person sought to be arrested." x x x The requirement of probable cause is consistent with Section 18, Article VII of the 1987 Constitution. It is only upon the existence of probable cause that a person can be "judicially charged" under the last two paragraphs of Section 18, Article VII of the 1987 Constitution, x x x The standard of "reasonable belief" advanced by the OSG is essentially the same as probable cause. The Court has held in several cases that probable cause does not mean "actual and positive cause" nor does it import absolute certainty. Rather, probable cause is merely based on opinion and **reasonable belief** that the act or omission complained of constitutes the offense charged. The facts and circumstances surrounding the case must be such as to excite **reasonable belief** in the mind of the person charging. Probable cause, basically premised on common sense, is the most reasonable, most practical, and most expedient standard by which the President can fully ascertain the existence or non-existence of rebellion necessary for a declaration of martial law or suspension of the privilege of the writ. Lacking probable cause of the existence of rebellion, a declaration of martial law or suspension of the privilege of the writ is without any basis and thus, unconstitutional. However, the sufficiency of the factual basis of martial law must be determined at the time of its proclamation. Immediately preceding or contemporaneous events must establish probable cause for the existence of the factual basis. Subsequent events that immediately take place, however, can be considered to confirm the existence of the factual basis.

5. ID.; ID.; ID.; ID.; THE DECLARATION OF MARTIAL LAW OR SUSPENSION OF THE PRIVILEGE OF THE WRIT REQUIRES THE CONCURRENCE OF (1) EXISTENCE OF ACTUAL REBELLION OR INVASION AND (2) PUBLIC SAFETY REQUIRES THE DECLARATION.— In exercising his Commander-in-Chief power to declare martial law or suspend the privilege of the writ, the 1987 Constitution requires that the President establish the following: **(1) the existence of actual rebellion or invasion; and (2) public safety requires the declaration of martial law or suspension of the privilege of the writ to suppress the rebellion or invasion**. x x x Consequently, in exercising its constitutional duty to "review" the "sufficiency of the factual basis" for the declaration of martial law or suspension of the privilege of the writ, the Court has a two-fold duty: (1) to make a finding of fact that there is or there is no actual rebellion or invasion, and if there is, (2) to determine whether public safety requires the declaration of martial law or suspension of the privilege of the writ to suppress the rebellion or invasion. If there is actual rebellion or invasion, and the declaration of martial law or suspension of the privilege of the writ is necessary to suppress the rebellion or invasion, then the Court must validate the declaration as constitutional. On the other hand, if there is no actual rebellion or invasion, or even if there is, but the declaration of martial law or suspension of the privilege of the writ is not necessary to suppress the rebellion or invasion, then the Court must strike down the proclamation for being unconstitutional. This is the specific review power that the framers of the 1987 Constitution and the people who ratified the 1987 Constitution expressly tasked the Court as a checking mechanism to any abusive use by the President of his Commander-in-Chief power to declare martial law or suspend the privilege of the writ.

6. ID.; ID.; ID.; ID.; VALIDITY OF PROCLAMATION NO. 216 DECLARING A STATE OF MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IN THE WHOLE OF MINDANAO; THERE EXISTS PROBABLE CAUSE THAT THERE IS ACTUAL REBELLION AND THAT PUBLIC SAFETY REQUIRES THE DECLARATION OF MARTIAL LAW AND SUSPENSION OF THE PRIVILEGE OF THE WRIT IN MARAWI CITY, BUT NOT ELSEWHERE.— Applying the evidentiary threshold required in a proceeding challenging

the sufficiency of the factual basis of a declaration of martial law and suspension of the privilege of the writ. I find that probable cause exists that there is actual rebellion in Marawi City and that public safety requires the declaration of martial law and suspension of the privilege of the writ in Marawi City to suppress the rebellion. x x x Without question, the widespread killing of both government forces and innocent civilians, coupled with the destruction of government and private facilities, thereby depriving the whole population in Marawi City of basic necessities and services, endangered the public safety in the whole of Marawi City. Hence, with the concurrence of an actual rebellion and requirement of public safety, the President lawfully exercised his Commander-in-Chief powers to declare martial law and suspend the privilege of the writ in Marawi City. However, the same does not apply to the rest of Mindanao. Proclamation No. 216 and the President's Report to Congress **do not contain any evidence whatsoever of actual rebellion outside of Marawi City**. x x x Proclamation No. 216 also attempts to justify the declaration of martial law and suspension of the privilege of the writ in the whole of Mindanao by citing the **capability** of the Maute-Hapilon group and other rebel groups to sow terror, and cause death and damage to property, not only in Marawi City but also in other parts of Mindanao. x x x **Capability** to rebel, **absent an actual rebellion or invasion**, is not a ground to declare martial law or suspend the privilege of the writ under the 1987 Constitution. x x x The argument that martial law is justified in the whole of Mindanao since the rebels in Marawi City could easily flee or escape to other areas of Mindanao is also wrong. x x x The rebels who escape Marawi City may be issued a warrant of arrest anywhere within the Philippines without the need to declare martial law or suspend the privilege of the writ outside of Marawi City. The rebels may even be arrested by a civilian pursuant to the provision on warrantless arrests under the Rules of Court. To allow martial law in the whole of Mindanao on the sole basis of securing the arrest of rebels who escape Marawi City would not only violate the 1987 Constitution, but also render useless the provisions of the Revised Penal Code and the Rules of Court. The act of the rebels in fleeing or escaping to other territories outside of the place of rebellion will certainly not constitute armed public uprising for the purpose of removing from allegiance to the Philippines the territory where the rebels flee or escape to.

Moreover, sporadic bombings in other areas of Mindanao outside of Marawi City, **in the absence of an armed public uprising against the Government and sans an intent to remove from allegiance to the Government the areas where the bombings take place, *cannot* constitute actual rebellion**. x x x Proclamation No. 216, having been issued by the President in the absence of an actual rebellion outside of Marawi City, was issued without sufficient factual basis, contrary to the express requirement under Section 18, Article VII of the 1987 Constitution, **with respect to areas outside of Marawi City**.

LEONEN, *J.*, *dissenting opinion*:

1. POLITICAL LAW; 1987 CONSTITUTION; SECTION 18, ARTICLE VII THEREOF; THE SUPREME COURT MAY REVIEW, IN AN APPROPRIATE PROCEEDING FILED BY ANY CITIZEN, THE SUFFICIENCY OF THE FACTUAL BASIS OF THE PROCLAMATION OF MARTIAL LAW OR THE SUSPENSION OF THE PRIVILEGE OF THE WRIT; ANY PROPER PARTY MAY ALSO FILE A PETITION INVOKING ARTICLE VIII, SECTION 1.— The present petitions are justiciable. I concur that the petitions are the "appropriate proceedings" filed by "any citizen" which appropriately invokes sui generis judicial review contained in the Constitution. However, in addition to the remedy available in Article VII, Section 18 of the Constitution, any proper party may also file a Petition invoking Article VIII, section 1. The remedies are not exclusive of each other. Neither does one subsume the other. x x x The power of judicial review is the Court's authority to strike down acts of the executive and legislative which are contrary to the Constitution. This is inherent in all courts, being part of their power of judicial review. Article VIII, Section 1 includes, but does not limit, judicial power to the duty of the courts to settle actual controversies and determine whether or not any branch or instrumentality of the Government has committed grave abuse of discretion. x x x It is true that Article VIII, Section 5 provided for instances when the Court exercises original jurisdiction: x x x However, the enumeration in Article VIII, Section 5 is far from exclusive as the Court was also endowed with original jurisdiction under Section 1 of the same article and over the *sui generis* proceeding under Article VII, Section 18.

Notwithstanding the *sui generis* proceeding, a resort to a petition for *certiorari* pursuant to the Court's jurisdiction under Article VIII, Section 1 or Rule 65 is also proper to question the propriety of any declaration or implementation of the suspension of the writ of Habeas Corpus or martial law. The jurisdiction of the Court in Article VIII, Section 1 was meant "to ensure the potency of the power of judicial review to curb grave abuse of discretion by 'any branch or instrumentalities of government[.]'"

2. ID.; ID.; ID.; ID.; THE PRESIDENT EVADES REVIEW WHEN HE DOES NOT SPECIFY HOW MARTIAL LAW WOULD BE USED.— This Court has the power to determine the sufficiency of factual basis for determining that public safety requires the proclamation of martial law [or the suspension of the privilege of the writ of *habeas corpus*]. The President evades review when he does not specify how martial law would be used. x x x In conducting a review of the sufficiency of factual basis for the proclamation of martial law, this Court cannot be made to imagine what martial law is. The President's failure to outline the powers he will be exercising and the civil liberties that may be curtailed will make it impossible for this Court to assess whether public safety requires the exercise of those powers or the curtailment of those civil liberties. It is not sufficient to declare "there is martial law." Because martial law can only be declared when public safety requires it, it is the burden of the President to state what powers public safety requires be exercised. x x x Proclamation No. 216 fails to accord persons a fair notice of which conduct to avoid and leaves law enforcers unbridled discretion in carrying out their functions. x x x A broad declaration of martial law therefore will not be sufficient to inform. It will thus immediately violate due process of law.

3. ID.; ID.; ID.; ID.; IT IS THE GOVERNMENT'S BURDEN TO PROVE THAT THERE ARE SUFFICIENT FACTS TO SUPPORT THE DECLARATION OF MARTIAL LAW.— [I]t is the government's burden to prove that there are sufficient facts to support the declaration of martial law. x x x [The] petitions are in the nature of an exercise of a citizen's right to require transparency of the most powerful organ of government. It is incidentally intended to discover or smoke out the needed information for this Court to be able to intelligently rule on the sufficiency of factual basis. The general rule that "he who alleges must prove" finds no application here in light of the

government's monopoly of the pertinent information needed to prove sufficiency of factual basis. x x x [T]he burden of evidence shifts to the government to prove the constitutionality of the proclamation or suspension and it does this by presenting the actual evidence, not just conclusions of fact, which led the President to decide on the necessity of declaring martial law. x x x The Constitution requires not only that there are facts that are alleged. It requires that these facts are sufficient. Sufficiency can be seen in two (2) senses. The first sense is that the facts as alleged and used by the President is credible. This entails an examination of what kinds of sources and analysis would be credible for the President as intelligence information. The second sense is whether the facts found to be supported with credible sources of information or evidence sufficiently establishes a conclusion that (a) there is an actual rebellion and (b) public safety requires the use of specific powers under the rubric of martial law allowable by our Constitution.

4. **ID.; ID.; ID.; ID.; INTELLIGENCE REPORT RELIED UPON BY THE PRESIDENT ARE CREDIBLE ONLY WHEN THEY HAVE UNDERGONE A SCRUPULOUS PROCESS OF ANALYSIS.—** Intelligence information relied upon by the President are credible only when they have undergone a scrupulous process of analysis. x x x The bases on which a proclamation of martial law or the suspension of the privilege of the writ of habeas corpus are grounded must factually be correct with a satisfactory level of confidence at the time when it is presented. x x x The President, in exercising the powers of a Commander-in-Chief under Article VII, Section 18 of the Constitution, cannot be expected to personally gather intelligence information. The President will have to rely heavily on reports given by those under his or her command to arrive at sound policy decisions affecting the entire country. It is imperative, therefore, that the reports submitted to the President be sufficient and worthy of belief. The recommendation or non-recommendation of the President's alter-egos regarding the imposition of martial law or the suspension of the privilege of the writ of habeas corpus would be indicative of the sufficiency of the factual basis. x x x Evidently, the factual basis upon which the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus is founded cannot just be asserted. The information must undergo an analytical process that would show sound logic behind the inferences drawn. The

respondents should show these analyses by indicating as far as practicable their sources and the basis of their inferences from the facts gathered. Thereafter, the respondents should have indicated the levels of confidence they have on their conclusions.

5. ID.; ID.; ID.; ID.; RE PROCLAMATION NO. 216 IMPOSING MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IN MINDANAO; THE GOVERNMENT'S PRESENTATION OF FACTS AND THEIR ARGUMENTS OF THEIR SUFFICIENCY ARE WANTING.— The government's presentation of facts and their arguments of their sufficiency are wanting. First, there are factual allegations that find no relevance to the declaration of martial law and the suspension of the privilege of the writ of habeas corpus. Second, there are facts that have been contradicted by Open-Source Intelligence sources. [T]here are facts that have absolutely no basis as they are unsupported by credible evidence. x x x Third, the factual bases cited by respondents in their pleadings seem to be mere allegations. The sources of these information and the analyses to vet them were not presented. x x x Fourth, the documents presented to this court containing intelligence information have not been consistent. x x x Fifth, it is possible that the critical pieces of information have been taken out of context. x x x To assess the sufficiency of the factual basis for finding that rebellion exists in Mindanao, it is essential to contextualize the acts supposedly suggestive of rebellion, in relation to the culture of the people purported to have rebelled. x x x Ignoring the cultural context will render this Court vulnerable to accepting any narrative, no matter how far-fetched. x x x The facts presented show that there was, indeed, armed confrontation in Marawi City. However, this must be interpreted taking the context into consideration. x x x Taking the facts in their proper context, there may be acts of terrorism but not necessarily rebellion. The facts also establish that the Maute group are no more than terrorists who committed acts of violence in order to evade or resist arrest of their leaders.

6. ID.; ID.; ID.; ID.; ID.; DECLARING PROCLAMATION NO. 216 AND RELATED ISSUANCES AS UNCONSTITUTIONAL WILL NOT HAVE AN EFFECT ON PROCLAMATION NO. 55 (THE DECLARATION OF A STATE OF NATIONAL EMERGENCY ON ACCOUNT OF LAWLESS VIOLENCE IN MINDANAO).— Declaring

Proclamation No. 216 and related issuances as unconstitutional will not have an effect on Proclamation No. 55. Although embodied in the same section, the calling out power of the President is in a different category from the power to proclaim martial law and suspend the privilege of the writ of *habeas corpus*. *Integrated Bar of the Philippines v. Zamora* classified the calling out power of the President as "no more than the maintenance of peace and order and promotion of the general welfare." The calling out power of the President can be activated to prevent or suppress lawless violence, invasion, or rebellion. Among the three Commander-in-Chief powers mentioned in Article VII, Section 18, the calling out power is the most benign compared to the suspension of the privilege of the writ of *habeas corpus* and the proclamation of martial law. Additionally, unlike the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus* which must concur with the twin requirements of actual invasion or rebellion and necessity of public safety, no such conditions are attached to the President's calling out power.

CAGUIOA, *J.*, *dissenting opinion*:

1. POLITICAL LAW; 1987 CONSTITUTION; SECTION 18, ARTICLE VII THEREOF; THE SUPREME COURT MAY REVIEW, IN AN APPROPRIATE PROCEEDING FILED BY ANY CITIZEN, THE SUFFICIENCY OF THE FACTUAL BASIS OF THE PROCLAMATION OF MARTIAL LAW OR THE SUSPENSION OF THE PRIVILEGE OF THE WRIT; THE ISSUE/S ARE JUSTICIABLE QUESTIONS IN A *SUI GENERIS* PROCEEDING.— The declaration of martial law and suspension of the privilege of the writ are justiciable questions by express authorization of the third paragraph of Section 18, Article VII of the Constitution. The language of the provision and the intent of the framers clearly foreclose any argument of non-justiciability. Moreover, the question before the Court does not squarely fall within any of the formulations of a political question. Concretely, even as the first paragraph of Section 18 commits to the Executive the issue of the declaration of martial law and suspension of the privilege of the writ, the third paragraph commits the review to the Court and provides the standards to use therein — unmistakably carving out the question from those that are political

in nature. Clearly, no full discretionary authority on the part of the Executive was granted by the Constitution in the declaration of martial law and suspension of the privilege of the writ. As well, insofar as Section 18 lays down the mechanics of government in times of emergency, it is precisely the province of the Court to say what the law is. x x x I agree with the *ponencia* that Section 18 contemplates a *sui generis* proceeding set into motion by a petition of any citizen. Plainly, Section 18 is a neutral and straightforward fact-checking mechanism, shorn of any political color whatsoever, by which any citizen can invoke the aid of the Court — an independent and apolitical branch of government — to determine the necessity of the Executive's declaration of martial law or suspension of the privilege of the writ based on the facts obtaining. Given its *sui generis* nature, the scope of a Section 18 petition and the workings of the Court's review cannot be limited by comparison to other cases over which the Court exercises jurisdiction — primarily, petitions for *certiorari* under Rule 65 of the Rules of Court and Article VIII, Section 1.

2. **ID.; ID.; ID.; ID.; THE REVIEW IS MANDATORY TO THE COURT.—** Keeping in mind that "under our constitutional scheme, the Supreme Court is the ultimate guardian of the Constitution, particularly of the allocation of powers, the guarantee of individual liberties and the assurance of the people's sovereignty," the Court's review rises to the level of a public duty owed by the Court to the sovereign people — to determine, independent of the political branches of government, the sufficiency of the factual basis, and to provide the Executive the venue to inform the public.

3. **ID.; ID.; ID.; ID.; THE PROCEEDING MAY BE FILED BY ANY CITIZEN AND IT IS *SUI GENERIS*, THAT ENTAILS A FACTUAL AND LEGAL REVIEW.—** I concur with the *ponencia* that a Section 18 petition may be filed by any citizen. The Court, as intimated above, should not add any qualification for the enjoyment of this clear and evident right apart from what is stated in the provision, especially when the intent of the framers was to clearly relax the question of standing. In determining the nature and requirements of the Court's review, guidance can be had from the language of the provision and the intent of the framers. Both show that the review contemplated is both factual and legal in nature. x x x The constitutional

mandate to review, as worded and intended, necessarily requires the Court to delve into both factual and legal issues indispensable to the final determination of the "sufficiency of the factual basis" of the declaration of martial law and suspension of the privilege of the writ. x x x Section 18, as a neutral and straightforward fact-checking mechanism, 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. Viewed in this light, the government is called upon to embrace this mechanism because it provides the Executive yet another opportunity to lay before the sovereign people its reasons for the declaration of martial law or suspension of the privilege of the writ, if it had not already done so. This requires the Executive to meaningfully take part in this mechanism in a manner that breathes life to the mandate of the Constitution. In the same manner, the Court is also mandated to embrace this fact-checking mechanism, and not find reasons of avoidance by, for example, resorting to procedural niceties.

4. ID.; ID.; ID.; ID.; THE EXECUTIVE HAS THE BURDEN OF PROVING, BY SUBSTANTIAL EVIDENCE, THE SUFFICIENCY OF THE FACTUAL BASIS OF THE DECLARATION OF MARTIAL LAW AND THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*.— *Apropos* to the question of the burden of proof and threshold of evidence under a Section 18 petition, I submit that fixing the burden of proof upon the petitioners in a neutral and straightforward fact-checking mechanism is egregious error because: *First*, there is nothing in the language of Section 18 or the deliberations to show that it fixes or was intended to fix the burden of proof upon the citizen applying to the Court for review; *Second*, a Section 18 petition is neither a civil action nor akin to one, but is in the nature of an application to the Court to determine the sufficiency of the factual basis. It is not required to carry a concurrent claim that there was lack or insufficiency of factual basis. x x x *Third and most important*, considering that the declaration of martial law and

suspension of the privilege of the writ can only be validly made upon the concurrence of the requirements in the Constitution, the very act of declaration of martial law or suspension of the privilege of the writ already constitutes a positive assertion by the Executive that the constitutional requirements have been met — one which it is in the best position to substantiate. To require the citizen to prove a lack or insufficiency of factual basis is an undue shifting of the burden of proof that is clearly not the intendment of the framers.

5. ID.; ID.; ID.; ID.; ID.; THE REVIEW IS A TEST OF SUFFICIENCY AND NOT ARBITRARINESS.— The use of the word "sufficiency," signals that the Court's role in the neutral straightforward fact-checking mechanism of Section 18 is precisely to check *post facto*, and with the full benefit of hindsight, the validity of the declaration of martial law or suspension of the privilege of the writ, based upon the presentation by the Executive of the sufficient factual basis therefor. x x x This means that the Court is also called upon to investigate the accuracy of the facts forming the basis of the proclamation — whether there is actual rebellion and whether the declaration of martial law and the suspension of the privilege of the writ are necessary to ensure public safety. x x x Since Section 18 is a neutral straightforward fact-checking mechanism, any nullification necessarily does not ascribe any grave abuse or attribute any culpable violation of the Constitution to the Executive. x x x Accordingly, I disagree with the *ponencia's* statement that in the review of the sufficiency of the factual basis, the Court can only consider the information and data available to the President prior to or at the time of the declaration and that it is not allowed to undertake an independent investigation beyond the pleadings. x x x [And] while I concur with the holding that probable cause is the standard of proof to show the existence of actual rebellion at the time of the proclamation, I submit that the second requirement of public safety (*i.e.,* necessity) is a **continuing** requirement that must still exist during the review, and that the Court is not temporally bound to the time of the declaration of martial law or suspension of the privilege of the writ in determining the requirements of public safety.

6. ID.; ID.; ID.; ID.; THE FACTUAL BASIS FOR THE DECLARATION INCLUDES BOTH THE EXISTENCE OF

ACTUAL REBELLION AND THE REQUIREMENTS OF PUBLIC SAFETY; REBELLION IS UNDERSTOOD AS REBELLION DEFINED IN ARTICLE 134 OF THE REVISED PENAL CODE; DISCUSSED.— Proceeding now to the crux of the controversy, the Court must look into the factual basis of **both** requirements for the declaration of martial law and suspension of the privilege of the writ: (1) the existence of actual rebellion or invasion; and (2) the requirements of public safety. Necessity creates the conditions of martial law and at the same time limits the scope of martial law. x x x I concur with the *ponencia* that the rebellion mentioned in the Constitution refers to rebellion as defined in Article 134 of the Revised Penal Code. The gravamen of the crime of rebellion is an armed public uprising against the government. By its very nature, rebellion is essentially a crime of masses or multitudes involving crowd action, which cannot be confined *a priori* within predetermined bounds. The crime of rebellion requires the concurrence of intent and overt act; it 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. Both purpose and overt acts are essential elements of the crime and without their concurrence the crime of rebellion cannot legally exist.

7. **ID.; ID.; ID.; ID.; PROCLAMATION NO. 216; THERE IS SUFFICIENT SHOWING THAT, AT THE TIME OF THE PROCLAMATION, PROBABLE CAUSE EXISTED FOR THE ACTUAL REBELLION IN MARAWI CITY.—** The armed public uprising in Marawi City is self-evident. The use of heavy artillery and the hostile nature of attacks against both civilians and the armed forces are strongly indicative of an uprising against the Government. The multitude of criminal elements as well as the concerted manner of uprising therefore satisfies the first element of the crime of rebellion. Anent the second element of intent, the Executive's presentation of its military officials and intelligence reports *in camera* showed probable cause to believe that the intent component of the rebellion exists — that the Maute group sought to establish a "*wilayah*,"or caliphate in Lanao del Sur of extremist network ISIS, which has yet to officially acknowledge the said group. The video footage recovered by the military showing the plans of the Maute Group to attack Marawi City further evidences

the plan to remove Marawi City from its allegiance to the Government of the Republic of the Philippines.

8. ID.; ID.; ID.; ID.; ID.; THERE IS INSUFFICIENT SHOWING THAT THE REQUIREMENTS OF PUBLIC SAFETY NECESSITATED THE DECLARATION OF MARTIAL LAW OVER THE ENTIRE MINDANAO.— The second indispensable requirement that must be shown by the Executive is that public safety calls for the declaration of martial law and suspension of the privilege of the writ. Here, there can be no serious disagreement that the existence of actual rebellion does not, on its own, justify the declaration of martial law or suspension of the privilege of the writ if there is no showing that it is necessary to ensure public safety. x x x While the *ponencia* holds that the scope of territorial application could either be "the Philippines or any part thereof" without qualification, this does not mean, as the *ponencia* holds, that the Executive has full and unfettered discretionary authority. The import of this holding will lead to a conclusion that the Executive needs only to show sufficient factual basis for the existence of actual rebellion in a given locality and then the territorial scope becomes its sole discretion. *Ad absurdum*. Under this formula, the existence of actual rebellion in Mavulis Island in Batanes, without more, is sufficient to declare martial law over the entire Philippines, or up to the southernmost part of Tawi-tawi. This overlooks the public safety requirement and is obviously not the result intended by the framers of the fact-checking mechanism. 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**.

9. ID.; ID.; ID.; ID.; ID.; THERE IS INSUFFICIENT SHOWING THAT THERE IS ACTUAL REBELLION OUTSIDE OF MARAWI CITY.— [T]he Executive had the onus to present substantial evidence to show the necessity of placing the entire Mindanao under martial law. Unfortunately, the Executive failed to show this. In fact, during the interpellations, it was drawn out that there is no armed public uprising in the eastern portion

> of Mindanao x x x In this connection, it should be noted that even if principal offenders, conspirators, accomplices, or accessories to the rebellion flee to or are found in places where there is no armed public rising, this fact alone does not justify the extension of the effect of martial law to those areas. They can be pursued by the State under the concept of rebellion being a continuing crime, even without martial law. x x x Without a showing that normative acts of rebellion are being committed in other areas of Mindanao, the standard of public safety requires a demonstration that these areas are so intimately or inextricably connected to the armed public uprising in order for them to be included in the scope of martial law. Otherwise, the situation in these areas merely constitute an "imminent threat" of rebellion which does not justify the declaration of martial law and suspension of the privilege of the writ in said areas.

APPEARANCES OF COUNSEL

Lagman Lagman & Mones Law Firm for petitioners in G.R. No. 231658.

National Union of Peoples' Lawyers and *Union of Peoples' Lawyers in Mindanao* for petitioners in G.R. No. 231771.

Alternative Law Groups, Inc. for petitioners in G.R. No. 231774.

The Solicitor General for public respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Effective May 23, 2017, and for a period not exceeding 60 days, President Rodrigo Roa Duterte issued Proclamation No. 216 declaring a state of martial law and suspending the privilege of the writ of *habeas corpus* in the whole of Mindanao.

The full text of Proclamation No. 216 reads as follows:

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

WHEREAS, Section 18, Article VII of the Constitution provides that 'x x x In case of invasion or rebellion, when the public safety requires it, he (the President) may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law x x x';

WHEREAS, Article 134 of the Revised Penal Code, as amended by R.A. No. 6968, provides that 'the crime of rebellion or insurrection is committed by rising and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives';

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

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

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

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

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

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

DONE in the Russian Federation, this 23rd day of May in the year of our Lord, Two Thousand and Seventeen.

Within the timeline set by Section 18, Article VII of the Constitution, the President submitted to Congress on May 25, 2017, a written Report on the factual basis of Proclamation No. 216.

The Report pointed out that for decades, Mindanao has been plagued with rebellion and lawless violence which only escalated and worsened with the passing of time.

Mindanao has been the hotbed of violent extremism and a brewing rebellion for decades. In more recent years, we have witnessed the perpetration of numerous acts of violence challenging the authority of the duly constituted authorities, i.e., the Zamboanga siege, the Davao bombing, the Mamasapano carnage, and the bombings in Cotabato, Sultan Kudarat, Sulu, and Basilan, among others. Two armed groups have figured prominently in all these, namely, the Abu Sayaff Group (ASG) and the ISIS-backed Maute Group.[1]

The President went on to explain that on May 23, 2017, a government operation to capture the high-ranking officers of the Abu Sayyaf Group (ASG) and the Maute Group was conducted. These groups, which have been unleashing havoc in Mindanao, however, confronted the government operation by intensifying their efforts at sowing violence aimed not only against the government authorities and its facilities but likewise against civilians and their properties. As narrated in the President's Report:

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

[1] *Rollo* of G.R. No. 231658, p. 37.

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

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

The events commencing on 23 May 2017 put on public display the groups' clear intention to establish an Islamic State and their capability to deprive the duly constituted authorities - the President, foremost - of their powers and prerogatives.[2]

In particular, the President chronicled in his Report the events which took place on May 23, 2017 in Marawi City which impelled him to declare a state of martial law and suspend the privilege of writ of *habeas corpus*, to wit:

- At 1400H members of the Maute Group and ASG, along with their sympathizers, commenced their attack on various facilities—government and privately owned—in the City of Marawi.
- At 1600H around fifty (50) armed criminals assaulted Marawi City Jail being managed by the Bureau of Jail Management and Penology (BJMP).
- The Maute Group forcibly entered the jail facilities, destroyed its main gate, and assaulted on-duty personnel. BJMP personnel were disarmed, tied, and/or locked inside the cells.

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[2] *Id*.

- The group took cellphones, personnel-issued firearms, and vehicles (*i.e.*, two [2] prisoner vans and private vehicles).
- By 1630H, the supply of power into Marawi City had been interrupted, and sporadic gunfights were heard and felt everywhere. By evening, the power outage had spread citywide. (As of 24 May 2017, Marawi City's electric supply was still cut off, plunging the city into total black-out.)
- From 1800H to 1900H, the same members of the Maute Group ambushed and burned the Marawi Police Station. A patrol car of the Police Station was also taken.
- A member of the Provincial Drug Enforcement Unit was killed during the takeover of the Marawi City Jail. The Maute Group facilitated the escape of at least sixty-eight (68) inmates of the City Jail.
- The BJMP directed its personnel at the Marawi City Jail and other affected areas to evacuate.
- By evening of 23 May 2017, at least three (3) bridges in Lanao del Sur, namely, Lilod, Bangulo, and Sauiaran, fell under the control of these groups. They threatened to bomb the bridges to pre-empt military reinforcement.
- As of 2222H, persons connected with the Maute Group had occupied several areas in Marawi City, including Naga Street, Bangolo Street, Mapandi, and Camp Keithly, as well as the following barangays: Basak Malutlot, Mapandi, Saduc, Lilod Maday, Bangon, Saber, Bubong, Marantao, Caloocan, Banggolo, Barionaga, and Abubakar.
- These lawless armed groups had likewise set up road blockades and checkpoints at the Iligan City-Marawi City junction.
- Later in the evening, the Maute Group burned Dansalan College Foundation, Cathedral of Maria Auxiliadora, the nun's quarters in the church, and the Shia Masjid Moncado Colony. Hostages were taken from the church.
- About five (5) faculty members of Dansalan College Foundation had been reportedly killed by the lawless groups.
- Other educational institutions were also burned, namely, Senator Ninoy Aquino College Foundation and the Marawi Central Elementary Pilot School.

- The Maute Group also attacked Amai Pakpak Hospital and hoisted the DAESH flag there, among other several locations. As of 0600H of 24 May 2017, members of the Maute Group were seen guarding the entry gates of Amai Pakpak Hospital. They held hostage the employees of the Hospital and took over the PhilHealth office located thereat.
- The groups likewise laid siege to another hospital, Filipino-Libyan Friendship Hospital, which they later set ablaze.
- Lawless armed groups likewise ransacked the Landbank of the Philippines and commandeered one of its armored vehicles.
- Latest information indicates that about seventy-five percent (75%) of Marawi City has been infiltrated by lawless armed groups composed of members of the Maute Group and the ASG. As of the time of this Report, eleven (11) members of the Armed Forces and the Philippine National Police have been killed in action, while thirty-five (35) others have been seriously wounded.
- There are reports that these lawless armed groups are searching for Christian communities in Marawi City to execute Christians. They are also preventing Maranaos from leaving their homes and forcing young male Muslims to join their groups.
- Based on various verified intelligence reports from the AFP and the PNP, there exists a strategic mass action of lawless armed groups in Marawi City, seizing public and private facilities, perpetrating killings of government personnel, and committing armed uprising against and open defiance of the government.[3]

The unfolding of these events, as well as the classified reports he received, led the President to conclude that —

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

The cutting of vital lines for transportation and power; the recruitment of young Muslims to further expand their ranks and

[3] *Id*. at 38-39.

strengthen their force; the armed consolidation of their members throughout Marawi City; the decimation of a segment of the city population who resist; and the brazen display of DAESH flags constitute a clear, pronounced, and unmistakable intent to remove Marawi City, and eventually the rest of Mindanao, from its allegiance to the Government.

There exists no doubt that lawless armed groups are attempting to deprive the President of his power, authority, and prerogatives within Marawi City as a precedent to spreading their control over the entire Mindanao, in an attempt to undermine his control over executive departments, bureaus, and offices in said area; defeat his mandate to ensure that all laws are faithfully executed; and remove his supervisory powers over local governments.[4]

According to the Report, the lawless activities of the ASG, Maute Group, and other criminals, brought about undue constraints and difficulties to the military and government personnel, particularly in the performance of their duties and functions, and untold hardships to the civilians, *viz*.:

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

The taking up of arms by lawless armed groups in the area, with support being provided by foreign-based terrorists and illegal drug money, and their blatant acts of defiance which embolden other armed groups in Mindanao, have resulted in the deterioration of public order and safety in Marawi City; they have likewise compromised the security of the entire Island of Mindanao.[5]

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[4] *Id*. at 40.

[5] *Id*.

The Report highlighted the strategic location of Marawi City and the crucial and significant role it plays in Mindanao, and the Philippines as a whole. In addition, the Report pointed out the possible tragic repercussions once Marawi City falls under the control of the lawless groups.

> The groups' occupation of Marawi City fulfills a strategic objective because of its terrain and the easy access it provides to other parts of Mindanao. Lawless armed groups have historically used provinces adjoining Marawi City as escape routes, supply lines, and backdoor passages.
>
> Considering the network and alliance-building activities among terrorist groups, local criminals, and lawless armed men, the siege of Marawi City is a vital cog in attaining their long-standing goal: absolute control over the entirety of Mindanao. These circumstances demand swift and decisive action to ensure the safety and security of the Filipino people and preserve our national integrity.[6]

The President ended his Report in this wise:

> While the government is presently conducting legitimate operations to address the on-going rebellion, if not the seeds of invasion, public safety necessitates the continued implementation of martial law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao until such time that the rebellion is completely quelled.[7]

In addition to the Report, representatives from the Executive Department, the military and police authorities conducted briefings with the Senate and the House of Representatives relative to the declaration of martial law.

After the submission of the Report and the briefings, the Senate issued P.S. Resolution No. 388[8] expressing full support to the martial law proclamation and finding Proclamation No. 216 "to be satisfactory, constitutional and in accordance with the

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[6] *Id*. at 40-41.

[7] *Id*. at 41.

[8] *Id*. at 42-43.

law." In the same Resolution, the Senate declared that it found "no compelling reason to revoke the same." The Senate thus resolved as follows:

> NOW, THEREFORE, BE IT RESOLVED, as it is hereby resolved, by way of the sense of the Senate, that the Senate finds the issuance of Proclamation No. 216 to be satisfactory, constitutional and in accordance with the law. The Senate hereby supports fully Proclamation No. 216 and finds no compelling reason to revoke the same.[9]

The Senate's counterpart in the lower house shared the same sentiments. The House of Representatives likewise issued House Resolution No. 1050[10] "EXPRESSING THE FULL SUPPORT OF THE HOUSE OF REPRESENTATIVES TO PRESIDENT RODRIGO DUTERTE AS IT FINDS NO REASON TO REVOKE PROCLAMATION NO. 216, ENTITLED '*DECLARING A STATE OF MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS IN THE WHOLE OF MINDANAO*'".

The Petitions

A) G.R. No. 231658 (Lagman Petition)

On June 5, 2017, Representatives Edcel C. Lagman, Tomasito S. Villarin, Gary C. Alejano, Emmanuel A. Billones, and Teddy Brawner Baguilat, Jr. filed a *Petition*[11] *Under the Third Paragraph of Section 18 of Article VII of the 1987 Constitution*.

First, the Lagman Petition claims that the declaration of martial law has no sufficient factual basis because there is no rebellion or invasion in Marawi City or in any part of Mindanao. It argues that acts of terrorism in Mindanao do not constitute rebellion[12] since there is no proof that its purpose is to remove Mindanao

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[9] *Id*. at 43.

[10] *Id*. at 44-45.

[11] *Id*. at 3-32.

[12] *Id*. at 15.

or any part thereof from allegiance to the Philippines, its laws, or its territory.[13] It labels the flying of ISIS flag by the Maute Group in Marawi City and other outlying areas as mere propaganda[14] and not an open attempt to remove such areas from the allegiance to the Philippine Government and deprive the Chief Executive of the assertion and exercise of his powers and prerogatives therein. It contends that the Maute Group is a mere private army, citing as basis the alleged interview of *Vera Files* with Joseph Franco wherein the latter allegedly mentioned that the Maute Group is more of a "clan's private militia latching into the IS brand theatrically to inflate perceived capability".[15] The Lagman Petition insists that during the briefing, representatives of the military and defense authorities did not categorically admit nor deny the presence of an ISIS threat in the country but that they merely gave an evasive answer[16] that "there is ISIS in the Philippines".[17] The Lagman Petition also avers that Lt. Gen. Salvador Mison, Jr. himself admitted that the current armed conflict in Marawi City was precipitated or initiated by the government in its bid to capture Hapilon.[18] Based on said statement, it concludes that the objective of the Maute Group's armed resistance was merely to shield Hapilon and the Maute brothers from the government forces, and not to lay siege on Marawi City and remove its allegiance to the Philippine Republic.[19] It then posit that if at all, there is only a *threat* of rebellion in Marawi City which is akin to "imminent danger" of rebellion, which is no longer a valid ground for the declaration of martial law.[20]

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[13] *Id*. at 16.

[14] *Id*. at 16-17.

[15] *Id*. at 17.

[16] *Id*.

[17] *Id*.

[18] *Id*. at 19.

[19] *Id*. at 20.

[20] *Id*. at 20-21.

Second, the Lagman Petition claims that the declaration of martial law has no sufficient factual basis because the President's Report contained "false, inaccurate, contrived and hyperbolic accounts."[21]

It labels as false the claim in the President's Report that the Maute Group attacked Amai Pakpak Medical Center. Citing online reports on the interview of Dr. Amer Saber (Dr. Saber), the hospital's Chief, the Lagman Petition insists that the Maute Group merely brought an injured member to the hospital for treatment but did not overrun the hospital or harass the hospital personnel.[22] The Lagman Petition also refutes the claim in the President's Report that a branch of the Landbank of the Philippines was ransacked and its armored vehicle commandeered. It alleges that the bank employees themselves clarified that the bank was not ransacked while the armored vehicle was owned by a third party and was empty at the time it was commandeered.[23] It also labels as false the report on the burning of the Senator Ninoy Aquino College Foundation and the Marawi Central Elementary Pilot School. It avers that the Senator Ninoy Aquino College Foundation is intact as of May 24, 2017 and that according to Asst. Superintendent Ana Alonto, the Marawi Central Elementary Pilot School was not burned by the terrorists.[24] Lastly, it points out as false the report on the beheading of the police chief of Malabang, Lanao del Sur, and the occupation of the Marawi City Hall and part of the Mindanao State University.[25]

Third, the Lagman Petition claims that the declaration of martial law has no sufficient factual basis since the President's Report mistakenly included the attack on the military outpost in Butig, Lanao del Sur in February 2016, the mass jail break in Marawi City in August 2016, the Zamboanga siege, the Davao

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[21] *Id*. at 23.

[22] *Id*. at 24.

[23] *Id*.

[24] *Id*. at 24-25.

[25] *Id*. at 25.

market bombing, the Mamasapano carnage and other bombing incidents in Cotabato, Sultan Kudarat, and Basilan, as additional factual bases for the proclamation of martial law. It contends that these events either took place long before the conflict in Marawi City began, had long been resolved, or with the culprits having already been arrested.[26]

Fourth, the Lagman Petition claims that the declaration of martial law has no sufficient factual basis considering that the President acted alone and did not consult the military establishment or any ranking official[27] before making the proclamation.

Finally, the Lagman Petition claims that the President's proclamation of martial law lacks sufficient factual basis owing to the fact that during the presentation before the Committee of the Whole of the House of Representatives, it was shown that the military was even successful in pre-empting the ASG and the Maute Group's plan to take over Marawi City and other parts of Mindanao; there was absence of any hostile plan by the Moro Islamic Liberation Front; and the number of foreign fighters allied with ISIS was "undetermined"[28] which indicates that there are only a meager number of foreign fighters who can lend support to the Maute Group.[29]

Based on the foregoing argumentation, the Lagman Petition asks the Court to: (1) "exercise its specific and special jurisdiction to review sufficiency of the factual basis of Proclamation No. 216"; and (2) render "a Decision voiding and nullifying Proclamation No. 216" for lack of sufficient factual basis.[30]

In a Resolution[31] dated June 6, 2017, the Court required respondents to comment on the Lagman Petition and set the case for oral argument on June 13, 14, and 15, 2017.

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[26] *Id*.

[27] *Id*. at 26-27.

[28] *Id*. at 28.

[29] *Id*. at 29.

[30] *Id*. at 29-30.

[31] *Id*. at 48-50.

On June 9, 2017, two other similar petitions docketed as G.R. Nos. 231771 and 231774 were filed and eventually consolidated with G.R. No. 231658.[32]

B) G.R. No. 231771 (Cullamat Petition)

The Cullamat Petition, "anchored on Section 18, Article VII"[33] of the Constitution, likewise seeks the nullification of Proclamation No. 216 for being unconstitutional because it lacks sufficient factual basis that there is rebellion in Mindanao and that public safety warrants its declaration.[34]

In particular, it avers that the supposed rebellion described in Proclamation No. 216 relates to events happening in Marawi City only and not in the entire region of Mindanao. It concludes that Proclamation No. 216 "failed to show any factual basis for the imposition of martial law in the *entire Mindanao*,"[35] "failed to allege any act of rebellion *outside Marawi City*, much less x x x allege that public safety requires the imposition of martial law *in the whole of Mindanao*."[36]

The Cullamat Petition claims that the alleged "capability of the Maute Group and other rebel groups to sow terror and cause death and damage to property"[37] does not rise to the level of rebellion sufficient to declare martial law in the whole of Mindanao.[38] It also posits that there is no lawless violence in other parts of Mindanao similar to that in Marawi City.[39]

Moreover, the Cullamat Petition assails the inclusion of the phrase "other rebel groups" in the last Whereas Clause of

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[32] *Rollo* of G.R. No. 231771, pp. 80-83; *rollo* of G.R. No. 231774, pp. 47-50.

[33] *Rollo* of G.R. No. 231771, pp. 4, 7.

[34] *Id*. at 5.

[35] *Id*. at 23. Italics supplied.

[36] *Id*. at 23-24. Italics supplied.

[37] *Id*. at 24.

[38] *Id*.

[39] *Id*. at 27.

Proclamation No. 216 for being vague as it failed to identify these rebel groups and specify the acts of rebellion that they were supposedly waging.[40]

In addition, the Cullamat Petition cites alleged inaccuracies, exaggerations, and falsities in the Report of the President to Congress, particularly the attack at the Amai Pakpak Hospital, the ambush and burning of the Marawi Police Station, the killing of five teachers of Dansalan College Foundation, and the attacks on various government facilities.[41]

In fine, the Cullamat Petition prays for the Court to declare Proclamation No. 216 as unconstitutional or in the alternative, should the Court find justification for the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* in Marawi City, to declare the same as unconstitutional insofar as its inclusion of the other parts of Mindanao.[42]

C) G.R. No. 231774 (Mohamad Petition)

The Mohamad Petition, denominated as a "Petition for Review of the Sufficiency of [the] Factual Basis of [the] Declaration of Martial Law and [the] Suspension of the Privilege of the Writ of *Habeas Corpus*,"[43] labels itself as "a special proceeding"[44] or an "appropriate proceeding filed by any citizen"[45] authorized under Section 18, Article VII of the Constitution.

The Mohamad Petition posits that martial law is a measure of last resort[46] and should be invoked by the President only after exhaustion of less severe remedies.[47] It contends that the

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[40] *Id*. at 24-25.

[41] *Id*. at 28-29.

[42] *Id*. at 31.

[43] *Rollo* of G.R. No. 231774, p. 3.

[44] *Id*. at 6.

[45] *Id*. at 8.

[46] *Id*. at 11.

[47] *Id*.

extraordinary powers of the President should be dispensed sequentially, *i.e.*, first, the power to call out the armed forces; second, the power to suspend the privilege of the writ of *habeas corpus*; and finally, the power to declare martial law.[48] It maintains that the President has no discretion to choose which extraordinary power to use; moreover, his choice must be dictated only by, and commensurate to, the exigencies of the situation.[49]

According to the Mohamad Petition, the factual situation in Marawi is not so grave as to require the imposition of martial law.[50] It asserts that the Marawi incidents "do not equate to the existence of a public necessity brought about by an actual rebellion, which would compel the imposition of martial law or the suspension of the privilege of the writ of *habeas corpus*".[51] It proposes that "[m]artial law can only be justified if the rebellion or invasion has reached such gravity that [its] imposition x x x is compelled by the needs of public safety"[52] which, it believes, is not yet present in Mindanao.

Moreover, it alleges that the statements contained in the President's Report to the Congress, to wit: that the Maute Group intended to establish an Islamic State; that they have the capability to deprive the duly constituted authorities of their powers and prerogatives; and that the Marawi armed hostilities is merely a prelude to a grander plan of taking over the whole of Mindanao, are conclusions bereft of substantiation.[53]

The Mohamad Petition posits that immediately after the declaration of martial law, and without waiting for a congressional action, a suit may already be brought before the Court to assail the sufficiency of the factual basis of Proclamation No. 216.

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[48] *Id*.

[49] *Id*. at 12.

[50] *Id*. at 15.

[51] *Id*. at 17.

[52] *Id*. at 12.

[53] *Id*. at 20-21.

Finally, in invoking this Court's power to review the sufficiency of the factual basis for the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus*, the Mohamad Petition insists that the Court may "look into the wisdom of the [President's] actions, [and] not just the presence of arbitrariness".[54] Further, it asserts that since it is making a negative assertion, then the burden to prove the sufficiency of the factual basis is shifted to and lies on the respondents.[55] It thus asks the Court "to compel the [r]espondents to divulge relevant information"[56] in order for it to review the sufficiency of the factual basis.

In closing, the Mohamad Petition prays for the Court to exercise its power to review, "compel respondents to present proof on the factual basis [of] the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao"[57] and declare as unconstitutional Proclamation No. 216 for lack of sufficient factual basis.

The Consolidated Comment

The respondents' Consolidated Comment[58] was filed on June 12, 2017, as required by the Court. Noting that the same coincided with the celebration of the 119th anniversary of the independence of this Republic, the Office of the Solicitor General (OSG) felt that "defending the constitutionality of Proclamation No. 216" should serve as "a rallying call for every Filipino to unite behind one true flag and defend it against all threats from within and outside our shores."[59]

The OSG acknowledges that Section 18, Article VII of the Constitution vests the Court with the authority or power to review

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[54] *Id*. at 23.

[55] *Id*. at 24.

[56] *Id*.

[57] *Id*. at 25.

[58] *Rollo* of G.R. No. 231658, pp. 85-135.

[59] *Id*. at 130.

the sufficiency of the factual basis of the declaration of martial law.[60] The OSG, however, posits that although Section 18, Article VII lays the basis for the exercise of such authority or power, the same constitutional provision failed to specify the vehicle, mode or remedy through which the "appropriate proceeding" mentioned therein may be resorted to. The OSG suggests that the "appropriate proceeding" referred to in Section 18, Article VII may be availed of using the vehicle, mode or remedy of a *certiorari* petition, either under Section 1 or 5, of Article VIII.[61] Corollarily, the OSG maintains that the review power is not mandatory, but discretionary only, on the part of the Court.[62] The Court has the discretion not to give due course to the petition.[63]

Prescinding from the foregoing, the OSG contends that the sufficiency of the factual basis of Proclamation No. 216 should be reviewed by the Court "under the lens of grave abuse of discretion"[64] and not the yardstick of correctness of the facts.[65] Arbitrariness, not correctness, should be the standard in reviewing the sufficiency of factual basis.

The OSG maintains that the burden lies not with the respondents but with the petitioners to prove that Proclamation No. 216 is bereft of factual basis. It thus takes issue with petitioners' attempt to shift the burden of proof when they asked the Court "to compel [the] respondents to present proof on the factual basis"[66] of Proclamation No. 216. For the OSG, "he who alleges must prove"[67] and that governmental actions are presumed to be valid and constitutional.[68]

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[60] *Id*. at 105.

[61] *Id*. at 106.

[62] *Id*. at 105.

[63] *Id*.

[64] *Id*. at 107.

[65] *Id*.

[66] *Id*. at 111.

[67] *Id*.

[68] *Id*.

Likewise, the OSG posits that the sufficiency of the factual basis must be assessed from the trajectory or point of view of the President and based on the facts available to him *at the time the decision was made*.[69] It argues that the sufficiency of the factual basis should be examined *not* based on the facts discovered *after* the President had made his decision to declare martial law because to do so would subject the exercise of the President's discretion to an impossible standard.[70] It reiterates that the President's decision should be guided only by the information and data available to him at the time he made the determination.[71] The OSG thus asserts that facts that were established *after* the declaration of martial law should *not* be considered in the review of the sufficiency of the factual basis of the proclamation of martial law. The OSG suggests that the assessment of after-proclamation-facts lies with the President and Congress for the purpose of determining the propriety of revoking or extending the martial law. The OSG fears that the Court considers after-proclamation-facts in its review of the sufficiency of the factual basis for the proclamation, it would in effect usurp the powers of the Congress to determine whether martial law should be revoked or extended.[72]

It is also the assertion of the OSG that the President could validly rely on intelligence reports coming from the Armed Forces of the Philippines;[73] and that he could not be expected to personally determine the veracity of the contents of the reports.[74] Also, since the power to impose martial law is vested solely on the President as Commander-in-Chief, the lack of recommendation from the Defense Secretary, or any official for that matter, will not nullify the said declaration, or affect its validity, or compromise the sufficiency of the factual basis.

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[69] *Id*. at 112.

[70] *Id*. at 113.

[71] *Id*.

[72] *Id*.

[73] *Id*.

[74] *Id*. at 114.

Moreover, the OSG opines that the petitioners miserably failed to validly refute the facts cited by the President in Proclamation No. 216 and in his Report to the Congress by merely citing news reports that supposedly contradict the facts asserted therein or by criticizing in piecemeal the happenings in Marawi. For the OSG, the said news articles are "hearsay evidence, twice removed,"[75] and thus inadmissible and without probative value, and could not overcome the "legal presumption bestowed on governmental acts."[76]

Finally, the OSG points out that it has no duty or burden to prove that Proclamation No. 216 has sufficient factual basis. It maintains that the burden rests with the petitioners. However, the OSG still endeavors to lay out the factual basis relied upon by the President "if only to remove any doubt as to the constitutionality of Proclamation No. 216".[77]

The facts laid out by the OSG in its Consolidated Comment will be discussed in detail in the Court's Ruling.

ISSUES

The issues as contained in the revised Advisory[78] are as follows:

1. Whether or not the petitions docketed as G.R. Nos. 231658, 231771, and 231774 are the "appropriate proceeding" covered by Paragraph 3, Section 18, Article VII of the Constitution sufficient to invoke the mode of review required of this Court when a declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* is promulgated;
2. Whether or not the President in declaring martial law and suspending the privilege of the writ of *habeas corpus*:

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[75] *Id*.

[76] *Id*.

[77] *Id*. at 119.

[78] See Notice dated June 13, 2017, *id.* at 211-216.

a. is required to be factually correct or only not arbitrary in his appreciation of facts;

b. is required to obtain the favorable recommendation thereon the Secretary of National Defense;

c. is required to take into account only the situation at the time of the proclamation, even if subsequent events prove the situation to have not been accurately reported;

3. Whether or not the power of this Court to review the sufficiency of the factual basis [of] the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* is independent of the actual actions that have been taken by Congress jointly or separately;

4. Whether or not there were sufficient factual [basis] for the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*;

a. What are the parameters for review?

b. Who has the burden of proof?

c. What is the threshold of evidence?

5. Whether the exercise of the power of judicial review by this Court involves the calibration of graduated powers granted the President as Commander-in-Chief, namely calling out powers, suspension of the privilege of the writ of *habeas corpus*, and declaration of martial law;

6. Whether or not Proclamation No. 216 of 23 May 2017 may be considered vague and thus null and void:

a. with its inclusion of "other rebel groups;" or

b. since it has no guidelines specifying its actual operational parameters within the entire Mindanao region;

7. Whether or not the armed hostilities mentioned in Proclamation No. 216 and in the Report of the President to Congress are sufficient [bases]:

a. for the existence of actual rebellion; or

b. for a declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao region;

8. Whether or not terrorism or acts attributable to terrorism are equivalent to actual rebellion and the requirements of public safety sufficient to declare martial law or suspend the privilege of the writ of *habeas corpus*; and

9. Whether or not nullifying Proclamation No. 216 of 23 May 2017 will:

a. have the effect of recalling Proclamation No. 55 s. 2016; or

b. also nullify the acts of the President in calling out the armed forces to quell lawless violence in Marawi and other parts of the Mindanao region.

After the oral argument, the parties submitted their respective memoranda and supplemental memoranda.

OUR RULING

I. *Locus standi of petitioners.*

One of the requisites for judicial review is *locus standi*, *i.e.*, "the constitutional question is brought before [the Court] by a party having the requisite 'standing' to challenge it."[79] As a general rule, the challenger must have "a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement."[80] Over the years, there has been a trend towards relaxation of the rule on legal standing, a prime example of which is found in Section 18 of Article VII which provides that *any citizen* may file the appropriate proceeding to assail the sufficiency of the factual

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[79] Bernas, Joaquin G., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 1996 ed., p. 850.

[80] *Id*., citing *People v. Vera*, 65 Phil. 56, 89 (1937); *Police General Macasiano (Ret.) v. National Housing Authority*, 296 Phil. 56, 64 (1993).

basis of the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus*. "[T]he only requisite for standing to challenge the validity of the suspension is that the challenger be a citizen. He need not even be a taxpayer."[81]

Petitioners in the Cullamat Petition claim to be "suing in their capacities as citizens of the Republic;"[82] similarly, petitioners in the Mohamad Petition all claim to be "Filipino citizens, all women, all of legal [age], and residents of Marawi City".[83] In the Lagman Petition, however, petitioners therein did not categorically mention that they are suing as citizens but merely referred to themselves as duly elected Representatives.[84] That they are suing in their official capacities as Members of Congress could have elicited a vigorous discussion considering the issuance by the House of Representatives of House Resolution No. 1050 expressing full support to President Duterte and finding no reason to revoke Proclamation No. 216. By such resolution, the House of Representatives is declaring that it finds no reason to review the sufficiency of the factual basis of the martial law declaration, which is in direct contrast to the views and arguments being espoused by the petitioners in the Lagman Petition. Considering, however, the trend towards relaxation of the rules on legal standing, as well as the transcendental issues involved in the present Petitions, the Court will exercise judicial self-restraint[85] and will not venture into this matter. After all, "the Court is not entirely without discretion to accept a suit which does not satisfy the requirements of a [*bona fide*] case or of standing. Considerations paramount to [the requirement of legal standing] could compel assumption of jurisdiction."[86] In any

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[81] Bernas, Joaquin G., *Constitutional Rights and Social Demands*, 2010 ed., p. 795.

[82] *Rollo* of G.R. No. 231771, p. 7.

[83] *Rollo* of G.R. No. 231774, p. 6.

[84] *Rollo* of G.R. No. 231658, pp. 4-5.

[85] Bernas, Joaquin G., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 1996 ed., p. 852.

[86] *Id*. at 851.

case, the Court can take judicial cognizance of the fact that petitioners in the Lagman Petition are all citizens of the Philippines since Philippine citizenship is a requirement for them to be elected as representatives. We will therefore consider them as suing in their own behalf as citizens of this country. Besides, respondents did not question petitioners' legal standing.

II. *Whether or not the petitions are the "appropriate proceeding" covered by paragraph 3, Section 18, Article VII of the Constitution sufficient to invoke the mode of review required by the Court.*

All three petitions beseech the cognizance of this Court based on the third paragraph of Section 18, Article VII (Executive Department) of the 1987 Constitution which provides:

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

During the oral argument, the petitioners theorized that the jurisdiction of this Court under the third paragraph of Section 18, Article VII is *sui generis*.[87] It is a special and specific jurisdiction of the Supreme Court different from those enumerated in Sections 1 and 5 of Article VIII.[88]

The Court agrees.

a) Jurisdiction must be specifically conferred by the Constitution or by law.

It is settled that jurisdiction over the subject matter is conferred only by the Constitution or by the law.[89] Unless jurisdiction

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[87] TSN of Oral Argument, June 13, 2017, p. 83.

[88] *Id*. at 21-22.

[89] *De Jesus v. Garcia*, 125 Phil. 955, 959 (1967).

has been *specifically* conferred by the Constitution or by some legislative act, no body or tribunal has the power to act or pass upon a matter brought before it for resolution. It is likewise settled that in the absence of a *clear* legislative intent, jurisdiction cannot be implied from the language of the Constitution or a statute.[90] It must appear clearly from the law or it will not be held to exist.[91]

A plain reading of the afore-quoted Section 18, Article VII reveals that it specifically grants authority to the Court to determine the sufficiency of the factual basis of the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*.

b) "In an appropriate proceeding" does not refer to a petition for certiorari filed under Section 1 or 5 of Article VIII.

It could not have been the intention of the framers of the Constitution that the phrase "in an appropriate proceeding" would refer to a Petition for *Certiorari* pursuant to Section 1 or Section 5 of Article VIII. The standard of review in a petition for *certiorari* is whether the respondent has committed any grave abuse of discretion amounting to lack or excess of jurisdiction in the performance of his or her functions. Thus, it is not the proper tool to review the sufficiency of the factual basis of the proclamation or suspension. It must be emphasized that under Section 18, Article VII, the Court is tasked to review the sufficiency of the *factual* basis of the President's exercise of emergency powers. Put differently, if this Court applies the standard of review used in a petition for *certiorari*, the same would emasculate its constitutional task under Section 18, Article VII.

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[90] Agpalo, Ruben, E., *Statutory Construction*, 2003 ed., p. 167, citing *Pimentel v. Commission on Elections*, 189 Phil. 581, 587 (1980) and *Dimagiba v. Geraldez*, 102 Phil. 1016, 1019 (1958).

[91] *De Jesus v. Garcia*, *supra* at 960.

c) Purpose/significance of Section 18, Article VII is to constitutionalize the pre-Marcos martial law ruling in In the Matter of the Petition for Habeas Corpus of Lansang.

The third paragraph of Section 18, Article VII was inserted by the framers of the 1987 Constitution to constitutionalize the pre-Marcos martial law ruling of this Court in *In the Matter of the Petition for Habeas Corpus of Lansang*,[92] to wit: that the factual basis of the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* is not a political question but precisely within the ambit of judicial review.

"In determining the meaning, intent, and purpose of a law or constitutional provision, the history of the times out of which it grew and to which it may be rationally supposed to bear some direct relationship, the evils intended to be remedied, and the good to be accomplished are proper subjects of inquiry."[93] Fr. Joaquin G. Bernas, S.J. (Fr. Bernas), a member of the Constitutional Commission that drafted the 1987 Constitution, explained:

> The Commander-in-Chief provisions of the 1935 Constitution had enabled President Ferdinand Marcos to impose authoritarian rule on the Philippines from 1972 to 1986. ***Supreme Court decisions during that period upholding the actions taken by Mr. Marcos made authoritarian rule part of Philippine constitutional jurisprudence.*** The members of the Constitutional Commission, very much aware of these facts, went about reformulating the Commander-in-Chief powers with a view to dismantling what had been constructed during the authoritarian years. The new formula included revised grounds for the activation of emergency powers, the manner of activating them, the scope of the powers, and review of presidential action.[94] (Emphasis supplied)

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[92] 149 Phil. 547 (1971).

[93] Agpalo, Ruben, E., *Statutory Construction*, 2003 edition, p. 109.

[94] Bernas, Joaquin, G., *The Intent of the 1986 Constitution Writers*, 1995 ed., p. 456.

To recall, the Court held in the 1951 case of *Montenegro v. Castañeda*[95] that the authority to decide whether there is a state of rebellion requiring the suspension of the privilege of the writ of *habeas corpus* is lodged with the President and his decision thereon is final and conclusive upon the courts. This ruling was reversed in the 1971 case of *Lansang* where it was held that the factual basis of the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* is not a political question and is within the ambit of judicial review.[96] However, in 1983, or after the declaration of martial law by former President Ferdinand E. Marcos, the Court, in *Garcia-Padilla v. Enrile*,[97] abandoned the ruling in *Lansang* and reverted to *Montenegro*. According to the Supreme Court, the constitutional power of the President to suspend the privilege of the writ of *habeas corpus* is not subject to judicial inquiry.[98]

Thus, by inserting Section 18 in Article VII which allows judicial review of the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*, the framers of the 1987 Constitution in effect constitutionalized and reverted to the Lansang doctrine.

d) Purpose of Section 18, Article VII is to provide additional safeguard against possible abuse by the President on the exercise of the extraordinary powers.

Section 18, Article VII is meant to provide additional safeguard against possible abuse by the President in the exercise of his power to declare martial law or suspend the privilege of the writ of *habeas corpus*. Reeling from the aftermath of the Marcos martial law, the framers of the Constitution deemed it wise to

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[95] 91 Phil. 882, 887 (1952).

[96] *In the Matter of the Petition for Habeas Corpus of Lansang*, *supra* note 92 at 585-586.

[97] 206 Phil. 392 (1983).

[98] *Id*. at 419.

insert the now third paragraph of Section 18 of Article VII.[99] This is clear from the records of the Constitutional Commission when its members were deliberating on whether the President could proclaim martial law even without the concurrence of Congress. Thus:

MR. SUAREZ. Thank you, Madam President.

The Commissioner is proposing a very substantial amendment because this means that he is vesting exclusively unto the President the right to determine the factors which may lead to the declaration of martial law and the suspension of the writ of *habeas corpus*. I suppose he has strong and compelling reasons in seeking to delete this particular phrase. May we be informed of his good and substantial reasons?

MR. MONSOD. This situation arises in cases of invasion or rebellion. And in previous interpellations regarding this phrase, even during the discussions on the Bill of Rights, as I understand it, the interpretation is a situation of actual invasion or rebellion. In these situations, the President has to act quickly. Secondly, this declaration has a time fuse. It is only good for a maximum of 60 days. At the end of 60 days, it automatically terminates. Thirdly, the right of the judiciary to inquire into the sufficiency of the factual basis of the proclamation always exists, even during those first 60 days.

MR. SUAREZ. Given our traumatic experience during the past administration, if we give exclusive right to the President to determine these factors, especially the existence of an invasion or rebellion and the second factor of determining whether the public safety requires it or not, may I call the attention of the Gentleman to what happened to us during the past administration. Proclamation No. 1081 was issued by Ferdinand E. Marcos in his capacity as President of the Philippines by virtue of the powers vested upon him purportedly under Article VII, Section 10 (2) of the Constitution, wherein he made this predicate under the "Whereas" provision:

> Whereas, the rebellion and armed action undertaken by these lawless elements of the Communists and other armed

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[99] See also Cruz, Isagani, A., *Philippine Political Law*, 2002 edition, pp. 225-226.

> aggrupations organized to overthrow the Republic of the Philippines by armed violence and force have assumed the magnitude of an actual state of war against our people and the Republic of the Philippines.

And may I also call the attention of the Gentleman to General Order No. 3, also promulgated by Ferdinand E. Marcos, in his capacity as Commander-in-Chief of all the Armed Forces of the Philippines and pursuant to Proclamation No. 1081 dated September 21, 1972 wherein he said, among other things:

> Whereas, martial law having been declared because of wanton destruction of lives and properties, widespread lawlessness and anarchy and chaos and disorder now prevailing throughout the country, which condition has been brought about by groups of men who are actively engaged in a criminal conspiracy to seize political and state power in the Philippines in order to take over the government by force and violence, the extent of which has now assumed the proportion of an actual war against our people and the legitimate government . . .

And he gave all reasons in order to suspend the privilege of the writ of *habeas corpus* and declare martial law in our country without justifiable reason. Would the Gentleman still insist on the deletion of the phrase 'and, with the concurrence of at least a majority of all the members of the Congress'?

MR. MONSOD. ***Yes, Madam President, in the case of Mr. Marcos, he is undoubtedly an aberration in our history and national consciousness. But given the possibility that there would be another Marcos, our Constitution now has sufficient safeguards. As I said, it is not really true, as the Gentleman has mentioned, that there is an exclusive right to determine the factual basis because the paragraph beginning on line 9 precisely tells us that the Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof and must promulgate its decision on the same within 30 days from its filing.***

I believe that there are enough safeguards. The Constitution is supposed to balance the interests of the country. And here we are trying to balance the public interest in case of invasion or rebellion as against the rights of citizens. And I am saying that there are

enough safeguards, unlike in 1972 when Mr. Marcos was able to do all those things mentioned.[100]

To give more teeth to this additional safeguard, the framers of the 1987 Constitution not only placed the President's proclamation of martial law or suspension of the privilege of the writ of *habeas corpus* within the ambit of judicial review, it also relaxed the rule on standing by allowing any citizen to question before this Court the sufficiency of the factual basis of such proclamation or suspension. Moreover, the third paragraph of Section 18, Article VII veritably conferred upon any citizen a demandable right to challenge the sufficiency of the factual basis of said proclamation or suspension. It further designated this Court as the reviewing tribunal to examine, in an appropriate proceeding, the sufficiency of the factual basis and to render its decision thereon within a limited period of 30 days from date of filing.

e) Purpose of Section 18, Article VII is to curtail the extent of the powers of the President.

The most important objective, however, of Section 18, Article VII is the **curtailment of the extent of the powers of the Commander-in-Chief**. This is the primary reason why the provision was not placed in Article VIII or the Judicial Department but remained under Article VII or the Executive Department.

During the closing session of the Constitutional Commission's deliberations, President Cecilia Muñoz Palma expressed her sentiments on the 1987 Constitution. She said:

> The executive power is vested in the President of the Philippines elected by the people for a six-year term with no reelection for the duration of his/her life. **While traditional powers inherent in the office of the President are granted, nonetheless for the first time, there are specific provisions which curtail the extent of such powers. Most significant is the power of the Chief Executive to**

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[100] II RECORD, CONSTITUTIONAL COMMISSION 476-477 (July 30, 1986).

suspend the privilege of the writ of *habeas corpus* or proclaim martial law.

The flagrant abuse of that power of the Commander-in-Chief by Mr. Marcos caused the imposition of martial law for more than eight years and the suspension of the privilege of the writ even after the lifting of martial law in 1981. The new Constitution now provides that those powers can be exercised only in two cases, invasion or rebellion when public safety demands it, only for a period not exceeding 60 days, and reserving to Congress the power to revoke such suspension or proclamation of martial law which congressional action may not be revoked by the President. More importantly, the action of the President is made subject to judicial review, thereby again discarding jurisprudence which render[s] the executive action a political question and beyond the jurisdiction of the courts to adjudicate.

For the first time, there is a provision that the state of martial law does not suspend the operation of the Constitution nor abolish civil courts or legislative assemblies, or vest jurisdiction to military tribunals over civilians, or suspend the privilege of the writ. Please forgive me if, at this point, I state that this constitutional provision vindicates the dissenting opinions I have written during my tenure in the Supreme Court in the martial law cases.[101]

f) To interpret "appropriate proceeding" as filed under Section 1 of Article VIII would be contrary to the intent of the Constitution.

To conclude that the "appropriate proceeding" refers to a Petition for *Certiorari* filed under the expanded jurisdiction of this Court would, therefore, contradict the clear intention of the framers of the Constitution to place *additional* safeguards against possible martial law abuse for, invariably, the third paragraph of Section 18, Article VII would be subsumed under Section I of Article VIII. In other words, the framers of the Constitution added the safeguard under the third paragraph of Section 18, Article VII on top of the expanded jurisdiction of this Court.

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[101] V RECORD, CONSTITUTIONAL COMMISSION 1009-1010 (October 15, 1986). Emphasis supplied.

g) Jurisdiction of the Court is not restricted to those enumerated in Sections 1 and 5 of Article VIII.

The jurisdiction of this Court is not restricted to those enumerated in Sections 1 and 5 of Article VIII. For instance, its jurisdiction to be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President can be found in the last paragraph of Section 4, Article VII.[102] The power of the Court to review on *certiorari* the decision, order, or ruling of the Commission on Elections and Commission on Audit can be found in Section 7, Article IX(A).[103]

h) Unique features of the third paragraph of Section 18, Article VII make it sui generis.

The unique features of the third paragraph of Section 18, Article VII clearly indicate that it should be treated as *sui generis* separate and different from those enumerated in Article VIII. Under the third paragraph of Section 18, Article VII, a petition filed pursuant therewith will follow a different rule on standing as any citizen may file it. Said provision of the Constitution also limits the issue to the sufficiency of the factual basis of the exercise by the Chief Executive of his emergency powers. The usual period for filing pleadings in Petition for *Certiorari* is likewise not applicable under the third paragraph

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[102] "The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose."

[103] "Section 7. Each Commission shall decide by a majority vote of all its Members, any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. **Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof.**" (Emphasis supplied)

of Section 18, Article VII considering the limited period within which this Court has to promulgate its decision.

A proceeding "[i]n its general acceptation, [is] the form in which actions are to be brought and defended, the manner of intervening in suits, of conducting them, the mode of deciding them, of opposing judgments, and of executing."[104] In fine, the phrase "in an appropriate proceeding" appearing on the third paragraph of Section 18, Article VII refers to any action initiated by a citizen for the purpose of questioning the sufficiency of the factual basis of the exercise of the Chief Executive's emergency powers, as in these cases. It could be denominated as a complaint, a petition, or a matter to be resolved by the Court.

III. *The power of the Court to review the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege, of the writ of habeas corpus under Section 18, Article VII of the 1987 Constitution is independent of the actions taken by Congress.*

During the oral argument,[105] the OSG urged the Court to give deference to the actions of the two co-equal branches of the Government: on the part of the President as Commander-in-Chief, in resorting to his extraordinary powers to declare martial law and suspend the privilege of the writ of *habeas corpus*; and on the part of Congress, in giving its imprimatur to Proclamation No. 216 and not revoking the same.

The framers of the 1987 Constitution reformulated the scope of the extraordinary powers of the President as Commander-in-Chief and the review of the said presidential action. In particular, the President's extraordinary powers of suspending the privilege of the writ of *habeas corpus* and imposing martial law are subject to the veto powers of the Court and Congress.

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[104] Ballentine, J., *Law Dictionary with Pronunciations*, 1948 ed., p. 1023; Bouvier, J., *Law Dictionary and Concise Encyclopedia*, 8th ed., Vol. II, p. 2730.

[105] TSN of Oral Argument, June 14, 2017, pp. 99-100.

a) The judicial power to review versus the congressional power to revoke.

The Court may strike down the presidential proclamation in an appropriate proceeding filed by any citizen on the ground of lack of sufficient factual basis. On the other hand, Congress may revoke the proclamation or suspension, which revocation shall not be set aside by the President.

In reviewing the sufficiency of the factual basis of the proclamation or suspension, the Court considers only the information and data available to the President prior to or at the time of the declaration; it is not allowed to "undertake an independent investigation beyond the pleadings."[106] On the other hand, Congress may take into consideration not only data available prior to, but likewise events supervening the declaration. Unlike the Court which does not look into the absolute correctness of the factual basis as will be discussed below, Congress could probe deeper and further; it can delve into the accuracy of the facts presented before it.

In addition, the Court's review power is passive; it is only initiated by the filing of a petition "in an appropriate proceeding" by a citizen. On the other hand, Congress' review mechanism is automatic in the sense that it may be activated by Congress itself at any time after the proclamation or suspension was made.

Thus, the power to review by the Court and the power to revoke by Congress are not only totally different but likewise independent from each other although concededly, they have the same trajectory, which is, the nullification of the presidential proclamation. Needless to say, the power of the Court to review can be exercised independently from the power of revocation of Congress.

b) The framers of the 1987 Constitution intended the judicial power to review to

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[106] *David v. President Macapagal-Arroyo,* 522 Phil. 705, 767 (2006), citing *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 643 (2000).

be exercised independently from the congressional power to revoke.

If only to show that the intent of the framers of the 1987 Constitution was to vest the Court and Congress with veto powers independently from each other, we quote the following exchange:

MS. QUESADA. Yesterday, the understanding of many was that there would be safeguards that Congress will be able to revoke such proclamation.

MR. RAMA. Yes.

MS. QUESADA. But now, if they cannot meet because they have been arrested or that the Congress has been padlocked, then who is going to declare that such a proclamation was not warranted?

x x x x x x x x x

MR. REGALADO. May I also inform Commissioner Quesada that the judiciary is not exactly just standing by. A petition for a writ of *habeas corpus*, if the Members are detained, can immediately be applied for, and the Supreme Court shall also review the factual basis. x x x[107]

c) Re-examination of the Court's pronouncement in Fortun v. President Macapagal-Arroyo.

Considering the above discussion, the Court finds it imperative to re-examine, reconsider, and set aside its pronouncement in *Fortun v. President Macapagal-Arroyo*[108] to the effect that:

Consequently, although the Constitution reserves to the Supreme Court the power to review the sufficiency of the factual basis of the proclamation or suspension in a proper suit, it is implicit that the Court must allow Congress to exercise its own review powers, which is automatic rather than initiated. Only when Congress defaults in its express duty to defend the Constitution through such review should the Supreme Court step in as its final rampart. The constitutional

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[107] II RECORD, CONSTITUTIONAL COMMISSION 503-504 (July 31, 1986).

[108] *Fortun v. President Macapagal-Arroyo*, 684 Phil. 526 (2012).

validity of the President's proclamation of martial law or suspension of the writ of *habeas corpus* is first a political question in the hands of Congress before it becomes a justiciable one in the hands of the Court.[109]

x x x x x x x x x

If the Congress procrastinates or altogether fails to fulfill its duty respecting the proclamation or suspension within the short time expected of it, then the Court can step in, hear the petitions challenging the President's action, and ascertain if it has a factual basis. x x x.[110]

By the above pronouncement, the Court willingly but unwittingly clipped its own power and surrendered the same to Congress as well as, abdicated from its bounden duty to review. Worse, the Court considered itself just on stand-by, waiting and willing to act as a substitute in case Congress "defaults." It is an aberration, a stray declaration, which must be rectified and set aside in this proceeding.[111]

We, therefore, hold that the Court can simultaneously exercise its power of review with, and independently from, the power to revoke by Congress. Corollary, any perceived inaction or default on the part of Congress does not deprive or deny the Court of its power to review.

IV. *The judicial power to review the sufficiency of factual basis of the declaration of martial law or the suspension of the privilege of the writ of habeas corpus does not extend to the calibration of the President's decision of which among his graduated powers he will avail of in a given situation.*

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[109] *Id.* at 558.

[110] *Id*. at 561.

[111] Any reference in the Majority Opinion and in the Dissent of Justice Antonio T. Carpio in *Fortun v. President Macapagal-Arroyo* to acting "in tandem", "not only sequentially, but in a sense jointly", and "sequential or joint" pertains to the interplay of powers/actions between the President and the Congress; not of the Judiciary. See *Fortun v. President Macapagal-Arroyo*, *id*. at 557, 560, 604.

The President as the Commander-in-Chief wields the extraordinary powers of: a) calling out the armed forces; b) suspending the privilege of the writ of *habeas corpus*; and c) declaring martial law.[112] These powers may be resorted to only under specified conditions.

The framers of the 1987 Constitution reformulated the powers of the Commander-in-Chief by revising the "grounds for the activation of emergency powers, the manner of activating them, the scope of the powers, and review of presidential action."[113]

a) Extraordinary powers of the President distinguished.

Among the three extraordinary powers, the calling out power is the most benign and involves ordinary police action.[114] The President may resort to this extraordinary power *whenever it becomes necessary* to prevent or suppress lawless violence, invasion, or rebellion. "[T]he power to call is fully discretionary to the President;"[115] the only limitations being that he acts within permissible constitutional boundaries or in a manner not constituting grave abuse of discretion.[116] In fact, "the *actual use* to which the President puts the armed forces is x x x not subject to judicial review."[117]

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[112] CONSTITUTION, Article VII, Section 18.

[113] Bernas, Joaquin G., *The Intent of the 1986 Constitution Writers,* 1995 ed., p. 456.

[114] *David v. President Macapagal-Arroyo*, *supra* note 106 at 780.

[115] *Integrated Bar of the Philippines v. Zamora,* 392 Phil. 618, 642 (2000).

[116] *Id*. at 639-640.

[117] Bernas, Joaquin, G., *Constitutional Structure and Powers of Government, Notes and Cases Part I,* 2010 ed., p. 472.

The difference in the treatment of the calling out power *vis-a-vis* the power to suspend the privilege of the writ of *habeas corpus* and the power to declare martial law is explained in this wise:

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

The extraordinary powers of suspending the privilege of the writ of *habeas corpus* and/or declaring martial law may be exercised only when there is actual invasion or rebellion, and public safety requires it. The 1987 Constitution imposed the following limits in the exercise of these powers: "(1) a time limit of sixty days; (2) review and possible revocation by Congress; [and] (3) review and possible nullification by the Supreme Court."[118]

The framers of the 1987 Constitution eliminated insurrection, and the phrase "imminent danger thereof" as grounds for the suspension of the privilege of the writ of *habeas corpus* or declaration of martial law.[119] They perceived the phrase "imminent danger" to be "fraught with possibilities of abuse;"[120] besides, the calling out power of the President "is sufficient for handling imminent danger."[121]

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.[122] As such,

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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 the Congress and review by this Court. (*Id*. at 479.)

[118] Bernas, Joaquin, G., *Constitutional Structure and Powers of Government, Notes and Cases Part I*, 2010 ed., p. 474.

[119] Bernas, Joaquin, G., *The Intent of the 1986 Constitution Writers*, 1995 ed., p. 456.

[120] *Id*. at 458.

[121] *Id*.

[122] *David v. President Macapagal-Arroyo*, *supra* note 106 at 781.

their exercise requires more stringent safeguards by the Congress, and review by the Court.[123]

b) What really happens during martial law?

During the oral argument, the following questions cropped up: What really happens during the imposition of martial law? What powers could the President exercise during martial law that he could not exercise if there is no martial law? Interestingly, these questions were also discussed by the framers of the 1987 Constitution, *viz*.:

> 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.[124]

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[123] *Integrated Bar of the Philippines v. Zamora*, *supra* note 115 at 643.

[124] II RECORD, CONSTITUTIONAL COMMISSION 398 (July 29, 1986).

x x x x x x x x x

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.[125]

A state of martial law is peculiar because the President, at such a time, exercises police power, which is normally a function of the Legislature. In particular, the President exercises police power, with the military's assistance, to ensure public safety and in place of government agencies which for the time being are unable to cope with the condition in a locality, which remains under the control of the State.[126]

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[125] II RECORD, CONSTITUTIONAL COMMISSION 402 (July 29, 1986).

[126] Bernas, Joaquin, G. *Constitutional Structure and Powers of Government, Notes and Cases Part I*, 2010 ed., p. 473.

In *David v. President Macapagal-Arroyo*,[127] the Court, quoting Justice Vicente V. Mendoza's (Justice Mendoza) *Statement before the Senate Committee on Justice* on March 13, 2006, stated that under a valid declaration of martial law, the President as Commander-in-Chief may order the "(a) arrests and seizures without judicial warrants; (b) ban on public assemblies; (c) [takeover] of news media and agencies and press censorship; and (d) issuance of Presidential Decrees x x x".[128]

Worthy to note, however, that the above-cited acts that the President may perform do not give him unbridled discretion to infringe on the rights of civilians during martial law. This is because martial law does not suspend the operation of the Constitution, neither does it supplant the operation of civil courts or legislative assemblies. Moreover, the guarantees under the Bill of Rights remain in place during its pendency. And in such instance where the privilege of the writ of *habeas corpus* is also suspended, such suspension applies only to those judicially charged with rebellion or offensed connected with invasion.[129]

Clearly, from the foregoing, while martial law poses the most severe threat to civil liberties,[130] the Constitution has safeguards against the President's prerogative to declare a state of martial law.

c) "Graduation" of powers refers to hierarchy based on scope and effect; it does not refer to a sequence, order, or arrangement by which the Commander-in-Chief must adhere to.

Indeed, the 1987 Constitution gives the "President, as Commander-in-Chief, a 'sequence' of 'graduated power[s]'.

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[127] *Supra* note 106.

[128] *Id*. at 781-782.

[129] See Dissenting Opinion of *J.* Carpio, *Fortun v. President Macapagal-Arroyo*, *supra* note 108 at 599.

[130] *David v. President Macapagal-Arroyo*, *supra* note 106 at 781.

From the most to the least benign, these are: the calling out power, the power to suspend the privilege of the writ of *habeas corpus*, and the power to declare martial law."[131] It must be stressed, however, that the graduation refers only to hierarchy based on scope and effect. It does not in any manner refer to a sequence, arrangement, or order which the Commander-in-Chief must follow. This so-called "graduation of powers" does not dictate or restrict the manner by which the President decides which power to choose.

These extraordinary powers are conferred by the Constitution with the President as Commander-in-Chief; it therefore necessarily follows 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. The power to choose, initially, which among these extraordinary powers to wield in a given set of conditions is a judgment call on the part of the President. As Commander-in-Chief, his powers are broad enough to include his prerogative to address exigencies or threats that endanger the government, and the very integrity of the State.[132]

It is thus beyond doubt that the power of judicial review does *not* extend to calibrating the President's decision pertaining to which extraordinary power to avail given a set of facts or conditions. To do so would be tantamount to an incursion into the exclusive domain of the Executive and an infringement on the prerogative that solely, at least initially, lies with the President.

d) The framers of the 1987 Constitution intended the Congress not to interfere a priori in the decision-making process of the President.

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[131] *SANLAKAS v. Executive Secretary Reyes*, 466 Phil. 482, 510-511 (2004).

[132] *Id*. at 518.

The elimination by the framers of the 1987 Constitution of the requirement of prior concurrence of the Congress in the initial imposition of martial law or suspension of the privilege of the writ of *habeas corpus* further supports the conclusion that judicial review does not include the calibration of the President's decision of which of his graduated powers will be availed of in a given situation. Voting 28 to 12, the framers of the 1987 Constitution removed the requirement of congressional concurrence in the first imposition of martial law and suspension of the privilege.[133]

MR. PADILLA. x x x

We all agree with the suspension of the writ or the proclamation of martial law should not require beforehand the concurrence of the majority of the Members of the Congress. However, as provided by the Committee, the Congress may revoke, amend, or shorten or even increase the period of such suspension.[134]

x x x x x x x x x

MR. NATIVIDAD. First and foremost, we agree with the Commissioner's thesis that in the first imposition of martial law there is no need for concurrence of the Members of Congress because the provision says 'in case of actual invasion or rebellion.' If there is actual invasion and rebellion, as Commissioner Crispino de Castro said, there is a need for immediate response because there is an attack. Second, the fact of securing a concurrence may be impractical because the roads might be blocked or barricaded. x x x So the requirement of an initial concurrence of the majority of all Members of the Congress in case of an invasion or rebellion might be impractical as I can see it.

Second, Section 15 states that the Congress may revoke the declaration or lift the suspension.

And third, the matter of declaring martial law is already a justiciable question and no longer a political one in that it is subject to judicial review at any point in time. So on that basis, I agree that there is no

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[133] Bernas, Joaquin, G., *The Intent of the 1986 Constitution Writers*, 1995 ed., p. 464.

[134] II RECORD, CONSTITUTIONAL COMMISSION 469 (July 30, 1986).

need for concurrence as a prerequisite to declare martial law or to suspend the privilege of the writ of *habeas corpus*. x x x[135]

x x x x x x x x x

MR. SUAREZ. Thank you.

The Commissioner is suggesting that in connection with Section 15, we delete the phrase 'and, with the concurrence of at least a majority of all the Members of the Congress . . .'

MR. PADILLA. That is correct especially for the initial suspension of the privilege of the writ of *habeas corpus* or also the declaration of martial law.

MR. SUAREZ. So in both instances, the Commissioner is suggesting that this would be an exclusive prerogative of the President?

MR. PADILLA. At least initially, for a period of 60 days. But even that period of 60 days may be shortened by the Congress or the Senate because the next sentence says that the Congress or the Senate may even revoke the proclamation.[136]

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MR. SUAREZ. x x x

The Commissioner is proposing a very substantial amendment because this means that he is vesting exclusively unto the President the right to determine the factors which may lead to the declaration of martial law and the suspension of the writ of *habeas corpus*. I suppose he has strong and compelling reasons in seeking to delete this particular phrase. May we be informed of his good and substantial reasons?

MR. MONSOD. This situation arises in cases of invasion or rebellion. And in previous interpellations regarding this phrase, even during the discussions on the Bill of Rights, as I understand it, the interpretation is a situation of actual invasion or rebellion. In these situations, the President has to act quickly. Secondly, this declaration has a time fuse. It is only good for a maximum of 60 days. At the end of 60 days, it automatically terminates. Thirdly, the right of the

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[135] II RECORD, CONSTITUTIONAL COMMISSION 470 (July 30, 1986).

[136] II RECORD, CONSTITUTIONAL COMMISSION 471 (July 30, 1986).

judiciary to inquire into the sufficiency of the factual basis of the proclamation always exists, even during those first 60 days.

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MR. MONSOD. Yes, Madam President, in the case of Mr. Marcos[,] he is undoubtedly an aberration in our history and national consciousness. But given the possibility that there would be another Marcos, our Constitution now has sufficient safeguards. As I said, it is not really true, as the Gentleman mentioned, that there is an exclusive right to determine the factual basis because the paragraph being on line 9 precisely tells us that the Supreme court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof and must promulgate its decision on the same within 30 days from its filing.

I believe that there are enough safeguards. The Constitution is supposed to balance the interests of the country. And here we are trying to balance the public interest in case of invasion or rebellion as against the rights of citizens. x x x

MR. SUAREZ. Will that prevent a future President from doing what Mr. Marcos had done?

MR. MONSOD. There is nothing absolute in this world, and there may be another Marcos. What we are looking for are safeguards that are reasonable and, I believe, adequate at this point. On the other hand, in case of invasion or rebellion, even during the first 60 days when the intention here is to protect the country in that situation, it would be unreasonable to ask that there should be a concurrence on the part of the Congress, which situation is automatically terminated at the end of such 60 days.

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MR. SUAREZ. Would the Gentleman not feel more comfortable if we provide for a legislative check on this awesome power of the Chief Executive acting as Commander-in-Chief?

MR. MONSOD. I would be less comfortable if we have a presidency that cannot act under those conditions.

MR. SUAREZ. But he can act with the concurrence of the proper or appropriate authority?

MR. MONSOD. Yes. But when those situations arise, it is very unlikely that the concurrence of Congress would be available; and, secondly, the President will be able to act quickly in order to deal with the circumstances.

MR. SUAREZ. So, we would be subordinating actual circumstances to expediency?

MR. MONSOD. Ido not believe it is expediency when one is trying to protect the country in the event of an invasion or a rebellion.[137]

The foregoing exchange clearly manifests the intent of the Constitution not to allow Congress to interfere *a priori* in the President's choice of extraordinary powers.

e) The Court must similarly and necessarily refrain from calibrating the President's decision of which among his extraordinary powers to avail given a certain situation or condition.

It cannot be overemphasized that time is paramount in situations necessitating the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*. It was precisely this time element that prompted the Constitutional Commission to eliminate the requirement of concurrence of the Congress in the initial imposition by the President of martial law or suspension of the privilege of the writ of *habeas corpus*. Considering that the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus* is now anchored on actual invasion or rebellion and when public safety requires it, and is no longer under threat or in imminent danger thereof, there is a necessity and urgency for the President to act quickly to protect the country.[138] The Court, as Congress does, must thus accord the President the same leeway by not wading into the realm that is reserved exclusively by the Constitution to the Executive Department.

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[137] II RECORD, CONSTITUTIONAL COMMISSION 476-477 (July 30, 1986).

[138] II RECORD, CONSTITUTIONAL COMMISSION 476-477 (July 30, 1986).

f) The recommendation of the Defense Secretary is not a condition for the declaration of martial law or suspension of the privilege of the writ of habeas corpus.

Even the recommendation of, or consultation with, the Secretary of National Defense, or other high-ranking military officials, is not a condition for the President to declare martial law. A plain reading of Section 18, Article VII of the Constitution shows that the President's power to declare martial law is not subject to any condition except for the requirements of actual invasion or rebellion and that public safety requires it. Besides, it would be contrary to common sense if the decision of the President is made dependent on the recommendation of his mere alter ego. Rightly so, it is only on the President and no other that the exercise of the powers of the Commander-in-Chief under Section 18, Article VII of the Constitution is bestowed.

g) In any event, the President initially employed the most benign action — the calling out power —before he declared martial law and suspended the privilege of the writ of habeas corpus.

At this juncture, it must be stressed that prior to Proclamation No. 216 or the declaration of martial law on May 23, 2017, the President had already issued Proclamation No. 55 on September 4, 2016, declaring a state of national emergency on account of lawless violence in Mindanao. This, in fact, is extant in the first Whereas Clause of Proclamation No. 216. Based on the foregoing presidential actions, it can be gleaned that although there is no obligation or requirement on his part to use his extraordinary powers on a graduated or sequential basis, still the President made the conscious and deliberate effort to first employ the most benign from among his extraordinary powers. As the initial and preliminary step towards suppressing and preventing the armed hostilities in Mindanao, the President decided to use his calling out power first. Unfortunately, the situation did not improve; on the contrary, it only worsened.

Thus, exercising his sole and exclusive prerogative, the President decided to impose martial law and suspend the privilege of the writ of *habeas corpus* on the belief that the armed hostilities in Mindanao already amount to actual rebellion and public safety requires it.

V. *Whether or not Proclamation No. 216 may be considered vague and thus void because of (a) its inclusion of "other rebel groups"; and (b) the absence of any guideline specifying its actual operational parameters within the entire Mindanao region.*

Proclamation No. 216 is being facially challenged on the ground of "vagueness" by the insertion of the phrase "other rebel groups"[139] in its Whereas Clause and for lack of available guidelines specifying its actual operational parameters within the entire Mindanao region, making the proclamation susceptible to broad interpretation, misinterpretation, or confusion.

This argument lacks legal basis.

a) Void-for-vagueness doctrine.

The void-for-vagueness doctrine holds that a law is facially invalid if "men of common intelligence must necessarily guess at its meaning and differ as to its application."[140] "[A] statute or act may be said to be vague when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ in its application. [In such instance, the statute] is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid;

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[139] WHEREAS, this [May 23, 2017 Marawi incident] 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. (Emphasis supplied)

[140] *Ermita-Malate Hotel & Motel Operators Association, Inc. v. Hon. City Mayor of Manila*, 127 Phil. 306, 325 (1967).

and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle."[141]

b) Vagueness doctrine applies only in free speech cases.

The vagueness doctrine is an analytical tool developed for testing "on their faces" statutes in free speech cases or, as they are called in American law, First Amendment cases.[142] A facial challenge is allowed to be made to a vague statute and also to one which is overbroad because of possible "'chilling effect' on protected speech that comes from statutes violating free speech. A person who does not know whether his speech constitutes a crime under an overbroad or vague law may simply restrain himself from speaking in order to avoid being charged of a crime. The overbroad or vague law thus chills him into silence."[143]

It is best to stress that the vagueness doctrine has a special application only to free-speech cases. They are not appropriate for testing the validity of penal statutes.[144] Justice Mendoza explained the reason as follows:

> A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible 'chilling effect' upon protected speech. The theory is that '[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity.' The possible harm to society in

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[141] *People v. Nazario*, 247-A Phil. 276, 286 (1988).

[142] *Estrada v. Sandiganbayan*, 421 Phil. 290, 354 (2001).

[143] *Disini, Jr. v. The Secretary of Justice*, 727 Phil. 28, 122 (2014).

[144] *Spouses Romualdez v. Commission on Elections*, 576 Phil. 357, 390-391 (2008).

permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.

This rationale does not apply to penal statutes. Criminal statutes have general *in terrorem* effect resulting from their very existence, and, if facial challenge is allowed for this reason alone, the State may well be prevented from enacting laws against socially harmful conduct. In the area of criminal law, the law cannot take chances as in the area of free speech.

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In sum, the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing 'on their faces' statutes in free speech cases or, as they are called in American law, First Amendment cases. They cannot be made to do service when what is involved is a criminal statute. With respect to such statute, the established rule is that 'one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional.' As has been pointed out, 'vagueness challenges in the First Amendment context, like overbreadth challenges typically produce facial invalidation, while statutes found vague as a matter of due process typically are invalidated [only] 'as applied' to a particular defendant.' x x x[145]

Invalidation of statutes "on its face" should be used sparingly because it results in striking down statutes entirely on the ground that they might be applied to parties not before the Court whose activities are constitutionally protected.[146] "Such invalidation would constitute a departure from the usual requirement of 'actual case and controversy' and permit decisions to be made in a sterile abstract context having no factual concreteness."[147]

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[145] Separate Opinion of Justice Mendoza in *Estrada v. Sandiganbayan*, *supra* note 142 at 430-432.

[146] *Id*. at 355.

[147] *Romualdez v. Hon. Sandiganbayan*, 479 Phil. 265, 283 (2004).

c) Proclamation No. 216 cannot be facially challenged using the vagueness doctrine.

Clearly, facial review of Proclamation No. 216 on the grounds of vagueness is unwarranted. Proclamation No. 216 does not regulate speech, religious freedom, and other fundamental rights that may be facially challenged.[148] What it seeks to penalize is conduct, not speech.

As held by the Court in *David v. President Macapagal-Arroyo*,[149] the facial review of Proclamation No. 1017, issued by then President Gloria Macapagal-Arroyo declaring a state of national emergency, on ground of vagueness is uncalled for since a plain reading of Proclamation No. 1017 shows that it is not primarily directed at speech or even speech-related conduct. It is actually a call upon the Armed Forces of the Philippines (AFP) to prevent or suppress all forms of lawless violence. Like Proclamation No. 1017, Proclamation No. 216 pertains to a spectrum of conduct, not free speech, which is manifestly subject to state regulation.

d) Inclusion of "other rebel groups" does not make Proclamation No. 216 vague.

The contention that the phrase "other rebel groups" leaves Proclamation No. 216 open to broad interpretation, misinterpretation, and confusion, cannot be sustained.

In *People v. Nazario*,[150] the Court enunciated that:

As a rule, a statute or act may be said to be vague when it lacks comprehensible standards that men 'of common intelligence must necessarily guess at its meaning and differ as to its application.' It is repugnant to the Constitution in two respects: (1) it violates due

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[148] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council,* 646 Phil. 452, 490 (2010).

[149] *Supra* note 106.

[150] *Supra* note 141.

process for failure to accord persons, especially the parties targetted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.

But the act must be utterly vague on its face, that is to say, it cannot be clarified by either a saving clause or by construction. Thus, in Coates v. City of Cincinnati, the U.S. Supreme Court struck down an ordinance that had made it illegal for 'three or more persons to assemble on any sidewalk and there conduct themselves in a manner annoying to persons passing by.' Clearly, the ordinance imposed no standard at all 'because one may never know in advance what annoys some people but does not annoy others.'

Coates highlights what has been referred to as a 'perfectly vague' act whose obscurity is evident on its face. It is to be distinguished, however, from legislation couched in imprecise language — but which nonetheless specifies a standard though defectively phrased — in which case, it may be 'saved' by proper construction.[151]

The term "other rebel groups" in Proclamation No. 216 is not at all vague when viewed in the context of the words that accompany it. Verily, the text of Proclamation No. 216 refers to "other rebel groups" found in Proclamation No. 55, which it cited by way of reference in its Whereas clauses.

e) Lack of guidelines/operational parameters does not make Proclamation No. 216 vague.

Neither could Proclamation No. 216 be described as vague, and thus void, on the ground that it has no guidelines specifying its actual operational parameters within the entire Mindanao region. Besides, operational guidelines will serve only as mere tools for the implementation of the proclamation. In Part III, we declared that judicial review covers only the sufficiency of information or data available to or known to the President prior to, or at the time of, the declaration or suspension. And, as will be discussed exhaustively in Part VII, the review will be confined to the proclamation itself and the Report submitted to Congress.

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[151] *Id*. at 286-287.

Clearly, therefore, there is no need for the Court to determine the constitutionality of the implementing and/or operational guidelines, general orders, arrest orders and other orders issued after the proclamation for being irrelevant to its review. Thus, any act committed under the said orders in violation of the Constitution and the laws, such as criminal acts or human rights violations, should be resolved in a separate proceeding. Finally, there is a risk that if the Court wades into these areas, it would be deemed a trespassing into the sphere that is reserved exclusively for Congress in exercise of its power to revoke.

VI. ***Whether or not nullifying Proclamation No. 216 will (a) have the effect of recalling Proclamation No. 55; or (b) also nullify the acts of the President in calling out the armed forces to quell lawless violence in Marawi and other parts of the Mindanao region.***

a) The calling out power is in a different category from the power to declare martial law and the power to suspend the privilege of the writ of habeas corpus; nullification of Proclamation No. 216 will not affect Proclamation No. 55.

The Court's ruling in these cases will **not**, in any way, affect the President's declaration of a state of national emergency on account of lawless violence in Mindanao through Proclamation No. 55 dated September 4, 2016, where he called upon the Armed Forces and the Philippine National Police (PNP) to undertake such measures to suppress any and all forms of lawless violence in the Mindanao region, and to prevent such lawless violence from spreading and escalating elsewhere in the Philippines.

In *Kulayan v. Tan*,[152] the Court ruled that the President's calling out power is in a *different category* from the power to suspend the privilege of the writ of *habeas corpus* and the power to declare martial law:

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[152] 690 Phil. 72, (2012).

x x x Congress may revoke such proclamation or suspension and the Court may review the sufficiency of the factual basis thereof. However, **there is no such equivalent provision dealing with the revocation or review of the President's action to call out the armed forces**. The distinction places the calling out power in a *different category* from the power to declare martial law and the power to suspend the privilege of the writ of *habeas corpus*, otherwise, the framers of the Constitution would have simply lumped together the three powers and provided for their revocation and review without any qualification.[153]

In other words, the President may exercise the power to call out the Armed Forces **independently** of the power to suspend the privilege of the writ of *habeas corpus* and to declare martial law, although, of course, it may also be a prelude to a possible future exercise of the latter powers, as in this case.

Even so, the Court's review of the President's declaration of martial law and his calling out the Armed Forces necessarily entails *separate proceedings* instituted for that particular purpose.

As explained in *Integrated Bar of the Philippines v. Zamora*,[154] the President's exercise of his power to call out the armed forces to prevent or suppress lawless violence, invasion or rebellion may only be examined by the Court as to whether such power was exercised within permissible constitutional limits or in a manner constituting **grave abuse of discretion**.[155]

In *Zamora*, the Court categorically ruled that the Integrated Bar of the Philippines had failed to sufficiently comply with the requisites of *locus standi*, as it was not able to show *any specific injury* which it had suffered or could suffer by virtue of President Joseph Estrada's order deploying the Philippine Marines to join the PNP in visibility patrols around the metropolis.[156]

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[153] *Id*. at 91-92. Emphasis supplied.

[154] *Supra* note 115.

[155] *Id*. at 640.

[156] *Id*. at 632-634.

This *locus standi* requirement, however, need not be complied with in so far as the Court's jurisdiction to review the sufficiency of the factual basis of the President's declaration of martial law or suspension of the privilege of the writ of *habeas corpus* is concerned. In fact, by constitutional design, such review may be instituted by **any citizen** before the Court,[157] without the need to prove that he or she stands to sustain a direct and personal injury as a consequence of the questioned Presidential act/s.

But, even assuming *arguendo* that the Court finds no sufficient basis for the declaration of martial law in this case, such ruling could not affect the President's exercise of his calling out power through Proclamation No. 55.

b) The operative fact doctrine.

Neither would the nullification of Proclamation No. 216 result in the nullification of the acts of the President done pursuant thereto. Under the "operative fact doctrine," the unconstitutional statute is recognized as an "operative fact" before it is declared unconstitutional.[158]

> Where the assailed legislative or executive act is found by the judiciary to be contrary to the Constitution, it is null and void. As the new Civil Code puts it, 'When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution.' The above provision of the Civil Code reflects the orthodox view that an unconstitutional act, whether legislative or executive, is not a law, confers no rights, imposes no duties, and affords no protection. This doctrine admits of qualifications, however. As the American Supreme Court stated: 'The actual existence of a statute prior to such a determination [of constitutionality], is an operative fact and may have consequences which cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to the invalidity may have to be considered in various aspects,

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[157] CONSTITUTION, Article VII, Section 18, par. 3.

[158] Bernas, Joaquin G., *The 1987 Constitution of the Republic of the Philippines: A Commentary*; 1996 ed., p. 865.

— with respect to particular regulations, individual and corporate, and particular conduct, private and official.

The orthodox view finds support in the well-settled doctrine that the Constitution is supreme and provides the measure for the validity of legislative or executive acts. Clearly then, neither the legislative nor the executive branch, and for that matter much less, this Court, has power under the Constitution to act contrary to its terms. Any attempted exercise of power in violation of its provisions is to that extent unwarranted and null.

The growing awareness of the role of the judiciary as the governmental organ which has the final say on whether or not a legislative or executive measure is valid leads to a more appreciative attitude of the emerging concept that a declaration of nullity may have legal consequences which the more orthodox view would deny. **That for a period of time such a statute, treaty, executive order, or ordinance was in 'actual existence' appears to be indisputable. What is more appropriate and logical then than to consider it as 'an operative fact?'** (Emphasis supplied)[159]

However, it must also be stressed that this "operative fact doctrine" is not a fool-proof shield that would repulse any challenge to acts performed during the effectivity of martial law or suspension of the privilege of the writ of *habeas corpus*, purportedly in furtherance of quelling rebellion or invasion, and promotion of public safety, when evidence shows otherwise.

VII. *The Scope of the Power to Review.*

a) The scope of the power of review under the 1987 Constitution refers only to the determination of the sufficiency of the factual basis of the declaration of martial law and suspension of the privilege of habeas corpus.

To recall, the Court, in the case of *In the Matter of the Petition for Habeas Corpus of Lansang*,[160] which was decided under

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[159] *Id*. at 864-865, citing *Fernandez v. Cuerva*, 129 Phil. 332, 340 (1967).

[160] *Supra* note 92.

the 1935 Constitution,[161] held that it can inquire into, **within proper bounds**, whether there has been adherence to or compliance with the constitutionally-imposed limitations on the Presidential power to suspend the privilege of the writ of *habeas corpus*.[162] "*Lansang* limited the review function of the Court to a very prudentially narrow test of arbitrariness."[163] Fr. Bernas described the "proper bounds" in *Lansang* as follows:

> What, however, are these 'proper bounds' on the power of the courts? The Court first gave the general answer that its power was 'merely to check — not to supplant — the Executive, or to *ascertain merely whether he has gone beyond* the constitutional limits of his jurisdiction, *not to exercise the power vested in him* or to determine the wisdom of his act. More specifically, the Court said that its power was not 'even comparable with its power over civil or criminal cases elevated thereto by appeal . . . in which cases the appellate court has all the powers of the court of origin,' nor to its power of quasi-judicial administrative decisions where the Court is limited to asking whether 'there is some *evidentiary basis*' for the administrative finding. Instead, the Court accepted the Solicitor General's suggestion that it '*go no* further than to satisfy [itself] *not* that the President's decision is *correct* and that public safety was endangered by the rebellion and justified the suspension of the writ, but that in suspending the writ, the President did not act arbitrarily.'[164]

Lansang, however, was decided under the 1935 Constitution. The 1987 Constitution, by providing only for judicial review based on the determination of the sufficiency of the factual bases, has in fact done away with the test of arbitrariness as provided in *Lansang*.

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[161] Both the 1935 and 1973 Constitution do not have the equivalent provision of Section 18, par. 3, Article VII, 1987 Constitution.

[162] *In the Matter of the Petition for Habeas Corpus of Lansang*, *supra* note 92 at 586. See Bernas, Joaquin G., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 1996 ed., p. 473.

[163] Bernas, Joaquin G., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 1996 ed., p. 475.

[164] *Id*. at 473.

b) The "sufficiency of factual basis test".

Similarly, under the doctrine of contemporaneous construction, the framers of the 1987 Constitution are presumed to know the prevailing jurisprudence at the time they were drafting the Constitution. Thus, the phrase "sufficiency of factual basis" in Section 18, Article VII of the Constitution should be understood as the only test for judicial review of the President's power to declare martial law and suspend the privilege of the writ of *habeas corpus* under Section 18, Article VII of the Constitution. The Court does not need to satisfy itself that the President's decision is correct, rather it only needs to determine whether the President's decision had sufficient factual bases.

We conclude, therefore, that Section 18, Article VII limits the scope of judicial review by the introduction of the "sufficiency of the factual basis" test.

As Commander-in-Chief, the President has the **sole** discretion to declare martial law and/or to suspend the privilege of the writ of *habeas corpus*, subject to the revocation of Congress and the review of this Court. Since the exercise of these powers is a judgment call of the President, the determination of this Court as to whether there is sufficient factual basis for the exercise of such, must be based only on facts or information known by or available to the President at the time he made the declaration or suspension, which facts or information are found in the proclamation as well as the written Report submitted by him to Congress. These may be based on the situation existing at the time the declaration was made or past events. As to how far the past events should be from the present depends on the President. Past events may be considered as justifications for the declaration and/or suspension as long as these are connected or related to the current situation existing at the time of the declaration.

As to what facts must be stated in the proclamation and the written Report is up to the President.[165] As Commander-in-Chief,

[165] According to petitioner Lagman, "the length of the proclamation and the assertion of facts therein is the call of the President; see TSN of Oral Argument, June 14, 2017, p. 67.

he has sole discretion to determine what to include and what not to include in the proclamation and the written Report taking into account the urgency of the situation as well as national security. He cannot be forced to divulge intelligence reports and confidential information that may prejudice the operations and the safety of the military.

Similarly, events that happened after the issuance of the proclamation, which are included in the written report, cannot be considered in determining the sufficiency of the factual basis of the declaration of martial law and/or the suspension of the privilege of the writ of *habeas corpus* since these happened after the President had already issued the proclamation. If at all, they may be used only as tools, guides or reference in the Court's determination of the sufficiency of factual basis, but not as part or component of the portfolio of the factual basis itself.

In determining the sufficiency of the factual basis of the declaration and/or the suspension, the Court should look into the full complement or totality of the factual basis, and not piecemeal or individually. Neither should the Court expect absolute correctness of the facts stated in the proclamation and in the written Report as the President could not be expected to verify the accuracy and veracity of all facts reported to him due to the urgency of the situation. To require precision in the President's appreciation of facts would unduly burden him and therefore impede the process of his decision-making. Such a requirement will practically necessitate the President to be on the ground to confirm the correctness of the reports submitted to him within a period that only the circumstances obtaining would be able to dictate. Such a scenario, of course, would not only place the President in peril but would also defeat the very purpose of the grant of emergency powers upon him, that is, to borrow the words of Justice Antonio T. Carpio in *Fortun*, to "immediately put an end to the root cause of the emergency."[166]

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[166] See Dissenting Opinion of Justice Antonio T. Carpio in *Fortun v. President Macapagal-Arroyo*, *supra* note 108 at 607.

Possibly, by the time the President is satisfied with the correctness of the facts in his possession, it would be too late in the day as the invasion or rebellion could have already escalated to a level that is hard, if not impossible, to curtail.

Besides, the framers of the 1987 Constitution considered intelligence reports of military officers as credible evidence that the President can appraise and to which he can anchor his judgment,[167] as appears to be the case here.

At this point, it is wise to quote the pertinent portions of the Dissenting Opinion of Justice Presbitero J. Velasco Jr. in *Fortun*:

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[167] II RECORD, CONSTITUTIONAL COMMISSION 470-471 (July 30, 1986).

MR. NATIVIDAD. And the Commissioner said that in case of subversion, sedition or imminent danger of rebellion or invasion, that would be the *causus beli* for the suspension of the privilege of the writ of *habeas corpus*. But I wonder whether or not the Commissioner would consider intelligence reports of military officers as evidence of imminent danger of rebellion or invasion because this is usually the evidence presented.

MR. PADILLA. **Yes, as credible evidence, especially if they are based on actual reports and investigation of facts that might soon happen.**

MR. NATIVIDAD. Then the difficulty here is, of course, that the authors and the witnesses in intelligence reports may not be forthcoming under the rule of classified evidence of documents. Does the Commissioner still accept that as evidence?

MR. PADILLA. **It is for the President as commander-in-chief of the Armed Forces to appraise these reports and be satisfied that the public safety demands the suspension of the writ.** After all, this can also be raised before the Supreme Court as in the declaration of martial law because it will no longer be, as the former Solicitor General always contended, a political issue. It becomes now a justiciable issue. The Supreme Court may even investigate the factual background in support of the suspension of the writ or the declaration of martial law.

MR. NATIVIDAD. As far as the Commissioner is concerned, would he respect the exercise of the right to, say, classified documents, and when authors of or witnesses to these documents may not be revealed?

MR. PADILLA. **Yes, because the President, in making this decision of suspending the writ, will have to base his judgment on the document** because, after all, we are restricting the period to only 60 days and further we are giving the Congress or the Senate the right or the power to revoke, reduce, or extend its period.

President Arroyo cannot be blamed for relying upon the information given to her by the Armed Forces of the Philippines and the Philippine National Police, considering that the matter of the supposed armed uprising was within their realm of competence, and that a state of emergency has also been declared in Central Mindanao to prevent lawless violence similar to the 'Maguindanao massacre,' which may be an indication that there is a threat to the public safety warranting a declaration of martial law or suspension of the writ.

Certainly, the President cannot be expected to risk being too late before declaring martial law or suspending the writ of *habeas corpus*. The Constitution, as couched, does not require precision in establishing the fact of rebellion. The President is called to act as public safety requires.[168]

Corollary, as the President is expected to decide quickly on whether there is a need to proclaim martial law even only on the basis of intelligence reports, it is irrelevant, for purposes of the Court's review, if subsequent events prove that the situation had not been accurately reported to him. After all, the Court's review is confined to the sufficiency, not accuracy, of the information at hand during the declaration or suspension; subsequent events do not have any bearing insofar as the Court's review is concerned. In any event, safeguards under Section 18, Article VII of the Constitution are in place to cover such a situation, *e.g.*, the martial law period is good only for 60 days; Congress may choose to revoke it even immediately after the proclamation is made; and, this Court may investigate the factual background of the declaration.[169]

Hence, the maxim *falsus in uno, falsus in omnibus* finds no application in this case. Falsities of and/or inaccuracies in some of the facts stated in the proclamation and the written report are not enough reasons for the Court to invalidate the declaration and/or suspension as long as there are other facts in the

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[168] See Dissenting Opinion of Justice Presbitero J. Velasco in *Fortun v. President Macapagal-Arroyo*, *supra* note 108 at 629.

[169] II RECORD, CONSTITUTIONAL COMMISSION 470-471 (July 30, 1986).

proclamation and the written Report that support the conclusion that there is an actual invasion or rebellion and that public safety requires the declaration and/or suspension.

In sum, the Court's power to review is limited to the determination of whether the President in declaring martial law and suspending the privilege of the writ of *habeas corpus* had sufficient factual basis. Thus, our review would be limited to an examination on whether the President acted within the bounds set by the Constitution, *i.e.*, whether the facts in his possession prior to and at the time of the declaration or suspension are sufficient for him to declare martial law or suspend the privilege of the writ of *habeas corpus*.

VIII. *The parameters for determining the sufficiency of the factual basis for the declaration of martial law and/or the suspension of the privilege of the writ of habeas corpus.*

a) Actual invasion or rebellion, and public safety requirement.

Section 18, Article VII itself sets the parameters for determining the sufficiency of the factual basis for the declaration of martial law and/or the suspension of the privilege of the writ of *habeas corpus*, "namely (1) actual invasion or rebellion, and (2) public safety requires the exercise of such power."[170] Without 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.

As a general rule, a word used in a statute which has a technical or legal meaning, is construed to have the same technical or legal meaning.[171] Since the Constitution did not define the term

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[170] See Dissenting Opinion of Justice Antonio T. Carpio in *Fortun v. President Macapagal-Arroyo*, *supra* note 108 at 610.

[171] Agpalo, Ruben, E., *Statutory Construction,* Fifth Edition, 2003, pp. 187-189.

"rebellion," it must be understood to have the same meaning as the crime of "rebellion" in the Revised Penal Code (RPC).[172]

During the July 29, 1986 deliberation of the Constitutional Commission of 1986, then Commissioner Florenz D. Regalado alluded to actual rebellion as one defined under Article 134 of the RPC:

> MR. DE LOS REYES. As I see it now, the Committee envisions actual rebellion and no longer imminent rebellion. Does the Committee mean that there should be actual shooting or actual attack on the legislature or Malacañang, for example? Let us take for example a contemporary event — this Manila Hotel incident, everybody knows what happened. Would the Committee consider that an actual act of rebellion?
>
> MR. REGALADO. If we consider the definition of rebellion under Articles 134 and 135 of the Revised Penal Code, that presupposes an actual assemblage of men in an armed public uprising for the purposes mentioned in Article 134 and by the means employed under Article 135. x x x[173]

Thus, rebellion as mentioned in the Constitution could only refer to rebellion as defined under Article 134 of the RPC. To give it a different definition would not only create confusion but would also give the President wide latitude of discretion, which may be abused — a situation that the Constitution seeks to prevent.[174]

Article 134 of the RPC states:

> Art. 134. *Rebellion or insurrection; How committed.* — The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine

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[172] See Dissenting Opinion of Justice Antonio T. Carpio in *Fortun v. President Macapagal-Arroyo*, *supra* note 108 at 592.

[173] II RECORD, CONSTITUTIONAL COMMISSION 412 (July 29, 1986).

[174] See Dissenting Opinion of Justice Antonio T. Carpio in *Fortun v. President Macapagal-Arroyo*, *supra* note 108 at 595.

Islands or any part thereof, of any body of land, naval or other armed forces, depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.

Thus, for rebellion to exist, the following elements must be present, to wit: "(1) there is a (a) public uprising and (b) taking arms against the Government; and (2) the 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."[175]

b) Probable cause is the allowable standard of proof for the President.

In determining the existence of rebellion, the President only needs to convince himself that there is probable cause or evidence showing that more likely than not a rebellion was committed or is being committed.[176] To require him to satisfy a higher standard of proof would restrict the exercise of his emergency powers. Along this line, Justice Carpio, in his Dissent in *Fortun v. President Macapagal-Arroyo*, concluded that the President needs only to satisfy probable cause as the standard of proof in determining the existence of either invasion or rebellion for purposes of declaring martial law, and that probable cause is the most reasonable, most practical and most expedient standard by which the President can fully ascertain the existence or non-existence of rebellion necessary for a declaration of martial law or suspension of the writ. This is because unlike other standards of proof, which, in order to be met, would require much from the President and therefore unduly restrain his exercise of emergency powers, the requirement of probable cause is much simpler. It merely necessitates an "average man [to weigh] the facts and circumstances without resorting to the calibration of the rules of evidence of which he has no technical knowledge.

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[175] *Id*. at 594-595.

[176] *Id*. at 597-598.

He [merely] relies on common sense [and] x x x needs only to rest on evidence showing that, more likely than not, a crime has been committed x x x by the accused."[177]

To summarize, the parameters for determining the sufficiency of factual basis are as follows: 1) actual rebellion or invasion; 2) public safety requires it; the first two requirements must concur; and 3) there is probable cause for the President to believe that there is actual rebellion or invasion.

Having laid down the parameters for review, the Court shall now proceed to the core of the controversy — whether Proclamation No. 216, Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the whole of Mindanao, lacks sufficient factual basis.

IX. *There is sufficient factual basis for the declaration of martial law and the suspension of the writ of habeas corpus.*

At this juncture, it bears to emphasize that the purpose of judicial review is not the determination of accuracy or veracity of the facts upon which the President anchored his declaration of martial law or suspension of the privilege of the writ of *habeas corpus*; rather, only the sufficiency of the factual basis as to convince the President that there is probable cause that rebellion exists. It must also be reiterated that martial law is a matter of urgency and much leeway and flexibility should be accorded the President. As such, he is not expected to completely validate all the information he received before declaring martial law or suspending the privilege of the writ of *habeas corpus*.

We restate the elements of rebellion for reference:

1. That there be (a) public uprising, and (b) taking up arms against the Government; and

2. That the purpose of the uprising or movement is either: (a) to remove from the allegiance to said Government or its laws the territory of the Philippines or any part thereof, or any body of land, naval or

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[177] *Id*.

other armed forces or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers or prerogatives.[178]

Petitioners concede that there is an armed public uprising in Marawi City.[179] However, they insist that the armed hostilities do not constitute rebellion in the absence of the element of culpable political purpose, *i.e.*, the removal from the allegiance to the Philippine 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.

The contention lacks merit.

a) Facts, events and information upon which the President anchored his decision to declare martial law and suspend the privilege of the writ of habeas corpus.

Since the President supposedly signed Proclamation No. 216 on May 23, 2017 at 10:00 PM,[180] the Court will consider only those facts and/or events which were known to or have transpired on or before that time, consistent with the scope of judicial review. Thus, the following facts and/or events were deemed to have been considered by the President in issuing Proclamation No. 216, as plucked from and extant in Proclamation No. 216 itself:

1. Proclamation No. 55 issued on September 4, 2016, declaring a state of national emergency on account of lawless violence in Mindanao;[181]

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[178] Caraig, Benjamin R., *The Revised Penal Code, Criminal Law, Book Two*, 2008 revised ed., p. 59.

[179] *Rollo* of G.R. No. 231658, p. 267.

[180] *Id*. at 380.

[181] See Proclamation No. 216, 1st Whereas Clause.

2. Series of violent acts[182] committed by the Maute terrorist group including:

a) Attack on the military outpost in Butig, Lanao del Sur in February 2016, killing and wounding several soldiers;

b) Mass jailbreak in Marawi City in August 2016 of the arrested comrades of the Maute Group and other detainees;

3. On May 23, 2017:[183]

a) Takeover of a hospital in Marawi;

b) Establishment of several checkpoints within Marawi;

c) Burning of certain government and private facilities;

d) Mounting casualties on the part of the government;

e) Hoisting the flag of ISIS in several areas; and

f) 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;

and the Report[184] submitted to Congress:

1. Zamboanga siege;[185]

2. Davao bombing;[186]

3. Mamasapano carnage;[187]

4. Cotabato bombings;[188]

5. Sultan Kudarat bombings;[189]

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[182] See Proclamation No. 216, 4th Whereas Clause.

[183] See Proclamation No. 216, 5th Whereas Clause.

[184] *Rollo* of G.R. No. 231658, pp. 187-193.

[185] *Id*. at 189.

[186] *Id*.

[187] *Id*.

[188] *Id*.

[189] *Id*.

6. Sulu bombings;[190]

7. Basilan bombings;[191]

8. Attempt to capture Hapilon was confronted with armed resistance, by combined forces of ASG and the Maute Group;[192]

9. Escalation of armed hostility against the government troops;[193]

10. Acts of violence directed not only against government authorities and establishments but civilians as well;[194]

11. Takeover of major social, economic and political foundations which paralyzed Marawi City;[195]

12. The object of the armed hostilities was to lay the groundwork for the establishment of a DAESH/ISIS *wilayat* or province;[196]

13. Maute Group has 263 active members, armed and combat-ready;[197]

14. Extensive networks linkages of the Maute Group with foreign and local armed groups;[198]

15. Adherence of the Maute Group to the ideals espoused by ISIS;[199]

16. Publication of a video showing Maute Group's declaration of allegiance to ISIS;[200]

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[190] *Id*.

[191] *Id*.

[192] *Id*.

[193] *Id*.

[194] *Id*.

[195] *Id*.

[196] *Id*.

[197] *Id*.

[198] *Id*.

[199] *Id*.

[200] *Id*.

17. Foreign-based terrorist groups provide financial and logistical support to the Maute Group;[201]

18. Events on May 23, 2017 in Marawi City, particularly:

a) at 2:00 PM, members and sympathizers of the Maute Group and ASG attacked various government and privately-owned facilities;[202]

b) at 4:00 PM, around fifty (50) armed criminals forcibly entered the Marawi City Jail; facilitated the escape of inmates; killed a member of PDEA; assaulted and disarmed on-duty personnel and/or locked them inside the cells; confiscated cellphones, personnel-issued firearms, and vehicles;[203]

c) by 4:30 PM, interruption of power supply; sporadic gunfights; city wide power outage by evening;[204]

d) from 6:00 PM to 7:00 PM, Maute Group ambushed and burned the Marawi Police Station; commandeered a police car;[205]

e) BJMP personnel evacuated the Marawi City Jail and other affected areas;[206]

f) control over three bridges in Lanao del Sur, namely, Lilod, Bangulo, and Sauiaran, was taken by the rebels;[207]

g) road blockades and checkpoints set up by lawless armed groups at the Iligan-Marawi junction;[208]

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[201] *Id*.

[202] *Id*. at 190.

[203] *Id*.

[204] *Id*.

[205] *Id*.

[206] *Id*.

[207] *Id*.

[208] *Id*.

h) burning of Dansalan College Foundation, Cathedral of Maria Auxiliadora, the nuns' quarters in the church, and the Shia Masjid Moncado Colony;[209]

i) taking of hostages from the church;[210]

j) killing of five faculty members of Dansalan College Foundation;[211]

k) burning of Senator Ninoy Aquino College Foundation and Marawi Central Elementary Pilot School;[212]

l) overrunning of Amai Pakpak Hospital;[213]

m) hoisting the ISIS flag in several areas;[214]

n) attacking and burning of the Filipino-Libyan Friendship Hospital;[215]

o) ransacking of a branch of Landbank of the Philippines and commandeering an armored vehicle;[216]

p) reports regarding Maute Group's plan to execute Christians;[217]

q) preventing Maranaos from leaving their homes;[218]

r) forcing young Muslims to join their group;[219] and

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[209] *Id*. at 191.

[210] *Id*.

[211] *Id*.

[212] *Id*.

[213] *Id*.

[214] *Id*.

[215] *Id*.

[216] *Id*.

[217] *Id*.

[218] *Id*.

[219] *Id*.

s) intelligence reports regarding the existence of strategic mass action of lawless armed groups in Marawi City, seizing public and private facilities, perpetrating killings of government personnel, and committing armed uprising against and open defiance of the Government.[220]

b) The President's Conclusion

After the assessment by the President of the aforementioned facts, he arrived at the following conclusions, as mentioned in Proclamation No. 216 and the Report:

1) The Maute Group is "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."[221]

2) "[L]awless armed groups have taken up arms and committed public uprising against the duly constituted government and against the people of Mindanao, for the purpose of removing Mindanao — starting with the City of Marawi, Lanao del Sur — from its allegiance to the Government and its laws and depriving the Chief Executive of his powers and prerogatives to enforce the laws of the land and to maintain public order and safety in Mindanao, to the great damage, prejudice, and detriment of the people therein and the nation as a whole."[222]

3) The May 23, 2017 events "put on public display the groups' clear intention to establish an Islamic State and their capability to deprive the duly constituted authorities — the President, foremost — of their powers and prerogatives."[223]

4) "These activities constitute not simply a display of force, but a clear attempt to establish the groups' seat of power in

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[220] *Id*.

[221] See Proclamation No. 216, 5th Whereas Clause.

[222] See Report, p. 1, 1st par., *rollo* of G.R. No. 231658, p. 187.

[223] *Id*. at 3, last par., *id*. at 189.

Marawi City for their planned establishment of a DAESH *wilayat* or province covering the entire Mindanao."[224]

5) "The cutting of vital lines for transportation and power; the recruitment of young Muslims to further expand their ranks and strengthen their force; the armed consolidation of their members throughout Marawi City; the decimation of a segment of the city population who resist; and the brazen display of DAESH flags constitute a clear, pronounced, and unmistakable intent to remove Marawi City, and eventually the rest of Mindanao, from its allegiance to the Government."[225]

6) "There exists no doubt that lawless armed groups are attempting to deprive the President of his power, authority, and prerogatives within Marawi City as a precedent to spreading their control over the entire Mindanao, in an attempt to undermine his control over executive departments, bureaus, and offices in said area; defeat his mandate to ensure that all laws are faithfully executed; and remove his supervisory powers over local governments."[226]

7) "Law enforcement and other government agencies now face pronounced difficulty sending their reports to the Chief Executive due to the city-wide power outages. Personnel from the BJMP have been prevented from performing their functions. Through the attack and occupation of several hospitals, medical services in Marawi City have been adversely affected. The bridge and road blockades set up by the groups effectively deprive the government of its ability to deliver basic services to its citizens. Troop reinforcements have been hampered, preventing the government from restoring peace and order in the area. Movement by both civilians and government personnel to and from the city is likewise hindered."[227]

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[224] *Id*. at 6, 1st par., *id*. at 192.

[225] *Id*., 2nd par., *id*.

[226] *Id*., 3rd par., *id*.

[227] *Id*., 4th par., *id*.

8) "The taking up of arms by lawless armed groups in the area, with support being provided by foreign-based terrorists and illegal drug money, and their blatant acts of defiance which embolden other armed groups in Mindanao, have resulted in the deterioration of public order and safety in Marawi City; they have likewise compromised the security of the entire Island of Mindanao."[228]

9) "Considering the network and alliance-building activities among terrorist groups, local criminals, and lawless armed men, the siege of Marawi City is a vital cog in attaining their long-standing goal: absolute control over the entirety of Mindanao. These circumstances demand swift and decisive action to ensure the safety and security of the Filipino people and preserve our national integrity."[229]

Thus, the President deduced from the facts available to him that there was an armed public uprising, the culpable purpose of which was to remove from the allegiance to the Philippine Government a portion of its territory and to deprive the Chief Executive of any of his powers and prerogatives, leading the President to believe that there was probable cause that the crime of rebellion was and is being committed and that public safety requires the imposition of martial law and suspension of the privilege of the writ of *habeas corpus*.

A review of the aforesaid facts similarly leads the Court to conclude that the President, in issuing Proclamation No. 216, had sufficient factual bases tending to show that actual rebellion exists. The President's conclusion, that there was an armed public uprising, the culpable purpose of which was the removal from the allegiance of the Philippine Government a portion of its territory and the deprivation of the President from performing his powers and prerogatives, was reached after a tactical consideration of the facts. In fine, the President satisfactorily discharged his burden of proof.

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[228] *Id*., 5th par., *id*.

[229] *Id*. at 7, penultimate par., *id*. at 193.

After all, what the President needs to satisfy is only the standard of probable cause for a valid declaration of martial law and suspension of the privilege of the writ of *habeas corpus*. As Justice Carpio decreed in his Dissent in *Fortun*:

> x x x [T]he Constitution does not compel the President to produce such amount of proof as to unduly burden and effectively incapacitate her from exercising such powers.
>
> Definitely, the President need not gather proof beyond reasonable doubt, which is the standard of proof required for convicting an accused charged with a criminal offense. x x x
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> x x x x x x x x x
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> Proof beyond reasonable doubt is the highest quantum of evidence, and to require the President to establish the existence of rebellion or invasion with such amount of proof before declaring martial law or suspending the writ amounts to an excessive restriction on 'the President's power to act as to practically tie her hands and disable her from effectively protecting the nation against threats to public safety.'
>
> Neither clear and convincing evidence, which is employed in either criminal or civil cases, is indispensable for a lawful declaration of martial law or suspension of the writ. This amount of proof likewise unduly restrains the President in exercising her emergency powers, as it requires proof greater than preponderance of evidence although not beyond reasonable doubt.
>
> Not even preponderance of evidence, which is the degree of proof necessary in civil cases, is demanded for a lawful declaration of martial law.
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> x x x x x x x x x
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> Weighing the superiority of the evidence on hand, from at least two opposing sides, before she can act and impose martial law or suspend the writ unreasonably curtails the President's emergency powers.
>
> Similarly, substantial evidence constitutes an unnecessary restriction on the President's use of her emergency powers. Substantial evidence is the amount of proof required in administrative or quasi-judicial cases, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

I am of the view 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.

Probable cause is the same amount of proof required for the filing of a criminal information by the prosecutor and for the issuance of an arrest warrant by a judge. Probable cause has been defined as a 'set of facts and circumstances as would lead a reasonably discreet and prudent man to believe that the offense charged in the Information or any offense included therein has been committed by the person sought to be arrested.'

In determining probable cause, the average man weighs the facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than suspicion; it requires less than evidence that would justify conviction.

Probable cause, basically premised on common sense, is the most reasonable, most practical, and most expedient standard by which the President can fully ascertain the existence or non-existence of rebellion, necessary for a declaration of martial law. x x x[230]

c) Inaccuracies, simulations, falsities, and hyperboles.

The allegation in the Lagman Petition that the facts stated in Proclamation No. 216 and the Report are false, inaccurate, simulated, and/or hyperbolic, does not persuade. As mentioned, the Court is not concerned about absolute correctness, accuracy, or precision of the facts because to do so would unduly tie the hands of the President in responding to an urgent situation.

Specifically, it alleges that the following facts are not true as shown by its counter-evidence:[231]

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[230] *Fortun v. President Macapagal-Arroyo*, *supra* note 112 at 595-598.

[231] *Rollo* of G.R. No. 231658, pp. 275-276.

FACTUAL STATEMENTS	COUNTER-EVIDENCE
(1) that the Maute group attacked Amai Pakpak Hospital and hoisted the DAESH flag there, among several locations. As of 0600H of 24 May 2017, members of the Maute Group were seen guarding the entry gates of the Amai Pakpak Hospital and that they held hostage the employees of the Hospital and took over the PhilHealth office located thereat (Proclamation No. 216 and Report);	Statements made by: (a) Dr. Amer Saber, Chief of the Hospital (b) Health Secretary Paulyn Ubial; (c) PNP Spokesperson Senior Supt. Dionardo Carlos; (d) AFP Public Affairs Office Chief Co. Edgard Arevalo; and (e) Marawi City Mayor Majul Gandamra denying that the hospital was attacked by the Maute Group **citing on-line news articles of Philstar, Sunstar, Inquirer, and Bombo Radyo**.[232]
2. that the Maute Group ambushed and burned the Marawi Police Station (Proclamation No. 216 and the Report);	Statements made by PNP Director General Ronald dela Rosa and Marawi City Mayor Majul Gandamra **in the on-line news reports of ABS-CBN News and CNN Philippines**[233] denying that the Maute group occupied the Marawi Police Station.
3. that lawless armed groups likewise ransacked the Landbank of the Philippines and commandeered one of its armored vehicles (Report);	Statement made by the bank officials **in the on-line news article of Philstar**[234] that the Marawi City branch was not ransacked but sustained damages from the attacks.
4. that the Marawi Central Elementary Pilot School was	Statements **in the on-line news article of Philstar**[235] made by

[232] *Id*. at 320-332.

[233] *Id*. at 331-332, 343-344.

[234] *Id*. at 320-323.

[235] *Id*.

burned (Proclamation No. 216 and the Report);	the Marawi City Schools Division Assistant Superintendent Ana Alonto denying that the school was burned and Department of Education Assistant Secretary Tonisito Umali stating that they have not received any report of damage.
5. that the Maute Group attacked various government facilities (Proclamation No. 216 and the Report).	Statement **in the on-line news article of Inquirer**[236] made by Marawi City Mayor Majul Gandamra stating that the ASG and the Maute Terror Groups have not taken over any government facility in Marawi City.

However, the so-called counter-evidence were derived solely from unverified news articles on the internet, with neither the authors nor the sources shown to have affirmed the contents thereof. It was not even shown that efforts were made to secure such affirmation albeit the circumstances proved futile. As the Court has consistently ruled, news articles are hearsay evidence, twice removed, and are thus without any probative value, unless offered for a purpose other than proving the truth of the matter asserted.[237] This pronouncement applies with equal force to the Cullamat Petition which likewise submitted online news articles[238] as basis for their claim of insufficiency of factual basis.

Again, it bears to reiterate that the maxim *falsus in uno, falsus in omnibus* finds no application in these cases. As long as there are other facts in the proclamation and the written Report indubitably showing the presence of an actual invasion or rebellion and that public safety requires the declaration and/or suspension, the finding of sufficiency of factual basis, stands.

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[236] *Id*. at 347-348.

[237] *Feria v. Court of Appeals*, 382 Phil. 412, 423 (2000).

[238] See *rollo* of G.R. No. 231771. p. 29.

d) Ruling in Bedol v. Commission on Elections not applicable.

Petitioners, however, insist that in *Bedol v. Commission on Elections*,[239] news reports may be admitted on grounds of relevance, trustworthiness, and necessity. Petitioners' reliance on this case is misplaced. The Court in *Bedol* made it clear that the doctrine of independent relevant statement, which is an exception to the hearsay rule, applies in cases "where only the fact that such statements were made is relevant, and the truth or falsity thereof is immaterial."[240] Here, the question is not whether such statements were made by Saber, *et al.*, but rather whether what they said are true. Thus, contrary to the view of petitioners, the exception in *Bedol* finds no application here.

e) There are other independent facts which support the finding that, more likely than not, rebellion exists and that public safety requires it.

Moreover, the alleged false and/or inaccurate statements are just pieces and parcels of the Report; along with these alleged false data is an arsenal of other independent facts showing that more likely than not, actual rebellion exists, and public safety requires the declaration of martial law or suspension of the privilege of the writ of *habeas corpus*. To be precise, the alleged false and/or inaccurate statements are only five out of the several statements bulleted in the President's Report. Notably, in the interpellation by Justice Francis H. Jardeleza during the second day of the oral argument, petitioner Lagman admitted that he was not aware or that he had no personal knowledge of the other incidents cited.[241] As it thus stands, there is no question or challenge with respect to the reliability of the other incidents, which by themselves are ample to preclude the conclusion that

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[239] 621 Phil. 498 (2009).

[240] *Id*. at 517.

[241] TSN of the Oral Arguments, June 14, 2017, pp. 10-23.

the President's report is unreliable and that Proclamation No. 216 was without sufficient factual basis.

Verily, there is no credence to petitioners' claim that the bases for the President's imposition of martial law and suspension of the writ of *habeas corpus* were mostly inaccurate, simulated, false and/or hyperbolic.

X. *Public safety requires the declaration of martial law and the suspension of the privilege of the writ of habeas corpus in the whole of Mindanao.*

Invasion 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*. For a declaration of martial law or suspension of the privilege of the writ of *habeas corpus* to be valid, there must be a concurrence of actual rebellion or invasion and the public safety requirement. In his Report, the President noted that the acts of violence perpetrated by the ASG and the Maute Group were directed not only against government forces or establishments but likewise against civilians and their properties.[242] In addition and in relation to the armed hostilities, bomb threats were issued;[243] road blockades and checkpoints were set up;[244] schools and churches were burned;[245] civilian hostages were taken and killed;[246] non-Muslims or Christians were targeted;[247] young male Muslims were forced to join their group;[248] medical services and delivery of basic services were hampered;[249] reinforcements of government

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[242] See Report, p. 3, 2nd par. *Rollo* of G.R. No. 231658, p. 189.

[243] *Id*. at 4; *id*. at 190.

[244] *Id.; id.*

[245] *Id*. at 5; *id*. at 191.

[246] *Id.; id*.

[247] *Id.; id.*

[248] *Id.; id.*

[249] *Id*. at 6; *id*. at 192.

troops and civilian movement were hindered;[250] and the security of the entire Mindanao Island was compromised.[251]

These particular scenarios convinced the President that the atrocities had already escalated to a level that risked public safety and thus impelled him to declare martial law and suspend the privilege of the writ of *habeas corpus*. In the last paragraph of his Report, the President declared:

> While the government is presently conducting legitimate operations to address the on-going rebellion, if not the seeds of invasion, public safety necessitates the continued implementation of martial law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao until such time that the rebellion is completely quelled.[252]

Based on the foregoing, we hold that the parameters for the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* have been properly and fully complied with. Proclamation No. 216 has sufficient factual basis there being probable cause to believe that rebellion exists and that public safety requires the martial law declaration and the suspension of the privilege of the writ of *habeas corpus*.

XI. *Whole of Mindanao*

a) The overriding and paramount concern of martial law is the protection of the security of the nation and the good and safety of the public.

Considering the nation's and its people's traumatic experience of martial law under the Marcos regime, one would expect the framers of the 1987 Constitution to stop at nothing from *not* resuscitating the law. Yet it would appear that the constitutional writers entertained *no* doubt about the necessity and practicality

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[250] *Id.; id.*

[251] *Id.; id.*

[252] *Id*. at 7; *id*. at 193.

of such specie of extraordinary power and thus, once again, bestowed on the Commander-in-Chief the power to declare martial law albeit in its diluted form.

Indeed, martial law and the suspension of the privilege of the writ of *habeas corpus* are necessary for the protection of the security of the nation; suspension of the privilege of the writ of *habeas corpus* is "precautionary, and although it might [curtail] certain rights of individuals, [it] is for the purpose of defending and protecting the security of the state or the entire country and our sovereign people".[253] Commissioner Ople referred to the suspension of the privilege of the writ of *habeas corpus* as a "form of immobilization" or "as a means of immobilizing potential internal enemies" "especially in areas like Mindanao."[254]

Aside from protecting the security of the country, martial law also guarantees and promotes public safety. It is worthy of mention that rebellion alone does not justify the declaration of martial law or suspension of the privilege of the writ of *habeas corpus*; the public safety requirement must likewise be present.

b) As Commander-in-Chief, the President receives vital, relevant, classified, and live information which equip and assist him in making decisions.

In Parts IX and X, the Court laid down the arsenal of facts and events that formed the basis for Proclamation No. 216. For the President, the totality of facts and events, more likely than not, shows that actual rebellion exists and that public safety requires the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*. Otherwise stated, the President believes that there is probable cause that actual rebellion exists and public safety warrants the issuance of Proclamation

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[253] I RECORD, CONSTITUTIONAL COMMISSION 710 (July 17, 1986).

[254] I RECORD, CONSTITUTIONAL COMMISSION 774 (July 18, 1986).

No. 216. In turn, the Court notes that the President, in arriving at such a conclusion, relied on the facts and events included in the Report, which we find sufficient.

To be sure, the facts mentioned in the Proclamation and the Report are far from being exhaustive or all-encompassing. At this juncture, it may not be amiss to state that as Commander-in-Chief, the President has possession of documents and information classified as "confidential", the contents of which cannot be included in the Proclamation or Report for reasons of national security. These documents may contain information detailing the position of government troops and rebels, stock of firearms or ammunitions, ground commands and operations, names of suspects and sympathizers, etc. In fact, during the closed door session held by the Court, some information came to light, although not mentioned in the Proclamation or Report. But then again, the discretion whether to include the same in the Proclamation or Report is the judgment call of the President. In fact, petitioners concede to this. During the oral argument, petitioner Lagman admitted that "the assertion of facts [in the Proclamation and Report] is the call of the President."[255]

It is beyond cavil that the President can rely on intelligence reports and classified documents. "It is for the President as [C]ommander-in-[C]hief of the Armed Forces to appraise these [classified evidence or documents/] reports and be satisfied that the public safety demands the suspension of the writ."[256] Significantly, respect to these so-called classified documents is accorded even "when [the] authors of or witnesses to these documents may not be revealed."[257]

In fine, not only does the President have a wide array of information before him, he also has the right, prerogative, and the means to access vital, relevant, and confidential data, concomitant with his position as Commander-in-Chief of the Armed Forces.

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[255] TSN of Oral Argument, June 14, 2014, p. 67.

[256] II RECORD, CONSTITUTIONAL COMMISSION 470 (July 30, 1986).

[257] II RECORD, CONSTITUTIONAL COMMISSION 470 (July 30, 1986).

c) The Court has no machinery or tool equal to that of the Commander-in-Chief to ably and properly assess the ground conditions.

In contrast, the Court does not have the same resources available to the President. However, this should not be considered as a constitutional lapse. On the contrary, this is in line with the function of the Court, particularly in this instance, to determine the sufficiency of factual basis of Proclamation No. 216. As thoroughly discussed in Part VIII, the determination by the Court of the sufficiency of factual basis must be limited only to the facts and information mentioned in the Report and Proclamation. In fact, the Court, in *David v. President Macapagal-Arroyo*,[258] cautioned not to "undertake an independent investigation beyond the pleadings." In this regard, "the Court will have to rely on the fact-finding capabilities of the [E]xecutive [D]epartment;"[259] in turn, the Executive Department will have to open its findings to the Court,[260] which it did during the closed door session last June 15, 2017.

d) The 1987 Constitution grants to the President, as Commander-in-Chief the discretion to determine the territorial coverage or application of martial law or suspension of the privilege of the writ of habeas corpus.

Section 18, Article VII of the Constitution states that "[i]n case of invasion or rebellion, when the public safety requires it, [the President] may x x x suspend the privilege of writ of *habeas corpus* or place **the Philippines or any part thereof under** martial law." Clearly, the Constitution grants to the President the discretion to determine the territorial coverage

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[258] *David v. President Macapagal-Arroyo, supra* note 106 at 767.

[259] Bernas, Joaquin G., *The 1987 Constitution of the Republic of the Philippines*, 1996 ed., p. 486.

[260] *Id*.

of martial law and the suspension of the privilege of the writ of *habeas corpus*. He may put the entire Philippines or only a part thereof under martial law.

This is both an acknowledgement and a recognition that it is the Executive Department, particularly the President as Commander-in-Chief, who is the repository of vital, classified, and live information necessary for and relevant in calibrating the territorial application of martial law and the suspension of the privilege of the writ of *habeas corpus*. It, too, is a concession that the President has the tactical and military support, and thus has a more informed understanding of what is happening on the ground. Thus, the Constitution imposed a limitation on the period of application, which is 60 days, unless sooner nullified, revoked or extended, but not on the territorial scope or area of coverage; it merely stated "the Philippines or any part thereof," depending on the assessment of the President.

e) The Constitution has provided sufficient safeguards against possible abuses of Commander-in-Chief's powers; further curtailment of Presidential powers should not only be discouraged but also avoided.

Considering the country's history, it is understandable that the resurgence of martial law would engender apprehensions among the citizenry. Even the Court as an institution cannot project a stance of nonchalance. However, the importance of martial law in the context of our society should outweigh one's prejudices and apprehensions against it. The significance of martial law should not be undermined by unjustified fears and past experience. After all, martial law is critical and crucial to the promotion of public safety, the preservation of the nation's sovereignty and ultimately, the survival of our country. It is vital for the protection of the country not only against internal enemies but also against those enemies lurking from beyond our shores. As such, martial law should not be cast aside, or its scope and potency limited and diluted, based on bias and unsubstantiated assumptions.

Conscious of these fears and apprehensions, the Constitution placed several safeguards which effectively watered down the power to declate martial law. The 1987 Constitution "[clipped] the powers of [the] Commander-in-Chief because of [the] experience with the previous regime."[261] Not only were the grounds limited to actual invasion or rebellion, but its duration was likewise fixed at 60 days, unless sooner revoked, nullified, or extended; at the same time, it is subject to the veto powers of the Court and Congress.

Commissioner Monsod, who, incidentally, is a counsel for the Mohamad Petition, even exhorted his colleagues in the Constitutional Convention to look at martial law from a new perspective by elaborating on the sufficiency of the proposed safeguards:

> MR. MONSOD. x x x
>
> Second, we have been given a spectre of *non sequitur*, that the mere declaration of martial law for a fixed period not exceeding 60 days, which is subject to judicial review, is going to result in numerous violations of human rights, the predominance of the military forever and in untold sufferings. Madam President, we are talking about invasion and rebellion. We may not have any freedom to speak of after 60 days, if we put as a precondition the concurrence of Congress. That might prevent the President from acting at that time in order to meet the problem. So I would like to suggest that, perhaps, we should look at this in its proper perspective. We are only looking at a very specific case. We are only looking at a case of the first 60 days at its maximum. And we are looking at actual invasion and rebellion, and there are other safeguards in those cases.[262]

Even Bishop Bacani was convinced that the 1987 Constitution has enough safeguards against presidential abuses and commission of human rights violations. In voting yes for the elimination of the requirement of prior concurrence of Congress, Bishop Bacani stated, *viz*.:

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[261] II RECORD, CONSTITUTIONAL COMMISSION 394 (July 29, 1986).

[262] II RECORD, CONSTITUTIONAL COMMISSION 482 (July 30, 1986).

BISHOP BACANI. Yes, just two sentences. The reason I vote yes is that despite my concern for human rights, I believe that a good President can also safeguard human rights and human lives as well. And I do not want to unduly emasculate the powers of the President. x x x[263]

Commissioner De los Reyes shared the same sentiment, to wit:

MR. DE LOS REYES. May I explain my vote, Madam President.

x x x The power of the President to impose martial law is doubtless of a very high and delicate nature. A free people are naturally jealous of the exercise of military power, and the power to impose martial law is certainly felt to be one of no ordinary magnitude. But as presented by the Committee, there are many safeguards: 1) it is limited to 60 days; 2) Congress can revoke it; 3) the Supreme Court can still review as to the sufficiency of factual basis; and 4) it does not suspend the operation of the Constitution. To repeat what I have quoted when I interpellated Commissioner Monsod, it is said that the power to impose martial law is dangerous to liberty and may be abused. **All powers may be abused if placed in unworthy hands. But it would be difficult, we think, to point out any other hands in which this power will be more safe and at the same time equally effectual.** When citizens of the State are in arms against each other and the constituted authorities are unable to execute the laws, the action of the President must be prompt or it is of little value. x x x[264] (Emphasis supplied)

At this juncture, it bears to stress that it was the collective sentiment of the framers of the 1987 Constitution that *sufficient* safeguards against possible misuse and abuse by the Commander-in-Chief of his extraordinary powers are already in place and that no further emasculation of the presidential powers is called for in the guise of additional safeguards. The Constitution recognizes that any further curtailment, encumbrance, or emasculation of the presidential powers would not generate any good among the three co-equal branches, and to the country and its citizens as a whole. Thus:

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[263] II RECORD, CONSTITUTIONAL COMMISSION 483 (July 30, 1986).

[264] II RECORD, CONSTITUTIONAL COMMISSION 485 (July 30, 1986).

MR. OPLE. **The reason for my concern, Madam President, is that when we put all of these encumbrances on the President and Commander-in-Chief during an actual invasion or rebellion, given an intractable Congress that may be dominated by opposition parties, we may be actually impelling the President to use the sword of Alexander to cut the Gordian knot by just declaring a revolutionary government that sets him free to deal with the invasion or the insurrection. x x x**[265] (Emphasis supplied)

f) Rebellion and public safety; nature, scope, and range.

It has been said that the "gravamen of the crime of rebellion is an armed public uprising against the govemment;"[266] and that by nature, "rebellion is x x x a crime of masses or multitudes, involving crowd action, that cannot be confined *a priori*, within predetermined bounds."[267] We understand this to mean that the precise extent or range of the rebellion could not be measured by exact metes and bounds.

To illustrate: A contingent armed with high-powered firearms publicly assembled in Padre Faura, Ermita, Manila where the Court's compound is situated. They overpowered the guards, entered the Court's premises, and hoisted the ISIS flag. Their motive was political, *i.e.*, they want to remove from the allegiance to the Philippine government a part of the territory of the Philippines, particularly the Court's compound and establish it as an ISIS-territory.

Based on the foregoing illustration, and vis-a-vis the nature of the crime of rebellion, could we validly say that the rebellion is confined only within the Court's compound? Definitely not. The possibility that there are other rebels positioned in the nearby buildings or compound of the Philippine General Hospital (PGH) or the Manila Science High School (MSHS) could not be

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[265] II RECORD, CONSTITUTIONAL COMMISSION 509 (July 31, 1986).

[266] *People v. Lovedioro*, 320 Phil. 481, 488 (1995).

[267] *People v. Geronimo*, 100 Phil. 90, 96 (1956); *People v. Lovedioro*, 320 Phil. 481, 488 (1995).

discounted. There is no way of knowing that *all* participants in the rebellion went and stayed inside the Court's compound.

Neither could it be validly argued that the armed contingent positioned in PGH or MSHS is *not* engaged in rebellion because there is no publicity in their acts as, in fact, they were merely lurking inside the compound of PGH and MSHS. However, it must be pointed out that for the crime of rebellion to be consummated, it is not required that *all* armed participants should congregate in *one* place, in this case, the Court's compound, and publicly rise in arms against the government for the attainment of their culpable purpose. It suffices that a *portion* of the contingent gathered and formed a mass or a crowd and engaged in an armed public uprising against the government. Similarly, it cannot be validly concluded that the grounds on which the armed public uprising actually took place should be the measure of the extent, scope or range, of the actual rebellion. This is logical since the other rebels positioned in PGH, MSHS, or elsewhere, whose participation did not involve the *publicity* aspect of rebellion, may also be considered as engaging in the crime of rebellion.

Proceeding from the same illustration, suppose we say that the President, after finding probable cause that there exists actual rebellion and that public safety requires it, declares martial law and suspends the writ of *habeas corpus* in the whole of Metro Manila, could we then say that the territorial coverage of the proclamation is too expansive?

To answer this question, we revert back to the premise that the discretion to determine the territorial scope of martial law lies with the President. The Constitution grants him the prerogative whether to put the entire Philippines or *any* part thereof under martial law. There is no constitutional edict that martial law should be confined only in the particular place where the armed public uprising actually transpired. This is not only practical but also logical. Martial law is an urgent measure since at stake is the nation's territorial sovereignty and survival. As such, the President has to respond quickly. After the rebellion in the Court's compound, he need not wait for another rebellion

to be mounted in Quezon City before he could impose martial law thereat. If that is the case, then the President would have to wait until every remote corner in the country is infested with rebels before he could declare martial law in the *entire* Philippines. For sure, this is not the scenario envisioned by the Constitution.

Going back to the illustration above, although the President is not required to impose martial law only within the Court's compound because it is where the armed public uprising actually transpired, he may do so if he sees fit. At the same time, however, he is not precluded from expanding the coverage of martial law beyond the Court's compound. After all, rebellion is not confined within predetermined bounds.

Public safety, which is another component element for the declaration of martial law, "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."[268] Public safety is an *abstract* term; it does not take any physical form. Plainly, its range, extent or scope could not be physically measured by metes and bounds.

Perhaps another reason why the territorial scope of martial law should not necessarily be limited to the particular vicinity where the armed public uprising actually transpired, is because of the unique characteristic of rebellion as a crime. "The crime of rebellion consists of *many* acts. It is a vast movement of men and a complex net of intrigues and plots. Acts committed in furtherance of rebellion[,] though crimes in themselves[,] are deemed absorbed in one single crime of rebellion."[269] Rebellion *absorbs* "other acts committed in its pursuance."[270] Direct assault,[271]

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[268] Definitions of PUBLIC SAFETY <www.definition.net/definition/PUBLIC SAFETY> (visited July 3, 2017).

[269] *People v. Dasig*, 293 Phil. 599, 608 (1993). Italics supplied.

[270] *People v. Lovedioro*, *supra* note 266 at 488.

[271] *People v. Dasig*, *supra* 269 at 608-609.

murder,[272] homicide,[273] arson,[274] robbery,[275] and kidnapping,[276] just to name a few, are absorbed in the crime of rebellion if committed in furtherance of rebellion; "[i]t cannot be made a basis of a separate charge."[277] Jurisprudence also teaches that not only common crimes may be absorbed in rebellion but also "offenses under special laws [such as Presidential Decree No. 1829][278] which are perpetrated in furtherance of the political offense."[279] "All crimes, whether punishable under a special law or general law, which are mere components or ingredients, or committed in furtherance thereof, become absorbed in the crime of rebellion and cannot be isolated and charged as separate crimes in themselves."[280]

Thus, by the theory of absorption, the crime of murder committed in Makati City, if committed in furtherance of the crime of rebellion being hypothetically staged in Padre Faura, Ermita, Manila, is stripped of its common complexion and is absorbed in the crime of rebellion. This all the more makes it difficult to confine the application of martial law only to the place where the armed public uprising is actually taking place. In the illustration above, Padre Faura could only be the nerve center of the rebellion but at the same time rebellion is also happening in Makati City.

In fine, it is difficult, if not impossible, to fix the territorial scope of martial law in *direct proportion* to the "range" of actual

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[272] *People v. Mangallan*, 243 Phil. 286 (1988) cited in *People v. Dasig*, *supra* at 609.

[273] *People v. Lovedioro*, *supra* at 488.

[274] *Ponce Enrile v. Judge Amin*, 267 Phil. 603, 612 (1990).

[275] *Id*.

[276] *Id*.

[277] *People v. Dasig*, *supra* at 609.

[278] *Ponce EnriIe v. Judge Amin*, *supra* at 603.

[279] *People v. Lovedioro*, *supra* at 490.

[280] *Ponce Enrile v. Judge Amin*, *supra* at 611.

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.

Moreover, the President's duty to maintain peace and public safety is not limited only to the place where there is actual rebellion; it extends to other areas where the present hostilities are in danger of spilling over. It is not intended merely to prevent the escape of lawless elements from Marawi City, but also to avoid enemy reinforcements and to cut their supply lines coming from different parts of Mindanao. Thus, limiting the proclamation and/or suspension to the place where there is actual rebellion would not only defeat the purpose of declaring martial law, it will make the exercise thereof ineffective and useless.

g) The Court must stay within the confines of its power.

The Court can only act within the confines of its power. For the Court to overreach is to infringe upon another's territory. Clearly, the power to determine the scope of territorial application belongs to the President. "The Court cannot indulge in judicial legislation without violating the principle of separation of powers, and, hence, undermining the foundation of our republican system."[281]

To reiterate, the Court is not equipped with the competence and logistical machinery to determine the strategical value of other places in the military's efforts to quell the rebellion and restore peace. It would be engaging in an act of adventurism if it dares to embark on a mission of deciphering the territorial metes and bounds of martial law. To be blunt about it, hours after the proclamation of martial law none of the members of

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[281] *People v. Hernandez*, 99 Phil. 515, 550 (1956).

this Court could have divined that more than ten thousand souls would be forced to evacuate to Iligan and Cagayan de Oro and that the military would have to secure those places also; none of us could have predicted that Cayamora Maute would be arrested in Davao City or that his wife Ominta Romato Maute would be apprehended in Masiu, Lanao del Sur; and, none of us had an inkling that the Bangsamoro Islamic Freedom Fighters (BIFF) would launch an attack in Cotabato City. The Court has no military background and technical expertise to predict that. In the same manner, the Court lacks the technical capability to determine which part of Mindanao would best serve as forward operating base of the military in their present endeavor in Mindanao. Until now the Court is in a quandary and can only speculate whether the 60-day lifespan of Proclamation No. 216 could outlive the present hostilities in Mindanao. It is on this score that the Court should give the President sufficient leeway to address the peace and order problem in Mindanao.

Thus, considering the current situation, it will not serve any purpose if the President is goaded into using "the sword of Alexander to cut the Gordian knot"[282] by attempting to impose another encumbrance; after all, "the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* is **essentially an executive act**."[283]

Some sectors, impelled perhaps by feelings of patriotism, may wish to subdue, rein in, or give the President a nudge, so to speak, as some sort of a reminder of the nation's experience under the Marcos-styled martial law. However, it is not fair to judge President Duterte based on the ills some of us may have experienced during the Marcos-martial law era. At this point, the Court quotes the insightful discourse of Commissioner Ople:

MR. OPLE. x x x

x x x x x x x x x

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[282] II RECORD, CONSTITUTIONAL COMMISSION 509 (July 31, 1986).

[283] II RECORD, CONSTITUTIONAL COMMISSION 510 (July 31, 1986). Emphasis supplied.

Madam President, there is a tendency to equate patriotism with rendering the executive branch of the government impotent, as though by reducing drastically the powers of the executive, we are rendering a service to human welfare. I think it is also important to understand that the extraordinary measures contemplated in the Article on the Executive pertain to a practical state of war existing in this country when national security will become a common bond of patriotism of all Filipinos, especially if it is an actual invasion or an actual rebellion, and the President may have to be given a minimum flexibility to cope with such unprecedented threats to the survival of a nation. I think the Commission has done so but at the same time has not, in any manner, shunned the task of putting these powers under a whole system of checks and balances, including the possible revocation at any time of a proclamation of martial law by the Congress, and in any case a definite determination of these extraordinary powers, subject only to another extension to be determined by Congress in the event that it is necessary to do so because the emergency persists.

So, I think this Article on the Executive for which I voted is completely responsible; it is attuned to the freedom and the rights of the citizenry. It does not render the presidency impotent and, at the same time, it allows for a vigorous representation of the people through their Congress when an emergency measure is in force and effect.[284]

h) Several local armed groups have formed linkages aimed at committing rebellion and acts in furtherance thereof in the whole of Mindanao.

With a predominantly Muslim population, Marawi City is "the only Islamic City of the South."[285] On April 15, 1980, it was conferred the official title of "Islamic City of Marawi."[286]

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[284] II RECORD, CONSTITUTIONAL COMMISSION 735 (August 6, 1986). Emphasis supplied.

[285] History of Lanao del Sur <https://lanaodelsur.gov.ph/about/history> (visited July 3, 2017).

[286] Islamic City of Marawi: Historical Background <https://sites.google.com/site/icomgovph/government/historical-background> (visited July 3, 2017).

The city's first name, "Dansalan," "was derived from the word 'dansal', meaning a destination point or rendezvous. Literally, it also means arrival or coming."[287] Marawi lies in the heart of Mindanao. In fact, the Kilometer Zero marker in Mindanao is found in Marawi City thereby making Marawi City the point of reference of all roads in Mindanao.

Thus, there is reasonable basis to believe that Marawi is only the staging point of the rebellion, both for symbolic and strategic reasons. Marawi may not be the target but the whole of Mindanao. As mentioned in the Report, "[l]awless armed groups have historically used provinces adjoining Marawi City as escape routes, supply lines, and backdoor passages;"[288] there is also the plan to establish a *wilayat* in Mindanao by staging the siege of Marawi. The report that prior to May 23, 2017, Abdullah Maute had already dispatched some of his men to various places in Mindanao, such as Marawi, Iligan, and Cagayan de Oro for bombing operations, carnapping, and the murder of military and police personnel,[289] must also be considered. Indeed, there is some semblance of truth to the contention that Marawi is only the start, and Mindanao the end.

Other events also show that the atrocities were not concentrated in Marawi City. Consider these:

a. On January 13, 2017, an improvised explosive device (IED) exploded in Barangay Campo Uno, Lamita City, Basilan. A civilian was killed while another was wounded.[290]

b. On January 19, 2017, the ASG kidnapped three Indonesians near Bakungan Island, Taganak, Tawi-Tawi.[291]

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[287] Islamic City of Marawi: Historical Background <https://sites.google.com/site/icomgovph/government/historical-background> (visited July 3, 2017).

[288] *Rollo* of G.R. No. 231658, pp. 40-41.

[289] *Id*. at 156.

[290] *Id*. at 146.

[291] *Id*.

c. On January 29, 2017, the ASG detonated an IED in Barangay Danapah, Albarka, Basilan resulting in the death of two children and the wounding of three others.[292]

d. From March to May 2017, there were eleven (11) separate instances of IED explosions by the BIFF in Mindanao. These resulted in the death and wounding of several personalities.[293]

e. On February 26, 2017, the ASG beheaded its kidnap victim, Juergen Kantner in Sulu.[294]

f. On April 11, 2017, the ASG infiltrated Inabaga, Bohol resulting in firefights between rebels and government troops.[295]

g. On April 13, 2017, the ASG beheaded Filipino kidnap victim Noel Besconde.[296]

h. On April 20, 2017, the ASG kidnapped SSg. Anni Siraji and beheaded him three days later.[297]

There were also intelligence reports from the military about offensives committed by the ASG and other local rebel groups. All these suggest that the rebellion in Marawi has already spilled over to other parts of Mindanao.

Moreover, considering the widespread atrocities in Mindanao and the linkages established among rebel groups, the armed uprising that was initially staged in Marawi cannot be justified as confined only to Marawi. The Court therefore will not simply disregard the events that happened during the Davao City bombing, the Mamasapano massacre, the Zamboanga City siege, and the countless bombings in Cotabato, Sultan Kudarat, Sulu, and Basilan, among others.[298] The Court cannot simply take

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[292] *Id*.

[293] *Id*. at 147-148.

[294] *Id*. at 146.

[295] *Id*.

[296] *Id*.

[297] *Id*.

[298] President Duterte's Report to Congress, May 25, 2017, p. 3; *id*. at 37.

the battle of Marawi in isolation. As a crime without predetermined bounds, the President has reasonable basis to believe that the declaration of martial law, as well as the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao, is most necessary, effective, and called for by the circumstances.

i) Terrorism neither negates nor absorbs rebellion.

It is also of judicial notice that the insurgency in Mindanao has been ongoing for decades. While some groups have sought legal and peaceful means, others have resorted to violent extremism and terrorism. Rebellion may be subsumed under the crime of terrorism, which has a broader scope covering a wide range of predicate crimes. In fact, rebellion is only one of the various means by which terrorism can be committed.[299] However, while the scope of terrorism may be comprehensive, its purpose is distinct and well-defined. The objective of a "terrorist" is to sow and create a condition of widespread fear

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[299] Section 3 of Republic Act No. 9372, otherwise known as the Human Security Act of 2007, lists the following predicate crimes of terrorism:

a. Article 122 (Piracy in General and Mutiny in the High Seas or in the Philippine Waters);
b. Article 134 (Rebellion or Insurrection);
c. Article 134-a (Coup d'Etat), including acts committed by private persons;
d. Article 248 (Murder);
e. Article 267 (Kidnapping and Serious Illegal Detention);
f. Article 324 (Crimes Involving Destruction, or under
   (1) Presidential Decree No. 1613 (The Law on Arson);
   (2) Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990);
   (3) Republic Act No. 5207 (Atomic Energy Regulatory and Liability Act of 1968);
   (4) Republic Act No. 6235 (Anti-Hijacking Law);
   (5) Presidential Decree No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974); and,
   (6) Presidential Decree No. 1866, as amended (Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition of Firearms, Ammunitions or Explosives).

among the populace in order to coerce the government to give in to an unlawful demand. This condition of widespread fear is traditionally achieved through bombing, kidnapping, mass killing, and beheading, among others. In contrast, the purpose of rebellion, as previously discussed, is political, *i.e.*, (a) to remove from the allegiance to the Philippine Government or its laws: (i) the territory of the Philippines or any part thereof; (ii) any body of land, naval, or armed forces; or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives.

In determining what crime was committed, we have to look into the main objective of the malefactors. If it is political, such as for the purpose of severing the allegiance of Mindanao to the Philippine Government to establish a *wilayat* therein, the crime is rebellion. If, on the other hand, the primary objective is to sow and create a condition of widespread and extraordinary fear and panic among the populace in order to coerce the government to give in to an unlawful demand, the crime is terrorism. Here, we have already explained and ruled that the President did not err in believing that what is going on in Marawi City is one contemplated under the crime of rebellion.

In any case, even assuming that the insurgency in Marawi City can also be characterized as terrorism, the same will not in any manner affect Proclamation No. 216. Section 2 of Republic Act (RA) No. 9372, otherwise known as the Human Security Act of 2007 expressly provides that "[n]othing in this Act shall be interpreted as a curtailment, restriction or diminution of constitutionally recognized powers of the executive branch of the government." Thus, as long as the President complies with all the requirements of Section 18, Article VII, the existence of terrorism cannot prevent him from exercising his extraordinary power of proclaiming martial law or suspending the privilege of the writ of *habeas corpus*. After all, the extraordinary powers of the President are bestowed on him by the Constitution. No act of Congress can, therefore, curtail or diminish such powers.

Besides, there is nothing in Art. 134 of the RPC and RA 9372 which states that rebellion and terrorism are mutually

exclusive of each other or that they cannot co-exist together. RA 9372 does not expressly or impliedly repeal Art. 134 of the RPC. And while rebellion is one of the predicate crimes of terrorism, one cannot absorb the other as they have different elements.[300]

Verily, the Court upholds the validity of the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao region.

At the end of the day, however ardently and passionately we may believe in the validity or correctness of the varied and contentious causes or principles that we espouse, advocate or champion, let us not forget that at this point in time we, the Filipino people, are confronted with a crisis of such magnitude and proportion that we all need to summon the spirit of unity and act as one undivided nation, if we are to overcome and prevail in the struggle at hand.

Let us face up to the fact that the siege in Marawi City has entered the second month and only God or Allah knows when it would end. Let us take notice of the fact that the casualties of the war are mounting. To date, 418 have died. Out of that were 303 Maute rebels as against 71 government troops and 44 civilians.

Can we not sheathe our swords and pause for a while to bury our dead, including our differences and prejudices?

WHEREFORE, the Court **FINDS** sufficient factual bases for the issuance of Proclamation No. 216 and **DECLARES** it as **CONSTITUTIONAL**. Accordingly, the consolidated Petitions are hereby **DISMISSED**.

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[300] In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, *supra* note 148 at 493, the Court held that the elements of terrorism are as follows: (1) the offender commits an act punishable under any of the cited provisions of the Revised Penal Code, or under any of the enumerated special penal laws; (2) the commission of the predicate crime sows and creates a condition of widespread and extraordinary fear and panic among the populace; and (3) the offender is actuated by the desire to coerce the government to give in to an unlawful demand.

SO ORDERED.

Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, Mendoza, Reyes, Jardeleza, Martires, and *Tijam, JJ.*, concur, see separate opinions.

Perlas-Bernabe, J., concurs in the result, see separate opinion.

Sereno, C.J., *Carpio, Leonen,* and *Caguioa, JJ.,* see dissenting opinions.

SEPARATE CONCURRING OPINION

VELASCO, JR., *J.*:

[I]f the principle be established that the commander who, under any circumstances whatsoever, assumed to enforce superior military power over the people and territory of his own country does so under ***ultimate legal responsibility for his acts****, military rule is deprived of its terrors, and the law-abiding citizen sees in it nothing except the firm application for his benefit of the powerful military hand when civil institutions have ceased either wholly or at least effectively to perform their appropriate functions.*[1]

– Brig. Gen. W.E. Birkhimer, former Associate Justice of this Court

On the ground that the President correctly found probable cause of the existence of rebellion and that the public safety requires it, I concur in the *ponencia* sustaining the validity of Proclamation No. 216, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao."

Martial Law is the law of necessity in the actual presence of an armed conflict.[2] **The power to declare it is exercised precisely upon the principle of self-preservation in times of**

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[1] Birkhimer, W.E., *MILITARY GOVERNMENT AND MARTIAL LAW* (3rd ed. revised, 1914), Kansas City, Missouri; emphasis supplied.

[2] See *U.S. v. Diekelman*, 92 U.S. 520.

extreme emergency. To an extent, the power to declare Martial Law under Section 18, Article VII of the 1987 Constitution is similar to the citizen's right to **self-defense** under Article 11 of the Revised Penal Code (RPC), as unquestionably a State may use its military power to put down a rebellion too strong to be controlled by the civil authorities[3] to preserve its "sovereignty . . . and the integrity of [its] national territory."[4]

As it is a necessity—the confluence of the existence of an actual rebellion or invasion and the requirements of public safety—that gives the power to the President to proclaim Martial Law, such necessity must be shown to exist before such proclamation. However, as discussed in the *ponencia*, in deciding upon the existence of this necessity, **the facts as they were presented to the President at the moment he made the proclamation must govern; his decision must be scrutinized based on the information that be possessed at the time he made the proclamation and not the information he acquired later**. Thus, if the facts that were presented to him would excite a reasonable and prudent mind to believe that actual invasion or rebellion existed and the public safety required the imposition of Martial Law, the President is justified in acting on such belief. A subsequent discovery of the falsity of such facts will not render his act invalid at its inception.[5]

To this end, the President is not expected to act on proof beyond reasonable doubt as to the existence of actual invasion or rebellion and requirements of public safety. He must be able to act with urgency to best respond to the exigencies of the circumstances contemplated in Section 18, Article VII—actual invasion or rebellion. It should, therefore, be sufficient that he acts with the reasonableness and prudence of an average man to suitably respond to such events. Thus, **probable cause** is

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[3] See *Luther v. Borden*, 7 How. 1.

[4] CONSTITUTION, Art. II, Sec. 3.

[5] Birkhimer, *supra* note 1.

the evidentiary measure for the discretion given to the President's decision to proclaim a Martial Law. As in *Fortun v. Macapagal*,[6] I find the following excerpts from the *Brief of Amicus Curiae* of Fr. Joaquin Bernas, S.J. still instructive in this case:

> From all these it is submitted that the focus on public safety adds a nuance to the meaning of rebellion in the Constitution which is not found in the meaning of the same word in Article 134 of the Penal Code. The concern of the Penal Code, after all, is to punish acts of the past. But the concern of the Constitution is to counter threat to public safety both in the present and in the future arising from present and past acts. **Such nuance, it is submitted, gives to the President a degree of flexibility for determining whether rebellion constitutionally exists as basis for Martial Law even if facts cannot obviously satisfy the requirements of the Penal Code whose concern is about past acts. To require that the President must first convince herself that there can be proof beyond reasonable doubt of the existence of rebellion as defined in the Penal Code and jurisprudence can severely restrict the President's capacity to safeguard public safety for the present and the future and can defeat the purpose of the Constitution.**
>
> What all these point to are that the twin requirements of "actual rebellion or invasion" and the demand of public safety are inseparably entwined. But whether there exists a need to take action in favour of public safety is a factual issue different in nature from trying to determine whether rebellion exists. **The need of public safety is an issue whose existence, unlike the existence of rebellion, is not verifiable through the visual or tactile sense. Its existence can only be determined through the application of prudential estimation of what the consequences might be of existing armed movements. Thus, in deciding whether the President acted rightly or wrongly in finding that public safety called for the imposition of Martial Law, the Court cannot avoid asking whether the President acted wisely and prudently and not in grave abuse of discretion amounting to lack or excess of jurisdiction.** Such decision involves the verification of factors not as easily measurable as the demands of Article 134 of the Penal Code and can lead to a prudential

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[6] 684 Phil. 526, 631 (2012).

judgment in favour of the necessity of imposing Martial Law to ensure public safety even in the face of uncertainty whether the Penal Code has been violated. This is the reason why courts in earlier jurisprudence were reluctant to override the executive's judgment.

In sum, since **the President should not be bound to search for proof beyond reasonable doubt of the existence of rebellion and since deciding whether public safety demands action is a prudential matter, the function of the President is far from different from the function of a iudge trying to decide whether to convict a person for rebellion or not**. Put differently, looking for rebellion under the Penal Code is different from looking for rebellion under the Constitution.[7]

Certainly, the urgency of the circumstances envisioned under Section 18, Article VII of the Constitution requires the President to act with promptness and deliberate speed. He cannot be expected to check the accuracy of each and every detail of information relayed to him before he exercises any of the emergency powers granted to him by the Constitution. The window of opportunity to quell an actual rebellion or thwart an invasion is too small to admit delay. An expectation of infallibility on the part of the commander-in-chief may be at the price of our freedom.

As I have pointed out in *Fortun*,[8] "the President cannot be expected to risk being too late before declaring Martial Law or suspending the writ of *habeas corpus*. **The Constitution, as couched, does not require precision in establishing the fact of rebellion.** The President is called to act as public safety requires."[9] A degree of trust must, therefore, be accorded to the discretion exercised by the officer upon whom the exercise of emergency powers has been confided by the Constitution.

Notably, while Section 18, Article VII provides that "[t]he Supreme Court may review, in an appropriate proceeding filed

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[7] Emphasis and underscoring supplied.

[8] *Supra* note 6.

[9] Emphasis supplied.

by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof," it does not specify the "appropriate proceeding" that may be filed by a citizen for the purpose. Hence, in describing the nature of their petitions, petitioners Lagman, et al. and Cullamat, et al. would simply quote the third paragraph of Section 18, Article VII. Only petitioners Mohamad, et al. ventured further and maintained that its recourse is a "special proceeding."

It would be problematic for this Court to pigeonhole a petition praying for an inquiry into the "sufficiency of the factual basis of the proclamation of martial law" under any of the rules issued by this Court. Doing so may put undue procedural constraint on petitioners, defeating the intent underlying the provision. Given the exigencies of the circumstances considered in Section 18, Article VII of the Constitution, I concede that there is wisdom in the position that a petition praying for an inquiry into the "sufficiency of the factual basis of the proclamation of martial law" is *sui generis*.

This Court held in *David v. Macapagal-Arroyo*,[10] however, that the sufficiency of the factual basis for an emergency power must be measured not according to correctness but arbitrariness. The Court held:

> As to how the Court may inquire into the President's exercise of power, Lansang adopted the test that **"judicial inquiry can go no further than to satisfy the Court not that the President's decision is correct," but that "the President did not act arbitrarily." Thus, the standard laid down is not correctness, but arbitrariness**. In *Integrated Bar of the Philippines*, this Court further ruled that "it is incumbent upon the petitioner to show that the President's decision is totally bereft of factual basis" and that if he fails, by way of proof, to support his assertion, then "this Court cannot undertake an independent investigation beyond the pleadings."

In line with this, the yardstick available to this Court in gauging "arbitrariness" is found in Section 1, Article VIII of 1987, which

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[10] 522 Phil. 705, 854 (2006).

fortifies the expanded certiorari jurisdiction of this Court and, thus, allows it to "review what was before a forbidden territory, to wit, the discretion of the political departments of the government."[11] Section 1, Article VIII of the Constitution provides:

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

The provision's relation to the "appropriate proceeding" mentioned in Section 18, Article VII was spelled out by former Chief Justice and Constitutional Commissioner Roberto Concepcion in his sponsorship speech. He said:

> The first section starts with a sentence copied from former Constitutions. It says:
>
> The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> I suppose nobody can question it.
>
> The next provision is new in our constitutional law. I will read it first and explain.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.
>
> Fellow Members of this Commission, **this is actually a product of our experience during martial law**. As a matter of fact, it has some antecedents in the past, but **the role of the judiciary during the deposed regime was marred considerably by the circumstance that in a number of cases against the government, which then**

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[11] *Id*.

had no legal defense at all, the solicitor general set up the defense of political question and got away with it. As a consequence, certain principles concerning particularly the writ of habeas corpus, that is, the authority of courts to order the release of political detainees, and other matters related to the operation and effect of martial law failed because the government set up the defense of political question. And the Supreme Court said: "Well, since it is political, we have no authority to pass upon it." The Committee on the Judiciary feels that this was not a proper solution of the questions involved. It did not merely request an encroachment upon the rights of the people, but it, in effect, encouraged further violations thereof during the martial law regime. x x x

x x x x x x x x x

Briefly stated, courts of justice determine the limits of power of the agencies and offices of the government as well as those of its officers. In other words, the judiciary is the final arbiter on the question whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction, or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction or lack of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.

This is the background of paragraph 2 of Section 1, which means that the courts cannot hereafter evade the duty to settle matters of this nature, by claiming that such matters constitute a political question.[12]

Thus, where a proclamation of Martial Law is bereft of sufficient factual basis, this Court can strike down the proclamation as having been made with "a grave abuse of discretion amounting to lack or excess of jurisdiction." Otherwise, the President's determination of the degree of power demanded by the circumstances must stand.[13] Resolving a challenge against

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[12] I Record of the Constitutional Commission 434-436 (1986); cited in *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, G.R. Nos. 207132 & 207205, December 6, 2016.

[13] See *Luther v. Borden*, 7 How. 1.

the exercise of an emergency power, this Court held in *Integrated Bar of the Philippines v. Zamora*:[14]

> On the other hand, the President as Commander-in-Chief has a vast intelligence network to gather information, some of which may be classified as highly confidential or affecting the security of the state. In the exercise of the power to call, on-the-spot decisions may be imperatively necessary in emergency situations to avert great loss of human lives and mass destruction of property. Indeed, **the decision** to call out the military to prevent or suppress lawless violence **must be done swiftly and decisively if it were to have any effect at all**. Such a scenario is not farfetched when we consider the present situation in Mindanao, where the insurgency problem could spill over the other parts of the country. **The determination of the necessity** for the calling out power **if subjected to unfettered judicial scrutiny could be a veritable prescription for disaster, as such power may be unduly straitjacketed by an injunction or a temporary restraining order every time it is exercised**.
>
> 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.**[15]

On this score, the President did not commit a grave abuse of discretion in issuing Proclamation No. 216, given the facts he was confronted with, including but not limited to the following:

1. A state of national emergency on account of lawless violence was declared in Mindanao on September 4, 2016;
2. The Maute Group published a video declaring their allegiance to the Islamic State of Iraq and Syria (ISIS);
3. The Maute group attacked a military outpost in Butig, Lanao del Sur in February 2016;
4. The Maute Group caused a mass jailbreak in Marawi City in August 2016;

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[14] 392 Phil. 618, 675 (2000).

[15] Emphasis supplied.

5. A hospital was taken over by the Maute Group on May 23, 2017;
6. Several government and private facilities were set ablaze by the Maute terrorist group;
7. Members of the Maute group hoisted the ISIS flag;
8. A city-wide power outage set in as sporadic gunfights ensued in Marawi City;
9. Control over three bridges in Lanao de Sur fell to the Maute Group;
10. Hostages were taken from a church;
11. Young Muslims were forced to augment the Maute group.

I further lend my concurrence to the view sustaining the coverage of Proclamation No. 216 to the entirety of Mindanao. As pointed out by the *ponencia*, Marawi is in the heart of Mindanao and the rebels can easily join forces with the other rebel and terrorist groups and extend the scope of the theater of active conflict to other areas of Mindanao. And based on past events, such is the design of the multiple rebel and terrorist groups now presently in armed conflict with the Armed Forces in Marawi City. In fact, as shown by prior incidents, which include the following, the activities of these numerous rebel and terrorist groups are spread over different parts of the Mindanao:

1. An improvised explosive device (IED) was detonated at a night market in Roxas Avenue, Davao City on September 2, 2016, causing the death of fifteen (15) people and injury to more than sixty (60) others;
2. On November 5, 2016, the Abu Sayyaf Group (ASG) abducted a German national, Juergen Kantner off Tawi-Tawi; the remains of his wife, Sabine Merz, was found in Barangay Darul Akram, Sulu;
3. On December 28, 2016, members of the Bangsamoro Islamic Freedom Fighters (BIFF) lobbed two grenades at the provincial office of Shariff Maguindanao;
4. On January 13, 2017, an IED exploded in Barangay Uno, Basilan thereby killing one civilian and injuring another;
5. On January 19, 2017, the ASG kidnapped three (3) Indonesian crew members near Bakungan Island, Tawi-Tawi;

6. On January 19, 2017, the ASG detonated an IED in Barangay Danapah, Basilan resulting in the death of two (2) children and the wounding of three (3) others;
7. Military personnel were ambushed in Marawi City on February 16, 2017;
8. On February 16, 2017, the ASG beheaded its German kidnap victim, Juergen Kantner, in Sulu;
9. On March 15, 2017, Mrs. Omera Lotao Madid was kidnapped in Saguiaran, Lanao del Sur by suspected Maute Group elements;
10. The ASG beheaded kidnap victim Noel Besconde in Sulu;
11. There were eleven (11) separate instances of IED explosions by the BIFF all over Mindanao from February to May 2017;
12. Military intelligence disclose that the Maute Group had dispatched its members to the cities of Marawi, Iligan and Cagayan de Oro to conduct bombing operations, carnapping and "liquidation" of AFP and PNP personnel in the said areas as early as April 18, 2017.[16]

It can only complicate the situation if the effectivity of Proclamation No. 216 will be limited only to Marawi City or some other provinces. The Armed Forces must be given ample power to suppress or contain the rebellion as soon as possible under a singular rule of operational procedure regardless of territorial lines in Mindanao.

To date, almost two-thirds of Marawi's population have left the city and are now scattered in different parts of Mindanao. Thousands of these displaced citizens—men, women, and children, young and old alike—are cramped in uncomfortable evacuation centers without any means of livelihood and with barely enough food to eat and survive in these crowded, and sometimes unsanitary, spaces. Meanwhile, those who remain trapped in the ruins of the city are in danger of being caught in the line of fire and have scarcely any access to food or water.

Martial Law is not the end in itself, it is a temporary means to achieve the paramount object of restoring peace

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[16] See Respondents Memorandum dated June 19, 2017, pp. 10-11.

under civilian authority. With the breakdown of civilian government in Marawi at the hands of the Maute group, which has a reported culpable intention and capability to do the same to the rest of Mindanao, I find it proper that the President exercised his Martial Law powers to suppress the rebellion and temporarily replace the incapacitated civilian authorities with military men in the hopes of ending as soon possible this tragic humanitarian disaster.

With our nation's dark experience under the 1972 Proclamation No. 1081, however, it is understandable that any Martial Law proclamation will be examined with extreme wariness. In fact, the common thread running through the three consolidated petitions is the implicit distrust of Martial Law. Couched in the consolidated petitions challenging Proclamation No. 216 is the notion that the declaration of Martial Law is equivalent to a desecration of human rights and the automatic negation of Article III of the 1987 Constitution or the Bill of Rights. Even this very Court implied such sentiment. The Court's ruling in *Fortun* stated, thus:

> Two. Since President Arroyo withdrew her proclamation of Martial Law and suspension of the privilege of the writ of *habeas corpus* in just eight days, they have not been meaningfully implemented. The military did not take over the operation and control of local government units in Maguindanao. **The President did not issue any law or decree affecting Maguindanao that should ordinarily be enacted by Congress. No indiscriminate mass arrest had been reported. Those who were arrested during the period were either released or promptly charged in court.** Indeed, no petition for *habeas corpus* had been filed with the Court respecting arrests made in those eight days. The point is that the President intended by her action to address an uprising in a relatively small and sparsely populated province. In her judgment, the rebellion was localized and swiftly disintegrated in the face of a determined and amply armed government presence.[17]

Indeed, compared to the calling-out power of the President, the power to declare Martial Law is less benign and "poses the

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[17] *Supra* note 6. Emphasis supplied.

most severe threat to civil liberties."[18] This Court's ruling in *David v. Macapagal-Arroyo*[19] outlines the marked differences between the two emergency powers, thus:

> Under **the calling-out power**, the President may summon the armed forces to aid him in suppressing lawless violence, invasion and rebellion. **This involves ordinary police action** x x x.
>
> x x x x x x x x x
>
> **The declaration of Martial Law is a "warn[ing] to citizens that the military power has been called upon by the executive to assist in the maintenance of law and order, and that, while the emergency lasts, they must, upon pain of arrest and punishment, not commit any acts which will in any way render more difficult the restoration of order and the enforcement of law."**
>
> In his "Statement before the Senate Committee on Justice" on March 13, 2006, Mr. Justice Vicente V. Mendoza, an authority in constitutional law, said that of the three powers of the President as Commander-in-Chief, **the power to declare Martial Law poses the most severe threat to civil liberties**. It is a strong medicine which should not be resorted to lightly. It cannot be used to stifle or persecute critics of the government. It is placed in the keeping of the President for the purpose of enabling him to secure the people from harm and to restore order so that they can enjoy their individual freedoms. In fact, Section 18, Art. VII, provides:
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> x x x x x x x x x
>
> Justice Mendoza also stated that PP 1017 is not a declaration of Martial Law. It is no more than a call by the President to the armed forces to prevent or suppress lawless violence. As such, it cannot be used to justify acts that only under a valid declaration of Martial Law can be done. Its use for any other purpose is a perversion of its nature and scope, and any act done contrary to its command is ultra vires.[20]

This Court in *David* would later cite Justice Vicente V. Mendoza when he stated that, specifically, the following powers

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[18] *David v. Macapagal-Arroyo*, *supra* note 10.

[19] *Id*.

[20] Emphasis supplied.

can be exercised by the President as Commander-in-Chief where there is a valid declaration of Martial Law or suspension of the writ of *habeas corpus*: "(a) arrests and seizures without judicial warrants; (b) ban on public assemblies; [and] (c) take-over of news media and agencies and press censorship."[21]

Truly, in the occasion of a rebellion or invasion, **the paramount object of the State is the safety and interest of the public and the swift cessation of all hostilities**; it is neither the adjustment to nor the accommodation of the unbridled exercise of private liberties.[22] As Martial Law is borne out of necessity, interference of private rights may be justified. This concept is not foreign and is recognized by our laws. The prime example is the inherent police power of the state, which can prevail over specific constitutional guarantees.[23] As this Court elucidated, "the guarantees of due process, equal protection of the laws, peaceful assembly, free expression, and the right of association are neither absolute nor illimitable rights; they are always subject to the pervasive and dominant police power of the State and may be lawfully abridged to serve appropriate and important public interests."[24]

Article 11 of the Revised Penal Code (RPC) and Article 432 of the New Civil Code (NCC) likewise flow from this principle. Respectively, they state:

Article 11, RPC:

ARTICLE 11. Justifying Circumstances. — The following do not incur any criminal liability:

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[21] *Supra* note 10.

[22] Birkhimer, *supra* note 1.

[23] Nachura, Antonio E.B., *OUTLINE REVIEWER IN POLITICAL LAW* 47; citing *Philippine Press Institute v. COMELEC*, G.R. No. 119694, May 22, 1995, 244 SCRA 272 and *Quezon City v. Ericta*, No. L-34915, June 24, 1983, 122 SCRA 759.

[24] *Imbong v. Ferrer*, 146 Phil. 30, 67 (1970); citing *Gonzales v. Comelec*, No. L-27833, April 18, 1969, 27 SCRA 835, 858; Justice Douglas in *Elfbrandt v. Russel*, 384 U.S. 11, 18-19, 1966.

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

x x x x x x x x x

4. Any person who, in order to avoid an evil or injury, does an act which causes damage to another, provided that the following requisites are present:

First. That the evil sought to be avoided actually exists;

Second. That the injury feared be greater than that done to avoid it;

Third. That there be no other practical and less harmful means of preventing it.

Article 432, NCC:

The owner of a thing has no right to prohibit the interference of another with the same, if the interference is necessary to avert an imminent danger and the threatened damage, compared to the damage arising to the owner from the interference, is much greater. The owner may demand from the person benefited indemnity for the damage to him.

But **Martial Law is by no means an arbitrary license** conferred on the President and the armed forces. As it is borne out of necessity, so it is limited by necessity. Justice Teehankee eloquently explained this much:

***Necessity* limits both the *extent* of powers that may be exercised under Martial Law, and the *duration* of its exercise.** No life may be taken, no individual arrested or confined, or held for trial, no property destroyed, or appropriated, no rights of the individual may be curtailed or suspended except where necessity justifies such interference with the person or the property. **Any action on the part of the military that is *not* founded on the reasonable demands of necessity is a *gross usurpation of power*, illegal, unjustified, and improper.** The broad mantle of Martial Law cannot cover acts illegal

because not justified by necessity, nor proper under the circumstances. This principle is based not only upon the fundamental precepts of *constitutionalism*, but rests on sound reason—that where the action of the matter is not necessary for the public ends of the state they are illegal, and the *mere fact* that Martial Law exists will *not be* a ground for their justification.[25]

Intrusions into the civil rights must be proportional to the requirements of necessity. Only such power as is necessary to achieve the object of quashing the rebellion or thwarting the invasion and restoring peace can be used. "It is an unbending rule of law that the exercise of military power when the rights of the citizen are concerned shall never be pushed beyond what the exigency requires."[26] Anything in excess of what is considered "military necessity"[27] or is markedly removed from what is "needed in order to head the [rebellion or invasion] off"[28] will render liable the officer who committed such *ultra vires* act. Surely, an act against chastity and the desecration of women is unjustified even in times of war. Such and similar acts remain violative of the laws, which continue to be effective even after Martial Law is proclaimed.

The old maxim of *inter arma silent leges* (in times of war, the law falls silent) no longer holds true, especially given this clear expression of the uninterrupted superiority of the Constitution in Section 18, Article VII of the 1987 Constitution:

A state of Martial Law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction

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[25] *J.* Teehankee's Dissenting Opinion in *Aquino, Jr. v. Military Commission No. 2*, No. L-37364, 159-A Phil. 163-291 (1975); citing Santos, *Martial Law*, 2nd ed., pp. 17-78, citing Winthrop, p. 820; Fairman, p. 48; Wiener, p. 14. Emphasis supplied.

[26] *Raymond v. Thomas*, 91 U.S. 712.

[27] "The necessity of employing measures which are indispensable to achieve a legitimate aim of the conflict and are not otherwise prohibited by International Humanitarian Law." Republic Act No. 9851, Sec. 3(1).

[28] *Moyer v. Peabody*, 212 U.S. 78.

on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.

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

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.[29]

This is in conformity with the observations made in the seminal case of *Ex Parte Milligan*[30] where the United States' Supreme Court, through Justice Davis, held:

x x x Those great and good men foresaw that troublous times would arise when rulers and people would become restive under restraint, and seek by sharp and decisive measures to accomplish ends deemed just and proper, and that the principles of constitutional liberty would be in peril unless established by irrepealable law. The history of the world had taught them that what was done in the past might be attempted in the future. **The Constitution** of the United States **is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances**. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false, for the government, within the Constitution, has all the powers granted to it which are necessary to preserve its existence, as has been happily proved by the result of the great effort to throw off its just authority.

x x x x x x x x x

This nation, as experience has proved, cannot 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,

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[29] Emphasis and underscoring supplied.

[30] 71 U.S. 2 (4 Wall.) (1866).

and if this right is conceded, and the calamities of war again befall us, the dangers to human liberty are frightful to contemplate. If our fathers had failed to provide for just such a contingency, they would have been false to the trust reposed in them. They knew—the history of the world told them—the nation they were founding, be its existence short or long, would be involved in war; how often or how long continued human foresight could not tell, and that unlimited power, wherever lodged at such a time, was especially hazardous to freemen. For this and other equally weighty reasons, **they secured the inheritance they had fought to maintain by incorporating in a written constitution the safeguards which time had proved were essential to its preservation**. Not one of these safeguards can the President or Congress or the Judiciary disturb, except the one concerning the writ of habeas corpus.[31]

The continuous operation of the 1987 Constitution, a safeguard embedded in the very provision bestowing upon the President the power to proclaim Martial Law, primarily ensures that no right will unnecessarily be obstructed or impaired during Martial Law and that "civilian authority is, at all times, superior over the military."[32]

Notably, while Section 18, Article VII of the 1987 Constitution provides that in times of public emergency, the privilege of the writ of habeas corpus may be suspended, **there is no express authority allowing the suspension of the other guarantees and civil liberties**. Understandably, the question as to what can or cannot be done during Martial Law has long been discussed and debated over. As early as 1915, Henry Winthrop Ballantine posed the following questions in relation to the proclamation of Martial Law:

I. What is the effect of a proclamation of martial law, does it suspend the constitution, and the laws of the State . . .?

II. Does the [President] of a state, by such proclamation, confer on himself, or on his military representatives, a supreme and unlimited power over all his fellow-citizens, within the space described, which

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[31] Emphasis supplied.

[32] CONSTITUTION, Art. II, Sec. 3.

suspends the functions of civil courts and magistrates and substitutes in their place the mere will of the military commander?

III. May the military disregard the writ of *habeas corpus*, or other process of the courts, if issued? Is the writ of habeas corpus in practical effect suspended by such proclamation?

IV. May a military commission, or summary courts, be established as a substitute for the ordinary civil courts, to try civilians for (a) felony, (b) misdemeanours, or (c) disobedience of orders and proclamations?

V. If so, is there any limit to the punishments which may be prescribed and inflicted? May the military confiscate property and levy fines, as well as imprison and put to death at their discretion?

VI. If they take life, or injure person or property, are the military authorities immune from civil suit or criminal prosecution for unreasonable acts done in excess of authority? Are the ordinary courts without jurisdiction to inquire into and review the legality of military measures?

VII. May the military shoot persons caught looting or in the commission of other crimes?

VIII. May the military arrest without warrant, merely on suspicion of complicity in the rioting, or other disturbances? May they forcibly enter and search private houses and seize property without a search warrant?

IX. May the military hold and detain persons so arrested on suspicion, for indefinite periods at their discretion, without charge of crime and without turning them over to the civil courts for trial?

X. May the military issue executive orders and proclamations to the citizens generally, having the force of law?

(a) x x x
(b) May the military exercise a censorship over the press and suppress newspapers at their discretion?
(c) May the military limit the right or privilege of peaceable public assembly?
(d) May the military prescribe to employers what classes of laborers they shall or shall not employ?
(e) May the military establish "dead lines" within which it is forbidden to civilians to go without a military pass, and so restrict the freedom of movement of peaceable citizens?
(f) May the military confiscate arms, or forbid traffic in arms?

(g) Will a sentry be justified in firing on a person disobeying his orders to halt, where such person is not attempting to carry out any felonious design?[33]

In answer, it was proposed that the source from which the power to proclaim Martial Law springs must be considered. Hence, **if there is no Constitutional provision or statute expressly allowing an intrusion or limitation of a civil liberty, then it is *not* and will *not* be allowed**.

Public defense can and should be attained without a total abrogation of all individual rights. Otherwise, "it could be well said that a country, preserved at the sacrifice of all the cardinal principles of liberty, is not worth the cost of preservation."[34] Thus, while this Court recognized in *David* that "arrests and seizures without judicial warrants" can be made during Martial Law, the circumstances justifying such warrantless arrests and seizures under the Rules of Court and jurisprudence must still obtain. Pertinently, Section 5, Rule 113 reads:

SECTION 5. Arrest Without Warrant; When Lawful.— A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has **probable cause** to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

As the basis for the declaration of Martial Law—rebellion—is a **continuing crime**,[35] the authorities may resort to warrantless

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[33] Ballantine, Henry Winthrop. "Unconstitutional Claims of Military Authority." Journal of the American Institute of Criminal Law and Criminology, vol. 5, no. 5, 1915, pp. 718-743. JSTOR, www.jstor.org/stable/1132541.

[34] *Ex Parte Milligan*, *supra* note 30.

[35] *Umil v. Ramos*, G.R. No. 81567, October 3, 1991, 202 SCRA 251.

arrests of *persons suspected of rebellion* under the foregoing provision of the Rules of Court.[36] It must, however, be emphasized that the *suspicion of rebellion* upon which a warrantless arrest is made must be based on a **probable cause**, i.e., the ground of suspicion is supported by personal knowledge of facts and circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person sought to be arrested has "committed or is actually committing" the crime of rebellion. Thus, parenthetically, the general arrest orders must be issued by the Armed Forces on the basis of probable cause. Alternatively, it must be shown that the person to be arrested was caught ***in flagrante delicto*** or has committed or is actually committing an overt act of rebellion or any other offense in the presence of the arresting officer.

In sustaining an arrest without a judicial warrant, Justice Holmes, in *Moyer v. Peabody*, ratiocinated that the "public danger warrants the substitution of executive process for judicial process."[37] However, I subscribe to the position that even during Martial Law, **the jurisdiction of and inquiry by the courts are merely postponed, not ousted or superseded**.[38] Hence, the same tests that would be applied by the civil courts in an inquiry into the validity of a government action must be applied by the military during a Martial Law.

In line with this, searches and seizures without judicial warrants can only be had in the following cases: (1) search of moving vehicles; (2) seizure in plain view; (3) customs searches; (4) waiver or consented searches; (5) stop and frisk situations (Terry search); (6) search incidental to a lawful arrest; (7) exigent and emergency circumstance;[39] and (8) search of vessels and

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[36] *Sanlakas v. Reyes*, 466 Phil. 482, 548 (2004).

[37] 212 U.S. 78 (1909).

[38] Ballantine, Henry Winthrop, "*Martial Law." Columbia Law Review*, vol. 12, no. 6, 1912, pp. 529-538.

[39] *People v. Rom*, 727 Phil. 587, 607 (2014); citing *Dimacuha v. People*, 545 Phil. 406 (2007); *People v. Martinez*, G.R. No. 191366, December 13, 2010, 637 SCRA 791; *Caballes y Taiño v. Court of Appeals*, 424 Phil. 263, 290 (2002).

aircraft,[40] where, again, probable cause exists that an offense has been committed and the objects sought in connection with the offense are in the place sought to be searched.

In the restriction of the freedom of speech and of the press, the military must still be guided by the **clear and present danger** test—that words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that the military has a right to prevent.[41] Thus, the military can prohibit the dissemination of vital information that can be used by the enemy, e.g., they can ban posts on social media if there is a clear and present danger that such posts will disclose their location. The same test, the presence of clear and present danger, governs the power of the military to disperse peaceable assemblies during Martial Law. As this Court held, tolerance is the rule and limitation is the exception.[42] Otherwise stated, in the absence of clear and present danger, the military is bound by the rules of maximum tolerance[43] under Batas Pambansa Blg. (BP) 880, otherwise known as the "The Public Assembly Act of 1985."

As to the "take-over of news media" mentioned in *David*, Section 17, Article XII of the 1987 Constitution states that: "In times of national emergency, when the public interest so requires, the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately-owned public utility or business affected with public interest." Prescinding therefrom, this Court, in *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*,[44] held that ***police power*** justifies a temporary "take over [of] the

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[40] *Valeroso v. Court of Appeals*, 614 Phil. 236, 255 (2009).

[41] *Eastern Broadcasting Corp. v. Dans, Jr.*, 222 Phil. 151, 169 (1985).

[42] *David*, *supra* note 10.

[43] BP 880, Sec. 3(c). "Maximum tolerance" means the highest degree of restraint that the military, police and other peace keeping authorities shall observe during a public assembly or in the dispersal of the same.

[44] 465 Phil. 545, 586 (2004).

operation of any business affected with public interest" by the State in times of national emergency:

> *Temporary takeover of business affected with public interest in times of national emergency*
>
> Section 17, Article XII of the 1987 Constitution grants the State in times of national emergency the right to temporarily take over the operation of any business affected with public interest. This right is an exercise of police power which is one of the inherent powers of the State.
>
> Police power has been defined as the "state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare." It consists of two essential elements. First, it is an imposition of restraint upon liberty or property. Second, the power is exercised for the benefit of the common good. Its definition in elastic terms underscores its all-encompassing and comprehensive embrace. It is and still is the "most essential, insistent, and illimitable" of the State's powers. It is familiar knowledge that unlike the power of eminent domain, police power is exercised without provision for just compensation for its paramount consideration is public welfare.
>
> **It is also settled that public interest on the occasion of a national emergency is the primary consideration when the government decides to temporarily take over or direct the operation of a public utility or a business affected with public interest.** The nature and extent of the emergency is the measure of the duration of the takeover as well as the terms thereof. **It is the State that prescribes such reasonable terms which will guide the implementation of the temporary takeover as dictated by the exigencies of the time.** As we ruled in our Decision, this power of the State cannot be negated by any party nor should its exercise be a source of obligation for the State.[45]

This Court, however, has held that it is the legislature, not the executive, which is the constitutional repository of police power,[46]

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[45] Emphasis supplied.

[46] *Southern Luzon Drug Corp. v. Department of Social Welfare and Development*, G.R. No. 199669, April 25, 2017; citing *Ichong, etc., et al. v. Hernandez, etc., and Sarmiento*, 101 Phil. 1155 (1957).

the existence of a national emergency, such as a rebellion or invasion, notwithstanding. Accordingly, **the power to temporarily take over or direct the operation of any privately-owned public utility or business affected with public interest can only be done whenever there is a law passed by Congress authorizing the same**. This Court, in *David*, explained as much:

> But the exercise of emergency powers, such as the taking over of privately owned public utility or business affected with public interest, is a different matter. This requires a delegation from Congress.
>
> Courts have often said that constitutional provisions *in pari materia* are to be construed together. Otherwise stated, different clauses, sections, and provisions of a constitution which relate to the same subject matter will be construed together and considered in the light of each other. Considering that Section 17 of Article XII and Section 23 of Article VI, previously quoted, relate to national emergencies, they must be read together to determine the limitation of the exercise of emergency powers.
>
> Generally, Congress is the repository of emergency powers. This is evident in the tenor of Section 23 (2), Article VI authorizing it to delegate such powers to the President. Certainly, a body cannot delegate a power not reposed upon it. However, knowing that during grave emergencies, it may not be possible or practicable for Congress to meet and exercise its powers, the Framers of our Constitution deemed it wise to allow Congress to grant emergency powers to the President, subject to certain conditions, thus:
>
> (1) There must be a war or other emergency.
>
> (2) The delegation must be for a limited period only.
>
> (3) The delegation must be subject to such restrictions as the Congress may prescribe.
>
> (4) The emergency powers must be exercised to carry out a national policy declared by Congress.

Section 17, Article XII must be understood as an aspect of the emergency powers clause. The taking over of private business affected with public interest is just another facet of the emergency powers generally reposed upon Congress. **Thus, when Section 17 states that the "the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct**

the operation of any privately owned public utility or business affected with public interest," it refers to Congress, not the President. Now, whether or not the President may exercise such power is dependent on whether Congress may delegate it to him pursuant to a law prescribing the reasonable terms thereof. *Youngstown Sheet & Tube Co. et al. v. Sawyer*, held:

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The order cannot properly be sustained as an exercise of the President's military power as Commander-in-Chief of the Armed Forces. The Government attempts to do so by citing a number of cases upholding broad powers in military commanders engaged in day-to-day fighting in a theater of war. Such cases need not concern us here. Even though "theater of war" be an expanding concept, we cannot with faithfulness to our constitutional system hold that the Commander-in-Chief of the Armed Forces has the ultimate power as such to take possession of private property in order to keep labor disputes from stopping production. This is a job for the nation's lawmakers, not for its military authorities.

Nor can the seizure order be sustained because of the several constitutional provisions that grant executive power to the President. In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute. The first section of the first article says that "All legislative Powers herein granted shall be vested in a Congress of the United States. . ."

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It may be argued that when there is national emergency, Congress may not be able to convene and, therefore, unable to delegate to the President the power to take over privately-owned public utility or business affected with public interest.

In *Araneta v. Dinglasan*, this Court emphasized **that legislative power, through which extraordinary measures are exercised, remains in Congress even in times of crisis**.

x x x x x x x x x

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

Indeed, **the military must still be guided by *law* and *jurisprudence* and motivated by *good faith* in the exercise of the supreme force of the State even during a Martial law**. Thus, in its endeavor to restore peace and preserve the state, the military must still make proper adjustments to the safeguards of constitutional liberty under the following legislations intended to protect human rights:[47]

1. Republic Act No. 7438 (*An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers and Providing Penalties for Violations Thereof*)
2. Republic Act No. 8371 (*The Indigenous Peoples' Rights Act of 1997*)
3. Republic Act No. 9201 (*National Human Rights Consciousness Week Act of 2002*)
4. Republic Act No. 9208 (*Anti-Trafficking in Persons Act of 2003*)
5. Republic Act No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*)
6. Republic Act No. 9344 (*Juvenile Justice and Welfare Act of 2006*)
7. Republic Act No. 9372 (*Human Security Act of 2007*)
8. Republic Act No. 9710 (*The Magna Carta of Women*)
9. Republic Act No. 9745 (*Anti-Torture Act of 2009*)

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[47] *Ocampo v. Enriquez*, G.R. Nos. 225973, *etc*., November 8, 2016.

10. Republic Act No. 9851 (*Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity*)
11. Republic Act No. 10121 (*Philippine Disaster Risk Reduction and Management Act of 2010*)
12. Republic Act No. 10168 (*The Terrorism Financing Prevention and Suppression Act of 2012*)
13. Republic Act No. 10353 (*Anti-Enforced or Involuntary Disappearance Act of 2012*)
14. Republic Act No. 10364 (*Expanded Anti-Trafficking in Persons Act of 2012*)
15. Republic Act No. 10368 (*Human Rights Victims Reparation and Recognition Act of 2013*)
16. Republic Act No. 10530 (*The Red Cross and Other Emblems Act of 2013*)

The continuous effectivity of the 1987 Constitution further provides a blueprint by which the military shall act with respect to the civilians and how it shall conduct its operations and actions during the effectivity of Martial Law.

Under Section 2, Article II of the 1987 Constitution, the "generally accepted principles of international law [remains to be] part of the law of the land." Hence, conventions and treatises applicable to non-international armed conflicts including the Geneva Conventions and its Additional Protocols continue to impose the limits on the power and discretion of the armed forces.

Notably, Common Article 3 of the Geneva Conventions enumerates acts that remain prohibited despite the hostilities. It states:

> In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:
>
> (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or

wealth, or any other similar criteria. **To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:**

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.[48]

Furthermore, the Fundamental Guarantees under Article 4 of the "Protocol Additional to the Geneva Conventions x x x relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)" remain binding:

1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.

2. Without prejudice to the generality of the foregoing, **the following acts** against the persons referred to in paragraph 1 are and **shall remain prohibited at any time and in any place whatsoever**:

(a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(b) collective punishments;

(c) taking of hostages;

(d) acts of terrorism;

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[48] Emphasis supplied.

(e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

(f) slavery and the slave trade in all their forms;

(g) pillage;

(h) threats to commit any of the foregoing acts.

3. Children shall be provided with the care and aid they require, and in particular:

(a) they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care;

(b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated;

(c) children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities;

(d) the special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of sub-paragraph (c) and are captured;

(e) measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well-being.[49]

These international commitments are incorporated into our laws not only by virtue of Section 2, Article II of the 1987 Constitution, but also by the domestic legislations previously enumerated.

Without a doubt, state agents—the members of the armed forces—who abuse their power and discretion under the proclaimed Martial Law and thereby violate their duty as the "protector of the people and the State"[50] are criminally and civilly liable.

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[49] Emphasis supplied.

[50] CONSTITUTION, Art. II, Sec. 3.

And here lies the ultimate safeguard against the possible abuses of this emergency power—the **ultimate responsibility** of the officers for acts done in the implementation of Martial Law. To whom much is given, much will be required.

Our history justifies a heightened vigilance against the abuse of power, whether masked by Martial Law or otherwise. However, our fears should not hold us back from employing a power necessary to fight for our sovereignty and the integrity of our national territory under the auspices of democracy and civil authority. **As we recognize the superiority of the 1987 Constitution even during Martial Law, so should we recognize and place our trust in the safeguards written and intertwined in the grant of the power to declare Martial Law.** Let us concede that the framers of our Constitution, informed by lessons of history, guarded the "foundations of civil liberty against the abuses of unlimited power."[51]

WHEREFORE, I vote to **DISMISS** the petitions.

SEPARATE CONCURRING OPINION

LEONARDO-DE CASTRO, *J.*:

I concur in the DISMISSAL of the Petitions filed in these consolidated cases but I am compelled to write this separate opinion to elucidate the grounds for my concurring vote which, in some respects, deviate from the grounds adduced by my colleagues who also belong to the majority.

These three cases were denominated as petitions filed under the third paragraph of Section 18, Article VII of the 1987 Constitution. Petitioners collectively seek a ruling from this Court nullifying, for alleged lack of sufficient factual basis, Presidential Proclamation No. 216 dated May 23, 2017 which declared a state of martial law and suspended the privilege of the writ of *habeas corpus* in the whole of Mindanao. Proclamation No. 216 is quoted in full hereunder:

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[51] *Ex Parte Milligan*, *supra* note 30.

PROCLAMATION NO. 216
DECLARING A STATE OF MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS IN THE WHOLE OF MINDANAO

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

WHEREAS, Section 18, Article VII of the Constitution provides that "x x x in case of invasion or rebellion, when the public safety requires it, he (the President) may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law x x x";

WHEREAS, Article 134 of the Revised Penal Code, as amended by R.A. No. 6968, provides that "the crime of rebellion or insurrection is committed by rising and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other anned forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives";

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

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

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

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

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

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

DONE in the Russian Federation, this 23rd day of May in the year of our Lord Two Thousand and Seventeen.

As previously stated, petitioners base their separate actions on Section 18, Article VII (entitled "Executive Department"), which reads:

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

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

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of

the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

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

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

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

The above-quoted constitutional provision has laid to rest the issues that were the subject of lengthy debates in the cases of *Lansang v. Garcia*[1] and *Aquino v. Ponce Enrile*,[2] including those touching on the political question doctrine; the nature, extent and scope of martial law; and the respective constitutional boundaries or spheres of competence of the Executive Department, the Legislative Department and the Judiciary in relation to the proclamation by the President of martial law and the suspension of the privilege of the writ of *habeas corpus*.

Particularly, the 1987 Constitution categorically institutionalized (a) the power of this Court to review the sufficiency of the factual basis of the proclamation of martial law and the suspension of the said privilege; and (b) the power of Congress to revoke or, upon the initiative of the President, to extend the said proclamation and suspension. **The 1987 Constitution expressly laid out as well the consequences or effects of a state of martial law, specifically that: the operation of the Constitution is not suspended; civil courts and legislative bodies shall continue to function; no jurisdiction is conferred on military courts or agencies over civilians where civil courts are able**

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[1] 149 Phil. 547 (1971).

[2] 158-A Phil. 1, 132 (1974).

to function; the privilege of the writ of *habeas corpus* is not automatically suspended by the declaration of martial law; and any citizen has legal standing to initiate before the Supreme Court an appropriate proceeding as the avenue for the exercise of the power of judicial review of the aforesaid Presidential actions.

The detailed provisions of the 1987 Constitution have thus eliminated many of the controversial issues that previously confronted the Court in the Marcos martial law cases, which were brought about by the obscurity of the concept of martial law, notwithstanding that unlike the United States Constitution, the 1935 and 1973 Philippine Constitutions already explicitly empowered the chief executive, as Commander-in-Chief of the Armed Forces of the Philippines, to proclaim martial law and suspend the privilege of the writ of *habeas corpus*. Still, there are provisions in the 1987 Constitution that have engendered varying interpretations among the Members of this Court, which resulted in our differences in opinion on such issues as the nature of the "appropriate proceeding" where the Supreme Court may review the factual basis of the aforesaid Presidential actions, the test to determine the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* by the President, and the concept of "rebellion" adverted to in Section 18, Article VII.

Nature of the "appropriate proceeding" provided in Section 18, Article VII

With respect to a preliminary and technical aspect of the consolidated petitions at bar, the Court is called upon to pass upon the issue of what constitutes "an appropriate proceeding" as the means to secure a judicial review of the constitutional sufficiency of a martial law proclamation and/or a suspension of the privilege of the writ of *habeas corpus*.

On one side, respondents claim that the "appropriate proceeding" referred to in Section 18, Article VII is a petition for *certiorari* on the theory that it is the most suitable remedy

among the actions enumerated in Section 5(1), Article VIII[3] of the Constitution over which this Court exercises original jurisdiction. On the other hand, petitioners posit that the appropriate remedy is a petition filed under Section 18, Article VII, a proceeding that they characterize as *sui generis*.

In the resolution of this particular issue, I am of the opinion that Sections 1 and 5 of Article VIII do not restrict the jurisdiction of the Court to the actions mentioned therein. Furthermore, petitioners may file with this Court an action denominated as a petition under Section 18, Article VII for it is the Constitution itself that (a) grants a judicial remedy to any citizen who wishes to assail the sufficiency of the basis of a proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*; and (b) confers jurisdiction upon this Court to take cognizance of the same. The lack of any specific rules governing such a petition does not prevent the Court from exercising its constitutionally mandated power to review the validity or propriety of a declaration of martial law and/or the suspension of the privilege of the writ of *habeas corpus* as the Court may adopt in its discretion any rule or procedure most apt, just and expedient for this purpose.

It is long settled in jurisprudence that independent of any statutory provision, every court has the inherent power to do all things reasonably necessary for the administration of justice within the scope of its jurisdiction.[4] Relevantly, this doctrine is embodied in Section 6, Rule 135 of the Rules of Court,[5] which states:

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[3] Section 5(1), Article VIII of the 1987 Constitution provides:

SECTION 5. The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.

[4] *Shioji v. Harvey*, 43 Phil. 333, 342 (1922).

[5] See *Go Lea Chu v. Gonzales*, 130 Phil. 767, 776-777 (1968) in relation to the counterpart Section 6, Rule 135 under the then prevailing Rules of Court.

SECTION 6. *Means to carry jurisdiction into effect*. — When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and **if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules**. (Emphasis supplied.)

Nonetheless, I must register my vigorous objection to the implication that a petition under Section 18, Article VII is the ***only*** appropriate proceeding wherein the issue of sufficiency of the factual basis of a declaration of martial law and/or the suspension of the privilege of the writ of *habeas corpus* may be raised. It is my considered view that this issue may be raised in any action or proceeding where the resolution of such issue is germane to the causes of action of a party or the reliefs prayed for in the complaint or petition.

The meaning and the import of the term "appropriate proceeding" are best understood in the context of the scope, extent, conditions and limitations of the exercise of governmental powers during martial law under Section 18, Article VII of the 1987 Constitution.

I am in wholehearted agreement with the *ponencia* that the intent of the framers of our Constitution in expressly providing for judicial review under Section 18, Article VII is to provide an additional safeguard against possible abuse of the executive power to declare martial law or to suspend the privilege of the writ of *habeas corpus*. However, I do not believe that the same framers, who are so zealously opposed to the rise of dictatorship, would limit our citizens' judicial remedies against an unconstitutional or oppressive martial law regime to a single type of "*sui generis*" action or proceeding that at the time of their deliberations was yet unnamed and unseen, and for which no specific rules of procedure had even been promulgated.

A wide plethora of situations affecting the citizenry in general or specific individuals may arise from governmental actions taken or performed by the President or by the martial law

administrator or by other government officials during the existence of the state of martial law.

Justice Claudio Teehankee in his separate opinion in the case of *Aquino v. Ponce Enrile*,[6] stated:

> Pertinent to this question is the Court's adoption in *Lansang* of the doctrine of *Sterling vs. Constantine* enunciated through U.S. Chief Justice Hughes that even when the state has been placed under martial law "x x x (W)hen there is a *substantial showing that the exertion of state power has overridden private rights* secured by that Constitution, the subject is *necessarily one for judicial inquiry* in an **appropriate proceeding** directed against the individuals charged with the transgression. To such a case, the Federal judicial power extends (Art. 3, Sec. 2) and, so extending, *the court has all the authority appropriate to its exercise*. x x x. (Emphasis supplied, citation omitted.)

A party may find cause to seek the nullification or prohibition of acts committed by government officials in the implementation of martial law on the ground of grave abuse of discretion in which case a petition for *certiorari* and/or prohibition may be his/her best judicial recourse. There is no constitutional or procedural bar for the issue of sufficiency of factual basis of a martial law proclamation to be raised in a petition for *certiorari* or prohibition should a party choose to avail of these remedies. It is jurisprudentially accepted that:

> With respect to the Court, however, the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, *even if the latter does not exercise judicial, quasi-judicial or ministerial functions*. This application is expressly authorized by the text of the second paragraph of Section 1 [Article VIII of the 1987 Constitution].

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[6] *Supra* note 2 at 132.

Thus, petitions for *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.[7]

Pertinently, *Fortun v. President Macapagal-Arroyo*[8] and its consolidated cases illustrate the diverse situations that may precipitate the filing of an "appropriate proceeding" under Section 18, Article VII. These situations can be gleaned from certain questions identified by the Court for resolution in connection with the threshold issue of whether there is sufficient factual basis for the issuance by then President Gloria Macapagal-Arroyo of Proclamation No. 1959, which declared martial law within the Province of Maguindanao, except for certain excluded areas. These issues were:

> 3. Whether the declaration of martial law or the suspension of the writ authorizes warrantless arrests, searches and seizures;
>
> x x x x x x x x x
>
> 6. Whether this Court's determination of the sufficiency of the factual basis of the declaration of martial law or suspension of the writ, which in the meantime has been lifted and restored, respectively, would be essential to the resolution of **issues concerning the validity of related acts that the government committed during the time martial law was in force**. (Emphasis supplied.)

In *Fortun* and its consolidated cases, separate petitions for *certiorari*, petition for prohibition, and petition for *certiorari*, prohibition and mandamus were filed assailing the validity of Proclamation No. 1959 for lack of factual basis. While the majority opinion dismissed the petitions for being moot and academic, the separate opinions, whether concurring or dissenting, tacitly admitted the availability of the aforesaid special civil actions in questioning the validity of Proclamation No. 1959. This is implicit in the Dissenting Opinion of Justice Antonio T. Carpio (Justice Carpio) that the aforesaid petitions in *Fortun* and its consolidated cases may "prosper" as "any citizen" is

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[7] *Araullo v. Aquino III*, 737 Phil. 457, 531 (2014).

[8] 684 Phil. 526, 584 (2012).

clothed with legal standing to challenge the constitutionality of the declaration of martial law or suspension of the writ. Justice Carpio also opined that the Court should exercise its review power in *Fortun* and its consolidated cases which were filed as special civil actions as exceptions to the requirement of an actual case or controversy.[9] Justice Presbitero J. Velasco, Jr. (Justice Velasco) was also in favor of entertaining the petitions as exceptions to the requirement of an actual controversy in exercising the power of judicial review. Verily, at the time that the Court was deliberating on *Fortun*, it was never contemplated that the petitions therein were improper modes of invoking the Court's review power over a martial law declaration.

To my mind, the Court may even review the sufficiency of the factual basis for a declaration of martial law or the suspension of the privilege of the writ in a *habeas corpus* proceeding. This has judicial precedent in such cases as *Lansang v. Garcia*[10] wherein the Court inquired into the "constitutional sufficiency" of the factual bases for the suspension of the privilege of the writ of *habeas corpus*; and *Aquino v. Ponce Enrile*[11] wherein the Court took cognizance of the issue of constitutional sufficiency of the factual bases for the proclamation of martial law. In both instances, the issue of factual sufficiency was elevated to the Court through petitions for *habeas corpus* as petitioners therein uniformly asserted that they were illegally arrested and detained.

The importance of a petition for a writ of *habeas corpus* as a judicial remedy under martial law was discussed by Commissioner Florenz D. Regalado during the 1986 Constitutional Commission's deliberation, to wit:

MS. QUESADA: But there is a possibility then that the Congress cannot be convened because many of its Members have already been arrested.

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[9] *Id*. at 587-591.

[10] *Supra* note 1.

[11] *Supra* note 2.

MR. RAMA: There is always that possibility; that is why I am narrowing that chance.

x x x x x x x x x

MR.QUESADA: One of the assurances was that there were enough safeguards that the President would not just be able to use that power without some other conditions. So, are there any parts of the Constitution that would so protect the civilians or the citizens of the land?

MR. RAMA: Yes, there are safeguards.

MR. REGALADO: May I also inform Commissioner Quesada that the judiciary is not exactly just standing by. A **petition for a writ of *habeas corpus***, if the Members [of Congress] are detained, **can immediately be applied for, and the Supreme Court shall also review the factual basis**. x x x.[12] (Emphases supplied.)

It would be unjust, unreasonable and contrary to the orderly administration of justice to require a person who might have been illegally detained under martial law to file a petition for a writ of *habeas corpus* separately from a petition under Section 18, Article VII if he/she wishes to secure his/her liberty and at the same time question the constitutional validity of a proclamation of martial law or a suspension of the privilege of the writ of *habeas corpus*. That would be an inimical consequence of a ruling by this Court that the "appropriate proceeding" envisaged by the framers of our Constitution under Section 18, Article VII refers solely to a petition filed specifically for the purpose of questioning the sufficiency of the factual basis of a martial law proclamation or a suspension of the privilege of the writ of *habeas corpus*.

As for concerns that a petition for *certiorari*, prohibition or *habeas corpus* imposes procedural constraints that may hinder the Court's factual review of the sufficiency of the basis for a declaration of martial law or the suspension of the privilege of *habeas corpus*, these may all be addressed with little difficulty.

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[12] Record of the 1986 Constitutional Commission No. 044, Vol. II, July 31, 1986, pp. 503-504.

In the hierarchy of legal authorities binding on this Court, constitutional provisions must take precedence over rules of procedure. It is Section 18, Article VII of the 1987 Constitution which authorizes the Court to review factual issues in order to determine the sufficiency of the factual basis of a martial law declaration or a suspension of the privilege of the writ of *habeas corpus* and, as discussed above, the Court may employ the most suitable procedure in order to carry out its jurisdiction over the issue as mandated by the Constitution. Time and again, the Court has stressed that it has the inherent power to suspend its own rules when the interest of justice so requires.[13]

The Court should be cautious that it does not take a position in these consolidated cases that needlessly restricts our people's judicial remedies nor carelessly clips our own authority to take cognizance of the issue of constitutional sufficiency under Section 18, Article VII in ***any*** appropriate action that may be filed with the Court. Such would be antagonistic to the clear intent of the framers of the 1987 Constitution to empower our citizens and the Judiciary as a vital protection against potential abuse of the executive power to declare martial law and suspend the privilege of the writ of *habeas corpus*.

The Sufficiency of Factual Basis of Proclamation No. 216

I find it crucial to point out at the outset the underlying rationale behind the constitutional provision conferring upon the President, as Commander-in-Chief of the Armed Forces of the Philippines, three levels of emergency powers, such as (1) whenever necessary to call out such armed forces to prevent lawless violence, invasion or rebellion; or (2) to suspend the privilege of the writ of *habeas corpus*; or (3) to place the Philippines or any part thereof under martial law both in case of invasion or rebellion. In the past, a Member of this Court fittingly stated that:

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[13] See, for example, *Strategic Alliance Development Corp. v. Radstock Securities Ltd.*, 622 Phil. 431, 475 (2009), citing *Solicitor General v. The Metropolitan Manila Authority*, 281 Phil. 925, 933 (1991).

The right of a government to maintain its existence is the most pervasive aspect of sovereignty. To protect the nation's continued existence, from external as well as internal threats, the government "is invested with all those inherent and implied powers which, at the time of adopting the Constitution, were generally considered to belong to every government as such, and as being essential to the exercise of its functions" (Mr. Justice Bradley, concurring in *Legal Tender Cases* [US] 12 Wall. 457, 554,556,20 L. ed. 287, 314, 315). To attain this end, nearly all other considerations are to be subordinated. The constitutional power to act upon this basic principle has been recognized by all courts in every nation at different periods and diverse circumstances.[14]

The above-mentioned extraordinary powers vested by the Constitution under Section 18, Article VII upon the President as Commander-in-Chief of the Armed Forces of the Philippines implement the principle declared in Section 3, Article II of the Constitution, quoted below:

Sec. 3. Civilian authority is, at all times, supreme over the military. The Armed Forces of the Philippines is the protector of the people and the state. Its goal is to secure the sovereignty of the State and the integrity of the national territory.

In *Carpio v. Executive Secretary*,[15] we held:

[T]he President, as Commander-in-Chief, is not a member of the Armed Forces. He remains a civilian whose duties under the Commander-in- Chief provision "represent only a part of the organic duties imposed on him. All his other functions are clearly civil in nature." His position as a civilian Commander-in-Chief is consistent with, and a testament to, the constitutional principle that "civilian authority is, at all times, supreme over the military. x x x."

Rebellion, which is directed against the sovereignty and territorial integrity of the state, is a ground for the exercise of the second and third levels of emergency powers of the President,

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[14] Justice Felix Q. Antonio, Separate Opinion in *Aquino v. Ponce Enrile*, *supra* note 2 at 288.

[15] 283 Phil. 196, 212 (1992).

the existence of which is now invoked by the issuance of Proclamation No. 216.

The Concept of Rebellion

To determine the sufficiency or adequacy of the factual basis for the declaration of martial law and the suspension of the writ, an understanding of the concept of "rebellion" employed in Section 18, Article VII of the 1987 Constitution is necessary.

The concept of rebellion in our penal law was explained in the leading case of *People v. Hernandez*,[16] where the Court ruled that the word "rebellion" evokes, not merely a challenge to the constituted authorities, but, also, civil war, on a bigger or lesser scale, with all the evils that go with it; and that all other crimes, which are committed either **singly** or **collectively** and as a necessary means to attain the purpose of rebellion, or in connection therewith and in furtherance thereof, constitute only the simple, not complex, crime of rebellion. The Court also underscored that political crimes are those directly aimed against the political order and that the decisive factor in determining whether a crime has been committed to achieve a political purpose is the **intent** or **motive** in its commission.

While rebellion is considered as an act of terrorism under the law,[17] the latter can be used to achieve a political end, such as removing from allegiance to the State any part of the national territory or overthrowing the duly constituted authorities. Even so, such lawless elements engaged in terrorism will never acquire any status recognized under International Humanitarian Law. Yet, acts of terrorism may be taken into account in the context of determining the necessity for a declaration of martial law within our constitutional framework.

Plainly then, rebellion can be committed through an offense or a violation of any special law so long as it is done as a necessary

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[16] 99 Phil. 515, 520-521 (1956).

[17] Section 3(b), Republic Act No. 9372 "Human Security Act of 2007."

means to attain, or in furtherance of, the purpose of rebellion. In *Ponce Enrile v. Amin*,[18] the Court held that the offense of harboring or concealing a fugitive, or a violation of Presidential Decree No. 1829, if committed in furtherance of the purpose of rebellion, should be deemed to form part of the crime of rebellion instead of being punished separately. The Court explained:

All crimes, whether punishable under a special law or general law, which are mere components or ingredients, or committed in furtherance thereof, become absorbed in the crime of rebellion and cannot be isolated and charged as separate crimes in themselves. Thus:

> "This does not detract, however, from the rule that the ingredients of a crime form part and parcel thereof, and hence, are absorbed by the same and cannot be punished either separately therefrom or by the application of Article 48 of the Revised Penal Code. x x x" [Citing People *v.* Hernandez]

The *Hernandez* and other related cases mention common crimes as absorbed in the crime of rebellion. These common crimes refer to all acts of violence such as murder, arson, robbery, kidnapping, *etc.* as provided in the Revised Penal Code. The attendant circumstances in the instant case, however, constrain us to rule that the theory of absorption in rebellion cases must not confine itself to common crimes but also to offenses under special laws which are perpetrated in furtherance of the political offense.

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

From all these it is submitted that the focus on public safety adds a nuance to the meaning of rebellion in the Constitution which is not found in the meaning of the same word in Article 134 of the Penal Code. The concern of the Penal Code, after all, is to punish *acts of the past*. But the concern of the Constitution is to counter threat to

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[18] 267 Phil. 603, 611-612 (1990).

public safety both *in the present and in the future* arising from present and past acts. Such nuance, it is submitted, gives to the President a degree of flexibility for determining whether rebellion constitutionally exists as basis for martial law even if facts cannot obviously satisfy the requirements of the Penal Code whose concern is about past acts. To require that the President must first convince herself that there can be proof beyond reasonable doubt of the existence of rebellion as defined in the Penal Code and jurisprudence can severely restrict the President's capacity to safeguard public safety for the present and the future and can defeat the purpose of the Constitution.

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

In sum, since the President should not be bound to search for proof beyond reasonable doubt of the existence of rebellion and since deciding whether public safety demands action is a **prudential matter**, the function of the President is far from different from the function of a judge trying to decide whether to convict a person for rebellion or not. **Put differently, looking for rebellion under the Penal Code is different from looking for rebellion under the Constitution.**[19] (Emphases supplied.)

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[19] *Fortun v. President Macapagal-Arroyo*, *supra* note 8 at 629-630.

In *Aquino*, the Court expounded on the sophisticated and widespread nature of a modern rebellion, which rings more true today, in this wise:

> The state of rebellion continues up to the present. The argument that while armed hostilities go on in several provinces in Mindanao there are none in other regions except in isolated pockets in Luzon, and that therefore there is no need to maintain martial law all over the country, ignores the sophisticated nature and ramifications of rebellion in a modern setting. It does not consist simply of armed clashes between organized and identifiable groups on fields of their own choosing. It includes subversion of the most subtle kind, necessarily clandestine and operating precisely where there is no actual fighting. Underground propaganda, through printed news sheets or rumors disseminated in whispers; recruitment of armed and ideological adherents, raising of funds, procurement of arms and materiel, fifth-column activities including sabotage and intelligence all these are part of the rebellion which by their nature are usually conducted far from the battle fronts. They cannot be counteracted effectively unless recognized and dealt with in that context.[20]

To construe the existence of rebellion in the strict sense employed in the Revised Penal Code to limit martial law to places where there are actual armed uprising will hamper the President from exercising his constitutional authority with foreseeable dire consequences to national security and at great peril to public safety.

Standard of Proof to Determine Sufficiency of Factual Basis and Manner by which Standard is Applied

The Constitution vests upon the Supreme Court the duty to determine the sufficiency of the factual basis of the Presidential proclamation of martial law. The Constitution does not prescribe the quantum of proof to determine the "sufficiency" or "adequacy" of the factual basis for such a proclamation. We can only rely on settled jurisprudence but bearing in mind the

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[20] *Aquino v. Ponce Enrile*, *supra* note 2 at 48-49.

nature of the respective responsibilities lodged upon the President, the Legislature and the Judiciary under Section 18, Article VII of the Constitution, where the system of checks and balances, as a concomitant feature of the principle of the separation of powers, is made distinctly manifest.

There are seeming differences as to the standard or test to determine the sufficiency of the factual basis for the Presidential Proclamation. This arises from the confusion as to two concepts: (1) the standard to be used and (2) the manner the standard shall be applied.

In *Lansang*, the Court adopted this view:

> [T]hat judicial inquiry into the basis of the questioned proclamation can go *no further* than to satisfy the Court *not* that the President's decision is *correct* and that public safety was endangered by the rebellion and justified the suspension of the writ, but that in suspending the writ, the President **did not act *arbitrarily***.[21] (Emphasis supplied.)

Justice Antonio T. Carpio uses the test of "probable cause" to determine the sufficiency of factual basis of Proclamation No. 216, which in this case is the existence of rebellion in Mindanao. Justice Francis H. Jardeleza prefers to use "reasonableness," not arbitrariness. Justice Carpio cites the definition of probable cause as follows:

> Probable cause has been defined as a "set of facts and circumstances as would lead a **reasonably discreet and prudent man** to believe that the offense charged in the information or any offense included therein has been committed by the person sought to be arrested.[22] (Emphasis supplied.)

In a similar vein, Justice Jardeleza elucidated his view as follows:

> Accordingly, the standard of review in determining whether actual rebellion exists and whether public safety requires the extraordinary

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[21] *Lansang v. Garcia*, *supra* note 1 at 594.

[22] *Fortun v. President Macapagal-Arroyo*, *supra* note 8 at 597-598.

presidential action should likewise be guided by reasonableness. As well put in an American case, reasonableness is "what from the calm sea level of common sense, applied to the whole situation, is not illegitimate in view of the end attained." Since the objective of the Court's inquiry under Article VII, Section 18 is to verify the sufficiency of the factual basis of the President's action, the standard may be restated as ***such evidence that is adequate to satisfy a reasonable mind*** *seeking the truth (or falsity) of its factual existence*. (Emphasis supplied, citations omitted.)

While I do not subscribe to the meaning of rebellion advanced by Justice Carpio, his view on the quantum of proof to sustain the proclamation of martial law and the suspension of the writ, which is "probable cause," is consistent, I believe, with my view that the test to be applied to determine sufficiency of factual basis for the exercise of said Presidential power is **reasonableness** or the **absence of arbitrariness**. "Probable cause" and "reasonableness" are two sides with almost the same meaning or with little difference in degree of proof necessary. "Probable cause" and "reasonableness" are the same standards to sustain the assailed Presidential proclamation.

The various tests advocated by the Justices appear to use interchangeable terms. Notably, the term "arbitrary" is defined as "existing or coming about . . . as a capricious and unreasonable act of will."[23] In *Aquino v. Ponce Enrile*,[24] Justice Cecilia Muñoz Palma described the arbitrariness test in this manner:

> The President's action was neither capricious nor arbitrary. An arbitrary act is one that arises from an unrestrained exercise of the will, caprice, or personal preference of the actor (Webster's 3rd New International Dictionary, p. 110), one which is **not founded on a fair or substantial reason** (*Bedford Inv. Co. vs. Folb*, 180 P. 2d 361, 362, cited in Words & Phrases, Permanent Ed., Vol. 3-A, p. 573), is without adequate determining principle, **non-rational, and solely dependent on the actor's will**. (*Sweig vs. U.S.* D.C. Tex., 60 F. Supp. 785, Words & Phrases, *supra*, p. 562) x x x. (Emphases supplied.)

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[23] Webster's Ninth New Collegiate Dictionary (1986), p. 99.

[24] *Supra* note 2 at 483.

Premises considered, there is an apparent consensus that "reasonableness" is the proper test to be used in these consolidated cases which is but the other side of the same coin as the "arbitrariness" test: what is *reasonable* is *not arbitrary*.

At this point, I express my reservation regarding the view of Justice Jardeleza which relates the concept of good faith with the arbitrariness standards as a basis for his objection to this test. He states:

> The danger of fusing the sufficiency-of-factual-basis test with the standard of arbitrariness/grave abuse of discretion is this: the sufficiency of the factual basis is being measured by grave abuse of discretion. This is problematic because the phrase "grave abuse of discretion" carries a specific legal meaning in our jurisdiction. It refers to such capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction; the abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. While inquiry into the sufficiency of factual basis *may* yield a finding consistent with the accepted definition of grave abuse of discretion, such as when the presidential proclamation was totally bereft of factual basis or when such factual basis had been manufactured by the executive, the correlation is not perfect. Good faith reliance on inaccurate facts, for instance, does not strictly satisfy the "capricious and whimsical" or "arbitrary or despotic" standard. By setting the sufficiency-of-factual-basis standard, the Constitution foreclosed good faith belief as an absolute justification for the declaration of martial law or suspension of the privilege of the writ. Under Article VII, Section 18, the Court is vested with the power to revoke the proclamation, not because of grave abuse of discretion, but because of insufficiency of factual basis. (Citations omitted.)

The concept of "good faith" or "bad faith" should not be confused with the test of "arbitrariness." "Good faith" or "bad faith" refers to the state of mind of a person. It is a concept different from the exercise of one's sound judgment in a given situation. Good faith in declaring martial law which is not based on sufficient facts will not justify the existence or continuation of martial law. If at all, good faith may have a bearing only the

accountability of the President who declared martial law which does not meet the constitutional sufficiency test.

The above-mentioned standards, which essentially are synonymous with "reasonableness," if applied as threshold requirements for a martial law declaration, oblige us to **uphold** the Presidential proclamation. Consistent with these standards, to **nullify** the proclamation must necessarily require proof that the action taken was capricious or arbitrary, which would amount to "grave abuse of discretion" within the contemplation of Section 1, of Article VIII, which reads:

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

In *Maturan v. Commission on Elections*,[25] we explained:

> Grave abuse of discretion is committed "when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an **arbitrary** or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law." x x x. (Emphasis supplied.)

Nevertheless, to discharge faithfully the Court's duty under Section 18, Article VII requires more than setting the test or standard. What is equally important is adopting the process or the **manner** by which the test or standard is properly applied. Hence, Justice Cecilia Muñoz Palma stressed the importance of how the test is applied in *Aquino v. Ponce Enrile*[26] which I quote here:

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[25] G.R. No. 227155, March 28, 2017.

[26] *Supra* note 2 at 483.

> [W]hile that may be true, as it is the *Lansang* decision is a "giant leap" in the interest of judicial supremacy in upholding fundamental rights guaranteed by the Constitution, for that reason I cannot agree that We discard said decision or emasculate it so as to render its ruling a farce. The test of arbitrariness of executive action adopted in the decision is a sufficient safeguard; **what is vital to the people is the manner by which the test is applied by the Court** in both instances, *i.e.*, suspension of the privilege of the writ of habeas corpus and/or proclamation of martial law. (Emphasis supplied.)

The procedure followed by the Court in *Lansang* was replicated in these cases where the Court assumed an active role in ascertaining whether or not there is evidence to show that the President's proclamation has sufficient or adequate factual basis. At its own initiative, the Court held a closed-door briefing by high-ranking defense and military officials in the presence of the Solicitor General and a representative of the petitioners, to be informed of classified information upon which the President acted. This is judicial activism consistent with the intent of Section 18, Article VII. To comply with its constitutional duty under said provision, the Court may opt not to strictly apply the usual rules on burden of proof, if in its sound judgment, the procedure it used complied with the requirement of due process of law.

The theoretical foundation of *Lansang* remains sound but perhaps what was lacking then was the judicial will to resolutely apply the theory and follow it to its logical conclusion. While the Court should not pass upon whether the exercise of Presidential discretion is **correct**, we must nonetheless, as the present Constitution now demands, **carefully weigh the facts before us to determine whether there is real and rational basis for the President's action**.

Hence, it is necessary for the Court to carefully examine the facts cited by the respondents as basis for issuing Proclamation No. 216 to determine whether or not the President acted arbitrarily or unreasonably or capriciously. Do the facts presented to the Court show that the President acted as a "reasonably discreet and prudent man" such that he had reasonable factual basis when he issued Proclamation No. 216? This is the next and final item in this judicial inquiry.

Characterization of the armed hostilities averred in Proclamation No. 216 and in the Report of the President to Congress as actual rebellion

The facts relied upon by the President have demonstrated more than sufficient overt acts of armed public uprising in the island of Mindanao against the government. These have already been pointed out and extensively discussed by the *ponencia* of Justice Mariano C. del Castillo (Justice Del Castillo).

Respondents had convincingly shown that the series of violent acts and atrocities committed by the Abu Sayyaf and Maute terrorist groups were "intended to lay the groundwork for the eventual establishment of a DAESH *wilayah* or province in Mindanao." These factual bases for the declaration of martial law in the island of Mindanao were confirmed by defense military officials during the closed-door briefing of the Court. AFP Chief of Staff Eduardo Año informed the Court that he had briefed the President on the situation in Mindanao frequently and on a regular basis. In its Memorandum dated June 19, 2017, the Office of the Solicitor General amply recited past, current, and related events, prior to the declaration of martial law, that would support the factual claim that the Abu Sayyaf and Maute terrorist groups are aiming to establish a *wilayah* in the island of Mindanao:

> 9. There are four ISIS-linked local rebel groups that operate in different parts of Mindanao. These groups have formed an alliance for the purpose of establishing a *wilayah*, or Islamic province, in Mindanao. The four (4) groups, which find their roots in different parts of Mindanao, are as follows:
>
> a. The Abu Sayyaf Group from Basilan ("ASG-Basilan"), led by Isnilon Hapilon ("Hapilon");
>
> b. Ansarul Khilafah Philippines ("AKP"), also known as the Maguid Group, from Saranggani and Sultan Kudarat. The group is led by Mohammad Jaafar Maguid;
>
> c. The Maute Group from Lanao del Sur led by Omar Maute; and

d. Bangsamoro Islamic Freedom Fighters ("BIFF"), based in the Liguasan Marsh, Maguindanao.

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13. [I]n April 2016, the ISIS' weekly online newsletter, *Al Naba*, announced the appointment of ASG-Basilan leader, Hapilon, as the *emir* or leader of all ISIS forces in the Philippines. The appointment of Hapilon as its Philippine *emir* was further confirmed in a June 21, 2016 online video by ISIS entitled "The Solid Structure." The video hailed Hapilon as the *mujahid* authorized to lead the soldiers of the Islamic State in the Philippines.

14. The appointment by the ISIS of an *emir* in the Philippines furthered the unification of the local rebel groups. Sometime in June 2016, members of the different ISIS-linked local rebel groups consolidated in Basilan where its new *emir* operates his rebel group.

15. On December 31, 2016, Hapilon and about thirty (30) of his followers, including eight (8) foreign terrorists, were surveilled in Lanao del Sur. According to military intelligence, Hapilon performed a symbolic *hijra* or pilgrimage to unite with the ISIS-linked groups in mainland Mindanao. This was geared towards realizing the five (5)-step process of establishing a *wilayah*, which are: *first*, the pledging of allegiance to the Islamic State; *second*, the unification of all terrorist groups who have given *bay'ah* or their pledge of allegiance; *third*, the holding of consultations to nominate a *wali* or a governor of a province; *fourth*, the achievement of consolidation for the caliphate through the conduct of widespread atrocities and uprisings all across Mindanao; and *finally*, the presentation of all of these to the ISIS leadership for approval or recognition.

16. On the first week of January 2017, a meeting among these ISIS-linked rebel groups was supposed to take place in Butig, Lanao del Sur for the purpose of declaring their unified pledge of allegiance to ISIS and re-naming themselves as the *Da'wahtul Islamiyah Waliyatul Mashriq* ("DIWM"). This was, however, preempted by the death of Mohammad Jaafar Maguid (a.k.a. *Tokboy*), then leader of the AKP, coupled with the conduct of a series of military operations in the area.

17. The appointment by ISIS of an *emir* in the Philippines is already the third step in the establishment of a *wilayah* in Mindanao. Moreover, these groups now have the unified mission of wresting control of

Mindanaoan territory from the government for the purpose of establishing a *wilayah*.[27]

These factual antecedents show that there is probable cause or reasonable ground to believe that the series of violent acts and atrocities committed by the Abu Sayyaf and Maute terrorist groups are directed against the political order in Mindanao with no other apparent purpose but to remove from the allegiance of the Republic of the Philippines the island 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 therein.

On the other hand, petitioners maintain that the facts relied upon by the President in support of his declaration of martial law are invariably false, simulated, and/or hyperbolic. However, the evidence presented by petitioners to bolster these claims consisted mainly of unverified news articles culled from news websites on cyberspace with nary an author or credible source presented in court or, who at the very least, executed an affidavit to corroborate what has been alleged. Jurisprudence has established that newspaper articles amount to "hearsay evidence, twice removed" and are, therefore, not only inadmissible but without any probative value at all, whether objected to or not, unless offered for a purpose other than proving the truth of the matter asserted.[28] Therefore, given the inadmissibility and lack of probative value of petitioners' proffered evidence, the *ponencia* was correct in upholding the factual bases relied upon by the President — facts which are sourced from the entire intelligence-gathering machinery of the government itself and presented in utmost detail personally to the Members of this Court in closed session.

With regard to the contention that since Marawi City is the epicenter of hostilities, it is therefore error on the part of the President to subject the entire Mindanao region under martial

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[27] Memorandum of Respondents dated June 19, 2017, pp. 5-8.

[28] *Feria v. Court of Appeals*, 382 Phil. 412, 423 (2000).

rule. Petitioners submit that the proper course of action should have been to declare martial law only in Marawi City and its immediate environs. This contention is misplaced. The 1987 Constitution concedes to the President, through Section 18, Article VII or the Commander-in-Chief clause, the discretion to determine the territorial coverage or application of martial law or suspension of the privilege of the writ of *habeas corpus* and I quote:

> [I]n case of invasion or rebellion, when the public safety requires it, [the President] may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place **the Philippines or any part thereof** under martial law. x x x (Emphasis supplied.)

What is clear from this provision is a tacit acknowledgment that since the President possesses the means and wherewithal to access vital and classified information from the government's entire intelligence apparatus, he is given wide latitude to define the metes and bounds within which martial law or the suspension of the privilege of the writ of *habeas corpus* should take effect.

In the consolidated cases at bar, the intelligence report that was presented to the Members of this Court in closed session indicated that several local armed groups other than those presently engaged in the fighting in Marawi City have established alliances with the Maute group to form an ISIS-linked organization with the aim of establishing a *wilayah* in Mindanao and eventually dismembering the entire Mindanao region from Philippine territory. Prior and contemporaneous events likewise suggest that the same groups were committed to this concerted act of rebellion all over Mindanao. These said events include but are not limited to the following:

> a. There had been six (6) kidnappings from January 2017 up to the present, resulting to sixteen (16) victims. Notably, three (3) of the victims were beheaded, five (5) were released and nine (9) others were rescued with twenty-seven (27) victims still being held in captivity;
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> b. IED attack at a night market in Roxas Avenue, Davao City on September 2, 2016, leading to the death of fifteen (15) people and the injury of more than sixty (60) others;

c. On November 5, 2016, the ASG [Abu Sayyaf Group] abducted a German national, Juergen Kantner, and killed his wife, Sabine Merz;

d. Siege in Butig, Lanao del Sur from November 26 to December 1, 2016, which resulted in skirmishes with government troops and the eventual withdrawal of the group amid several fatalities;

e. On December 28, 2016, the members of BIFF [Bangsamoro Islamic Freedom Fighters] lobbed two (2) grenades at the provincial office of Shariff, Maguindanao;

f. On January 12, 2017, an IED exploded in Barangay Campo Uno, Basilan thereby killing one (1) civilian and injuring another;

g. On January 19, 2017, the ASG kidnapped three (3) Indonesian crew members near Bakungan Island, Tawi-tawi;

h. On January 29, 2017, the ASG detonated an JED in Barangay Danapah, Basilan resulting in the death of two (2) children and the wounding of three (3) others;

i. Ambush of military elements in Marawi City on February 16, 2017, to include MAJ JERICO P MANGALUS PA and one (1) enlisted personnel;

j. Carnapping in Iligan City on February 24, 2017 which led to government pursuit operations killing two (2) members identified as Azarn Taher AMPATUA and @WOWIE and the apprehension of Eyemen Canulo ALONTO in Tagoloan, Lanao del Norte on the same day;

k. On February 26, 2017, the ASG beheaded its German kidnap victim, Juergen Kantner in Sulu;

l. On March 5, 2017, Mrs Omera Lotao MADID was kidnapped in Saguiaran, Lanao del Sur by suspected Maute Group elements;

m. On April 11, 2017, the ASG infiltrated Inabanga, Bohol leading to firefights between the rebels and government troops;

n. On April 20, 2017, the ASG kidnapped SSgt. Anni Siraji and beheaded him three (3) days later; and,

o. From February to May 2017, there were eleven (11) separate instances of IED explosions by the BIFF in Mindanao. This resulted in the death and wounding of several military and civilian persons.[29]

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[29] Memorandum of Respondents dated June 19, 2017, pp. 73-74.

Furthermore, the AFP Intelligence Report, entitled "*Timeline of ASG and Maute Collaboration*" discloses that as early as April 18, 2017, Abdullah Maute had dispatched his followers to the cities of Marawi, Iligan, and Cagayan de Oro to conduct bombing operations, carnapping, and "liquidation" of AFP and PNP personnel in the said areas.[30]

These circumstances clearly indicate a concerted effort of formerly separate armed groups now united under an ISIS flag to essentially undertake a rebellion in the Mindanao region. Beyond doubt, this is constitutionally satisfactory justification for the President to declare a state of martial law and the suspension of the privilege of the writ of *habeas corpus* all over Mindanao. Hence, I fully concur with the conclusion of Justice Del Castillo as to the constitutional sufficiency of the factual bases for the issuance of Proclamation No. 216.

In view of the foregoing, I vote to **DISMISS** the petitions in these consolidated cases.

SEPARATE CONCURRING OPINION

PERALTA, *J.*:

On May 23, 2017, President Rodrigo Roa Duterte issued Proclamation No. 216, declaring a state of martial law and suspending the privilege of the writ of *habeas corpus* in the whole of Mindanao. The proclamation cited the Maute terrorist group's efforts to "remove Marawi City from the allegiance to the Philippine Government" and to 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.

On May 25, 2017, President Duterte submitted to Congress a *Report relative to Proclamation No. 216*. The document was received at 21:55 hours by respondents Senate President Aquilino

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[30] *Id*. at 74, referring to Annex "7" of the Affidavit of Eduardo Año dated June 17, 2017.

"Koko" Pimentel III and Speaker of the House of Representatives Pantaleon Alvarez.

On May 29, 2017, the House of Representatives resolved to constitute itself as a Committee of the Whole to formally receive and consider the Report on Proclamation No. 216.

On May 31, 2017, the last day of its First Regular Session, the Senate adopted P.S. Resolution No. 388, declaring Proclamation No. 216 as satisfactory, constitutional, and in accordance with the law. The Senate supported it fully as it found no compelling reason to revoke the same. Likewise, a majority of the Senators voted to reject P.S. Resolution No. 390 entitled "*Resolution to Convene Congress in Joint Session and Deliberate on Proclamation No. 216*."

On even date, the House of Representatives, led by Speaker Alvarez, convened itself as a Committee of the Whole to discuss President Duterte's *Report*. Thereafter, the Committee introduced to the plenary House Resolution No. 1050, expressing full support to President Duterte's declaration of Proclamation No. 216. A majority of the representatives voted to adopt House Resolution No. 1050.

On June 2, 2017, the First Regular Session of Congress adjourned. No joint session of the Senate and the House ofRepresentatives was convened.

Issues

The issues, as stated in the revised Advisory, are as follows:

1. Whether or not the petitions docketed as G.R. Nos. 231658, 231771, and 231774 are the "appropriate proceeding" covered by paragraph 3, Section 18, Article VII of the Constitution sufficient to invoke the mode of review required of this Court when a declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* is promulgated;

2. Whether or not the President in declaring martial law and suspending the privilege of the writ of *habeas corpus*:

   a. is required to be factually correct or only not arbitrary in his appreciation of the facts;

b. is required to obtain the favorable recommendation thereon of the Secretary of National Defense;
c. is required to take into account only the situation at the time of the proclamation, even if subsequent events prove the situation to have not been accurately reported;

3. Whether or not the power of this Court to review the sufficiency of the factual basis [of] the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* is independent of the actual actions that have been taken by Congress jointly or separately;

4. Whether or not there were sufficient factual [basis] for the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*;

a. What are the parameters for review?
b. Who has the burden of proof?
c. What is the threshold of evidence?

5. Whether the exercise of the power of judicial review by this Court involves the calibration of the graduated powers granted the President as Commander-in-Chief, namely: calling out powers, suspension of the privilege of the writ of *habeas corpus*, and declaration of martial law;

6. Whether or not Proclamation No. 216 of May 23, 2017 may be considered vague and thus null and void:

a. with its inclusion of "other rebel groups," or
b. since it has no guidelines specifying its actual operational parameters within the entire Mindanao region;

7. Whether or not the armed hostilities mentioned in Proclamation No. 216 and in the Report of the President to Congress are sufficient basis:

a. for the existence of actual rebellion;
b. for a declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao region;

8. Whether or not terrorism or acts attributable to terrorism are equivalent to actual rebellion and the requirements of public safety sufficient to declare martial law or suspend the privilege of the writ of *habeas corpus*;

9. Whether or not nullifying Proclamation No. 216 of May 23, 2017 will:

a. have the effect of recalling Proclamation No. 55, s. 2016; or
b. also nullify the acts of the President in calling out the Armed Forces to quell lawless violence in Marawi and other parts of the Mindanao region.

In a democratic and republican State such as ours, everyone must abide by the Rule of Law. More so, in momentous events affecting the life of the nation and the welfare of its people it is imperative to properly determine how power is to be allocated, exercised and recognized *vis-a-vis* the competing mandate of the three equal branches of the government to safeguard the civil liberties of the sovereign from whom their authority emanates. That is the gist of the issues presented in this case. Here, President Duterte, pursuant to his constitutional powers, has proclaimed martial law and suspended the privilege of the writ of *habeas corpus*. Apparently, the Congress has manifested its approbation thereto. Now, the Court is pleaded to discharge its solemn duty, similarly conferred by the Fundamental Law, to review the sufficiency of the factual basis of the President's action.

Indubitably, under Section 18, Article VII of the 1987 Constitution, the President, as the Commander-in-Chief of all armed forces of the Philippines, is authorized to place the country or any part thereof under martial law or to suspend the privilege of the writ of *habeas corpus* in case of invasion or rebellion, when the public safety requires it. The same provision of the organic act empowers the Supreme Court, upon the initiation of an appropriate proceeding by any citizen, to inquire into the sufficiency of the factual basis of such action. There is no question then that this Court is mandated to determine the validity of the declaration of martial law or suspension of the privilege of

the writ of *habeas corpus*, in the same way that the Congress is given the license to revoke such proclamation or suspension.

The "appropriate proceeding" under paragraph 3, Section 18, Article VII of the Constitution

The preliminary issue to take into account is the nature of the "*appropriate proceeding*" by which the Court could exercise its prerogative and discharge its responsibility as well as the extent of such authority to look into the assailed actions of the President.

While the present Constitution does not specifically state the kind of proceeding, the same could be ascertained from the antecedent of Section 18, Article VII in relation to the significant and novel feature of the 1987 Constitution that expands the concept of judicial power:

> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[1]

The aforequoted provision constitutionalized the ruling in *In the Matter of the Petition for Habeas Corpus of Lansang et al.*[2] as it appears clear that paragraph 2, Section 1, Article VIII of the Constitution incorporates in the Fundamental Law the teaching therein.[3] It was observed that:

> This new provision was enacted to preclude this Court from using the political question doctrine as a means to avoid having to make decisions simply because they are too controversial, displeasing to the President or Congress, inordinately unpopular, or which may be ignored and not enforced.

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[1] 1987 CONSTITUTION, Art. VIII, Sec. 1, par. 2.

[2] 149 Phil. 547 (1971).

[3] See *Marcos v. Manglapus*, G.R. No. 88211, September 15, 1989, 177 SCRA 668, 696.

The framers of the Constitution believed that the free use of the political question doctrine allowed the Court during the Marcos years to fall back on prudence, institutional difficulties, complexity of issues, momentousness of consequences or a fear that it was extravagantly extending judicial power in the cases where it refused to examine and strike down an exercise of authoritarian power. x x x The Constitution was accordingly amended. We are now precluded by its mandate from refusing to invalidate a political use of power through a convenient resort to the political question doctrine. We are compelled to decide what would have been non-justiceable under our decisions interpreting earlier fundamental charters.[4]

Given the *Lansang* background of paragraph 2, Section 1, Article VIII, it is appropriate to echo what the Court said way back in 1971, which pronouncement finds vitality, illumination and relevance today as it was then, if not more in view of the many features of the present Constitution that were influenced by the Marcos martial law experience. We held in *Lansang*:

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 of the writ of *habeas corpus*) belongs to the President and his 'decision is final and conclusive' upon the courts and upon all other persons." Indeed, had said question been decided in the affirmative, the main issue in all of these cases, except L-34339, would have been settled, and, since the other issues were relatively of minor importance, said cases could have been readily disposed of. 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

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[4] See Dissenting Opinion of Justice Hugo E. Gutierrez, Jr. in *Marcos v. Manglapus*, at 708. Likewise, In his separate opinion in *Araullo v. Aquino III* (G.R. No. 209287, July 1, 2014, 728 SCRA 1, 249), Justice Arturo D. Brion observed that "[t]his addition was apparently in response to the Judiciary's past experience of invoking the ***political question doctrine*** to avoid cases that had political dimensions but were otherwise justiciable. The addition responded as well to the societal disquiet that resulted from these past judicial rulings."

Constitution for the suspension of the privilege of the writ; but before proceeding to do so, the Court deemed it necessary to hear the parties on the nature and extent of the inquiry to be undertaken, none of them having previously expressed their views thereon. Accordingly, on October 5, 1971, the Court issued, in L-33964, L-33965, L-33973 and L-33982, a resolution stating in part that —

> x x x a majority of the Court having tentatively arrived at a consensus that it may inquire in order to satisfy itself of the existence of the factual bases for the issuance of Presidential Proclamations Nos. 889 and 889-A (suspending the privilege of the writ of *habeas corpus* for all persons detained or to be detained for the crimes of rebellion or insurrection throughout the Philippines, which area has lately been reduced to some eighteen provinces, two subprovinces and eighteen cities with the partial lifting of the suspension of the privilege effected by Presidential Proclamations Nos. 889-B, 889-C and 889-D) and thus determine the constitutional sufficiency of such bases in the light of the requirements of Article III, Sec. 1, par. 14, and Article VII, Sec. 10, par. 2, of the Philippine Constitution; and considering that the members of the Court are not agreed on the precise scope and nature of the inquiry to be made in the premises, even as all of them are agreed that the Presidential findings are entitled to great respect, the Court RESOLVED that these cases be set for rehearing on October 8, 1971 at 9:30A.M.
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> x x x x x x x x x

In our resolution of October 5, 1971, We stated that "a majority of the Court" had "*tentatively* arrived at a consensus that *it may inquire* in order to satisfy itself of the existence of the factual bases for the issuance of Presidential Proclamations Nos. 889 and 889-A x x x and thus *determine the constitutional sufficiency of such bases* in the light of the requirements of Article III, Sec. 1, par. 14, and Article VII, Sec. 10, par 2, of the Philippine Constitution x x x." Upon further deliberation, the members of the Court are now *unanimous* in the conviction that it has the authority to inquire into the existence of said factual bases in order to determine the constitutional sufficiency thereof.

Indeed, the grant of power to suspend the privilege is neither absolute nor unqualified. The authority conferred by the Constitution, both under the Bill of Rights and under the Executive Department,

is limited and conditional. The precept in the Bill of Rights establishes a general rule, as well as an exception thereto. What is more, it postulates the former in the *negative*, evidently to stress its importance, by providing that "(t)he privilege of the writ of *habeas corpus* shall *not* be suspended x x x." It is only by way of *exception* that it permits the suspension of the privilege "in cases of invasion, insurrection, or rebellion" — or, under Art. VII of the Constitution, "imminent danger thereof" — "when the public safety requires it, in any of which events the same may be suspended wherever during such period the necessity for such suspension shall exist." Far from being full and plenary, the authority to suspend the privilege of the writ is thus circumscribed, confined and restricted, not only by the prescribed setting or the conditions essential to its existence, but, also, as regards the time when and the place where it may be exercised. These factors and the aforementioned setting or conditions mark, establish and define the extent, the confines and the limits of said power, beyond which it does not exist. And, like the limitations and restrictions imposed by the Fundamental Law upon the legislative department, adherence thereto and compliance therewith may, within proper bounds, be inquired into by courts of justice. Otherwise, the explicit constitutional provisions thereon would be meaningless. Surely, the framers of our Constitution could not have intended to engage in such a wasteful exercise in futility.

Much less may the assumption be indulged in when we bear in mind that our political system is essentially democratic and republican in character and that the suspension of the privilege affects the most fundamental element of that system, namely, individual freedom. Indeed, such freedom includes and connotes, as well as demands, the right of every single member of our citizenry to freely discuss and dissent from, as well as criticize and denounce, the views, the policies and the practices of the government and the party in power that he deems unwise, improper or inimical to the commonwealth, regardless of whether his own opinion is objectively correct or not. The untrammelled enjoyment and exercise of such right which, under certain conditions, may be a civic duty of the highest order — is vital to the democratic system and essential to its successful operation and wholesome growth and development.

Manifestly, however, the liberty guaranteed and protected by our Basic Law is one enjoyed and exercised, not in derogation thereof, but consistently therewith, and, hence, within the framework of the social order established by the Constitution and the context of the

Rule of Law. Accordingly, when individual freedom is used to destroy that social order, *by means of force and violence*, in defiance of the Rule of Law — such as by rising publicly and taking arms against the government to overthrow the same, thereby committing the crime of rebellion — there emerges a circumstance that may warrant a limited withdrawal of the aforementioned guarantee or protection, by suspending the privilege of the writ of *habeas corpus*, when public safety requires it. Although we must be forewarned against mistaking mere dissent — no matter how emphatic or intemperate it may be — for dissidence amounting to rebellion or insurrection, the Court cannot hesitate, much less refuse — when the existence of such rebellion or insurrection has been fairly established or cannot reasonably be denied — to uphold the finding of the Executive thereon, without, in effect, encroaching upon a power vested in him by the Supreme Law of the land and depriving him, to this extent, of such power, and, therefore, without violating the Constitution and jeopardizing the very Rule of Law the Court is called upon to epitomize.

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Article VII of the Constitution vests in the Executive the power to suspend the privilege of the writ of *habeas corpus* under specified conditions. Pursuant to the principle of separation of powers underlying our system of government, the Executive is *supreme* within his own sphere. However, the separation of powers, under the Constitution, is not absolute. What is more, it goes hand in hand with the system of checks and balances, under which the Executive is supreme, as regards the suspension of the privilege, but only *if* and *when* he acts *within* the sphere allotted to him by the Basic Law, and the authority to determine whether or not he has so acted is vested in the Judicial Department, which, *in this respect*, is, in turn, constitutionally *supreme*.

In the exercise of such authority, the function of the Court is merely to *check* — not to *supplant* — the Executive, *or to ascertain merely whether he has gone beyond* the constitutional limits of his jurisdiction, *not to exercise the power vested in him* or to determine the wisdom of his act. To be sure, the power of the Court to determine the validity of the contested proclamation is far from being identical to, or even comparable with, its power over ordinary civil or criminal cases elevated thereto by ordinary appeal from inferior courts, in which cases the appellate court has *all* of the powers of the court of origin.

Under the principle of separation of powers and the system of checks and balances, the judicial authority to review decisions of

administrative bodies or agencies is much more limited, as regards findings of fact made in said decisions. Under the English law, the reviewing court determines *only* whether there is *some evidentiary basis* for the contested administrative finding; *no quantitative* examination of the supporting evidence is undertaken. The administrative finding can be interfered with *only* if there is *no* evidence whatsoever in support thereof, and said finding is, accordingly, arbitrary, capricious and obviously unauthorized. This view has been adopted by some American courts. It has, likewise, been adhered to in a number of Philippine cases. Other cases, in *both* jurisdictions, have applied the "substantial evidence" rule, which has been construed to mean "more than a mere scintilla" or "'relevant evidence as a reasonable mind might accept as adequate to support a conclusion," even if other minds equally reasonable might conceivably opine otherwise.

Manifestly, however, this approach refers to the review of administrative determinations involving the exercise of quasi-judicial functions calling for or entailing the reception of evidence. It does not and cannot be applied, in its aforesaid form, in testing the validity of an act of Congress or of the Executive, such as the suspension of the privilege of the writ of *habeas corpus*, for, as a general rule, neither body takes evidence — in the sense in which the term is used in judicial proceedings — before enacting a legislation or suspending the writ. Referring to the test of the validity of a statute, the Supreme Court of the United States, speaking through Mr. Justice Roberts, expressed, in the leading case of Nebbia v. New York, the view that:

> x x x If the laws passed are seen to have a *reasonable relation* to a proper legislative purpose, and are *neither arbitrary nor discriminatory*, the requirements of due process are satisfied, and *judicial determination to that effect renders a court functus officio* . . . With the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both *incompetent*and *unauthorized* to deal . . .

Relying upon this view, it is urged by the Solicitor General —

> x x x that judicial inquiry into the basis of the questioned proclamation can go *no further* than to satisfy the Court *not* that the President's decision is *correct* and that public safety was endangered by the rebellion and justified the suspension of the writ, but that in suspending the writ, the President did not act *arbitrarily*.

No cogent reason has been submitted to warrant the rejection of such test. Indeed, the co-equality of coordinate branches of the Government, under our constitutional system, seems to demand that the test of the validity of acts of Congress and of those of the Executive be, *mutatis mutandis*, fundamentally the same. Hence, counsel for petitioner Rogelio Arienda admits that the proper standard is not correctness, but arbitrariness.[5]

The foregoing considered, it necessarily follows that the "*appropriate proceeding*" under paragraph 3, Section 18, Article VII of the Constitution refers to the *certiorari* jurisdiction of the Court where the inquiry is on whether the President acted arbitrarily.[6] The proper role of the Supreme Court, in relation

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[5] *In the Matter of the Petition for Habeas Corpus of Lansang, et al., supra* note 2, at 577-594. (Citations omitted; emphasis in the original)

[6] *Cf. Aratuc v. Commission on Elections*, 177 Phil. 205, 222-224 (1979), the Court, after noting the change in the phraseology in the 1973 Constitution, as against the 1935 Constitution, with regard to review of COMELEC decisions, pointed out:

Now before discussing the merits of the foregoing contentions, it is necessary to clarify first the nature and extent of the Supreme Court's power of review in the premises. The Aratuc petition is expressly predicated on the ground that respondent Comelec "committed grave abuse of discretion, amounting to lack of jurisdiction" in eight specifications. On the other hand, the Mandangan petition raises pure questions of law and jurisdiction. In other words, both petitions invoked the Court's *certiorari* jurisdiction, not its appellate authority of review.

This is as it should be. While under the Constitution of 1935, "the decisions, orders and rulings of the Commission shall be subject to review by the Supreme Court" (Sec. 2, first paragraph, Article X) and pursuant to the Rules of Court, the petition for "*certiorari* or review" shall be on the ground that the Commission "has decided a question of substance not theretofore determined by the Supreme Court, or has decided it in a way not in accord with law or the applicable decisions of the Supreme Court" (Sec. 3, Rule 43), and such provisions refer not only to election contests but even to pre-proclamation proceedings, the 1973 Constitution provides somewhat differently thus: "Any decision, order or ruling of the Commission may be *brought* to the Supreme Court on *certiorari* by the aggrieved party within thirty days from his receipt of a copy thereof (Section 11, Article XII), even as it ordains that the Commission shall be the sole judge of all contests relating to the elections, returns and qualifications of all members of the National Assembly and elective provincial and city officials" (Section 2[2].)

to what it has been given as a duty to perform whenever the Commander-in-Chief proclaims martial law or suspends the privilege of the writ of *habeas corpus*, is merely to determine whether he acted with grave abuse of discretion amounting to lack or excess of jurisdiction. It is not for Us to rule on whether he decided rightly or otherwise, but whether he acted without factual basis, hence, acted whimsically or capriciously. If he had factual basis, there was no arbitrariness. We cannot second guess what he should have done under the prevailing circumstances. If the President was wrong in his assessment and in exercising his judgment call, he shall be answerable to the people and history and not to this Court.

We are aware that our decision-making authority is based on considerations that are vastly different from what the political departments regard in arriving at their own, especially on discretionary acts for which the latter are basically accountable to the electorate. Particularly, when it comes to the exercise of a power lodged in the Commander-in-Chief, the Court is cognizant of the practical necessity that there are certain matters and pieces of information that may only be available to the President and no one else in view of their sensitivity as well as their effect to public safety and national security. To make delicate matters available to the general public may compromise the ability of the government to do its job of protecting the Republic and its people. Confidentiality still has its place in a free and transparent society, otherwise greater danger may ensue. There is, therefore, a presumption in favor of the Chief Executive that he knows what he is doing, unless it could clearly be shown that he acted arbitrarily in the sense that he did not have any acceptable factual basis to justify what he did. Presumably,

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x x x x x x x x x

We hold, therefore, that under the existing constitutional and statutory provisions, the *certiorari* jurisdiction of the Court over orders, rulings and decisions of the Comelec is not as broad as it used to be and should be confined to instances of grave abuse of discretion amounting to patent and substantial denial of due process. Accordingly, it is in this light that We shall proceed to examine the opposing contentions of the parties in these cases.

the Office of the President is equipped with facilities where the implications of certain facts and circumstances could be appreciated and acted upon in a holistic manner.

Existence of actual rebellion defined and penalized under the Revised Penal Code

The factual basis of the President in declaring martial and suspending the privilege of the writ of *habeas corpus* is the rebellion being committed by the Maute terrorist group. The elements of the crime are as follows:

1. That there be (a) public uprising, and (b) taking arms against the Government.
2. That the *purpose* of the uprising or movements is either —
   a. To remove from the allegiance to said Government or its laws:
      (1) The territory of the Philippines or any part thereof; or
      (2) Any body of land, naval or other armed forces; or
   b. To deprive the Chief Executive or Congress, wholly or partially, of any of their powers or prerogatives.

In my interpellation during the oral argument, it has been established that public uprising and taking arms against the government are present, thus:

JUSTICE PERALTA:
For clarification, Congressman. Now, you could not admit that there is now public uprising in the Marawi City?

CONGRESSMAN LAGMAN:
There is public uprising, Your Honor, but there is no . . .

JUSTICE PERALTA:
Yah, there is also taking up arms rebellion against the government, you also admit that?

CONGRESSMAN LAGMAN:
Yes, Your Honor, we agree to that.

JUSTICE PERALTA:
What we are saying is that, because you believe that, what we are saying is that there are essential elements of rebellion: one, public

uprising; two is taking up arms against the government. What you are disputing is that, the focus of public uprising and taking up arms against the government is not political?

CONGRESSMAN LAGMAN:

No, we are saying that essential element of culpable purpose is not present.

JUSTICE PERALTA:

That's correct, that's what I'm saying. So, the purpose of the violence or the taking up arms against the government is not political in nature?

CONGRESSMAN LAGMAN:

Yes, Your Honor, we can say that because it is merely to saw fear and apprehension, Your Honor.

JUSTICE PERALTA

When do you say the purpose is not political? May I know why you are saying that the purpose of the violence or taking up arms against the government is not political?

CONGRESSMAN LAGMAN:

Well, we just agreed with your statement, Your Honor, but if you see the context of the present violence in Marawi City, there is no culpable purpose of removing Marawi City from the allegiance to the Republic or there is no culpable purpose of depriving the President to exercise its powers and prerogatives because the channels of civilian and Military authority is not destructive.

JUSTICE PERALTA:

By the extent of the violence committed, Mr. Congressman, the Chief Executive is deprived of his power to enforce the laws in Marawi City?

CONGRESSMAN LAGMAN:

At the time the proclamation was issued, Your Honor, there was no such kind of multitude in the violence, no less than the Military officials hours before the President issued the Proclamation said that the situation is under control. What this abuse in the mind of the public, Your Honor, is that what is happening now in Marawi City is the aftermath of the declaration of martial law, which was not the reality of the ground when martial law was imposed.

JUSTICE PERALTA:

The Chief . . .

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CHIEF JUSTICE SERENO:

So, we can now resume the interpellation of Justice Peralta. Thank you.

JUSTICE PERALTA:

We, therefore, agree, Congressman, that there are two political purposes of rebellion. One is the removal of the allegiance from the government or any part of its laws, that's number one. Number two, is the deprivation of the Chief Executive or the Legislator in the exercise of its powers and prerogatives. Am I correct?

CONGRESSMAN LAGMAN:

Yes, Your Honor.

JUSTICE PERALTA:

And then you said that presently, there is now a factual basis of the existence of rebellion, because it is now impossible for the President to exercise its power or the power enforcing the laws in Marawi, because of the extent of violence, did I heard (*sic*) you right?

CONGRESSMAN LAGMAN:

Your Honor, I think that was not my statement. There is now a factual basis for rebellion.

JUSTICE PERALTA:

Now, do you agree now that the President can now exercise its power to enforce the laws because of the extent of violence in Marawi City?

CONGRESSMAN LAGMAN:

Well, even without declaring martial law, Your Honor, the violence in Marawi City did not prelude the President from exercising its powers and prerogatives, because the channels of civilians and military authority are there.

JUSTICE PERALTA:

But I thought you said a while ago that there is no question that there is now public uprising. You also said that the violence, the taking up arms against the government is already there?

CONGRESSMAN LAGMAN

Yes, Your Honor . . .

JUSTICE PERALTA:

So, all these essential elements are already present?

CONGRESSMAN LAMAN:
The culpable purpose is not there.

JUSTICE PERALTA:
So, what was the culpable purpose?

CONGRESSMAN LAGMAN:
The culpable purpose, Your Honor, of rebellion, is to remove the Philippines or part thereof from allegiance to the republic or to prevent the President from the legislator from exercising its powers and prerogatives.

JUSTICE PERALTA:
So, what would you like the President to do under the circumstances?

CONGRESSMAN LAGMAN:
Under the circumstances, Your Honor, he has done what is supposed to do, except the fact that he declared martial law, because he could call the armed forces of the Philippines to subdue this terrorism being perpetrated.

JUSTICE PERALTA:
Despite the presence of public uprising and taking up arms against the government?

CONGRESSMAN LAGMAN:
Your Honor, the presence of an uprising, the presence of taking arms against the government is only one of the elements.

JUSTICE PERALTA:
That's what I was saying.

CONGRESSMAN LAGMAN:
It does not conclude or presume that the other element is present.

JUSTICE PERALTA:
That's what I was saying. How can the President exercise or execute the laws under the circumstances?

CONGRESSMAN LAGMAN:
Your Honor, he can, and he must be doing that, Your Honor.

JUSTICE PERALTA:
How?

CONGRESSMAN LAGMAN:
Because the channels of civilian and military commands [have] not been broken, Your Honor. As a matter of fact, the DND of Marawi

City, the LGUs of the entire Mindanao region are existing and operational. He can exercise his prerogatives and powers through the channels of these local government units, including the functioning departments of the government.[7]

Although petitioner Lagman did not agree that the element of culpable purpose is present, his adamant position is contrary to what is actually happening in Marawi City. As pointed out by the OSG, the siege in the City cannot be characterized as merely a result of counter-measures against the government's pursuit of Isnilon Hapilon, but is, in fact, a strategic and well-coordinated attack to overthrow the present government and to establish a *wilayah* in Mindanao. Needless to say, the Marawi siege shows a clear purpose to take over a portion of the Philippine territory.

Validity of the declaration of martial law and the suspension of habeas corpus in the entire Mindanao

In view of President Duterte's possession of information involving public safety which are unavailable to us, the Court cannot interfere with the exercise of his discretion to declare martial law and suspend the privilege of the writ of *habeas corpus* in the whole of Mindanao.

The OSG, representing the public respondents, averred that the Maute Group has banded with three other radical terrorist organizations, namely: the ASG from Basilan headed by Hapilon, the AKP (formerly known as the Maguid Group) from Saranggani and Sultan Kudarat, and the BIFF from Maguindanao. These groups are also affiliated with local cell groups located throughout the country. Even prior to the Marawi siege, the ASG, AKP, Maute Group, and BIFF as well as the numerous ISIS cell groups have already committed numerous bombings, assassinations, and extortion activities in the country, especially in Mindanao. These violent activities are widespread in several areas of Mindanao, such as Basilan, Sulu, Tawi-Tawi, Zamboanga, Davao

[7] TSN, Oral Arguments, June 14, 2017, pp. 41-49.

Del Norte, Lanao Del Sur, and Maguindanao. The AFP intelligence reports also disclosed that as early as April 18, 2017, Abdullah Maute had dispatched his followers to the cities of Marawi, Iligan, and Cagayan de Oro to conduct bombing operations, carnapping and "liquidation" of AFP and PNP personnel in the areas. As the OSG emphasized, the primary goal of the ISIS-linked local rebel groups is to establish a *wilayah* in Mindanao. In a video retrieved by the AFP, Abdullah Maute was shown saying: "*O kaya, unahin natin dit x x x tapas sunod-sunod na ito x x x O kaya unahin natin ditto x x x at separate natin dito isa (circled Marawi) para may daanan tayo*." Based on these, it cannot be said that the danger to public safety is isolated and contained only in Marawi City. At the very least, the danger stretches in the entire Mindanao.

I cannot accede to petitioner Lagman's proposition that it is only when the acts of rebellion are actually committed outside Marawi City that the President could declare martial law or suspend the privilige of the writ of *habeas corpus* in other affected towns or cities. Quoted below is my interpellation during the oral argument:

JUSTICE PERALTA:
Okay, I'll go to another point. Do [you] agree that the crime of rebellion is a continuing offense?

CONGRESSMAN LAGMAN:
Well, yes, there are jurisprudence to that effect, Your Honor.

JUSTICE PERALTA
In other word . . .

CONGRESSMAN LAGMAN:
But I would say that rebellion should not be extrapolated.

JUSTICE PERALTA:
No, I'm not after that. The other meaning of continuing offense is that; several acts are committed in different places, but their purpose is the same, do you agree with that?

CONGRESSMAN LAGMAN:
Yes, Your Honor, but in this particular case, the acts are not committed in other places.

JUSTICE PERALTA:

No, I'm not going to that yet, I will ask that question later, Congressman. What is the principle of continuing offense, you agree with that, the other principle of continuing offense?

CONGRESSMAN LAGMAN:

Yes, Your Honor.

JUSTICE PERALTA:

That several acts might be committed in different places?

CONGRESSMAN LAGMAN:

Yes, Your Honor.

JUSTICE PERALTA:

But the purpose is the same?

CONGRESSMAN LAGMAN:

Yes, Your Honor.

JUSTICE PERALTA:

Now, if assuming this is hypothetical, assuming that there is rebellion in Marawi City, and some of the acts are committed outside Marawi City, supposing the guns come from the nearby town of Marawi City and the other members of the rebel groups are based in that place and they bring their guns inside Marawi City. Will that not be rebellion in the other place?

CONGRESSMAN LAGMAN:

In the first place, Your Honor, that hypothetical question is not actually happening in Marawi City and other parts of Mindanao region.

JUSTICE PERALTA:

Supposing it happens, will it not be covered by the principle of continuing offense? If the acts are committed in another place and the actual rebellion takes place in another place, all of them will be liable under the theory of conspiracy.

CONGRESSMAN LAGMAN:

When we say, Your Honor, that it's a continuing offense, that rebellion is a continuing offense, it assumes that the inculpatory elements of rebellion are present.

JUSTICE PERALTA:

Of course, we assume that, that's why it's hypothetical. Now, if there's a rebellion, I will not use anymore Marawi City, because you might be presuming that I'm referring martial law in Marawi.

Supposing in one place, there is a rebellion ongoing, the declaration is to cover the whole area, outside the place where the actual rebellion is happening, can the President likewise cover the other areas nearby, as part of the declaration of rebellion?

CONGRESSMAN LAGMAN:

Your Honor, that may not be legally possible because with respect to the other areas, there is only an imminent danger of a rebellion and imminent danger has been deleted . . .

JUSTICE PERALTA:

What I understand from the deliberations of an imminent danger is, the initial declaration of martial law should not be based on imminent danger. Because if there is already a declaration of rebellion, you need not anymore ask or require imminent danger, because if there is a rebellion in one place, let's say in Marawi City, and then the rebels will go to the other place committing rebellion, the President will issue again a proclamation in that place? And then declare martial law in order to suspend the writ of *habeas corpus* in other place?

CONGRESSMAN LAGMAN:

While we say, Your Honor, that the President declares martial law, or suspends the privilege of the writ of habeas corpus, there must be an actual rebellion in the place occurring. When there is no actual rebellion in the other place because there is only a possibility that it is cover, I think that would, the imminent danger is not anymore ground.

JUSTICE PERALTA:

Can he not declare rebellion in Mindanao? Because Marawi City is part of Mindanao? You are suggesting that for every town that there is rebellion and declaration should be made?

CONGRESSMAN LAGMAN:

Yes, Your Honor, martial law can only be declared where there is actual rebellion in the coverage of President's proclamation.

JUSTICE PERALTA:

Yeah, because what I understand from the imminent danger as the reason why the possibility is that, in the initial proclamation of rebellion, under the old law, you can use that as a ground, but if the initial, if the proclamation is rebellion, that's it. It's covered in the Constitution.

CONGRESSMAN LAGMAN:

Rebellion, Your Honor, with respect to the place it is covered by marital law, not to other places where there is no rebellion or there is only a threat.

JUSTICE PERALTA:

But if the President declares Mindanao and Marawi City is part of Mindanao, what's wrong with it?

CONGRESSMAN LAGMAN:

Your Honor, Marawi City is only 0.0% of the entire Mindanao.

JUSTICE PERALTA:

But the groups who are involved are located in several places in Mindanao, some are based in Lanao, based in Davao, based in Basilan, based in Sulu, all of these places.

CONGRESSMAN LAGMAN:

That is only a threat, because of their presence there, but they have not activated, Your Honor. The word "a threat" is a key to imminent danger, it is not a ground.

JUSTICE PERALTA:

That's not what I mean, what I mean is that the President declares martial law in Mindanao, will that not cover the whole Mindanao because rebellion is taking place in Mindanao?

CONGRESSMAN LAGMAN:

Your Honor, that has no factual basis, the sufficiency of the basis of that declaration is not there because there is no rebellion in the other parts of Mindanao, particularly the areas mentioned yesterday by some members of this Honorable Court.

JUSTICE PERALTA:

Okay, so, the President should specifically declare certain place[s] where the actual rebellion is happening.

CONGRESSMAN LAGMAN:

Yes . . .

JUSTICE PERALTA:

So, if the rebellion will spread to the other towns, the President must declare, must again come out with the proclamation, declaring martial law in that place, is that your theory?

CONGRESSMAN LAGMAN:

Where there is actual rebellion in that place, Your Honor.

JUSTICE PERALTA:

Yeah, there is actual rebellion in the other place, so, the rebels are now in certain place[s]. They now expand the rebellion in the nearby town, so the President will declare another proclamation in

that nearby town. If we follow the theory, that there is no imminent danger, [then] he can only declare martial law, when the actual rebellion already takes place in that nearby town.

CONGRESSMAN LAGMAN:
We are just following the intention of the Constitution, Your Honor, that there must be actual rebellion as the basis for the declaration of martial law.

JUSTICE PERALTA:
Of course, that's always the requirement, that there must be actual rebellion. Thank you, thank you, Congressman.

CONGRESSMAN LAGMAN:
Thank you, Your Honor.[8]

To limit the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* in Marawi City alone where there is actual rebellion verges on the absurd. If we are to follow a "*piece-meal*" proclamation of martial law, the President would have to declare it repeatedly. Where there is already a declaration of martial law and/or suspension of the privilege of the writ of *habeas corpus*, considering that rebellion is a continuing crime, there is no need for actual rebellion to occur in every single town or city of Mindanao in order to validate the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus* in the entire island. Indeed, there is no need for a separate declaration because the declaration itself already covers the whole of Mindanao.

The validity of the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao is further bolstered by the fact that rebellion has no "predetermined bounds." Quoting *People v. Lovedioro*,[9] the OSG raised:

The gravamen of the crime of rebellion is an armed public uprising against the government. **By its very nature, rebellion is essentially a crime of masses or multitudes involving crowd action, which**

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[8] *Id.* at 49-54.

[9] G.R. No. 112235, November 29, 1995, 250 SCRA 389.

cannot be confined *a priori* within predetermined bounds. One aspect noteworthy in the commission of rebellion is that other acts committed in its pursuance are, by law, absorbed in the crime itself because they acquire a political character. This peculiarity was underscored in the case of *People v. Hernandez*, thus:

> In short, political crimes are those directly aimed against the political order, as well as such common crimes as may be committed to achieve a ***political purpose. The decisive factor is the intent or motive.*** If a crime usually regarded as common, like homicide, is perpetrated for the purpose of removing from the allegiance 'to the Government the territory of the Philippine Islands or any part thereof,' then it becomes stripped of its "common" complexion, inasmuch as, being part and parcel of the crime of rebellion, the former acquires the political character of the latter.[10]

Consistent with the nature of rebellion as a continuing crime and a crime without borders, the rebellion being perpetrated by the ISIS-linked rebel groups is not limited to the acts committed in Marawi City. The criminal acts done in furtherance of the purpose of rebellion, which are absorbed in the offense, even in places outside the City are necessarily part of the crime itself. **More importantly, the ISIS-linked rebel groups have a common goal of taking control of Mindanao from the government for the purpose of establishing the region as a *wilayah*. This political purpose, coupled with the rising of arms publicly against the government, constitutes the crime of rebellion and encompasses territories even outside Marawi City, endangering the safety of the public not only in said City but the entire Mindanao.**

It is true that the 1987 Constitution has a number of safeguards to ensure that the President's exercise of power to declare martial law or suspend the privilege of the writ of *habeas corpus* will not be abused. Nonetheless, it does not do away with the powers necessarily included in the effective exercise of such authority. Indeed, certain things taken for granted during times of peace and quietude may have to adapt to meet the exigencies of the

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[10] *People v. Lovedioro*, G.R. No. 112235, November 29, 1995, 250 SCRA 389, 394-395. (Emphasis ours)

moment. What may be considered as unreasonable during normal times may become justifiable in cases of invasion or rebellion. When the threat to society becomes evident, there must be corresponding adjustments in the manner by which the government addresses and responds to it. For instance, would ordinary rules regarding visual search or inspection in checkpoints still be reasonable if vehicles are used as car bombs? Or should appropriate remedial measures be adopted to ensure that the lives of the people are not unwittingly exposed to such danger, such as undertaking more comprehensive inspections and not just relying on the apparent, if not deceptive, appearances of the vehicles and their occupants?

The Constitution is a living, responsive, and adaptable instrument for effective governance. It should not be seen as providing permanently framed and fossilized rules. The nation could not stand still and be a helpless victim of ordinary crimes, terrorism, rebellion or invasion. It has its own defenses and means to protect itself, which are primarily entrusted to the President who remains to be accountable to the sovereign people. The Court also has its part in that duty, yet it can only do so within the confines of its own constitutionally vested authority, including the limitation not to overstretch itself and encroach on the domain of the Executive Department.

Wherefore, I vote to **DISMISS** the consolidated petitions.

SEPARATE OPINION

BERSAMIN, *J.*:

I **CONCUR.**

I hereby substantiate my concurrence in order to express my views on certain issues that I deem to be of greatest significance.

I

The 1987 Constitution is often described as an anti-martial law fundamental law. This may most probably be because the

Filipino people have thereby firmly institutionalized solid safeguards to ensure against the abuse of martial law as a response to any internal or external threats to the stability of the Republic.

I think, however, that the description may not be entirely apt. Martial law had theretofore no generally accepted definition, much less precise meaning. The lack of an accepted or constant definition and precision has been recognized in this jurisdiction for some time now.[1] The need for the Court to enlighten our

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[1] See the concurring opinion of *J*. Barredo in *Aquino v. Enrile*, No. L-35546, September 17, 1974, 59 SCRA 183, which noted:

Martial law pursuant to Proclamation No. 1081, however, does not completely follow the traditional forms and features which martial law has assumed in the past. It is modern in concept, in the light of relevant new conditions, particularly present day rapid means of transportation, sophisticated means of communications, unconventional weaponry, and such advanced concepts as subversion, fifth columns, the unwitting use of innocent persons, and the weapons of ideological warfare.

The contingencies which require a state of martial law are time-honored. They are invasion, insurrection and rebellion. Our Constitution also allows a proclamation of martial law in the face of imminent danger from any of these three contingencies. The Constitution vests the power to declare martial law in the President under the 1935 Constitution or the Prime Minister under the 1973 Constitution. As to the form, extent, and appearance of martial law, the Constitution and our jurisprudence are silent.

Martial law pursuant to Proclamation No. 1081 has, however, deviated from the traditional picture of rigid military rule super-imposed as a result of actual and total or near total breakdown of government.

Martial law was proclaimed before the normal administration of law and order could break down. Courts of justice were still open and have remained open throughout the state of martial law. The nationwide anarchy, overthrow of government, and convulsive disorders which classical authors mention as essential factors for the proclamation and continuation of martial law were not present.

More important, martial law under Proclamation No. 1081 has not resulted in the rule of the military. The will of the generals who command the armed forces has definitely not replaced the laws of the land. It has not superseded civilian authority. Instead of the rule by military officials, we have the rule of the highest civilian and elective official of the land, assisted by civilian heads of executive departments, civilian elective local officials and other civilian officials. Martial law under Proclamation No. 1081 has made extensive use of military forces, not to take over civilian authority but to insure that

people through a higher understanding of the concept of martial law thus exists even today. But the problem is not only about the meaning; it is also about the scope of martial law. Such understanding is essential to the determination of the serious issues that have been presented in these consolidated cases.

There is much about martial law that is mysterious probably because of its extraordinary and uncommon effects on civilians used to a rule by civil authority. The traditional concept of martial law is its not being law in the usual sense but the will of the military commander, to be exercised by him or her only on his or her responsibility to his or her government or superior officer; when once established, it applies alike to citizen and soldier.[2] In its comprehensive sense, the term *martial law* is that which is promulgated and administered *by* and *through* military authorities and agencies for the maintenance of public order and the protection of persons and property in territory wherein the agencies of the civil law usually employed for such purposes have been paralyzed, overthrown, or overpowered, and are unable, for the time being, fully to operate and function.[3] In its

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civilian authority is effective throughout the country. This Court can very well note that it has summoned and continues to summon military officers to come before it, sometimes personally and at other times through counsel. These military commanders have been required to justify their acts according to our Constitution and the laws of the land. These military officers are aware that it is not their will much less their caprice but the sovereign will of the people under a rule of law, which governs under martial law pursuant to Proclamation No. 1081.

[2] *Id*., citing *Johnson v. Jones*, 44 Ill 142.

In addition, Thurman Arnold wrote about Martial Law in the *Encyclopaedia of Social Sciences, viz*.:

Martial law is a legal concept by which Anglo-American civil courts have sought in times of disorder to define the limits of executive or military control over citizens in domestic territory. It is analyzed in so many different ways, and there are so many theories as to its sanction that no definition can do more than express the most current legal impressions. Martial law is regarded as the substitution of the will of the executive or military commander for the process of the courts.

[3] *Id*., citing *State ex rel. O'Connor v. District Court in Shelby County*, 219 Iowa 1165, 260 NW 73, 99 ALR 967; *Ex parte McDonald*, 49 Mont 454, 143 P 947; *State ex rel. Grove v. Mott*, 46 NJL 328.

strict and absolute sense, however, martial law *supersedes* all civil authority during the period in which it is in operation.[4]

The latter sense is not true under the 1987 Constitution. The majority opinion, ably written for the Court by Justice Del Castillo, adverts to the discussion among the members of the Constitutional Commission on the added powers of the President during martial law.[5] As can be gathered from the discussion, martial law does not automatically vest legislative power in the President; and does not supplant the functioning of civil courts. During martial law, the President is granted the powers of a commanding general in a theater of war, and, as such, becomes authorized to issue orders that have the effect and force of law strictly in the theater of war.

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[4] *Id*., citing *Ex parte* Milligan, 71 US 2; *Martin v. Mott*, 25 US 19; *Johnson v. Jones*, 44 Ill 142; *State ex rel. O'Connor v. District Court in Shelby County*, 219 Iowa 1165, 260 NW 73, 99 ALR 967; *Ex parte McDonald*, 49 Mont 454, 143 P 947; *Ex parte Lavinder*, 88 W Va 713, 108 SE 428, 24 ALR 1178.

[5] *Records of the Constitutional Commission No. 042*, [July 29, 1986]:

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 *Aquino vs. 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 theatre 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 theatre of war.

The reference to the theater of war manifests the intent of the framers to revert to the traditional concept of martial law as developed in American jurisprudence. *Ex parte Milligan*,[6] decided around the end of the American Civil War, stands among the earliest cases explaining the necessity for martial rule to substitute civil authority during an invasion or civil war, when it is impossible to administer justice according to law. It is worthy to note that *Ex parte Milligan* referred to a theater of *active* of military operations or the locality of *actual* war in relation to martial rule, to wit:

> If, in foreign invasion or civil war, the courts are actually closed, and it is impossible to administer criminal justice according to law, *then*, on the theatre of active military operations, where war really prevails, there is a necessity to furnish a substitute for the civil authority, thus overthrown, to preserve the safety of the army and society; and as no power is left but the military, it is allowed to govern by martial rule until the laws can have their free course. As necessity creates the rule, so it limits its duration; for, if this government is continued *after* the courts are reinstated, it is a gross usurpation of power. Martial rule can never exist where the courts are open, and in proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of actual war.

Another American case — *Duncan v. Kahanamoku*[7] — became the occasion to clarify that martial law, "*while intended to authorize the military to act vigorously for the maintenance of an orderly civil government and for the defense of the Islands against actual or threatened rebellion or invasion, was not intended to authorize the supplanting of courts by military tribunals*."

The right to proclaim, apply and exercise martial law is one of the rights of sovereignty, and is as essential to the existence of a nation as the right to declare and carry on war.[8] In republican

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[6] 71 U.S. (4 Wall.) 2 (1866).

[7] 327 U.S. 304 (1946).

[8] 53A Am Jur 2nd, Section 437, citing *Luther v. Borden*, 48 US 1.

Philippines, the power to proclaim martial law has always been lodged in the Presidency. This is by no means either odd or unwelcome. The necessity that can justify the wielding of the power looks to the President as the commander-in-chief of all the armed forces of the State to respond swiftly and capably to any internal or external threats. Giving to the bicameral Congress the right to exercise the power may be cumbersome, inconvenient and unwieldy, and is anathema to the notion of responding to the critical emergency that directly and immediately threatens to diminish, if not destroy, the sovereignty of the State itself over the territory and population of the country. Indeed, of the three great branches of the Government, it is the President, as the Chief Executive and commander-in-chief of the armed forces, who has the ability and competence and the means to make the timely and decisive response.

II

Section 18, Article VII of the 1987 Constitution expressly provides:

> Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. **In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law.** Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.
>
> The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

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

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

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

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

Under the provision, the President has the leeway to choose his or her responses to any threat to the sovereignty of the State. He or she may call out the armed forces to prevent or suppress lawless violence, invasion or rebellion; or, in case of invasion or rebellion, when the public safety requires it, he or she may suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law for a period not exceeding 60 days.

These consolidated cases focus on the proclamation of martial law by President Duterte over the entire Mindanao through Proclamation No. 216. The herein petitioners essentially seek the review by the Court, pursuant to the third paragraph of Section 18, of the "sufficiency of the factual basis of the proclamation of martial law." The review is a legal duty of the Court upon the filing of the several consolidated petitions assailing the sufficiency of the factual basis for the proclamation of martial law.

There is no question to me that the third paragraph of Section 18, *supra*, vests in the Court the unqualified duty to review the factual sufficiency of the declaration of martial law, and the necessity for the declaration.

Invoking the paragraph, the petitioners insist that the action they have initiated is a *sui generis* proceeding, different from the Court's *certiorari* powers stated in the second paragraph of Section 1,[9] Article VIII of the 1987 Constitution and those enumerated under Section 5(1),[10] Article VIII of the 1987 Constitution.

In contrast, the Office of the Solicitor General (OSG) posits that it is insufficient for the petitioners to merely invoke the third paragraph of Section 18 in order to enable the Court to review the sufficiency of the factual bases of Presidential proclamation No. 216 because they should also invoke the expanded judicial power of the Court to determine the existence of grave abuse of discretion under the second paragraph of Section 1, in relation to Section 5(1). Equating the *appropriate proceeding* under the third paragraph of Section 18 with the special civil action of *certiorari* under Section 5(1), the OSG theorizes that the third paragraph of Section 18 requires the petitioners to anchor their petitions on the existence of grave abuse of discretion because the appropriate proceeding under the third paragraph of Section 18 should be brought under the second paragraph of Section 1.

The majority opinion adopts the position of the petitioners. It holds that to equate the *appropriate proceeding* mentioned in the third paragraph of Section 18 with the *certiorari* action under Section 5(1) in relation to the second paragraph of Section 1 is to "emasculate the Court's task under Section 18, Article VII."[11]

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[9] Section 1. x x x

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[10] Section 5. The Supreme Court shall have the following powers:

1. Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus, quo warranto*, and *habeas corpus*.

x x x x x x x x x

[11] See the majority opinion, p. 22.

I agree with the majority opinion.

The third paragraph of Section 18 suffices to confer on the Court the exclusive and original jurisdiction to determine the sufficiency of the factual bases of the proclamation of martial law. To equate the *appropriate proceeding* to the *certiorari* action authorized under Section 5(1), in relation to the second paragraph of Section 1, is erroneous. As earlier pointed out, the third paragraph of Section 18 defines the legal duty to review the sufficiency of the factual basis for the proclamation of martial law upon the filing of the petition for the purpose by *any* citizen. The Court has then to discharge the duty.

The silence of Section 5(1) on what the *appropriate proceeding* is should be of no consequence because Section 5 is not the sole repository of the cases or situations coming under the Court's jurisdiction.

III

The check-and-balance constitutional design set down in Section 18 of Article VII of the 1987 Constitution establishes a structure of collaboration among the three great branches of the Government in the matter of the proclamation of martial law. Although the power of proclaiming martial law over the country or any part of it is exclusively lodged in the President, he or she is nonetheless required to report to Congress on the proclamation, and Congress shall then decide whether to revoke or extend the state of martial law. The Court, being a passive institution, *may be* called upon to review and determine the sufficiency of the factual basis of the proclamation, and whether the public safety requires it, only upon the petition for the purpose by any citizen.

The invocation of the third paragraph of Section 18 by the petitioning citizen suffices to initiate this Court's power to review the sufficiency of the factual bases of the declaration of martial law. This initiation, which triggers the inquiry or review by the Court, albeit unique, conforms to the constitutional design.

The appropriate proceeding, once commenced, should not focus on whether the President gravely abused his or her

discretion or not in determining the necessity for proclaiming martial law. Instead, the 1987 Constitution mandates the Court to examine and sift through the factual basis relied upon by the President to justify his proclamation of martial law and to determine whether the factual basis is sufficient or not. To rule that a finding of grave abuse of discretion is essential is to confine the discharge of the duty by the Court within limits not considered at the time of the ratification of the 1987 Constitution. Doing so may also produce impractical results. Consider this hypothetical scenario. Supposing that the President cites 10 factual bases for his proclamation of martial law, and the Court, upon its assiduous review of the factual bases, considers nine of the 10 as manufactured or fabricated or inadequate, leaving but one as true or authentic. Under the thesis of the OSG, the Court would necessarily nullify the proclamation simply because the President was found to have gravely abused his or her discretion. The Court would thereby act indifferently towards the one true or authentic justification on the ground that the grave abuse of discretion as to the nine tainted the proclamation.

Moreover, the determination of sufficiency or insufficiency of the factual bases for the proclamation of martial law is usually a matter of validating the good judgment of the President of the facts or information known to or made available to him or her. This goes without saying that such facts must have occurred *prior to* or *about* the time the determination by the President is made. Whether or not such facts are later shown by subsequent events to be fabricated or false or inadequate is not a decisive factor unless the President is credibly shown to have known of the fabrication or falsity or inadequacy of the factual bases at the time he or she issued the proclamation of martial law. In that situation, the main consideration is definitely not whether or not grave abuse of discretion intervened.

My reading of the third paragraph of Section 18 tells me that the term *appropriate proceeding* is different from the proceedings or actions that the Court may take cognizance of under Section 5(1) or Section 1. My foremost reason for so holding is that the third paragraph of Section 18 textually mandates the Court to be a trier of facts, an office and function

that the Court is not generally called upon to discharge under either Section 5(1) or Section 1. It is true that the Court is not always precluded from reviewing facts. There are occasions when it assumes the role of a trier of facts, like, to name some, in criminal appeals; in appeals from rulings of the Court of Appeals in proceedings for the writ of *amparo*; or when it sits as the Presidential Electoral Tribunal.[12]

In fine, I deem it to be plainly erroneous to subsume the *appropriate proceeding* allowed in the third paragraph of Section 18 to the *certiorari* jurisdiction vested by Section 5(1) in relation to the expanded jurisdiction defined in second paragraph of Section 1.

Nonetheless, considering that the *appropriate proceeding* under the third paragraph of Section 18 is initiated by a petition filed by *any* citizen, the Court need not be hamstrung by the foregoing differentiation. In discharging its constitutional duty of reviewing the sufficiency of the factual basis for the proclamation of martial law, the Court should be least curtailed by form and formality. It should dutifully undertake the review *regardless of form and formality*. It should also eschew the usual judicial tools of avoidance, like *locus standi* and justiciability, because the task at hand is constitutionally inevitable for the Court. Until adequate rules for the regulation of the *appropriate proceeding* under the third paragraph of Section 18 are crafted and promulgated, the Court should be content with the petitions as they have been filed in these consolidated cases.

In this connection, I have no hesitation in adopting the caution that our colleague, Justice Leonardo-De Castro, has written so clearly in her Separate Concurring Opinion herein, to wit:

> The Court should be cautious that it does not take a position in these consolidated cases that needlessly restricts our people's judicial remedies nor carelessly clips our own authority to take cognizance of the issue of constitutional sufficiency under Section 18, Article VII

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[12] The 2010 Rules of the Presidential Electoral Tribunal (A.M. No. 10-4-29-SC dated May 4, 2010).

in ***any*** appropriate action that may be filed with the Court. Such would be antagonistic to the clear intent of the framers of the 1987 Constitution to empower our citizens and the Judiciary as a vital protections against potential abuse of the executive power to declare martial law and suspend the privilege of the writ of *habeas corpus*.

IV

One noticeable area of disagreement between the OSG and the petitioners is the burden of proof. This disagreement has to arise because the Court's task to be presently discharged requires the determination of the sufficiency of the *factual* basis of the necessity for martial law.

The petitioners' argument that the burden of proof immediately falls on the Government is difficult to accept. My view is that the burden of proof to show that the factual basis of the President in proclaiming martial law *was* insufficient has to fall on the shoulders of the citizen initiating the proceeding. Such laying of the burden of proof is constitutional, natural and practical — *constitutional*, because the President is entitled to the strong presumption of the constitutionality of his or her acts as the Chief Executive and head of one of the great branches of Government;[13] *natural*, because the dutiful performance of an official duty by the President is always presumed;[14] and *practical*, because the alleging party is expected to have the proof to substantiate the allegation.

For purposes of this proceeding, President Duterte, by his proclamation of martial law, discharged an official act. He incorporated his factual bases in Proclamation No. 216 itself as well as in his written report to Congress. The petitioners have come forward to challenge the sufficiency of the factual bases for the existence of actual rebellion and for the necessity for martial law (*i.e.*, the public safety requires it). It was incumbent upon the petitioners to show why and how such factual

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[13] *Abakada Guro Party List v. Purisima*, G.R. No. 166715, August 14, 2008, 562 SCRA 251, 272.

[14] Section 3 (m), Rule 131 of the *Rules of Court*.

bases were insufficient. Although there may be merit in the urging of the petitioners that the Government carried the burden of proof on the basis of the proclamation of martial law being a derogation of civil rights and liberties, I persist in the view that the burden of proof pertained to the petitioners considering that despite embedding numerous safeguard mechanisms, the 1987 Constitution has not dissolved the presumption of good faith in favor of the President. In other words, we should presume that the President, in proclaiming the state of martial law, did so in good faith.[15]

Nonetheless, I also suggest future consideration that where the petitioning citizen has incorporated or stated in the petition those of the factual bases that he or she admits, and those that he or she denies because he holds them to be false or fabricated, or inadequate to justify the proclamation, specifying the reasons for the denial or for holding such factual bases as false, fabricated or inadequate, then the burden of evidence — as distinguished from the burden of proof — may be shifted to the Government. This process, known in civil procedure as the *specific denial*,[16] may be very useful in allocating the duty to come forward with the evidence.

V

The Government has convincingly shown that the President had sufficient factual bases for proclaiming martial law over the entire Mindanao. Indeed, the facts and events known to the

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[15] *Dimapilis-Baldoz v. Commission on Audit*, G.R. No. 199114, July 16, 2013, 701 SCRA 318.

[16] Section 10, Rule 8 of the *Rules of Court* recites:

> Section 10. *Specific denial*.— A defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial. Where a defendant desires to deny only a part of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Where a defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state, and this shall have the effect of a denial. (10a)

President when he issued the proclamation provided sufficient basis for the conclusion that an actual rebellion existed.

The point has been made that the proclamation of the state of martial law should be confined to the areas of Mindanao under armed conflict.

After accepting the factual premises based on the existence of an *actual* rebellion fueled by the movement for secession, and knowing that the rebellion has been happening in various areas of Mindanao for a long time already, I agree with the majority that the proclamation of martial law over the entire Mindanao was warranted. Indeed, the local armed groups had formed linkages aimed at committing rebellion *throughout* Mindanao, not only in Marawi City, which was but the starting point for them. Verily, the rest of Mindanao, even those not under armed conflict at the moment of the proclamation, were exposed to the same positive danger of the rebellion that gave rise to the necessity for the proclamation.[17]

I **VOTE TO UPHOLD** the constitutionality of Proclamation No. 216 over the entire Mindanao.

SEPARATE CONCURRING OPINION

MENDOZA, *J.*:

Once again the Court is confronted with an issue raised to test the constitutional safeguards against abuses put in place

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[17] Lieber, G. Norman, *What is the Justification of Martial Law?*, The North American Review, Vol. 163, No. 480 (Nov., 1896), pp. 549-563 (published by the University of Northern Iowa), quoting Dr. Francis Lieber's manuscript note entitled "*Instructions for the government of the armies of the United States in the field*," to wit:

> It has been denied that the government has any right to proclaim martial law, or to act according to its principles, in districts distant from the field of action, or declare it in larger districts than either cities or counties. This is fallacious. **The only justification of martial law is the danger to which the country is exposed, and as far as the positive danger extends, so far extends its justification.** (Bold underscoring supplied)

by the Framers of the 1987 Constitution in response to the experiences of the nation during the regime of former President Ferdinand E. Marcos.

Martial law is a polarizing concept. On the one hand, it is an extraordinary constitutional power conferred on the president, which he may exercise when there is invasion or rebellion and when public safety requires it. Martial law is not merely an implied or necessary power, but a power expressly and categorically entrusted by the people to the president.

Yet, an invocation of the said power generates a dissonant reaction from various sectors of the citizenry—some are downright antagonistic. They still vividly recall how, during the Marcos regime, martial law was utilized, not as a shield to protect the sovereignty from both foreign and local threats, but as a mechanism to stifle dissent, to oppress the opposition, and to plunder the economy. The same power intended to protect the citizenry from danger was instead used to violate their constitutional and human rights.

The present controversy stemmed from the issuance of President Rodrigo Duterte (*President Duterte*) of Proclamation No. 216, which placed several islands comprising Mindanao under martial law.

Considering the trauma sustained by the people during the Marcos regime, the Court understands the skepticism of some sectors of society. In case of invasion or rebellion and when the public safety requires it, however, the Court cannot just enjoin the implementation of martial law. It can only do so if the sufficiency of the factual bases for such declaration cannot be proven in an appropriate proceeding.

This case is the appropriate proceeding. It is *sui generis* in the absence of a corresponding specific procedure promulgated by the Court.

The Factual Antecedents

As early as November 2014, certain groups in Mindanao pledged allegiance to the Islamic State of Iraq and Syria (*ISIS*)

Caliphate.[1] The four groups coming from different parts of Mindanao were (1) the Abu Sayyaf Group (*ASG*) from Basilan, headed by Isnilon Hapilon (*Hapilon*); (2) the Dawlah Islamiya or the Maute Group from Lanao del Sur, headed by Omar Maute; (3) the Ansarul Khilafah Philippines (*AKP*), also known as the Maguid Group from Saranggani and Sultan Kudarat, led by Mohammad Jaafar Maguid; and (4) the Bangsamoro Islamic Freedom Fighters (*BIFF*), based in Maguindanao.

In 2016, Hapilon was appointed as the *Emir* in the Islamic State of the Philippines. The groups intended to establish Marawi City in Lanao del Sur as their capital as it is the central point from which other areas in Mindanao can be easily accessed.

In the first quarter of 2017, due to the heightened frequency of the armed attacks in Mindanao, the quality of the weapons used by the armed groups, and the evident political intention to dismember Philippine territory and deprive the President of his powers in Mindanao, Defense Secretary Delfin N. Lorenzana (*Secretary Lorenzana*) and National Security Adviser General Hermogenes Esperon, Jr. (*General Esperon*), during security briefings and cabinet meetings, expressed to the President the advisability of declaring martial law. Martial Law Administrator, Armed Forces Chief General Eduardo Año (*General Año*), confirmed that he had been briefing the President at least three (3) times a day on the situation in Mindanao, which was getting critical every day.

Sometime before May 23, 2017, the Maute Group, the ASG, the BIFF, and the AKP, who all vowed to overthrow the government and establish a *wilayah* (province) in Mindanao, met and discussed how to execute their plan to realize their aspirations. This has been validated by a video[2] showing Hapilon

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[1] The word 'Caliph' means successor, and designates the political leader of the Islamic community, or ummah. By using the language of Caliph and Caliphate, ISIS is attempting to establish itself as the leader of a worldwide Muslim movement and mobilize a broad coalition of support by erasing national boundaries. (http://www.huffingtonpost.com/2014/06/30/what-is-a-caliphate-meaning_n_5543538.html)

[2] Annex "B", Consolidated Comment.

and the Maute brothers discussing their strategy on how to attack Marawi City.

On May 23, 2017, acting on intelligence so far gathered, the police, with the assistance of the military, moved out to serve a warrant of arrest on Hapilon, who was reported to be in a safe house of the Maute Group. A firefight between the military and the rebels ensued, but the latter, following their then secret plan, simultaneously laid siege to Marawi City in an unprecedented scale, occupied strategic positions therein, set up their own checkpoints, and virtually paralyzed the city. Several government and private infrastructures were destroyed and the operations of the local government were crippled. The ISIS-inspired local rebel groups had indeed succeeded in terrorizing the entire city of Marawi on the very first day of Ramadan with the goal of establishing a *wilayah* in Mindanao.

On the same day, May 23, 2017, acting on validated intelligence reports, President Duterte issued Proclamation No. 216 declaring a state of martial law in the entire Mindanao.

Hence, these consolidated petitions.

Overall, the petitioners challenge President Duterte's declaration of martial law on the ground that it is constitutionally infirm primarily because there is no actual rebellion, and even if there is, he should have exercised his calling out powers only.

Martial Law Powers under the 1987 Constitution

The power of the president to declare martial law is specifically provided under Section 18, Article 7 of the 1987 Constitution (*"Commander-in-Chief" Clause*), *viz*:

> The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. **In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines**

or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

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

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

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

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

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released. [Emphases and underscoring supplied]

As explained by revered constitutionalist Fr. Joaquin Bernas (*Fr. Bernas*), the martial law contemplated under the present Constitution pertains to the traditional concept of martial law as espoused in American Jurisprudence. Thus:

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 *Aquino vs. 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 theatre 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 theatre of war.[3] [Emphases supplied]

Justice lsagani Cruz wrote that "the declaration of martial law has no further legal effect than to warn the citizens that the military powers have been called upon by the executive to assist him in the maintenance of law and order and that while the emergency lasts, they must, upon pain of arrest and punishment, not commit any act which will in any way render difficult the restoration of order and the enforcement of law. When martial law is declared, no new powers are given to the executive; no extension of arbitrary authority is recognized; no civil rights of the individuals are suspended. The relation of the citizens to their State is unchanged."[4]

It is to be noted that the **Constitution does not define what martial law is and what powers are exactly granted to the**

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[3] Records of the Constitutional Commission No. 42.

[4] Cruz, *Philippine Political Law* (2002 Ed.), p. 227 citing Willoughby, 2nd Ed., Sec. 1056, pp. 1591-1592.

president to meet the exigencies of the moment. Fr. Bernas merely described it as one similar to the martial law of the American legal system. Thus, martial law is a fluid and flexible concept, which authorizes the president to issue orders as the situation may require. For said reason, it can be said that the president possesses broad powers, which he may exercise to the best of his discretion.

To confine martial law to a particular definition would limit what the president could do in order to arrest the problem at hand. This is not to say, however, that the president has unrestricted powers whenever he declares martial law. Compared to the past constitutions, the president's discretion has been greatly diminished. In the exercise of his martial law powers, **he must at all times observe the constitutional safeguards**.

In crafting the provisions, the Framers sought to establish equilibrium between the protection of the public from possible abuses and the president's prerogative to wield the martial law power. The sponsorship speech of Commissioner Sumulong is quite enlightening, *viz*:

> The Committee on the Executive has the honor to submit, for consideration and approval, Proposed Resolution No. 517, proposing to incorporate in the new Constitution an Article on the Executive. This Article on the Executive is based mainly on the many resolutions referred to our Committee for study and report. The members of the Committee have studied and discussed these resolutions which dealt with concrete instances of misuse and abuse of executive power during the Marcos regime especially after the declaration of martial law. The members of the Committee made an intensive and exhaustive study on the constitutional proposals contained in those resolutions intended to prevent a repetition of the misuse and abuse of executive power. **At the same time, the members of the Committee were always on guard and careful in their intense desire to undo and correct the misdeeds and mistakes of the Marcos regime, because we might impose safeguards and restrictions which may be unreasonable and unduly harsh and which might emasculate our future presidents in the exercise of executive power.**[5] [Emphasis supplied]

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[5] Records of the Constitutional Commission No. 42.

Clearly, the Framers were cognizant of the past abuses prevalent during the Marcos regime when they laid down the powers of the president under the Commander-in-Chief Clause. At the same time, they recognized the necessity to provide the president sufficient elbow room to address critical situations. Thus, the present Constitution is more stringent and more precise in contrast to past provisions because it imposed limitations on the exercise of the martial law power.

As can be gleaned from the Constitution, it did not define what martial law is in order to make it flexible enough to be an effective tool to address extraordinary needs during extraordinary times. To my mind, in not giving a positive definition on what martial law is and merely providing specific restrictions, the Framers were striking a balance between the right of the State to protect itself from local and foreign threats and the concern of the public over the abuse in the exercise of such potent power. The Framers deemed it wise to impose safeguards to curtail possible abuses of the martial law powers without categorically defining martial law as not to unduly restrict the president.

It must be borne in mind that it is **the people, through the Constitution, who entrusted to the president their safety and security**. They gave him enough latitude and discernment on how to execute such emergency powers. **If the Framers did not so cramp him, it is not for the Court to impose restrictions. To do so is dangerous for it would tie up the hands of future presidents facing the same, if not more serious, critical situations.** At any rate, the Framers have put in place several safeguards to prevent violations of the constitutional and other human rights.

Constitutional Safeguards

As above-stated, the harrowing experience of the Filipino people during the Marcos regime did not escape the minds of the Framers. It is for this reason that numerous safeguards were put in place to prevent another dictator from abusing the said power.

The present government is very much aware of these restrictions. Thus, the Department of National Defense (*DND*), in its May 24, 2017 Memorandum, cited the **constitutional safeguards** under Section 18, Article VII of the Constitution, particularly: **(1) the continuing operation and supremacy of the Constitution; (2) military authority not supplanting Congress or the Judiciary; and (3) the military courts not acquiring jurisdiction over civilians, where civilian courts are fully functioning.** Stated differently, the president and the armed forces cannot issue orders violative of the Constitution. Otherwise, they may be held accountable to be determined in a *separate action*.

Pursuant thereto, the DND enjoined the Armed Forces of the Philippines (*AFP*), and all its officers and personnel to faithfully observe the rule of law in places where martial law has been in effect. It is an assurance by the government that it would adhere to the constitutional safeguards in place and would not countenance any violation or abuse of constitutional or human rights.

Martial Law justified in cases of Rebellion or Invasion and when Public Safety requires it

One of the important reforms in the present charter is the removal of the phrase "imminent danger." Thus, at present, martial law may be declared only when following circumstances concur: (1) there is actual rebellion or invasion; (2) and the public safety requires it.

The initial determination of the existence of actual rebellion and the necessity of declaring martial law as public safety requires rests with the president. The following discussions of the Framers are enlightening, *viz*:

MR. REGALADO: **If we consider the definition of rebellion under Articles 134 and 135 of the Revised Penal Code, that presupposes an actual assemblage of men in an armed public uprising for the purposes mentioned in Article 134 and by the means employed under Article 135.** I am not trying to pose as an

expert about this rebellion that took place in the Manila Hotel, because what I know about it is what I only read in the papers. I do not know whether we can consider that there was really an armed public uprising. Frankly, I have my doubts on that because we were not privy to the investigations conducted there.

Commissioner Bernas would like to add something.

FR. BERNAS: **Besides, it is not enough that there is actual rebellion.** Even if we will suppose for instance that the Manila Hotel incident was an actual rebellion, that by itself would not justify the imposition of martial law or the suspension of the privilege of the writ because the Constitution further says: "when the public safety requires it." **So, even if there is a rebellion but the rebellion can be handled and public safety can be protected without imposing martial law or suspending the privilege of the writ, the President need not.** Therefore, even if we consider that a rebellion, clearly, it was something which did not call for imposition of martial law.

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MR. REGALADO:**It becomes a matter of factual appreciation and evaluation.** The magnitude is to be taken into account when we talk about tumultuous disturbance, to sedition, then graduating to rebellion. **All these things are variances of magnitude and scope. So, the President determines, based on the circumstances, if there is presence of a rebellion.**

MR. DE LOS REYES: With the concurrence of Congress.

MR. REGALADO: And another is, if there is publicity involved, not only the isolated situations. **If they conclude that there is really an armed public 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 necessary to declare martial law because he can still resort to the lesser remedy of just calling out the Armed Forces for the purpose of preventing or suppressing lawlessness or rebellion.[6] [Emphases supplied]

Rebellion, as understood in the Constitution, is similar to the rebellion contemplated under the Revised Penal Code (*RPC*).

[6] Records of the Constitutional Commission No. 42.

Thus, in order for the president to declare martial law, he must be satisfied that the following requisites concur: (1) there must be a public uprising; (2) there must be taking up arms against the government; (3) with the objective of removing from the allegiance to the government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval or other armed forces; (4) the Chief Executive or the Legislature, wholly or partially, is deprived of any of their powers or prerogatives;[7] and (5) the public safety requires it. In turn, the initial determination of the president must be scrutinized by the Court if any citizen challenges said declaration.

The President has Wide Discretionary Powers

The Commander-in-Chief Clause granted the president a sequence of graduated powers, from the least to the most benign, namely: (1) the calling out power; (2) the power to suspend the privilege of the writ of *habeas corpus*; and (3) the power to declare martial law.[8] In *Integrated Bar of the Philippines v. Zamora (Zamora),*[9] the Court explained the supplementary role of the military in the exercise of the president's calling-out-power, to wit:

> We disagree. The deployment of the Marines does not constitute a breach of the civilian supremacy clause. The calling of the Marines in this case constitutes permissible use of military assets for civilian law enforcement. **The participation of the Marines in the conduct of joint visibility patrols is appropriately circumscribed.**The limited participation of the Marines is evident in the provisions of the LOI itself, which sufficiently provides the metes and bounds of the Marines' authority. **It is noteworthy that the local police forces are the ones in charge of the visibility patrols at all times, the real authority belonging to the PNP. In fact, the Metro Manila Police Chief is the overall leader of the PNP-Philippine Marines joint visibility patrols. Under the LOI, the police forces are tasked to brief or**

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[7] Article 134, Book II of the RPC.

[8] *SANLAKAS v. Executive Secretary*, 466 Phil. 482, 510-511 (2004).

[9] 392 Phil. 618 (2000).

orient the soldiers on police patrol procedures. It is their responsibility to direct and manage the deployment of the Marines. It is, likewise, their duty to provide the necessary equipment to the Marines and render logistical support to these soldiers. In view of the foregoing, it cannot be properly argued that military authority is supreme over civilian authority.[10] [Emphases supplied]

Under the calling-out-power, the president merely summons the armed forces to aid him in suppressing lawless violence, invasion and rebellion.[11] The military merely supplements the police forces, with the latter having supervision over the former.

It is not, however, required that the president must first resort to his calling out power before he can declare martial law. Although the Commander-in-Chief Clause grants him graduated powers,[12] it merely pertains to the intensity of the different powers from the least benign (calling out powers) to the most stringent (the power to declare martial law), and the concomitant safeguards attached thereto. The Constitution does not require that the different powers under the Commander-in-Chief Clause be exercised sequentially.

So long as the requirements under the Constitution are met, the president may choose which power to exercise in order to address the issues arising from the emergency. In other words, when there is sufficient factual basis for the declaration of martial law, the president can resort to the most awesome power granted under the Commander-in-Chief Clause. He cannot be faulted for not resorting to his calling out power if he finds that the situation requires a stronger action. When the president declares martial law, he, in effect, declares that the military shall take a more active role in the suppression of invasion or rebellion in the affected areas. The armed forces can conduct operations on their own without any command or guidance from the police.

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[10] *Id*. at 645-646.

[11] *David v. Arroyo*, 522 Phil. 705, 780 (2006).

[12] *Supra* note 8.

At any rate, prior to the issuance of Proclamation No. 216 on May 23, 2017, the President already opted to choose and exercise the most benign action — the calling out power. This is found in the first Whereas Clause of Proclamation No. 216. Unfortunately, the calling out power was ineffective in pre-empting the brewing rebellion. When such power was deemed inadequate, the President resorted to the declaration of martial law because public safety already required it in the face of the overwhelming attack against Marawi and the government forces.

Judicial Review

Another significant constitutional safeguard the Framers have installed is the power of the Court to review the sufficiency of the factual basis for the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus*. The intent of the Framers to delimit the prerogative of the president to declare martial law is clear, to wit:

> MR. NATIVIDAD: First and foremost, we agree with the Commissioner's thesis that in the first imposition of martial law there is no need for concurrence of the majority of the Members of Congress because the provision says "in case of actual invasion and rebellion." If there is actual invasion and rebellion, as Commissioner Crispino de Castro said, there is need for immediate response because there is an attack. Second, the fact of securing a concurrence may be impractical because the roads might be blocked or barricaded. They say that in case of a rebellion, one cannot even take his car and go to the Congress, which is possible because the roads are blocked or barricaded. And maybe if the revolutionaries are smart, they would have an individual team for each and every Member of the Congress so he would not be able to respond to a call for a session. So the requirement of an initial concurrence of the majority of all the Members of the Congress in case of an invasion or rebellion might be impractical as I can see it.
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> Second, Section 15 states that the Congress may revoke the declaration or lift the suspension.
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> **And third, the matter of declaring martial law is already a justiciable question and no longer a political one in that it is subject to judicial review at any point in time.** So on that basis, I agree that there is no need for concurrence as a prerequisite to declare

martial law or to suspend the privilege of the writ of *habeas corpus*.I notice in the Commissioner's proposal that he is requiring less factors for the suspension of the privilege of the writ of *habeas corpus* than for the declaration of martial law. Is that correct?

MR. PADILLA: That is correct.

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MR. MONSOD:Yes, Madam President, in the case of Mr. Marcos, he is undoubtedly an aberration in our history and national consciousness. But given the possibility that there would be another Marcos, our Constitution now has sufficient safeguards. **As I said, it is not really true, as the Gentleman has mentioned, that there is an exclusive right to determine the factual basis because the paragraph beginning on line 9 precisely tells us that the Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof** and must promulgate its decision on the same within 30 days from its filing.

I believe that there are enough safeguards. The Constitution is supposed to balance the interests of the country. And here we are trying to balance the public interest in case of invasion or rebellion as against the rights of citizens. And I am saying that there are enough safeguards, unlike in 1972 when Mr. Marcos was able to do all those things mentioned.[13] [Emphases supplied]

As can be gleaned from the deliberations, the power of the Court to review the sufficiency of the factual basis for the declaration of martial law was precisely included to remove from the president the unbridled prerogative to determine the necessity thereof. It is a precautionary measure to prevent a repeat of possible abuses in cases where the awesome power to declare martial law rests only on one individual. Consequently, the Executive Department cannot hide behind the cloak of the political question doctrine because the Constitution itself mandated the review, thus, unquestionably justiciable.

The question as to the sufficiency of the factual basis for the declaration of martial law and the manner by which the

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[13] Records of the Constitutional Commission No. 43.

president executes it pursuant to such declaration are entirely different. The Court, upon finding that the factual basis is sufficient, cannot substitute the president's judgment for its own. "In times of emergencies, our Constitution demands that we repose a certain amount of faith in the basic integrity and wisdom of the Chief Executive, but at the same time, it obliges him to operate within carefully prescribed procedural limitations."[14]

In *Fortun v. Macapagal-Arroyo*,[15] it was written:

> Consequently, although the Constitution reserves to the Supreme Court the power to review the sufficiency of the factual basis of the proclamation or suspension in a proper suit, it is implicit that the Court must allow Congress to exercise its own review powers, which is automatic rather than initiated. Only when Congress defaults in its express duty to defend the Constitution through such review should the Supreme Court step in as its final rampart. The constitutional validity of the President's proclamation of martial law or suspension of the writ of habeas corpus is first a political question in the hands of Congress before it becomes a justiciable one in the hands of the Court.
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> If the Congress procrastinates or altogether fails to fulfill its duty respecting the proclamation or suspension within the short time expected of it, then the Court can step in, hear the petitions challenging the President's action, and ascertain if it has a factual basis.[16]

I agree with the *ponencia* that this should be set aside. There is nothing in the constitutional provisions or the deliberations which provide that it is only after Congress fails or refuses to act can the Court exercise its power to review. I am of the position that the Court can act on any petition questioning such sufficiency independently of the congressional power to revoke.

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[14] *Supra* note 11, at 744.

[15] 684 Phil. 526 (2012).

[16] *Id*. at 558-561.

Burden of Proof re Sufficiency of Factual Basis rests on the Government

In this appropriate proceeding to review the sufficiency of the factual basis for declaring martial law or suspending the privilege of the writ of *habeas corpus*, **the burden to prove the same lies with the government**. If it were otherwise, then, the judicial review safeguard would be rendered inutile considering that ordinary citizens have no access to the bulk of information and intelligence available only to the authorities.

Indeed, "he who alleges, not he who denies, must prove."[17] This rule, however, exists in recognition of the fact that in most court proceedings, he who puts forth an allegation is, in all probability, in possession of documents or other pieces of evidence to substantiate his claim.

It is not, however, without an exception. If a party's case depends upon the establishment of a negative fact, and the means of proving the fact are equally within the control of each party, then the burden of proof is upon the party averring the negative fact.[18] To put it in another way, when the parties are not in an equal position with respect to the evidence to prove a negative fact, then, the party denying the negative fact is bound to establish its existence.[19]

Doubtless, the petitioners do not have access to the intelligence gathered by the military. Instead, they principally rely on information provided by the Office of the President and reports from mainstream media and social media. For said reason, it is readily apparent that the petitioners are not in an equal position with the government, which has a trove of intelligence reports, security briefings and other vital information at its disposal.

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[17] *Heirs of Sevilla v. Sevilla*, 450 Phil. 598, 612 (2003).

[18] *Spouses Cheng v. Spouses Javier*, 609 Phil. 434, 441 (2009).

[19] *Apines v. Elburg Shipmanagement Philippines, Inc.*, G.R. No. 202114, November 9, 2016.

Threshold of Evidence re Sufficiency of the Factual Basis

In the *ponencia*, it has been written that probable cause is the allowable standard of proof as the President needs only to convince himself that there is evidence showing that, more likely than not, a rebellion has been committed or being committed. Others are of the view that as the Court exercises its *certiorari* jurisdiction, the point to determine should be arbitrariness, as enunciated in *Lansang v. Garcia*.[20]

In this regard, I share the view of Justice Estela Perlas-Bernabe that it is neither. I agree with her that there is **no action, but a proceeding**, *a sui generis* one, **to ascertain the sufficiency of the factual bases of the proclamation**, and that the Constitution itself provided the parameter for review — ***sufficient factual basis***, which means that there exists clear and convincing proof (1) that there is invasion or rebellion; and (2) that public safety requires the proclamation of martial law. **The threshold is reasonableness.**

On probable cause, I concur with her that the purpose and vantage point of a prosecutor or judge in the determination of probable cause are fundamentally different from those of the president when he proclaims martial law. She cited Fr. Bernas who, as the then *amicus curiae* of the Court, wrote that "the function of the President is far from different from the function of a judge trying to decide whether to convict a person for rebellion or not."[21]

"For purposes of filing a criminal information, probable cause has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondents are probably guilty thereof. It is such set of facts and circumstances which would lead a reasonably discreet and prudent man to believe that the offense charged in the

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[20] 149 Phil. 547, 592-594 (1971).

[21] Cited in the Dissenting Opinion of *J.* Velasco in *Fortun, supra* note 15, at 629.

Information, or any offense included therein, has been committed by the person sought to be arrested. A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and was committed by the suspect."[22] Accordingly, in a criminal case, it is necessary that a crime has been committed.

In contrast, the president establishes the existence of rebellion or invasion, not as a crime for purposes of prosecution against the accused, but merely as a factual occurrence to justify his declaration of martial law. If the president has sufficient and strong basis that a rebellion has been planned and the rebels had started to commit acts in furtherance thereof, he can already command the military to take action against the rebels.

This is to say that the president is afforded much leeway in determining the sufficiency of the factual basis for the declaration of martial law. Unlike in the executive or judicial determination of probable cause, the president may rely on information or intelligence even without personally examining the source. He may depend on the information supplied by his subordinates, and, on the basis thereof, determine whether the circumstances warrant the declaration of martial law. While the president is still required to faithfully comply with the twin requirements of actual rebellion and the necessity of public safety, he is not bound by the technical rules observed in the determination of probable cause.

As to arbitrariness, suffice it to say that the Framers did not refer to it as one akin to a *certiorari* petition. They were silent on it because they really intended it to be a unique proceeding, a *sui generis* one, with a different threshold of evidence.

Sufficiency of the Factual Basis

Guided by the above-mentioned standard, I fully concur with the *ponencia* that the proclamation of martial law by the President

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[22] *People v. Borje*, G.R. No. 170046, December 10, 2014, 744 SCRA 399, 409.

has sufficient factual basis. *First*, it has been unquestionably established that the ISIS-linked local groups had planned to, and did, invade Marawi City. *Second*, they were heavily armed and posed a dangerous threat against government forces. *Third*, the occupation by the ISIS-linked groups paralyzed the normal functions of Marawi and caused the death and displacement of several Marawi residents. *Fourth*, they sought to sever Marawi from the allegiance of the government with the goal of establishing a *wilayah* in the region.

The intention of the rebels to isolate and sever Marawi from the government is evident from the video retrieved by the military from their initial operations in Marawi. In the said video,[23] it can be seen that Hapilon, together with other unidentified members, were listening in closely as Abdullah Maute was giving directions or suggestions on how to commence and execute their planned offensive. In particular, they sought to isolate Marawi so that it could be used as their center of operation to access all points in Mindanao.

It need not be repeated that the ISIS-linked group attacked, stormed and rampaged all over Marawi City, terrorizing the whole populace, killing soldiers, policemen and civilians, effecting the escape of inmates from the Marawi City jail, taking over hospitals and other similar centers, controlling the business district, major thoroughfares and three bridges, burning Dansalan College, setting fire to the Cathedral of Maria Auxiliadora, kidnapping and taking hostages, and ransacking banks and residences. They also commandeered police and other vehicles, planted ISIS flags on them and rambled around the city, displaying their intimidating presence and power.

Further, **the requirement of public safety has been met** considering the capability of the rebel group to wreak more havoc on the region. The petitioners argue that what the group has launched does not amount to an actual rebellion. The contrary, however, has been sufficiently established. At the time

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[23] Annex "B" of the Consolidated Comment.

Proclamation No. 216 was issued, the Maute-led group had already commenced their offensive in Marawi. Their past actions, validated by subsequent events, serve as indicia of their ability to wage a protracted war and shed more blood. To date, 82 soldiers have given up their lives and the government is still not in total control of Marawi. The military has confirmed that there are already 39 dead civilians, not to mention those wounded, displaced and missing.

The nation is fortunate that the country has a decisive president who took immediate action to prevent the expansion of the rebellion to other areas. At a great price, its spread to other areas was checked. If it has indeed been contained, **the Court, however, cannot order the authorities to lift martial law in this appropriate proceeding because the judicial review, provided in the Constitution as a mechanism to check abuses, is limited only to the ascertainment of the sufficiency of the factual basis. When there is no longer any basis to continue the imposition of martial law, the remedy** is to **file a certiorari petition to question the arbitrariness of the assessment to prolong the period**.

At any rate, General Año gave his assurance that when the situation becomes normal, he will recommend the lifting of martial law.

Territorial Coverage of the Proclamation

Under the Commander-in-Chief Clause, the president may declare martial law in the Philippines or in any part thereof. Thus, it is understood that the president has the discretion to determine the territorial scope of the coverage as long as the constitutional requirements are met. In other words, there must be concurrence of an actual rebellion or invasion and the necessity for public safety. There is no constitutional provision suggesting that martial law may only be declared in areas where actual hostilities are taking place. The president must be given much leeway in deciding what is reasonably necessary to successfully quash such rebellion or invasion. As Commander-in-Chief, he has under his command the various intelligence networks

operating in the country and knows what is needed and where it is needed.

To limit the coverage of martial law to Marawi City only is unrealistic and impractical. As can be gleaned from the records, ISIS-linked local groups came from different places in Mindanao. The ASG, headed by Hapilon, came from Basilan; the Maute Group, from Lanao del Sur; the AKP or the Maguid Group, from Saranggani and Sultan Kudarat; and the BIFF, from Maguindanao.

These rebels previously wreaked havoc on other parts of Mindanao. Thus, President Duterte cannot be faulted for declaring martial law all over Mindanao because public safety would be greatly imperilled if these rebel groups would be able to expand their operations beyond Marawi City. Their capability to launch further attacks from Marawi City, serving as a spring board to extend their influence over other areas, impelled President Duterte to act swiftly and decisively.

Further, judicial notice can be taken of the fact that several members of the rebel groups had been apprehended in areas other than Marawi, such as Iligan City and Cagayan de Oro City. In fact, the father of the Maute brothers, Casamora Maute, was arrested at a Task Force Davao checkpoint in Sirawan, Toril District, Davao City. Their mother, Omenta Romato Maute, also known as Farhana, was apprehended in Masiu, Lanao Del Sur, beyond Marawi City. Others were intercepted in far away Bacolod City.

The fear of the petitioners that the constitutional rights of the people of the rest of Mindanao would be violated is unfounded. As earlier pointed out, the DND reminded the AFP and all its officers and personnel to faithfully observe the rule of law. As provided in the Constitution itself,

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with the invasion.[24]

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[24] Section 18, Article 7 of the 1987 Constitution.

Restricting the operation of the armed forces within the confines of Marawi City would be ineffective in quelling the uprising. The insurgents would simply cross city borders and be beyond the reach of the martial law authorities, who would not be able to exercise martial law powers. They will not be able to arrest any of them, unless they have personal knowledge of what the rebels have just committed, are committing or about to commit. Certainly, this is not what the Framers intended in including the martial law provisions in our Constitution. First and foremost in their minds were the security, safety, and territorial integrity of the country.

To ignore the reality is to dishonor the memory of the 82 soldiers who gallantly sacrificed and gave up their lives so that this country may still be one.

Accordingly, I vote to dismiss all the petitions.

SEPARATE CONCURRING OPINION

REYES, *J.*:

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

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

I.

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

There is invasion when there is a hostile or forcible encroachment on the sovereign rights of the Philippines.[3] On

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

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

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

the other hand, the term rebellion in Section 18 of Article VII of the Constitution must be understood as having the same meaning as the crime of rebellion defined and punishable under Article 134 of the Revised Penal Code (RPC),[4] which reads:

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

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

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

Further, when the President declares martial law or suspends the privilege of the writ of *habeas corpus*, he is inevitably exercising a discretionary power solely vested in his wisdom. The President, as Commander-in-Chief and Chief Executive

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

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

on whom is committed the responsibility of preserving the very survival of the State, is empowered, indeed obliged, to preserve the State against domestic violence and foreign attack. In the discharge of that duty, he necessarily is accorded a very broad authority and discretion in ascertaining the nature and extent of the danger that confronts the nation and in selecting the means or measures necessary for the preservation of the safety of the Republic. Indeed, whether actual invasion or rebellion exists is a question better addressed to the President, who under the Constitution is the authority vested with the power of ascertaining the existence of such exigencies and charged with the responsibility of suppressing them. His actions in the face of such emergency must be viewed in the context of the situation as it then confronted him.[6]

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

Corollary to the foregoing, the petitioners' claim that the President should have exercised his calling out power instead of declaring martial law and suspending the privilege of the

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

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

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

The imposition of martial law, however, "does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function x x x."[8] It does involve the substitution of the military in the civilian functions of government,[9] except, by express terms of the Constitution, the performance of legislative and judicial functions. In other words, martial law entails a substitution of the military in the performance of executive functions, including the maintenance of peace and order and the enforcement of laws relative to the protection of lives and properties, which is normally a function of the Philippine National Police (PNP).[10] Otherwise stated, during a state of martial law, the military personnel take over the functions, *inter alia*, of the PNP.

II.

Although the President is accorded wide discretion in ascertaining the nature and extent of the danger that confronts the State, as well as the course of action necessary to deal with

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[8] 1987 CONSTITUTION, Article VII, Section 18.

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

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

the same, his exercise of the powers as Commander-in-Chief under Section 18 of Article VII of the Constitution is nevertheless subject to certain constitutional limitations pursuant to the system of separation of powers and balancing of powers among the three great departments.

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

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

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[11] 1987 CONSTITUTION, Article VII, Section 18.

[12] *Id*.

basis for the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus*.

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

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

III.

The petitioners failed to prove that the President had insufficient basis in declaring martial law and suspending the privilege of the writ of *habeas corpus* in the whole of Mindanao. It is incumbent upon the petitioners to present credible evidence to prove that the President's declaration of martial law and

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

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

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

suspension of the privilege of the writ of *habeas corpus* had insufficient basis. However, a perusal of the petitioners' allegations shows that the same are merely based on various newspaper reports on the on-going armed fighting in Marawi City between the government forces and elements of the Maute group. However, newspaper articles amount to "hearsay evidence, twice removed" and are therefore not only inadmissible but without any probative value at all.[16]

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

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

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

[17] *Id*.

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

[19] *Id*. at 275.

IV.

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

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

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

Further, military intelligence reports had previously confirmed that the grand plan of the Maute group and other rebel groups in Mindanao is to raze the entire city of Marawi City, that would

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

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

Also, the President, in declaring martial law and suspending the privilege of the writ of *habeas corpus* in the whole of Mindanao, had probable cause to believe that the armed insurgents in Marawi City and the rest of Mindanao are mounting a rebellion against the State and are not merely engaged in armed hostilities. It should be noted that the President had previously issued Proclamation No. 55 on September 4, 2016, which declared a state of national emergency on account of lawless violence in Mindanao. Part of the reasons for the issuance of Proclamation No. 55 was the series of violent acts committed by the Maute terrorist group such as the attack on military outpost in Butig, Lanao del Sur in February 2016, killing and wounding several soldiers, and the mass jailbreak in Marawi City in August 2016, freeing their arrested comrades and other detainees.[22]

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

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

[22] Proclamation No. 216, fourth whereas clause.

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

by the ISIS' June 21, 2016 online video entitled "The Solid Structure," which hailed Hapilon as the *mujahid* authorized to lead the soldiers of the Islamic State in the Philippines.[24] What is clear from the foregoing circumstances is that the rebel groups in Mindanao already have the organization and manpower to realize their goal of removing the whole of Mindanao from the allegiance to the Government.

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

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

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[24] *Id*. at 7.

[25] *Id*. at 9-11.

[26] *Id*. at 11.

In this regard, the contention that the coverage of the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* should have been limited only to Marawi City is utterly baseless. To stress, the conduct of the rebel groups at the time of the siege of Marawi City, and even prior thereto, coupled with the aforementioned military intelligence reports in the possession of the President, are sufficient bases to engender a reasonable belief that the Marawi City is but a staging ground for the widespread armed attacks in the whole of Mindanao, with the ultimate objective being the establishment of an ISIS caliphate therein and, thus, removing Mindanao from the allegiance to the Government. Given the foregoing considerations, it would be the height of absurdity to expect the President to dawdle around and wait for the armed attacks by the rebel groups to reach the neighboring cities of Marawi and the rest of the provinces of Mindanao before he exercise his power to declare martial law and suspend the privilege of the writ of *habeas corpus*.

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

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

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[27] *Republic Act No. 6975*, Section 24.

V.

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

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

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

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

SEPARATE OPINION

JARDELEZA, *J.*:

I agree with the *ponencia*'s conclusion that there is sufficient factual basis for the proclamation of martial law and suspension of the privilege of the writ of *habeas corpus* in Mindanao. I write separately to articulate my views on the standard for the Court's review of the sufficiency of factual basis of the proclamation and the suspension of the privilege under Article VII, Section 18.

I

Article VII, Section 18 of the 1987 Constitution provides:

> Sec. 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.
>
> The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without any need of a call.
>
> The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

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

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

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

The provision is a microcosm of the system of checks and balances fundamental to our republican government. It exclusively vests upon the President the authority to proclaim martial law or suspend the privilege of the writ of *habeas corpus*—extraordinary powers that are essential to the security and preservation of the Republic and the safety of its citizens in cases where the sovereignty of the nation is under attack from foreign or homegrown enemies. As a check to this awesome executive power, which may be—and, historically, had been—abused, the Constitution grants Congress, the other political arm of government, the plenary power to veto the President's decision for whatever reason and effectively substitute its own wisdom for that of the President's. Additionally, the Constitution confers upon the Supreme Court the jurisdiction to review the factual basis of the executive action and, if the factual basis proves to be insufficient, revoke the same.

The powers given to the President, Congress, and the Court are independent of each other, and each is supreme within its own sphere. When the President declares martial law, such declaration is complete by itself—it does not require the affirmation or ratification by Congress, much less the Judiciary. This is in keeping with the objective of martial law, that is, "the preservation of the public safety and good order,"[1] and which necessitates swift action by the President if it is to be effective. Should

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[1] *Duncan v. Kahanamoku*, 327 U.S. 304, 335 (1946).

Congress, however, exercise its veto power, the "revocation shall not be set aside by the President."[2] Neither is such revocation subject to judicial review.

Compared to the political branches, the Court's role is more passive in that it only acts when its jurisdiction is invoked, consistent with its traditional power of judicial review which is "the chief, indeed the only, medium of participation—or instrument of intervention—of the judiciary in [the] balancing operation."[3] Nonetheless, when its jurisdiction is so invoked, the Court's action is no less effective. If it finds that there is no sufficient factual basis, it can revoke the declaration of the President—even when Congress chooses not to exercise its veto power.

II

The petitioners filed their respective petitions pursuant to the third paragraph of Article VII, Section 18. They posit that the provision confers special jurisdiction upon the Court which is distinct and supplemental to judicial power defined under Article VIII, Section 1.[4] On the other hand, the Solicitor General argues that the power to review the sufficiency of factual basis falls under the Court's power to "determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." Hence, the petitions should have been brought to us through a petition for *certiorari* under Rule 65. The resolution of this preliminary issue directly impacts

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[2] *Francisco, Jr. v. Nagmamalasakit na mga Manananggol ng mga Manggagawang Pilipino, Inc.*, G.R. No. 160261, November 10, 2003, 415 SCRA 44, 284.

[3] *Id.* at 124. Citation omitted.

[4] CONSTITUTION, Art. VIII, Sec. 1. x x x

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

how the core issue is framed (*i.e.*, "whether there is sufficient factual basis for Proclamation No. 216" or "whether the President acted in grave abuse of discretion in issuing Proclamation No. 216") and, consequently, the standard of review to be employed by the Court.

A

A case filed under Article VII, Section 18 is sui generis

A proceeding under Article VII, Section 18 significantly differs from any other action falling within the Court's jurisdiction as specified under Article VIII, Section 5.[5] First, as opposed to other public suits which require petitioners challenging a governmental act to show *locus standi* or legal standing, Article VII, Section 18 explicitly waives such requirement by granting standing to "any citizen." Legal standing refers to a party's personal and substantial interest in a case such that he has sustained or will sustain direct injury as a result of the governmental act being challenged. It calls for more than just a generalized grievance. The term "interest" means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or

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[5] CONSTITUTION, Art. VIII, Sec. 5. The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.

(2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

   (a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

   (b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.

   (c) All cases in which the jurisdiction of any lower court is in issue.

   (d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.

   (e) All cases in which only an error or question of law is involved.

a mere incidental interest.[6] Thus, a party will generally be allowed to litigate only when he can demonstrate that: (1) he has personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by the remedy being sought.[7] The requirement of legal standing is "rooted in the very nature of judicial power."[8] It is a hurdle that a party must overcome to meet the "case and controversy" requirement of Article VIII, Sections 1 and 5 that "lies at the very heart of the judicial function."[9] A *carte blanche* grant of legal standing to any citizen presents a significant departure from the Court's exercise of judicial power.

Second, Article VII, Section 18 textually calls for the Court to review facts. Again, this creates an exception to the long-standing legal principle that the Court is not a trier of facts. This applies whether the Court exercises its power of review on *certiorari* or its so-called "expanded *certiorari* jurisdiction." In reviews on *certiorari*, it is not the function of the Supreme Court to analyze or weigh such evidence all over again, its jurisdiction being limited to reviewing errors of law that might have been committed by the lower court.[10] More so in the consideration of the extraordinary writ of *certiorari*, where neither questions of fact nor even of law are entertained, but only questions of lack or excess of jurisdiction or grave abuse of discretion.[11]

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[6] *Jumamil v. Cafe*, G.R. No. 144570, September 21, 2005, 470 SCRA 475, 487.

[7] *Lozano v. Nograles*, G.R. No. 187883, June 16, 2009, 589 SCRA 354, 360. "We have generally adopted the 'direct injury test' to determine whether a party has the requisite standing to file suit" (*Knights of Rizal v. DMCI Homes, Inc.*, G.R. No. 213948, April 25, 2017, Jardeleza, *J.*, dissenting).

[8] *Lozano v. Nograles, supra.*

[9] *Kilosbayan, Incorporated v. Morato*, G.R. No. 118910, November 16, 1995, 250 SCRA 130, 139.

[10] *Far Eastern Surety and Insurance Co., Inc. v. People*, G.R. No. 170618, November 20, 2013, 710 SCRA 358, 368-369.

[11] *Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission*, G.R. No. 155306, August 28, 2013, 704 SCRA 24, 40-41.

Third, Article VII, Section 18 prescribes a vastly different timetable within which the Court must decide the case. It unequivocally mandates the Court to "promulgate its decision thereon within thirty days from its filing." In contrast, all other cases filed with the Court "must be decided or resolved within twenty-four months from date of submission."[12]

In view of these substantial distinctions, there can be no question that the framers of the Constitution intended the Court's power to revoke the President's action to be different from and supplemental to its primary judicial power—in the same way that Congress' power to revoke the same executive action is distinct from its primary function of enacting laws. It is a special power limited in scope and application. While it may be akin to the judiciary's broad function of judicial review, the power flows from Article VII, Section 18 itself, not from Article VIII, Section 1.[13]

Article VII, Section 18's reference to an "appropriate proceeding" simply means that there must be a petition, sufficient in form and substance,[14] filed by a Filipino citizen before the Court challenging the sufficiency of the factual basis of the

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[12] CONSTITUTION, Art. VIII, Sec. 15(1).

[13] The Constitution is replete with examples of supplemental powers being granted to different branches. For instance, the President's power to veto a bill passed by Congress (Art. VI, Sec. 27) is distinct from his primary duty to ensure that laws are faithfully executed (Art. VII, Sec. 17). Similarly, the Senate's power to ratify treaties entered into by the Executive (Art. VII, Sec. 21) is distinct from its core legislative power (Art. VI, Sec. 1).

[14] *Munsalud v. National Housing Authority*, G.R. No. 167181, December 23, 2008, 575 SCRA 144, 151-153.

A pleading is sufficient in form when it contains the following:

1. A Caption, setting forth the name of the court, the title of the action indicating the names of the parties, and the docket number which is usually left in blank, as the Clerk of Court has to assign yet a docket number;

2. The Body, reflecting the designation, the allegations of the party's claims or defenses, the relief prayed for, and the date of the pleading;

3. The Signature and Address of the party or counsel;

President's proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*. This is precisely what petitioners have done. Shoehorning Article VII, Section 18 into Article VIII, Sections 1 and 5 is a superfluous exercise because the former is complete in itself. As a provision that confers jurisdiction, Article VII, Section 18 defines a demandable public right, the purpose of which is the vindication of the Constitution, and specifies which court has jurisdiction and the circumstances under which such jurisdiction may be invoked. The nature of an action is determined by the material allegations of the complaint, the applicable law, and the character of the relief prayed for.[15] The substantive allegations for an action under Article VII, Section 18 would normally consist of (1) a presidential act declaring martial law and/or suspending the privilege of the writ and (2) the absence or falsity of the factual basis, and the relief to be sought is the revocation of the

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4. Verification. This is required to secure an assurance that the allegations have been made in good faith, or are true and correct and not merely speculative;

5. A Certificate of Non-forum Shopping, which although not jurisdictional, the same is obligatory;

6. An Explanation in case the pleading is not filed personally to the Court. x x x

x x x x x x x x x

In case a party is represented by counsel *de parte*, additional requirements that go into the form of the pleading should be incorporated, *viz*.:

1. The Roll of Attorney's Number;

2. The Current Professional Tax Receipt Number; and

3. The IBP Official Receipt No. or IBP Lifetime Membership Number.

4. MCLE Compliance or Exemption Certificate Number and Date of Issue (effective January 1, 2009).

x x x x x x x x x

Substance is one which relates to the material allegations in the pleading. x x x It is the embodiment of the essential facts necessary to confer jurisdiction upon the court. (Underscoring in the original.)

[15] *Galindo v. Heirs of Marciano A. Roxas*, G.R. No. 147969, January 17, 2005, 448 SCRA 497, 511.

presidential act. An Article VII, Section 18 petition is therefore in the nature of a factual review unlike any other proceeding cognizable by the Court. Alternatively, the reference to an "appropriate proceeding" could mean that the framers of the Constitution has left it to the Court, pursuant to its power to "[p]romulgate rules concerning the protection and enforcement of constitutional rights,"[16] to provide the procedural means for enforcing the right of action under Article VII, Section 18—akin to what the Court had done when it promulgated the rules on Writ of Amparo, Writ of *Habeas Data*, and Writ of *Kalikasan*. The absence of such rule, however, does not derogate from the substantive public right granted to all citizens by Article VII, Section 18.

The peculiarities of the Court's authority under Article VII, Section 15 make it distinct from all other cases over which the Court has jurisdiction. This leads me to conclude that the envisioned proceeding is *sui generis*. It creates a public right of action that allows any citizen to challenge a specific governmental action even in the absence of direct injury or material interest in the case. It involves inquiry into the factual basis of the act, not a review of errors of law or a determination of lack or excess of jurisdiction or grave abuse of discretion.

B

Sufficiency of the factual basis is distinct from grave abuse of discretion

Inquiry into the sufficiency of factual basis as a check to the President's commander-in-chief powers may be traced to the 1971 case of *Lansang v. Garcia*,[17] which involved a suspension of the privilege of the writ of *habeas corpus*. *Lansang* reversed the earlier doctrine in *Barcelon v. Baker*[18] and *Montenegro v. Castañeda and Balao*[19] that the President's assessment of whether

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[16] CONSTITUTION, Art. VIII, Sec. 5(5).

[17] G.R. No. L-33964, December 11, 1971, 42 SCRA 448.

[18] 5 Phil. 87 (1905).

[19] 91 Phil. 882 (1952).

the exigency has arisen requiring suspension of the privilege of the writ is a political question that is final and conclusive upon the courts, and held that the Court had authority to inquire into the existence of the factual bases required by the Constitution for the suspension of the privilege of the writ. Chief Justice Roberto Concepcion, writing for the majority, explained:

> Indeed, the grant of power to suspend the privilege is neither absolute nor unqualified. The authority conferred by the Constitution, both under the Bill of Rights and under the Executive Department, is limited and conditional. The precept in the Bill of Rights establishes a general rule, as well as an exception thereto. What is more, it postulates the former in the *negative*, evidently to stress its importance, by providing that "(t)he privilege of the writ of *habeas corpus* shall *not* be suspended x x x." It is only by way of *exception* that it permits the suspension of the privilege "in cases of invasion, insurrection, or rebellion — or, under Art. VII of the Constitution, "imminent danger thereof" — "when the public safety requires it, in any of which events the same may be suspended wherever during such period the necessity for such suspension shall exist." [Far] from being full and plenary, the authority to suspend the privilege [of the] writ is thus circumscribed, confined and restricted, not only by the prescribed setting or the conditions essential to its existence, but, also, as regards the time when and the place where it may be exercised. These factors and the aforementioned setting or conditions mark, establish and define the extent, the confines and the limits of said power, beyond which it does not exist. And, like the limitations and restrictions imposed by the Fundamental Law upon the legislative department, adherence thereto and compliance therewith may, within proper bounds, be inquired into by courts of justice. Otherwise, the explicit constitutional provisions thereon would be meaningless. Surely, the framers of our Constitution could not have intended to engage in such a wasteful exercise in futility.
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> Much less may the assumption be indulged in when we bear in mind that our political system is essentially democratic and republican in character and that the suspension of the privilege affects the most fundamental element of that system, namely, individual freedom. Indeed, such freedom includes and connotes, as well as demands, the right of every single member of our citizenry to freely discuss and dissent from, as well as criticize and denounce, the views, the policies and the practices of the government and the party in power that he deems unwise, improper or inimical to the commonweal,

regardless of whether his own opinion is objectively correct or not. The untrammeled enjoyment and exercise of such right — which, under certain conditions, may be a civic duty of the highest order — is vital to the democratic system and essential to its successful operation and wholesome growth and development.

Manifestly, however, the liberty guaranteed and protected by our Basic Law is one enjoyed and exercised, not in derogation thereof, but consistently therewith, and, hence, within the framework of the social order established by the Constitution and the context of the Rule of Law. Accordingly, when individual freedom is used to destroy that social order, *by means of force and violence*, in defiance of the Rule of Law — such as by rising publicly and taking arms against the government to overthrow the same, thereby committing the crime of rebellion — there emerges a circumstance that may warrant a limited withdrawal of the aforementioned guarantee or protection, by suspending the privilege of the writ of *habeas corpus*, when public safety requires it. Although we must be forewarned against mistaking mere dissent — no matter how emphatic or intemperate it may be — for dissidence amounting to rebellion or insurrection, the Court cannot hesitate, much less refuse — when the existence of such rebellion or insurrection has been fairly established or cannot reasonably be denied — to uphold the finding of the Executive thereon, without, in effect, encroaching upon a power vested in him by the Supreme Law of the land and depriving him, to this extent, of such power, and, therefore, without violating the Constitution and jeopardizing the very Rule of Law the Court is called upon to epitomize.[20] (Italics in the original, citation omitted.)

The framers of the Constitution presumably agreed with the above discussion and deemed it wise to explicitly state in the commander-in-chief provision that the Court may review "the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ." However, the Court did not actually resolve *Lansang* on the basis of the sufficiency of factual basis. Instead, upon the Government's urging, the Court went "*no further* than to satisfy [itself] *not* that the President's decision is *correct* and that public safety was endangered by the rebellion and justified the suspension

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[20] *Lansang v. Garcia, supra* note 17 at 473-475.

of the writ, but that in suspending the writ, the President did not act *arbitrarily*."[21] This led to the conundrum of *Lansang*, because as the Court claimed the power to inquire into the factual basis of the suspension, what proved decisive was the (lack of) arbitrariness of the President's own assessment of the facts. As observed by the constitutionalist Father Joaquin Bernas, SJ, *Lansang* "consisted of one step forward, overruling *Barcelon* and *Montenegro*, and one step backward, reducing its newly assumed power to nullify."[22]

The apparent incongruity within *Lansang* may best be explained by looking at the constitution prevailing at the time of its promulgation. The 1935 Constitution did not specify the standard for reviewing the President's suspension of the privilege of the writ of *habeas corpus*. At the time, the prevailing doctrine for judicial review of executive acts is *Araneta v. Dinglasan*:[23] "[o]nly in case of a manifest abuse of the exercise of powers by a political branch of the Government is judicial interference allowable in order to maintain the supremacy of the Constitution."[24] Thus, resort to the arbitrariness/grave abuse of discretion framework was the most principled work-around to the political question doctrine enunciated in *Barcelon* and *Montenegro*.

The framers of the 1987 Constitution, unlike the *Lansang* Court, were not bound by the same limitation. They had a free hand to devise checks on the President's commander-in-chief powers. The presumption is that they were aware of *Lansang*'s expansive discussion, quoted above, on the Court's power to inquire into the existence of the factual bases. Concomitantly, they are also presumed to know that *Lansang* was ultimately decided on a finding that there was no arbitrariness attendant

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[21] *Id.* at 481.

[22] Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2009 Ed., p. 541.

[23] 84 Phil. 368 (1949).

[24] *Id.* at 424.

to the suspension of the privilege of the writ. Thus, when the final text of the Constitution mentions "sufficiency of the factual basis" while conspicuously omitting *Lansang*' s keyword of "arbitrariness," this must be construed as a deliberate preference of one test over the other.

By textually adopting the sufficiency-of-factual-basis test, the Constitution raised the bar that the executive branch must hurdle in order to sustain the proclamation of martial law or suspension of the privilege of the writ. Whereas *Barcelon* (as reinstated by *Garcia-Padilla v. Enrile*[25]) barred judicial review of the presidential act under the political question doctrine and *Lansang* favored the abuse of discretion/arbitrariness test which is "hard to prove in the face of the formidable obstacle built up by the presumption of regularity in the performance of official duty,"[26] the 1987 text empowered the Court to make an independent determination of whether the two conditions for the exercise of the extraordinary executive powers have been satisfied, *i.e.*, whether there is in fact actual invasion and rebellion and whether public safety requires the proclamation of martial law or suspension of the privilege of the writ. The shift in focus of judicial review to determinable facts, as opposed to the manner or wisdom of the exercise of the power, created an objective test to determine whether the President has complied with the constitutionally prescribed conditions. This is consistent with the thrust of the 1987 Constitution "to forestall a recurrence of the long and horrible nightmare of the past regime when one single clause, the Commander-in-Chief clause of the Constitution then in force that authorized the President to declare martial law was held to have nullified the entire Constitution and the Bill of Rights."[27]

The Solicitor General, by insisting that arbitrariness remains to be the standard for examining the sufficiency of factual basis,

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[25] G.R. No. 61388, April 20, 1983, 121 SCRA 472.

[26] *Id.* at 497.

[27] *Olaguer v. Military Commission No. 34*, G.R. No. 54558, May 22, 1987, 150 SCRA 144, 174. Teehankee, *C.J.*, concurring.

is effectively asking this Court to confine itself to the same trappings as *Lansang*. To reiterate, *Lansang* was a product of its time, decided prior to the introduction of comprehensive checks on executive power by the 1987 Constitution. The Court, as it decides the case now, is not subject to the same limitation as *Lansang* and need only be guided by the clear text of Article VII, Section 18.

The danger of fusing "sufficiency of the factual basis" with the standard of arbitrariness/grave abuse of discretion is this: the sufficiency of the factual basis is being measured by grave abuse of discretion. This is problematic because the phrase "grave abuse of discretion" carries a specific legal meaning in our jurisdiction. It refers to such capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction; the abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[28] While inquiry into the sufficiency of factual basis *may* yield a finding consistent with the accepted definition of grave abuse of discretion, such as when the presidential proclamation was totally bereft of factual basis or when such factual basis had been manufactured by the executive, the correlation is not perfect. Good faith reliance on inaccurate facts, for instance, does not strictly satisfy the "capricious and whimsical" or "arbitrary or despotic" standard. By setting the sufficiency-of-factual-basis standard, the Constitution foreclosed good faith belief as an absolute justification for the declaration of martial law or suspension of the privilege of the writ. Under Article VII, Section 18, the Court is vested with the power to revoke the proclamation, not because of grave abuse of discretion, but because of insufficiency of factual basis.[29]

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[28] *Soriano v. Mendoza-Arcega*, G.R. No. 175473, January 31, 2011, 641 SCRA 51, 57.

[29] Compare with the rule in libel that a person is liable only when it is proved that he acted with "actual malice." If a person makes a statement

The strength of *Lansang* as the controlling precedent is also not clear-cut, as it was overruled by *Garcia-Padilla* prior to the 1987 Constitution. As already mentioned, the framers did not include "arbitrariness" in the final text of Article VII, Section 18. While *Lansang* has its merits, it would be error to assume that, in the face of the plain language of Article VII, Section 18, it was readopted in full. The phrase "sufficiency of the factual basis" should be understood in the sense that it has in common use and given its ordinary meaning.[30] One does not always have to look for some additional meaning to an otherwise plain and clearly worded provision. Just as the Constitution set the limited conditions under which the President may exercise the power to declare martial law or suspend the privilege of the writ, so did it set in no uncertain terms the parameters of the Court's review. We cannot expand these parameters by constitutional interpretation.[31]

III

The sole substantive issue to be resolved is, therefore, whether there is sufficient factual basis for Proclamation No. 216. While

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with knowledge of its falsity or with reckless disregard of whether it was true or false, then it may be said that he acted with actual malice. On the other hand, if is not so aware or reasonably determined the facts to be true, even if they later turn out to be false, he cannot be accused of actual malice and would thus not be liable. [*New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)]. The actual malice rule is similar to the standard of abuse of discretion. In a martial law situation, a President who bases his proclamation on facts which he is aware to be false or with reckless disregard whether they was true or false, may be said to act with grave abuse of discretion. However, if he is not so aware or reasonably determined the facts to be true, he cannot be accused of grave abuse of discretion. This situation is obviated by Art. VII, Sec. 18 when it sets truth or falsity as the standard. Whereas in libel, truth is not a defense, in the review of the sufficiency of the factual basis, truth is an acceptable justification by the executive (and falsity an adequate ground to revoke).

[30] *Kida v. Senate of the Philippines*, G.R. No. 196271, October 18, 2011, 659 SCRA 270, 292.

[31] See *Chavez v. Judicial and Bar Council*, G.R. No. 202242, April 16, 2013, 696 SCRA 496.

I arrive at the same conclusion as the *ponencia* that there exists an actual rebellion and public safety requires the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao, I propose a different standard of review for an Article VII, Section 18 proceeding.

A

Standard of reasonableness

A review of the sufficiency of factual basis involves inquiry into the existence of two things: (1) actual rebellion or invasion; and (2) the demands of public safety. While they involve separate factual issues, these twin requirements are inseparably entwined. Thus, the proper standard of review must be one that is applicable to both.

The *ponencia*, relying on a dissent in *Fortun v. Macapagal-Arroyo*,[32] applied the standard of probable cause, which is defined as "such set of facts and circumstances which would lead a reasonably discreet and prudent man to believe that the offense charged in the Information, or any offense included therein, has been committed by the person sought to be arrested."[33] I have no serious misgivings to the underlying principle behind the adoption of such standard, other than, for obvious reasons, it is inapplicable in assessing the public safety requirement. This is because the standard of probable cause is one evolved by jurisprudence as part of the criminal process, particularly in searches, seizures, and arrests, and not for the purpose of evaluating the demands of public safety.

Martial law is essentially police power. It has for its object "public safety," which is the principal concern of police power. However, whereas police power is normally a legislative function executed by the executive arm, martial law is exercised by the

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[32] G.R. No. 190293, March 20, 2012, 668 SCRA 504.

[33] *Kalalo v. Office of the Ombudsman*, G.R. No. 158189, April 23, 2010, 619 SCRA 141, 148.

executive with the aid of the military.[34] In *Mirasol v. DPWH*,[35] the Court held:

> The sole standard in measuring [the exercise of police power] is reasonableness. What is "reasonable" is not subject to exact definition or scientific formulation. No all-embracing test of reasonableness exists, for its determination rests upon human judgment applied to the facts and circumstances of each particular case.[36] (Citations omitted.)

Accordingly, the standard of review in determining whether actual rebellion exists and whether public safety requires the extraordinary presidential action should likewise be guided by reasonableness. As well put in an American case, reasonableness is "what 'from the calm sea level' of common sense, applied to the whole situation, is not illegitimate in view of the end attained."[37] Since the objective of the Court's inquiry under Article VII, Section 18 is to verify the sufficiency of the factual basis of the President's action, the standard may be restated as *such evidence that is adequate to satisfy a reasonable mind seeking the truth (or falsity) of its factual existence*. This is a flexible test that balances the President's authority to respond to exigencies created by a state of invasion or rebellion and the Court's duty to ensure that the executive act is within the bounds set by the Constitution. The test does not require absolute truth of the facts alleged to have been relied upon by the President, but simply that the totality of facts and circumstances make the allegations more likely than not to be true.[38]

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[34] Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2009 Ed., p. 902.

[35] G.R. No. 158793, June 8, 2006, 490 SCRA 318.

[36] *Id.* at 348. See also *Land Transportation Franchising and Regulatory Board v. Stronghold Insurance Company, Inc.*, G.R. No. 200740, October 2, 2013, 706 SCRA 675 and *City of Manila v. Laguio, Jr.*, G.R. No. 118127, April 12, 2005, 455 SCRA 308.

[37] *In Re Hall*, 50 Cal. App. 786 (Cal. Ct. App. 1920).

[38] On this point, I fully agree with the *ponencia* that "[i]n determining the sufficiency of the factual basis of the declaration and/or the suspension,

Indeed, the proposed standard hews closely to probable cause, which speaks of a "reasonably discreet and prudent man," but without being subject to the same jurisprudential restrictions. The purpose of the inquiry is not to determine whether an offense has been committed by a specific person or group of persons, rather it is to verify the truth or falsity of the facts relied upon by the President.

The test of reasonableness is also comparable to the substantial evidence standard in administrative cases, which is defined as "that amount of relevant evidence which a *reasonable mind* might accept as adequate to justify a conclusion."[39] But, again, substantial evidence has a specific legal meaning in our jurisdiction and is used in cases decided by administrative or quasi-judicial bodies. It does not and cannot be applied, in its accepted form, in testing the validity of a purely executive act, such as the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*, for the President does not take evidence — in the sense in which the term is used in judicial or quasi-judicial proceedings — before he acts.[40]

What reasonableness, probable cause, and substantial evidence[41] all have in common is that they use as a benchmark the hypothetical "reasonable mind" or "reasonable person," which signifies a sensible mind, fairly judicious in his actions, and at least somewhat cautious in reaching his conclusions.[42] But consistent with the *sui generis* nature of the present petitions

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the Court should look into the full complement or totality of the factual basis, and not piecemeal or individually. Neither should the Court expect absolute correctness of the facts stated in the proclamation and in the written Report." (*Ponencia*, p. 50.)

[39] RULES OF COURT, Rule 133, Sec. 5. Italics supplied.

[40] *Lansang v. Garcia, supra* note 17 at 481.

[41] In my view, it is difficult to precisely define the graduation between probable cause and substantial evidence, because whereas the latter is the basis for determining administrative liability, the former is a justification for deprivation of liberty.

[42] Words and Phrases: Permanent Edition, Vol. 36, pp. 559 & 570.

and in view of the fact that this is the first time the Court will resolve a challenge to the sufficiency of the factual basis for the declaration of martial law and/or suspension of the privilege,[43] the more principled approach is to define a standard that is not hamstrung by the whole body of jurisprudence that is applicable to different sets of cases. Resorting to existing standards that were neither designed nor evolved to test the exercise of commander-in-chief powers, specifically the determination of the sufficiency of the factual basis of such exercise, would lead to a rule that is of questionable provenance.

B

Twin requirements: Rebellion and demands of public safety

The *ponencia* proposes that "rebellion" as used in Article VII, Section 18 refers to the crime of rebellion under Article 134 of the Revised Penal Code (RPC). While reference to the RPC definition may be useful, it is important to understand the legal etymology of rebellion as used in constitutional law.

The origin of rebellion as a ground for the exercise of the State's emergency powers may be directly traced to the "Suspension Clause" of the United States Constitution, which provides that "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of *Rebellion or Invasion the public Safety may require it*."[44] Although the provision is silent as to who has the power to suspend the privilege, it is widely accepted that the authority belongs to Congress, primarily because the provision is placed in Article I, which is the repository of federal legislative powers.[45]

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[43] The majority in *Fortun v. Macapagal-Arroyo* held that the case was already moot.

[44] U.S. CONSTITUTION, Art. I, § 9, cl. 2.

[45] Barrett, *Suspension and Delegation*, 99 Cornell L. Rev. 251 (2014), p. 258. The author summarized some of the views in footnote 13:

> "Chief Justice Taney's opinion in *Ex parte Merryman*, 17 F. Cas. 144 (C.C.D. Md. 1861) is the seminal defense of this position. *See also* Stephen I. Vladeck, *The Field Theory: Martial Law, the Suspension*

In the Philippines, a similar clause appeared in the Organic Act of 1902. Unlike the United States Constitution, however, the Organic Act explicitly stated who may suspend the privilege:

> That the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of *rebellion, insurrection, or invasion the public safety may require it*, in either of which events the same may be suspended by the President, or by the Governor, with the approval of the Philippine Commission, wherever during such period the necessity for such suspension shall exist.[46]

The Jones Law (1916) retained the same provision and added in a separate section that the Governor-General "may, *in case*

Power, and the Insurrection Act, 80 TEMP. L. REV. 391,408 (2007) ("[A] number of courts confronted some form of the legal question raised in *Ex parte Merryman*, and virtually all of them reached a similar conclusion—i.e., that Lincoln's extralegislative suspension of *habeas corpus* was unconstitutional."); *id.* at 408 n.117 (collecting citations). While these lower court opinions are the only ones that address the question directly, dicta and separate opinions from the Supreme Court are consistent with this view. See, e.g., *Hamdi v. Rumsfeld*, 542 U.S. 507, 562 (2004) (Scalia, *J.*, dissenting) ("Although [the Suspension Clause] does not state that suspension must be effected by, or authorized by, a legislative act, it has been so understood . . . ."); *Ex parte* Bollman, 8 U.S. 75, 101 (1807) ("If at any time the public safety should require the suspension of the powers vested by this act in the courts of the United States, it is for the legislature to say so."). For a thorough argument in favor of exclusive congressional suspension power, see Saikrishna Bangalore Prakash, *The Great Suspender's Unconstitutional Suspension of the Great Writ*, 3 ALB. GOV'T L. REV. 575 (2010); *see also* 3 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1336, at 208-09 (photo. reprint 1991) (1833) x x x (treating the suspension power as exclusively legislative); [David L. Shapiro, *Habeas Corpus, Suspension, and Detention: Another View*, 82 NOTRE DAME L. REV. 59, 89 (2006)], at 71-72 (maintaining that the Constitution gives the power exclusively to Congress); [Amanda L. Tyler, Suspension as an Emergency Power, 118 YALE L.J. 600. 689-90 (2009)], at 687-89 (arguing that structural, historical, and functional arguments foreclose any claim that the Executive possesses the suspension power); *Federal Habeas Corpus, supra* note 2, at 1263-65 (arguing that constitutional history and structure support the proposition that suspension power belongs exclusively to Congress. x x x"

[46] PHILIPPINE ORGANIC ACT OF 1902, Sec. 5, par. 7.

of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privileges of the writ of habeas corpus, or place the Islands, or any part thereof, under martial law."[47]

The 1935 Constitution similarly had two provisions, though with slight variations. The suspension clause appeared in the Bill of Rights, which read, "[t]he privilege of the writ of *habeas corpus* shall not be suspended except in cases of *invasion, insurrection, or rebellion, when the public safety requires it*, in any of which events the same may be suspended wherever during such period the necessity for such suspension shall exist."[48] Meanwhile, of Article VII, Section 11(2) vested the power to suspend and to declare martial law upon the President, thus: "[t]he 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." These two provisions were substantially retained by the 1973 Constitution.

In order to avoid a repeat of the excesses associated with the Marcos martial law, the 1987 Constitution narrowed the grounds for suspension of the privilege and declaration of martial law to "*invasion or rebellion, when the public safety requires it*." It removed lawless violence and insurrection as grounds, as well as the phrase "imminent danger thereof," which means that there must be actual rebellion. Notably, the grounds set by the 1987 Constitution are the exact same grounds that first appeared in the suspension clause of the US Constitution. The similarity did not escape the attention of Father Bernas who, while agreeing that martial law under the 1987 Constitution falls under Willoughby's third formulation, observed that "[m]artial law in the Philippines jurisdiction is imposed not by

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[47] THE JONES LAW OF 1916, Sec. 21, par. b.

[48] CONSTITUTION (1935), Art. III, Sec. 1(14).

or through an authorization from Congress but by the Executive as specifically authorized and within the limits set by the Constitution."[49]

The origin of the phrase "rebellion or invasion" is not very clear, except that it was adopted to clarify and limit the meaning of "most urgent and pressing occasions" which appeared in the early formulation of the suspension clause.[50] No precise meaning of rebellion has been evolved in American jurisprudence, but the prevailing view is that the determination of whether a rebellion (or an invasion) exists rests with the legislature.[51] There has been two occasions when the US Congress has exercised this power: the first was in 1863 at the height of the American Civil War;[52] and in 1871 primarily to combat the Ku Klux Klan.[53] On both occasions, the suspension statutes were tied to current events and passed to allow the federal government to respond to exigencies.

The US Congress also enacted statutes delegating the suspension authority to territorial governors, including the Philippine Organic Act of 1902. In 1905, Governor-General Luke E. Wright suspended the privilege in order to put down "certain organized bands of ladrones x x x in the Provinces of Cavite and Batangas who are levying forced contributions upon the people, who frequently require them, under compulsion, to join their bands, and who kill or maim in the most barbarous manner those who fail to respond to their unlawful demands, and are therefore terrifying the law-abiding and inoffensive people of those provinces."[54] As required by the Organic Act,

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[49] Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2009 Ed., p. 901.

[50] Ackerman, *The Emergency Constitution*, 113 YALE L.J. 1029 (2004).

[51] Barrett, *Suspension and Delegation*, 99 Cornell L. Rev. 251 (2014); Tyler, *Is Suspension a Political Question*?, 59 STAN. L. REV. 333 (2006).

[52] *Habeas Corpus* Suspension Act, 12 Stat. 755 (1863).

[53] Enforcement Act of 1871, 17 Stat. 13 (1871).

[54] *Barcelon v. Baker, supra* note 18 at 89-90.

the Philippine Commission approved the Governor-General's order of suspension. The suspension was challenged in *Barcelon*, but the Court ruled that the determination is essentially a political question. Nonetheless, the Court resolved that the confernment of authority upon the Governor-General with the approval of the Philippine Commission was valid.

In *Montenegro*, the existence of rebellion was challenged because what existed was "intermittent sorties and lightning attacks by organized bands in different places x x x such sorties are occasional, localized and transitory."[55] In response, the Court, speaking through then Associate Justice (later Chief Justice) Cesar Bengzon, said: "[t]o the petitioner's unpracticed eye the repeated encounters between dissident elements and military troops may seem sporadic, isolated, or casual. But the officers charged with the Nation's security, analyzed the extent and pattern of such violent clashes and arrived at the conclusion that they are warp and woof of a general scheme to overthrow this government *vi et armis*, by force and arms."[56]

In *Lansang*, the Court measured the existence of a *state of rebellion* against the averments in the presidential proclamation that lawless elements "have entered into a conspiracy and have in fact joined and banded their forces together for the avowed purpose of staging, undertaking, waging and are *actually engaged* in an armed insurrection and rebellion in order to forcibly seize political power in this country, overthrow the duly constituted government, and supplant our existing political, social, economic and legal order with an entirely new one."[57]

Barcelon was decided prior to the enactment of the RPC, but the Court recognized the shared authority of the Governor-General and Philippine Commission to suspend the privilege even in the absence of a statutory definition of rebellion. *Montenegro* and *Lansang*, although enunciating diametrically

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[55] *Montenegro v. Castañeda and Balao, supra* note 19 at 886.

[56] *Id.* Italics in the original.

[57] *Lansang v. Garcia, supra* note 17 at 470. Italics in the original.

opposed doctrines, both understood the word rebellion without reference to the RPC. Then came *Garcia-Padilla*, where the Court explicitly stated that "**the terms 'rebellion and insurrection' are used [in the Constitution] in the sense of a state or condition of the Nation, not in the concept of a statutory offense**."[58] Despite the varying factual circumstances and conclusions reached by the Court in these cases, they all have one thing in common: the word 'rebellion,' as used in the Constitution, was never seen as being confined to the RPC definition. The factual bases in *Barcelon* and *Montenegro* do not squarely fall within the definition of the RPC. *Lansang* and *Garcia-Padilla* arguably did, but the analysis did not involve the RPC definition. In these cases, the Court consistently viewed rebellion from a national security perspective rather than a criminal law vantage point. The framers were presumably aware of these decisions, yet made no attempt to define rebellion. There is nothing in the debates that show a clear intent to either limit it to the RPC definition[59] or leave it the determination to Congress.[60] Therefore, rebellion in the Constitution properly refers to a "state of rebellion" rather than the "crime of rebellion."[61]

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[58] *Garcia-Padilla v. Enrile, supra* note 25 at 492.

[59] The *ponencia* cites the brief exchange between Comm. de los Reyes and Comm. Regalado, but it went no further than to suggest that the RPC definition *may* be considered. There is no unequivocal intent to make the RPC definition is the controlling definition. As Fr. Bernas, himself a member of the Constitutional Convention, stated in his Brief of *Amicus Curiae* in *Fortun*: "Notably, however, the text of the Constitution, unlike the Revised Penal Code, makes no attempt to define the meaning of rebellion. What can all these say about the meaning of rebellion as basis for martial law or suspension of the privilege? x x x [In *Lansang, Barcelon*, and *Montenegro*] there is an unmistakable focus on the threat to public safety arising from armed action x x x. [I]t is submitted that the focus on public safety adds a nuance to the meaning of rebellion in the Constitution which is not found in the meaning of the same word in Article 134 of the Penal Code." *Rollo* (G.R. No. 190293), p. 516.

[60] CONSTITUTION, Art. III, Secs. 3(1) & 6.

[61] Note that reference to the word "rebellion" in the fifth paragraph of Article VII, Section 18 is qualified by the phrase "judicially charged," which infers the existence of a penal statute. No such qualification appears in the first paragraph.

The legislative construction of the suspension clause in the US supports this interpretation. The federal suspension statutes were enacted to respond to exigencies existing at the time of their enactment. They were not constrained by preexisting penal statutes on rebellion. One may argue that in passing the suspension statutes, the US Congress effectively defined rebellion, and by defining rebellion in the RPC, the Philippine Congress did the same. The argument fails, however, because the RPC, as a general penal statute having for its objective the punishment of offenders, was hardly intended to respond to threats to the government. More importantly, the US Constitution vests the power to determine the existence of rebellion to their legislative branch, whereas the Philippine Constitution textually commits to the President the power to make such determination. In other words, our Constitution vests upon the President the emergency powers that the US Constitution vested upon the US Congress.

Of course, the President cannot declare martial law or suspend the writ on the basis of any disturbances. There must be some baseline against which the President's action may be evaluated against. It has been suggested that what is essential is that armed hostilities is in defiance of authorities.[62] This is similar to the first portion of the RPC definition: "rising publicly and taking arms against the Govemment."[63] Black's Law Dictionary defines rebellion as an "open, organized, and armed resistance to an established government or ruler."[64] The common theme is that there is a *public, armed resistance to the government*. In my view, this definition is the most consistent with the purpose of the grant of martial law/suspension powers: to meet the exigencies of internal or external threats to the very existence of the Republic.

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[62] Ackerman, *The Emergency Constitution*, 113 YALE L.J. 1029 (2004).

[63] The second part of the RPC definition, *i.e.*, "for the purpose of removing from the allegiance to said Government or its laws, the territory x x x" ostensibly refers to a state of mind, which may be inferred from the overt act of armed uprising, but is not easily ascertainable by the President.

[64] *Black's Law Dictionary*, 8th Ed., (2004).

The other condition for the proclamation of martial law or suspension of the privilege of the writ is the demands of public safety. Unlike rebellion, public safety is not as easily verifiable. Whether the exercise of the proclamation/suspension powers is required by public safety necessarily involves the prudential estimation of the President of the consequences of the armed uprising. Because it is phrased expressly in discretionary terms, it is difficult to set parameters in a vacuum, however broadly, as to what predicate facts should exist. To me, the only requirement that can be logically imposed is that the threat to public safety must, applying the reasonableness test, more likely than not be genuine based on publicly available facts or military reports founded on verifiable facts.

C

Procedure in an Article VII, Section 18 petition

As earlier discussed, the Constitution vested upon the President the *exclusive* authority to declare martial law or suspend the privilege of the writ of *habeas corpus*. However, when subsequently challenged by a citizen, as in this case, the President *must* satisfy the Court as to the sufficiency of the factual bases of his declaration of martial law or suspension of the privilege of the writ.

As a *sui generis* proceeding, where the Court performs a function it normally leaves to trial courts, it is not bound by the strictures of the Rules on Evidence. For one, the Court cannot indulge the presumption of regularity of the President's action, as it might be accused of abdicating its constitutional duty to make an independent appreciation of the facts.[65] Neither can the general rule "he who alleges must prove" strictly apply here. For the third paragraph of Article VII, Section 18 to operate as a meaningful check on the extraordinary powers of the executive, the better rule would be for the Government, at the first instance, to present to the Court and the public as much

[65] The result would be similar to the discarded rule in *Barcelon*, with the President's determination being semi-conclusive upon the Court. This could not have been the intent of the framers of the Constitution.

of the facts (or conclusions based on facts) which were considered by the President:

> x x x [S]ince the Court will have to rely on the fact-finding capabilities of the executive department, the executive department, if the President wants his suspension [and declaration] sustained, will have to open whatever findings the department might have to the scrutiny of the Supreme Court.[66]

The Court shall weigh and consider the Government's evidence in conjunction with any countervailing evidence that may be presented by the petitioners. Applying the standard of reasonableness, we shall then decide whether the *totality* of the factual bases considered by the President was sufficient to warrant the declaration of martial law and/or suspension of the privilege of the writ of *habeas corpus*.

Ideally, most of what the Government would present as evidence to justify the President's action can be set out in the Report he submits to the Congress. The executive department can, for example, consider attaching to the President's Report proof of the factual bases for the declaration of martial law and suspension of the privilege of the writ. These may include judicial affidavits, declassified or redacted military intelligence reports, and other products of the executive's fact-finding and intelligence gathering capabilities.[67] In fact, a sufficiently substantiated Report may work to allay the public's fears as to a possible abuse of the exercise of the President's extraordinary powers and even avoid/discourage legal challenges to it before this Court.

Of course, it may well be that the President considered facts which, due to their nature or provenance, cannot be made public. In *New York Times Co. v. United States*,[68] Justice Brennan noted the "single, extremely narrow class of cases" in which the First

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[67] In accordance with the provisions of Memorandum Circular No. 78, s. 1964, or the Rules Governing Security of Classified Matter in Government Offices.

[68] 403 U.S. 713 (1971).

Amendment's ban on prior restraint may be overridden: "such cases may arise only when the Nation is 'at war,' during which times '[n]o one would question but that a government might prevent actual obstruction to its recruitment service or the publication of the sailing dates of transports or the number and location of troops.'"[69]

Here, Memorandum Circular No. 78, s. 1964, or the Rules Governing Security of Classified Matter in Government Offices, provides for four (4) categories (top secret, secret, confidential and restricted) covering the gamut of official matter which requires protection in the interest of national security.[70] Thus, and relative to this exercise, it is possible that there are matters which cannot be publicly disclosed by the Government as it may, for example, indicate the capabilities or major successes of our intelligence services or imperil or reveal secret sources.[71] Still, in my view, the Government's presentation of its evidence should, *in the first instance*, be conducted publicly and in open court.

The experience of this Court with the conduct of the *in camera* hearing held last June 15, 2017, and the nature of the evidence subsequently submitted by the Government in support of its Memorandum of June 19, 2017, is instructive.

The Court, upon the Government's request, allowed an *in camera* presentation by the Government on the events that led to, and culminated in, the Marawi incidents of May 23, 2017. Two military officers made separate presentations supported by slides. While the first presentation dwelt principally with

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[69] *Id.* at 726. Citations omitted.

[70] Under the same Memorandum Circular, the term "matter" includes everything, regardless of its physical character, on, or in which information is recorded or embodied. Documents, equipment, projects, books, reports, articles, notes, letters, drawings, sketches, plans, photographs, recordings, machinery, models, apparatus, devices and all other products or substances fall within the general term "matter." Information which is transmitted orally is considered as "matter" for purposes of security.

[71] Memorandum Circular No. 78, s. 1964, Sec. II (4)(e) & Sec. III (11)(f).

the identities and backgrounds of the groups that engaged in acts of terrorism and posed a threat to security in Mindanao, the second presentation focused primarily on the events that transpired on May 23, 2017.[72]

At the end of the second presentation, I asked the Government if it was willing to make the presentations available to the public.[73] This is so because, save for one slide which referred to information shared by a foreign country,[74] none of the presentation materials contained, to my mind, sensitive military matters. Both presentations referred largely to past events that cannot possibly affect ongoing military operations. There was no identification of confidential sources; on the contrary, most of the information presented were in the public domain and/or already cited in Proclamation No. 261 and the President's Report. The Court, however, decided to leave it to the Government to determine which materials or information, not yet in the public domain, it would choose to release to the public.[75]

Members of the Court, and later petitioner Edcel Lagman, then propounded questions to Defense Secretary Delfin Lorenzana and AFP Chief-of-Staff Eduardo Año. Though the Solicitor General objected to some of the questions posed by petitioner Lagman, *none* of his objections were founded on the ground of a national security privilege. During my turn at asking questions, I emphasized to the Solicitor General the importance, in view of the Court's duty in this case, of providing as much of the facts which formed the bases for the President's action.[76] The Solicitor General thereafter agreed to prepare and submit judicial affidavits for this purpose.[77]

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[72] TSN, June 15, 2017, p. 16.

[73] TSN, June 15, 2017, p. 16.

[74] TSN, June 15, 2017, p. 19.

[75] TSN, June 15, 2017, p. 38.

[76] TSN, June 15, 2017, pp. 96, 102.

[77] TSN, June 15, 2017, p. 103.

As matters would turn out, the Memorandum filed by the Solicitor General on June 19, 2017 was supported by the judicial affidavits of Secretary Lorenzana and General Año, which were, in turn, supported by materials contained in the two presentations made at the *in camera* proceedings of June 15, 2017.[78]

My point is this: public interest would have been better served had the Court dispensed with the *in camera* proceedings in the first instance.

First, this is respectful of the public's right to information on matters of public concern.[79] The public is given a chance to follow the evidence being presented by the Government, as well as the questions posed to its representatives. Since the matter in issue concerns the President's exercise of his extraordinary powers, which necessarily involves restrictions on certain civil liberties, it is important that the public be fully apprised of the proceeding designed to check this exercise if only to assure them that no liberties are being unduly taken. Certainly, information on the facts supporting a declaration of martial law or the lifting of the privilege of the writ of *habeas corpus* lie at the apex of any hierarchy of what can be considered as "matters of public concern."[80]

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[78] The Government, invoking reasons of national security, withheld from the petitioners copies of "Operations Directive 02-2017" and "Rules of Engagement for Operations Directive 02-2017," which were attached as Annexes 3 and 4 to the Affidavit of General Eduardo Año. (See Memorandum for the Government, p. 5.)

[79] CONSTITUTION, Art. III, Sec. 7. **The right of the people to information on matters of public concern shall be recognized.** Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law. (Emphasis supplied.)

[80] In General Comment No. 13 on Article 14 (Administration of Justice) of the International Covenant on Civil and Political Rights, the Human Rights Committee provides that "[t]he publicity of hearings is an important safeguard in the interest of the individual and of society at large." Furthermore, and by way of illustration, Germany, as a general principle, forbids secret evidence in trials. German courts cannot base their judgments on secret information.

Second, it would ensure accountability by forcing the Government to make more diligent efforts to identify with specificity the particular pieces of evidence over which it would claim a privilege against public disclosure.[81]

Third, the conduct of proceedings in public would ultimately lend credibility to this Court's decision relative to the President's action:

> The right of access to the judicial process has been defined as important for ensuring accountability and instilling confidence in the administration of justice. In *Union Oil Co. of Cal. v. Leavell*, the Seventh Circuit Court of Appeals in the United States recognized a heightened burden to justify judicial secrecy, in order to protect the credibility of the decision before the public. **"Any step that withdraws an element of the judicial process from public view makes the ensuing decision look more like fiat, which requires a compelling justification."**[82] (Emphasis supplied.)

The German Federal Constitutional Court has deduced from Article 103 of the German Constitution (*Grundgesetz*), which guarantees to anyone the right to be heard, the right of all parties to a court procedure to know all the evidence on which the court envisages basing its judgment, and the right to comment on all such evidence. In the 1980 Friedrich Cremer case, however, the German Federal Constitutional Court accepted the use of "second hand evidence [or hearsay evidence based on classified intelligence information] **on the condition that the lower probative force of this evidence be taken into account by the Court**." (Didier Bigo, Sergio Carrera, Nicholas Hernanz, and Amandine Scherrer, *National Security And Secret Evidence In Legislation And Before The Courts: Exploring The Challenges, Study for the European Parliament's Committee on Civil Liberties, Justice and Home Affairs* (2014); available at: http://www.europarl.europa.eu/RegData/etudes/STUD/2014/509991/IPOL_STU(2014)509991_EN.pdf, (last accessed July 3, 2017.)

[81] Justice Douglas, in his Concurring Opinion in *New York Times Co. v. United States, supra* note 68 at 724, once said: "Secrecy in government is fundamentally anti-democratic, *perpetuating bureaucratic errors*. Open debate and discussion of public issues are vital to our national health. x x x" (Italics supplied.)

[82] MacLean, *In Open Court: Open Justice Principles, Freedom of Information and National Security* (2011), p. 11, available at spaa.newark.rutgers.edu/sites/default/files/files/Transparency_Research_Conference/Papers/Maclean_Emi.pdf, (last accessed on July 1, 2017).

I thus propose the following general procedure in the future conduct of similar proceedings: The Government, *as early as the filing of its Comment to the petition*, should present its case utilizing facts in the public domain or sensitive matter that it decides, in the public interest, to declassify and/or redact.[83] Only upon the invocation by the Government of "a *specific and on-the-record* evaluation that **'closure is essential to preserve higher values [than the public's right to access] and is narrowly tailored to serve that interest'**" can *in camera* presentation of evidence be considered and allowed.[84] For this reason, it is imperative that any invocation of privilege be timely made (*i.e.*, in its *Comment*) so that both the Court and petitioners would have reasonable opportunity to respond. Petitioners-citizens may thereafter be given an opportunity to present countervailing evidence.

Based on our experience in this proceeding, I submit that proffer by the Government of a fact (or conclusion based on facts) which it asserts the Court to consider, but not make of public record on grounds of national security, should come with a heavy presumption against its nature as a privileged matter,[85] imposing on the Government a heavy burden on why a specific fact should not be made public.[86] More than mere general invocations of reasons of national security, there must, for example, be some showing that the matter, if publicly disclosed, may reveal critical information relating to the capabilities of our intelligence sources, and or imperil secret sources, among others.[87] In the same manner, the Government may invoke (and subsequently justify the grant of) such a privilege in response to *specific* questions propounded by the Court or the parties to its witnesses.

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[83] Memorandum Circular No. 78, s. 1964.

[84] MacLean, *supra* a 18, citing *Press Enterprise Co. v. Superior Court (Press Enterprise I)*, 464 U.S. 501, 510 (1984).

[85] This "heavy presumption" can, depending on the circumstances, even become well-nigh conclusive as against the privileged nature of a specific matter in issue.

[86] *New York Times v. United States, supra* note 68 at 714.

[87] Memorandum Circular No. 78, s. 1964, Sec. II (4)(e).

Otherwise stated, the Government should not be allowed a *carte blanche* invocation of privilege to justify an *in camera* proceeding. This will avoid normalizing what should rightly be the exception when it comes to the conduct of proceedings such as this. As Justice Stewart, in *New York Times Co. v. United States*, teaches us:

> For when everything is classified, then nothing is classified, and the system becomes one to be disregarded by the cynical or the careless, and to be manipulated by those intent on self-protection or self-promotion. x x x [S]ecrecy can best be preserved only when credibility is truly maintained.[88]

Former Yale Law School Dean Eugene V. Rostow once said, "[t]he Supreme Court is, among other things, an educational body, and the Justices are inevitably teachers in a vital national seminar."[89] Similarly, when the Court sits, as it does here, as a trier of fact under Article VII, Section 18 of the Constitution, the citizenry is effectively empaneled as jury-at-large, looking over the shoulders of the Court and passing judgment on the judiciousness of our findings. In the end, the legitimacy of this Court's decision here will rest partly on the public's perception on how we conducted our fact-finding inquiry, and how we were able to reach our decision. A decision which is the product of a process done mostly in the sunshine will stand a better chance of gaining the people's acceptance over one clouded by generalized invocations of confidentiality.

IV

As I have mentioned, I concur with the *ponencia*'s appreciation of facts and the conclusion derived therefrom. Nonetheless, I think it would be useful to clarify, basically to myself and to the public, how I arrived at the conclusion that there is sufficient factual basis for Proclamation No. 216 using my proposed paradigm.

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[88] *New York Times v. United States, supra* note 68 at 729.

[89] Rostow, *The Democratic Character of Judicial Review*, Faculty Scholarship Series. 66 HARV. L. REV. 193, 208 (1952-1953).

A

Existence of actual rebellion

It is undisputed that an armed conflict erupted between the government forces and the alliance of Maute and Abu Sayaff (ASG) terrorist groups in the afternoon of May 23, 2017, triggered by the attempt of the government to capture the known leaders of these groups, Isnilon Hapilon, Abdullah Maute, and Omarkhayam Maute. Five days earlier, on May 18, 2017, the military had received intelligence reports that local terrorist groups, particularly the Maute and ASG, were planning to occupy Marawi City, raise the ISIS flag in the provincial capitol, and declare Marawi City. The planned siege is a prelude to the fourth step of the *wilayat*, or Islamic province, governed by *Shariah* law.[90]

Hapilon is the leader of ASG-Basilan, a notorious terrorist group founded in the 1990s and previously affiliated with Jemaah Islamiyah. Gen. Año reported Hapilon and 30 of his followers performed a symbolic *hijra*, or pilgrimage to unite with other ISIS-linked groups in mainland Mindanao, last December 31, 2016. Among those ISIS-linked groups is the Maute, a terror group with reportedly 263 members operating in Lanao del Sur, with the aim of establishing an Islamic state in the country. The military confirmed the consolidation of ASG, Maute, Maguid, and other local terrorist groups in Central Mindanao during a series of AFP combat operations from January to April 2017.[91]

As government troops moved into Marawi City to capture Hapilon and the Maute leaders at around 1300 of May 23, they were met with heavily armed resistance which resulted in the injury of several soldiers and at least one casualty. As the skirmishes continued throughout the day, the terror groups had forcibly occupied several establishments, including the Amai

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[90] Affidavit of Delfin Lorenzana dated June 17, 2017 and its attachments (Annex 1 of Respondent's Memorandum); Affidavit of Eduardo Año dated June 17, 2017 and its attachments (Annex 2 of Respondents' Memorandum).

[91] Affidavit of Eduardo Año, pp. 1-2.

Pakpak Hospital, burned down and ransacked government and private facilities, freed inmates of the Marawi City Jail, killed and kidnapped a number of civilians. In addition, as of 2200 of May 23, the terrorist groups had taken control of three bridges and set up several checkpoints. The President, who was then in Moscow but was regularly receiving military updates, issued Proclamation No. 216 at around 2200 (Philippine time).[92]

The petitioners do not dispute all the facts presented by the executive department. They only dispute a handful of them, namely: (1) the Amai Pakpak Hospital was not overrun by the enemy forces, (2) the police station was not burned down, (3) the Land Bank branch was not ransacked but merely sustained damage, and (4) the enemy groups had not taken over any government facility.[93] When asked to rebut the other facts presented, petitioners proffered that they have no personal knowledge.[94]

The facts pertinent to rebellion, understood as a public, armed resistance to the government, are publicly verifiable. These are mostly circumscribed between 1300 of May 23, 2017, when the military operation to arrest Hapilon and the Maute leaders began, and 2200 of the same date, when the President issued Proclamation No. 216. To me, the following undisputed facts are decisive of the issue of rebellion: (1) there was a sustained offensive against government troops from 1300 through 2200 with the terrorists showing no immediate sign of retreat; (2) the terrorists establishment checkpoints on public roads; (3) they publicly hoisted ISIS flags in various places; and (4) there were multiple military and civilian casualties and injuries. The totality of these more than adequately satisfies the constitutional requirement of actual rebellion.[95] Even when measured by the more rigid RPC definition, the siege of Marawi clearly constitutes

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[92] *Id.* at 7-8; Affidavit of Delfin Lorenzana.

[93] Annexes to Edcel Lagman, *et al.*'s Memorandum.

[94] TSN, June 14, 2017, pp. 10-23.

[95] It has been suggested that the armed hostilities are not acts of rebellion, but merely acts of terrorism done in order to prevent the actual service of warrants on leaders of local terrorist groups. In my view, it is more difficult

rebellion. There is an armed public uprising against the government and, considering the terrorist groups' publicly avowed objective of establishing an Islamic province, their purpose is clearly to remove a part of the Philippine territory from the allegiance to the government.

The events that happened before—Hapilon being appointed as *emir*, his attempts to unify the local terrorist groups, and the acts of violence committed by the various Mindanao-based terrorist groups—mostly provide context for the events that transpired on May 23. While one can cast about disputing whether Hapilon and the Mautes have united with other local terrorist groups or whether they have actual links with ISIS, the facts that occurred on May 23 — the existence of which cannot be reasonably denied—exemplifies the essence of rebellion under the Constitution.[96] Even granting the facts controverted by the petitioners to be true, these are minor details in the larger theater of war and do not alter the decisive facts necessary for determining the existence of rebellion.

B

Public safety necessitates declaration of law in the entire Mindanao

The government disclosed that there has been a rise in terroristic activities—bombings, kidnap for ransom, beheadings and other

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to draw a bright-line between terrorism and rebellion today because of ISIS' objective of establishing an Islamic caliphate. Moreover, such reading defies logic and is belied by the facts. The terrorists mounted an offensive, which prior to the President's proclamation had been continuing for almost nine hours. There were no signs of mass retreat by members of the terror groups to elude arrest; on the contrary, they brazenly hoisted ISIS flags across Marawi. The executive department's claim that the military had preempted the terrorist groups' planned takeover of Marawi is confirmed by a video recovered by the military which showed Hapilon and the Maute leaders planning to conduct a Mosul-style attack on Marawi on Ramadan. The more plausible conclusion is that the Mautes were forced to hastily move up the timetable for their plan in view of the military's preemptive action.

[96] Prior to May 23, there may be doubts as to the existence of rebellion; after May 23, however, those doubts have all but dissipated.

acts of atrocities—perpetrated by terrorist groups in Mindanao since the fourth quarter of 2016 until the siege of Marawi. Military leaders assessed the upsurge as a response to the "call to arms" issued by Hapilon who was anointed by ISIS as the *emir* or leader of all ISIS forces in the Philippines. Since the performance of the symbolic *hijra*, General Año reported that they have monitored collaborative activities of three major terrorist groups—the ASG, the Maute, and the Bangsamoro Islamic Freedom Fighters (BIFF) — along with foreign terrorists. It is also claimed that Hapilon has been receiving support from foreign terrorists who provide funding and facilitate the transport of pro-ISIS recruits from other Southeast Asian countries to Mindanao.[97]

General Año also revealed that the grand plan of the Hapilon-led group is to take over Marawi City and further march to Iligan City. The siege of Marawi City was supposed to serve as the prelude for allied terrorist groups to stage their own violent uprising across Mindanao for the purpose of attaining their ultimate goal of establishing a *wilayat*.[98]

The siege of Marawi City and the recent increase in terrorist activities in Mindanao have, to my mind, reasonably established that there is sufficient factual basis that public safety requires the declaration of martial law for the entire Mindanao. The objective of ISIS to establish an Islamic caliphate is well-known. Whether Hapilon is actually sponsored by ISIS is less clear, but he has publicly proclaimed that he is the *emir* of all ISIS forces in the Philippines and the announcement in an ISIS newsletter that he has been appointed as such has not been controverted.[99] The five-step process to establish of *wilayat* is not disputed, and the assessment that Hapilon and his followers are somewhere between the third and fourth steps are confirmed by the uncovered plot to assault Marawi.[100] Add to this their penchant for raising the ISIS flag during the siege of Marawi,

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[97] Affidavit of Eduardo Año and its attachments.

[98] Affidavit of Eduardo Año, p. 2.

[99] Respondents' Comment, Annex 2-A.

[100] Respondents' Comment, Annex 2-B.

then it becomes clear that the ASG and the Mautes are, at the very least, ISIS-inspired. Their public statements and terroristic acts are being used as propaganda to recruit more members, and if they are in fact not yet ISIS-linked, to get the attention and support of ISIS. These groups are no less dangerous just because there is some doubt as to their direct linkage with ISIS. As the siege of Marawi and their past terror activities have shown, the threat they pose is real.

The guerilla tactics employed by these groups and their familiarity with the terrain make it difficult to confine them to one area. We can take judicial notice of the fact that Marawi lies in central Mindanao, with access to other provinces in the Mindanao island, through nearby forests, mountains, and bodies of water.[101] As last year's attack on Davao City showed, the terrorists are capable of launching attacks in other areas of considerable distance from Marawi City.[102]

In the absence of countervailing evidence or patent implausibility of the facts presented by the executive department, it is difficult, if not irresponsible, to cast aside the statements personally made before the Court by the Secretary of Defense and the AFP Chief-of-Staff. The standard of reasonableness requires the Court to exercise caution in evaluating the factual assertions of the executive department, but it does not create a presumption against matters coming from their side. After the oral arguments and the submission of the pleadings, I find nothing incredulous or far-fetched with respect to the claimed capabilities and objectives of the terror groups. The executive's assessment of the nature and level of threat posed by these ISIS-inspired terror groups in Mindanao is not incompatible with local[103] and

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[101] Most notably, Lake Lanao and Agus River.

[102] Davao City is roughly 257.3 km from Marawi City.

[103] Paterno Esmaquel II, *Admit ISIS presence in Philippines, analyst says*, RAPPLER, May 25, 2017, available at https://goo.gl/GUW1QM; *Returning IS fighters to regroup in the Philippines-experts*, PHIL. STAR, April 4, 2017, *available at* https://goo.gl/CEjKQ3; Frances Mangosing, *Analysts: ISIS a real threat to PH*, PHIL. DAILY INQUIRER, January 14, 2016, *available at* https://goo.gl/9djqJt (all websites last accessed July 5, 2017).

foreign[104] media reports and publicly available research papers.[105] Understandably, the information provided to the Court is not perfect[106] and, given the 30-day period imposed by the Constitution, we do not have the time to vet it to the point of conclusiveness. But that is the constraint inherent in the nature of the process dealt us by Article VII, Section 18. The role of

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[104] James Griffiths, *ISIS in Southeast Asia: Philippines* battle growing threat, CNN, May 30, 2017, *available at* https://goo.gl/zuBPoV; Erik de Castro, *ISIS-linked Rebels' Seizure of Philippines City Should Worry Other Counties in Southeast Asia*, REUTERS, *available at* https://goo.gl/FiyFYL; Thomas Maresca, ISIS expands foothold in Southeast Asia with Philippine siege, USA TODAY, June 10, 2017, available at https://goo.gl/f76X2h; Felipe Villamor, *Duterte Faces Test Battle With ISIS-Linked Militants in the Philippines*, NY TIMES, May 25, 2017, *available at* https://goo.gl/kmCeV8; Per Liljas, *ISIS Is Making Inroads in the Southern Philippines and the Implications for Asia Are Alarming*, TIME, April 14, 2016, *available at* https://goo.gl/wUfBw3; Oliver Holmes, *Explainer: how and why Islamic State-linked rebels took over part of a Philippine city*, THE GUARDIAN, May 29, 2017, *available at* https://goo.gl/FdwGLr; *Philippines violence: IS-linked fighters 'among militants in Marawi'*, BBC, May 26, 2017, *available at* https://goo.gl/EZ77vV; Crispian Cuss, *The returning jihad: ISIL in Southeast Asia*, ALJAZEERA, July 12, 2016, *available at* https://goo.gl/Zb327y (all websites last visited July 5, 2017).

[105] *ISIS Followers in the Philippines: Threats to Philippine Security*, Defense & Securite, October 13, 2015, *available at* https://goo.gl/w7LEQh; Rommel Banlaoi, *The Persistent of the Abu Sayyaf Group*, INSTITUTE FOR AUTONOMY AND GOVERNANCE, June 14, 2016, *available at* https://goo.gl/M7rVPF; Konrad-Adenauer-Stiftung & S. Rajaratnam School of International Studies, *Countering Daesh Extremism: European and Asian Responses*, PANORAMA (2016), *available at* https://goo.gl/jzp5fw; Angel M. Rabasa, *The Rise of ISIS and the Evolving Terrorist Threat in the Asia-Pacific Region*, Quad Plus Dialogue (2015), *available at http://thf-reports.s3.amazonaws.com/quad/rabasa.pdf*; Joshua Spooner, *Assessing ISIS Expansion in Southeast Asia: Major Threat or Misplaced Fear*, WILSON CENTER (2016), *available at* https://goo.gl/NKWyeJ; Shashi Jayakumar, *The Islamic State Looks East: The Growing Threat in Southeast Asia*, 10 CTC SENTINEL 27 (2017), *available at* https://goo.gl/69PABv (all websites last visited July 5, 2017).

[106] If the government was in possession of perfect information, then it would have been easy for the military to avert the Marawi siege. Unfortunately, such proposition is more fiction than fact; military intelligence gathering is not an exact science.

the Court is to determine whether, on the basis of the matters presented to us, the threat to public safety is genuine. I conclude that, more likely than not, it is.

In view of the foregoing, I vote to dismiss the petitions.

SEPARATE OPINION

MARTIRES, *J.*:

"*We seem to distrust all future Presidents just because one President destroyed our faith by his declaration of martial law. I think we are overreacting. Let us not judge all Presidents who would henceforth be elected by the Filipino people on the basis of the abuses made by that one President. Of course, we must be on guard; but let us not overreact.*"[1]

On 29 August 2016, fifteen (15) soldiers were killed in Patikul, Sulu, as a result of an encounter with the Abu Sayyaf Group (*ASG*). On 2 September 2016, at least fourteen (14) people were killed and sixty-seven (67) others were seriously injured due to the bombing incident in a night market in Davao City. Moored on these incidents, as well as on government intelligence reports as to further terror attacks and acts of violence by lawless elements in the country, President Rodrigo Roa Duterte (*President Duterte*), pursuant to his Commander-in-Chief power to call out the armed forces whenever it becomes necessary to prevent or suppress lawless violence as enunciated in Section 18, Article VII of the 1987 Constitution, issued Proclamation No. 55 on 4 September 2016, declaring a state of national emergency on account of lawless violence in Mindanao.[2]

On 23 May 2017, President Duterte issued Proclamation No. 216 declaring a state of martial law and suspending the privilege of writ of *habeas corpus* in the whole of Mindanao. This time,

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[1] Statement of Mr. Francisco A. Rodrigo, Constitutional Commission Deliberations, 31 July 1986, p. 497.

[2] Proclamation No. 55, series of 2016.

President Duterte anchored his declaration, aside from the reasons cited in the earlier Proclamation No. 55, on the acts committed by the Maute terrorist group on that same day, to wit:[3]

> **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 the 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; x x x

On 25 May 2017, President Duterte, in compliance with Sec. 18, Art. VII of the Constitution requiring him to submit a report within forty-eight (48) hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, submitted his written report to the Senate and the House of Representatives.

On 29 May 2017, the Senate[4] issued P.S. Resolution No. 388 stating that the Senate found the issuance of Proclamation No. 216 to be satisfactory, constitutional, and in accordance with the law, and that it found no compelling reason to revoke the same.

On 31 May 2017, the House of Representatives, after constituting itself into a Committee of the Whole House, considered the President's report and heard a briefing from representatives of the executive department. Finding no reason

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[3] Proclamation No. 216 dated 23 May 2017.

[4] Introduced by Senators Vicente Sotto III, Aquilino Pimentel III, Ralph Recto, Juan Edgardo Angara, Nancy Binay, Joseph Victor Ejercito, Sherwin Gatchalian, Richard Gordon, Gregorio Honasan, Panfilo Lacson, Loren Legarda, Emmanuel Pacquiao, Joel Villanueva, Cynthia Villar, Juan Miguel Zubiri. Senators Francis Escudero and Grace Poe did not sign the Resolution.

to revoke Proclamation No. 216, the House of Representatives issued House Resolution No. 1050[5] expressing full support to President Duterte.

Before the Court, however, are three consolidated petitions brought under the third paragraph of Section 18, Article VII of the Constitution assailing the validity and constitutionality of Proclamation No. 216.

I vote to dismiss these petitions.

The present petitions are dismissible for being "inappropriate proceedings."

The provision in the 1987 Constitution on which petitioners anchored their respective petitions reads:

ARTICLE VII

EXECUTIVE DEPARTMENT

x x x x x x x x x

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

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[5] Introduced by Representatives Pantaleon D. Alvarez, Rodolfo C. Fariñas and Danilo E. Suarez.

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

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

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

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

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

Notably, while Section 18, Article VII of the Constitution allows any Filipino citizen to assail through an appropriate proceeding the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* or the extension thereof, it is only the Court which was conferred with the sole authority to review the sufficiency of the factual basis of the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus*. In both instances, the citizen and the Court are expressly clothed by the Constitution with authority: the former to bring to the fore the validity of the President's proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus*, and the latter to make a determination as to the validity thereof.

It is through the exercise of this authority, after the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus*, that both the citizen and the Court pierce through the exclusive realm of the President in the exercise

of his Commander-in-Chief powers. But it should be stressed that the exercise of this authority must be anchored on an "appropriate proceeding" that would bind the citizen and the Court as they march towards the sole domain of the Commander in Chief. Clearly, therefore, the absence of an "appropriate proceeding" nullifies the exercise by the citizen of his authority and, unless the Court in the exercise of its judicial discretion rules otherwise, divests it likewise of its authority to grant the plea of the suitor before it.

Section 18, Article VII of the Constitution does not categorically identify what the "appropriate proceeding" is. For sure, the "appropriate proceeding" contemplated therein cannot be Section 18, Article VII itself for otherwise this could have been expressly spelled out in the provision. Moreover, there is nothing in Section 18, Article VII from which it can be reasonably inferred that it is by itself a proceeding.

By using the phrase "appropriate proceeding," the Constitutional Commission obviously acknowledged that there already exists an available course of action which a citizen can invoke in supplicating the Court to exercise its awesome review power found under Article VIII of the Constitution. The words "appropriate proceeding" should be read in their natural, ordinary and obvious signification, devoid of forced or subtle construction. "*For words are presumed to have been employed by the lawmaker in their ordinary and common use and acceptation. And courts as a rule, should not presume that the lawmaking body does not know the meaning of the words and the rules of grammar*."[6]

The argument that the "appropriate proceeding" contemplated in Section 18, Article VII of the Constitution is *sui generis* is tantamount to regarding the phrase "appropriate proceeding" as a surplusage and a superfluity, barren of any meaning. To follow this interpretation would mean that while Section 18, Article VII requires that there be an "appropriate proceeding" to set the foundation for judicial review, that proceeding,

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[6] Agpalo, *Statutory Construction,* Fourth Edition, 1998, p. 177.

however, is none other than Section 18, Article VII itself. This could not have been the intent of the framers of the Constitution.

To fortify this stance, quoted hereunder is the deliberation of the Committee on the Executive of the Constitutional Commission, to wit:

> MR. SARMIENTO. Mr. Davide, one last question: Why should it be appropriate proceeding? My idea is to remove simply "appropriate." Say, in a proceeding or action brought before it by any citizen, it is for the Supreme Court to . . . (Drowned by voices)
>
> MR. REGALADO. It has to be appropriate. Father Bernas will answer that.
>
> MR. CONCEPCION. . . . (Inaudible) proper party to (?) handle the Rules of Court, but if we grant it to anybody, or everybody, they have to hold appropriately.
>
> VOICE. Proper action.
>
> MR. CONCEPCION. Well, of course, the proceeding may be an ordinary action. I think, in general, it is appropriate proceeding.
>
> VOICE. Appropriate.
>
> MR. CONCEPCION. What are cases triable by courts of justice?[7]

The fact is underscored that Justice Florenz Regalado, a legal luminary in remedial law, insisted during the deliberation that the "proceeding" be qualified as "appropriate." Unmistakably, Justice Regalado acknowledged that the "appropriate proceeding" already exists, and corollary thereto can be logically inferred as existing independently of Section 18, Article VII. To stress, if the intention were otherwise, Section 18, Article VII could have plainly provided that it is by itself a proceeding which a citizen can avail of in assailing the Commander-in-Chief powers of the President. But the use of the word "proceeding," which was even defined as "appropriate," can only mean that the proceeding has already been provided for in existing laws.

The *ponencia* cites Section 4, Article VII of the Constitution as another constitutional provision which, like Section 18,

[7] 17 June 1986, p. 188.

Article VII, confers jurisdiction to the Court in addition to those enumerated in Sections 1 and 5, Article VIII of the Constitution.

There is no issue that Section 4, Article VII of the Constitution vests jurisdiction upon the Court to be the sole judge of all contests relating to the election, returns, and qualifications of the President or the Vice-President, in the same manner that Section 18, Article VII clothes the Court with the exclusive authority to review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof.

Both Sections 4 and 18 of Article VII are not proceedings by themselves. In the first, there are specific rules by which the election, returns, and qualifications of the President or Vice-President can be assailed before the Court, while in the second, it is required that there be an "appropriate proceeding" filed by a citizen to set in motion the Court's review powers.

The Constitution's explicit definition of the Court's judicial power in Article VIII is enlightening:

ARTICLE VIII

JUDICIAL DEPARTMENT

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

As mentioned earlier, when the Constitutional Commission used the phrase "appropriate proceeding" in Section 18, Article VII, it actually acknowledged that there already exists an available route by which a citizen may attack the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* or the

extension thereof. And by defining the extent of judicial power of the Court in Section 1, Article VIII, the Constitutional Commission clearly identified that the "appropriate proceeding" referred to in Section 18, Article VII is one within the expanded jurisdiction of the Court.

The position that the power of the Court to review the factual basis of the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus* is pursuant to Section 1, Article VIII of the Constitution finds support in the following deliberations of the Committee on the Executive of the 1986 Constitutional Commission:

THE CHAIRMAN. We go to the last paragraph. The last paragraph of the revised resolution reads as follows: "THE BASIS OF A PROCLAMATION OF MARTIAL LAW OR SUSPENSION OF THE WRIT OF HABEAS CORPUS MAY BE INQUIRED INTO BY THE SUPREME COURT IN ANY APPROPRIATE PROCEEDING OR ACTION BROUGHT BEFORE IT BY ANY CITIZEN AND IF IT SO DETERMINES THAT NO SUFFICIENT BASIS EXISTS FOR SUCH PROCLAMATION OR SUSPENSION, THE SAME SHALL BE SET ASIDE. THE SUPREME COURT SHALL DECIDE THE PROCEEDING OR ACTION WITHIN THIRTY DAYS FROM ITS FILING." Any remark?

MS. AQUINO. Mr. Chairman, the paragraph in effect vests in the Supreme Court the power of judicial review in terms of testing or determining the constitutional sufficiency of the basis of the proclamation. Could it not be formulated in a more forthright way as to positively recognize the power of the Supreme Court to test the constitutional sufficiency or the power of judicial reprieve? No, no, no, formulate it that way, it belongs more to the judiciary than to this . . . (Interrupted)

MR. DAVIDE. Yeah, Mr. Chairman, I was really thinking if this should be placed under the judiciary, in the article on the judiciary, I would submit the matter to Chief Justice Concepcion if the most appropriate place for this provision would be within the article on the judiciary.

MR. CONCEPCION. Well, in connection with the judiciary, we tentatively agreed on the following expression, you know, Section l says: "Judicial power shall be vested on the supreme Court etcetera."

So the next paragraph either of the same section or a new section says: "Judicial power is the authority of courts of justice to settle conflicts or controversies involving rights which are legally demandable or enforceable including the question whether or not there has been an abuse of discretion amounting to lack or excess of jurisdiction, as well as the exercise of the power to suspend the privilege of a writ of habeas corpus and to declare Martial law." This is the provision that tentatively we are considering.

MR. DAVIDE. **So this particular paragraph, Your Honor, on the Commander-in-Chief's provision giving the Supreme Court the authority to inquire into the factual basis of the proclamation of Martial or the suspension of the privilege of a writ of habeas corpus, can be included . . .** (Interrupted)

MR CONCEPCION. **It is involved already. We are not satisfied with including the question whether or not there has been an abuse of discretion amounting to lack of jurisdiction or excess of jurisdiction initially because we did not want to mention Martial Law in particular as if we were reflecting upon the action of the Supreme Court. I am particularly under special obligation in these matters because I have been a member of the court and I am expected to exercise greater attention, more courtesy to the Supreme Court, but upon the insistence of Commissioner Colayco we added: "AS WELL AS THE EXERCISE OF THE POWER TO SUSPEND THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS AND TO DECLARE MARTIAL LAW."** I realize that this would have to be taken up also in connection with the Martial Law powers of the President, but we also consider it relevant to the question of what is the nature and extent of judicial review or judicial power?

The first sentence says: "Judicial power shall be vested." So we have to define somehow what is the nature and extent of judicial power and it simply implies that judicial power extends the power whenever there is a question of abuse of jurisdiction amounting to lack of jurisdiction or excess of jurisdiction. Well, the court has the power because that is the main function of the court in a presidential system to define and delimit the duties and functions of the different branches. That is the system of checks and balances.

MR. BERNAS. Mr. Chairman, in the light of the explanation given by Commissioner Concepcion, may I suggest reformulation of this last paragraph and its transposition to the end of the first paragraph

because in the first paragraph we are talking about the imposition of Martial Law, the mechanics for the imposition, the requirements for the imposition and after that we add a sentence saying: "THE SUPREME COURT MAY REVIEW IN AN APPROPRIATE PROCEEDING THE SUFFICIENCY OF THE FACTUAL BASIS OF THE PROCLAMATION OF MARTIAL LAW OR SUSPENSION OF THE WRIT OF HABEAS CORPUS OR ITS EXTENSION AND SHALL DECIDE THE CASE WITHIN THIRTY DAYS FROM ITS FILING."

THE CHAIRMAN. Where will you put that?

MR. BERNAS. At the end of the first paragraph or right after the first paragraph. First we are talking about the imposition, then we talk about the invalidation, then after that we talk about the effects.

THE CHAIRMAN. Will you please repeat?

MR. BERNAS. "THE SUPREME COURT MAY REVIEW IN AN APPROPRIATE PROCEEDING THE SUFFICIENCY OF THE FACTUAL BASIS FOR THE PROCLAMATION OF MARTIAL LAW OR SUSPENSION OF THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS OR THE EXTENSION THEREOF AND SHALL DECIDE THE CASE WITHIN THIRTY DAYS FROM ITS FILING."[8] (emphasis supplied)

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Pertinently, Article VIII of the Constitution provides:

Section 5. The Supreme Court shall have the following powers:

1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus, quo warranto* and habeas corpus.

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A petition for certiorari is proper when any tribunal, board or officer *exercising judicial or quasi-judicial functions* has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of

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[8] 17 June 1986, pp. 183-187.

jurisdiction.[9] A petition for prohibition may be filed when the proceedings of any tribunal, corporation, board, officer or person, whether exercising *judicial, quasi-judicial or ministerial functions*, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.[10] Clearly, these are the two modes, i.e., "appropriate proceedings," by which the Court exercises its judicial review to determine grave abuse of discretion. But it must be stressed that the petitions for certiorari and prohibition are not limited to correcting errors of jurisdiction of a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but extends to any branch or instrumentality of the government; thus, confirming that there are indeed available "appropriate proceedings" to invoke the Court's judicial review pursuant to Section 18, Article VII of the Constitution.

This position finds support in the Court's declaration in *Araullo v. Aquino*, *III*:[11]

> With respect to the Court, however, the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, *even if the latter does not exercise judicial, quasi-judicial or ministerial functions*. This application is expressly authorized by the text of the second paragraph of Section 1, x x x
>
> **Thus, petitions for *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.**
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> Necessarily, in discharging its duty under Section 1, x x x to set right and undo any act of grave abuse of discretion amounting to

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[9] Rules of Court, Rule 65, Sect. 1.

[10] *Id.*, Sec. 2.

[11] 737 Phil. 457 (2014).

lack or excess of jurisdiction by any branch or instrumentality of the Government, the Court is not at all precluded from making the inquiry provided the challenge was properly brought by interested or affected parties. **The Court has been thereby entrusted expressly or by necessary implication with both the duty and the obligation of determining, in appropriate cases, the validity of any assailed legislative or executive action. This entrustment is consistent with the republican system of checks and balances.**[12] (emphasis supplied)

Thus, when petitioners claimed that their petitions were pursuant to Section 18, Article VII of the Constitution, they, in effect, failed to avail of the proper remedy, thus depriving the Court of its authority to grant the relief they pleaded.

The Court must take note that the Constitutional Commission had put in place very tight safeguards to avoid the recurrence of another dictator rising in our midst. Thus, the President may use his Commander-in-Chief powers but with defined limitations: (a) to prevent or suppress lawless violence, invasion or rebellion he may call out the armed forces; and, (b) in case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law.

In the same manner that there are limitations for the exercise by the President of his powers pursuant to Section 18, Article VII, the Constitution likewise provides for the specific manner by which such exercise can be attacked before the Court: only by a citizen of the Philippines and through an appropriate proceeding. The absence of one of these requisites should have warranted the outright dismissal of the petition. But if only for the transcendental importance of the issues herein, I defer to the majority in taking cognizance of these petitions. After all, "*[t]his Court has in the past seen fit to step in and resolve petitions despite their being the subject of an improper remedy, in view of the public importance of the issues raised therein*."[13]

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[12] *Id.* at 513.

[13] *Rappler, Inc. v. Bautista*, G.R. No. 222702, 5 April 2016. (emphasis supplied)

The President did not act with grave abuse of discretion as he had sufficient factual basis in issuing Proclamation No. 216.

In the resolution of these petitions, it should be noted that Section 1, Article VIII of the Constitution provides for a specific parameter by which the Court, in relation to Section 18, Article VII, should undertake its judicial review — it must be proven that grave abuse of discretion attended the President's act in declaring martial law and in suspending the privilege of the writ of *habeas corpus* in Mindanao. Nothing short of grave abuse of discretion should be accepted by the Court.

Grave abuse of discretion has a definite meaning. There is grave abuse of discretion when an act is done in a "'*capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction.' The abuse of discretion must be so patent and gross as to amount to an 'evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility*.'"[14] That same definition finds importance to this Court in assessing whether the President, in issuing Proclamation No. 216, acted with grave abuse of discretion.

"Rebellion," as stated in Section 18, Article VII of the Constitution refers to the crime of rebellion defined under Article 134 of the Revised Penal Code (*RPC*), which has the following elements:

1. There is a public uprising and taking arms against the Government; and
2. The purpose is either to:
    a. Remove from the allegiance to said Government or its laws the territory of the Philippines or any part thereof, or any body of land, naval, or other armed forces; or

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[14] *Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission*, 716 Phil. 500, 515-516 (2013), citing *Yu v. Reyes-Carpio*, 667 Phil. 474, 481-482 (2011).

b. Deprive the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.

The presence of the first requirement is not controverted as petitioners admit that there was public uprising and taking arms against the Government in Marawi City at the time Proclamation No. 216 was issued. Petitioners capitalize, however, on the second requirement, insisting that there is no proof that the uprising was attended with the culpable intent inherent in the act of rebellion.

It bears emphasis, however, that intent, which is a state of mind, can be shown only through overt acts that manifest such intent.[15] Thus, the culpable intent to commit rebellion can only be shown through overt acts manifesting that the perpetrators intended to remove the Philippine territory or any part thereof from the allegiance of the government or to deprive the President or the Congress of their powers or prerogatives.

Proclamation No. 216 clearly stated overt acts manifesting the culpable intent of rebellion, to wit:

1. Proclamation No. 55, series of 2016 was issued on 4 September 2016 declaring a state of national emergency on account of **lawless violence in Mindanao**.

2. There was a 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, leading to the issuance of Proclamation No. 55.

3. On 23 May 2017, the same Maute terrorist group **took over a hospital** in Marawi City, **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.

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[15] *Clemente v. People*, 667 Phil. 515, 525 (2011).

In the Report submitted by the President to Congress on 25 May 2017, he specifically chronicled the events which showed the group's display of force against the Government in Marawi City, such as the following:

1. Attacks on various government and privately owned facilities.
2. Forced entry in Marawi City Jail thereby facilitating the escape of sixty-eight (68) inmates, and where a PDEA member was killed and on-duty personnel were assaulted, disarmed, and locked up inside the cells, and where the group confiscated cellphones, firearms, and vehicles.
3. Evacuation of the Marawi City Jail and other affected areas by BJMP personnel.
4. Interruption of the power supply in Marawi City, resulting in a city-wide power outage.
5. Sporadic gunfights.
6. Ambush and burning of the Marawi Police Station, where a police car was taken.
7. Control over three bridges in Lanao del Sur, namely, Lilod, Bangulo, and Sauiaran, with the threat to bomb these bridges to preempt military reinforcement.
8. Occupation by persons connected with the Maute group of several areas in Marawi City, including Naga Street, Bangolo Street, Mapandi, and Camp Keithly, as well as Barangays Basak Malutlot, Mapandi, Saduc, Lilod Maday, Bangon, Saber, Bubong, Marantao, Caloocan, Banggolo, Barionaga, and Abubakar.
9. Road blockades and checkpoints at the Iligan City-Marawi City junction.
10. Burning of Dansalan College Foundation, Cathedral of Maria Auxiliadora, the nuns' quarters in the church, and the Shia Masjid Moncado Colony.
11. Taking of hostages from the church.

12. Killing of five faculty members of Dansalan College Foundation.
13. Burning of Senator Ninoy Aquino College Foundation and the Marawi Central Elementary Pilot School.
14. Overruning of Amai Pakpak Hospital.
15. Hoisting of ISIS flag in several areas.
16. Attacking and burning of the Filipino-Libyan Friendship Hospital.
17. Ransacking of a branch of Landbank of the Philippines, and commandeering an armored vehicle.
18. Information that about 75% of Marawi city has been infiltrated by lawless armed groups composed of the Maute Group and the Abu Sayyaf Group (ASG).
19. Report that eleven (11) members of the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP) have been killed in action, while thirty-five (35) have been seriously wounded.
20. Reports regarding the Maute group's plan to execute Christians.
21. Preventing Maranaos from leaving their homes.
22. Forcing young Muslims to join their group.

These circumstances, jointly considered by the President when he issued Proclamation No. 216, show that there was no arbitrariness in the President's decision to declare martial law and suspend the privilege of the writ of *habeas corpus* in Mindanao.

Indeed, in the case at bar, it is the Government which has the burden of proof. As defined by the rules, burden of proof is the "*duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law*."[16] Thus, it is the Government which

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[16] Rules of Court, Rule 131, Sec. 1. (emphasis supplied)

has the duty to justify the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao.

Given the Government's evidence, as reported in Proclamation No. 216 and the President's Report, there is no doubt that the Government was able to discharge its burden of proof. As such, the burden of evidence, or the burden of going forward with the evidence, has been shifted to petitioners.

Petitioners, particularly in the Lagman petition, allege that there is no sufficient factual basis for the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao as the facts, as stated in Proclamation No. 216 and the President's Report, are false, contrived, and inaccurate. They hark on the falsity and inaccuracy of five statements in Proclamation No. 216 and in the Report.

The general rule is that no evidence is needed for a negative allegation. However, "*[i]n determining whether an assertion is affirmative or negative, we should consider the substance and not the form of the assertion. A legal affirmative is not necessarily a grammatical affirmative, nor a legal negative a grammatical negative; on the contrary, a legal affirmative frequently assumes the shape of a grammatical negative, and a legal negative that of a grammatical affirmative*."[17]

Petitioners' allegations, though couched in a grammatical negative, is actually a legal affirmative — they are claiming that five statements in Proclamation No. 216 and the President's Report are false. Being a positive assertion, petitioners are required to present evidence on their claim.

Notably, however, the evidence presented by petitioners are mere online news articles. The *ponencia* correctly observed that said news articles are hearsay evidence, twice removed, and are thus without any probative value, unless offered for a purpose other than proving the truth of the matter asserted.[18]

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[17] Francisco, *Evidence*, p. 11.

[18] *Feria v. Court of Appeals*, 382 Phil. 412, 423 (2000).

Moreover, the five statements assailed by petitioners merely constitute a few of the numerous facts presented by the President in his report. Even assuming that those five statements are inaccurate, such inaccuracy will not cast arbitrariness on the President's decision since petitioners did not controvert the rest of the factual statements in Proclamation No. 216 and the President's Report.

In justifying the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao and not just in Marawi City, the President took note of the following circumstances in his report:

1. Mindanao has been the hotbed of violent extremism and a brewing rebellion for decades.

2. In more recent years, there have been numerous acts of violence challenging the authority of the duly constituted authorities, such as the **recent Zamboanga siege, Davao bombing, Mamasapano carnage, and bombings in Cotabato, Sultan Kudarat, Sulu, and Basilan, among others**. Two armed groups have figured prominently in all these — the ASG and the Maute group.

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

4. The events which transpired on 23 May 2017 in Marawi City, as earlier enumerated, were not simply a display

of force, but **a clear attempt to establish the groups' seat of power in Marawi City for their planned establishment of a DAESH wilayat or province covering the entire Mindanao**.

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

6. Law enforcement and other government agencies now face pronounced difficulty sending their reports to the Chief Executive due to the city-wide power outages [in Marawi City].

7. Personnel from the BJMP have been prevented from performing their functions.

8. Through the attack and occupation of several hospitals, **medical services in Marawi City have been adversely affected**.

9. The bridge and road blockades set up by the groups effectively **deprived the government of its ability to deliver basic services** to its citizens.

10. Troop reinforcements have been hampered, preventing the government from restoring peace and order in the area. Movement by both civilians and government personnel to and from the city is likewise hindered.

11. The **taking up of arms by lawless armed groups** in the area, with support being provided by foreign-based terrorist and illegal drug money, and their **blatant acts of defiance** which embolden other armed groups in Mindanao, have **resulted in the deterioration of public order and safety**

in Marawi City; they have likewise compromised the security of the entire Island of Mindanao.

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

These acts and circumstances, viewed wholistically, provided sufficient justification for the President to believe that rebellion existed in the whole of Mindanao, and that the security of the whole island was compromised. After receiving verified intelligence reports of the growing number of the Maute terrorist group, who are fully armed and prepared to wage combat to further their aims, coupled with the recent Zamboanga siege, Davao bombing, Mamasapano carnage, and the bombings in Cotabato, Sultan Kudarat, and Basilan, the President had probable cause to believe that rebel groups have, in recent years, openly attempted to deprive the President of his power to faithfully execute the laws and to maintain peace and order in the whole island of Mindanao.

As to the requirement of public safety, there are no fixed standards in determining what constitutes such interference to justify a declaration of martial law. However, in *Lansang v. Garcia*,[19] the Supreme Court declared that "*the magnitude of the rebellion has a bearing on the second condition essential to the validity of the suspension of the privilege*." With this as the yardstick, logic mandates that the extent of the rebellion shown by the above-mentioned circumstances, supported as they are by verified intelligence reports, was sufficient to reasonably conclude that public safety had been compromised in such manner as to require the issuance of Proclamation No. 216. The increasing number of casualties of civilians and government troops, the escalating damage caused to property owners in the places attacked by the rebel groups, and the

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[19] G.R. No. L-33964, 11 December 1991.

incessant assaults in other parts in Mindanao leave no doubt that such dangers to public safety justified the declaration of martial law and the suspension of the privilege.

To better understand who these rebel groups are, Professor Rommel C. Banlaoi (*Professor Banlaoi*), Chairman of the Board and Executive Director of the Philippine Institute for Peace, Violence and Terrorism Research (*PIPVTR*) and Head of its Center for Intelligence and National Security Studies,[20] gives an in-depth analysis:[21]

> Though Philippine government forces are actually fighting in Marawi City unified armed groups that have pledged allegiance to the Islamic State in Iraq and Syria (ISIS), the group that inevitably stands out in the ongoing military conflict is the **Maute Group**.
>
> The Maute Group is brazenly taking the center stage in the ongoing firefights because the main battlefield is Marawi City, the stronghold of the Maute family and the only Islamic city in the Philippines. This armed group holds this label because the whole Maute family is involved in the establishment of an ISIS-linked organization that their followers call the ***Daulah Islamiyah Fi Ranao (DFIR)*** **or the Islamic State of Lanao**. The Maute family proclaimed the DIFR in September 2014 after performing a *bay'ah* or a pledge of allegiance o ISIS leader, Abu Bakar Baghdadi.
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> To advance ISIS activities in the **provinces of Lanao**, the Maute Group formed two highly trained armed groups called *Khilafah sa Jabal Uhod* (Soldiers of the Caliphate in Mouth Uhod) and *Khilafah sa Ranao* (Soldiers of the Caliphate in Lanao) headed by the Middle-East educated Maute brothers: Omarkayam Maute and Abdullah Maute. The family organized a clandestine fortress on behalf of ISIS in its hometown in **Butig, Lanao del Sur**, and other satellite camps in the **neighboring towns of Lumbatan, Lambuyanague, Marogong, Masiu, and even Marawi City**.
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[20] Banloi, Al-Harakatul Al-Islamiyyah, *Essays on the Abu Sayyaf Group*, Third Edition, p. 137.

[21] The Maute Group and rise of family terrorism. www.rappler.com/though-leaders/173037-maute-group-rise-family-terrorism. Last visited on 3 July 2017.

In Butig, the Maute Group was able to set up military camps with complete training facilities for combatants, bombers, community organizers and religious preachers. In fact, most of the suspects in the September 2016 Davao City bombing received bomb trainings in Butig where the Maute family initially organized an army of at least 300 ISIS fighters recruited from disgruntled members of families previously associated with the **Moro Islamic Liberation Front (MILF)**.

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But from Butig, the Maute Group just discreetly formed several hideouts in Marawi City with the intention of controlling the whole city to serve as the headquarters of the Maute-supported the Daulah Islamiya Wilayatul Mashriq (DIWM), the so-called Islamic State Province in East Asia.

The DIWM is the umbrella organization of all armed groups in the Philippines that have pledged allegiance to ISIS.

Among the notorious armed groups in the DIWM are factions of the **Abu Sayyaf Group (ASG)** and the **Bangsamoro Islamic Freedom Fighters (BIFF)** as well as remnants of the **Anshar Khalifa Philippines (AKP)** and the **Khilafa Islamiyah Mindanao (KIM)**. ASG commander Isnilon Hapilon serves as the overall leader or Amir of DIWM, whose members are called by ISIS as the Soldiers of the Caliphate in East Asia.

Contrary to various reports, government forces are fighting in Marawi City not only the Maute Group but also other armed groups under the DIWM. There is no doubt, however, that key officials of DIWM are members of the Maute family. (emphasis supplied)

According to Professor Banlaoi, these rebel groups are banded together by their belief in the Bangsamoro struggle:[22]

All Muslim radical groups in the Philippines, regardless of political persuasion and theological inclination, believe in the Bangsamoro struggle. The term *Bangsa* comes from the Malay word, which means *nation*. Spanish colonizers introduced the term *Moro* when they confused the Muslim people of Mindanao with the "moors" of North of Africa. Though the use of the term *Bangsamoro* to describe the

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[22] Banloi, Al-Harakatul Al-Islamiyyah, *Essays on the Abu Sayyaf Group,* Third Edition, pp. 24-25.

"national identity" of *Muslims* in the Philippines is being contested, Muslim leaders regard the *Bangsamoro* struggle as the longest "national liberation movement" in the country covering almost 400 years of violent resistance against Spanish, American, Japanese, **and even Filipino rule**. This 400-year history of Moro resistance deeply informs ASG's current struggle for a **separate Islamic state**. (emphasis supplied)

Clearly, the situation in Mindanao shows not just simple acts of lawless violence or terrorism confined in Marawi City. The widespread armed hostilities and atrocities are all indicative of a rebellious intent to establish Mindanao into an Islamic state or an ISIS *wilayah*, separate from the Philippines and away from the control of the Philippine Government.

Lastly, the peculiarity of the crime of rebellion must also be noted. "*The crime of rebellion consists of many acts. It is a vast movement of men and a complex net of intrigues and plots. Acts committed in furtherance of rebellion though crimes in themselves are deemed absorbed in one single crime of rebellion.*"[23]

For purposes of declaring martial law and suspending the privilege of the writ of *habeas corpus*, it is absurd to require that there be public uprising in every city and every province in Mindanao before rebellion can be deemed to exist in the whole island if there is already reason to believe that the rebel group's culpable intent is for the whole of Mindanao and that public uprising has already started in an area therein.

The following exchange among the framers of the 1987 Constitution is enlightening:[24]

MR. DE LOS REYES. **As I see it now, the Committee envisions actual rebellion and no longer imminent rebellion. Does the committee mean that there should be actual shooting or actual attack on the legislature or Malacañang, for example?** Let us take

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[23] *People v. Dasig*, 293 Phil. 599, 608 (1993).

[24] *Record of the Constitutional Commission: Proceedings and Debates Vol. II*, pp. 412-413.

for example a contemporary event—this Manila Hotel incident everybody knows what happened. Would the committee consider that an actual act of rebellion?

MR. REGALADO. **If we consider the definition of rebellion under Articles 134 and 135 of the Revised Penal Code, that presupposes an actual assemblage of men in an armed public uprising for the purposes mentioned in Article 134 and by the means employed under Article 135.** I am not trying to pose as an expert about this rebellion that took place in the Manila Hotel, because what I know about it is what I only read in the papers. I do not know whether we can consider that there was really an armed public uprising. Frankly, I have my doubts on that because we were not privy to the investigations conducted there.

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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, that would only amount to sedition under Article 138, or it can only be considered a tumultuous disturbance.

MR. DE LOS REYES. The public uprisings are not concentrated in one place, which used to be the concept of rebellion before.

MR. REGALADO. No.

MR. DE LOS REYES. But **the public uprisings consist of isolated attacks in several places—for example in one camp here; another in the province of Quezon; and then in another camp in Laguna;**

no attack in Malacañang—but there is a complete paralysis of the industry in the whole country. If we place these things together, the impression is clear—that there is an attempt to destabilize the government in order to supplant it with a new government.

MR. REGALADO. **It becomes a matter of factual appreciation and evaluation.** The magnitude is to be taken into account when we talk about tumultuous disturbance, to sedition, then graduating to rebellion. All these things are variances of magnitude and scope. **So, the President determines, based on the circumstances, if there is presence of a rebellion.**

MR. DE LOS REYES. With the concurrence of Congress.

MR. REGALADO. **And another is, if there is publicity involved, not only the isolated situations. If they conclude that there is really an armed public 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 necessary to declare martial law because he can still resort to the lesser remedy of just calling out the Armed Forces for the purpose of preventing or suppressing lawlessness or rebellion. (emphasis and underlining supplied)

What can be gleaned from the foregoing is that there was a recognition that acts constituting modern rebellion, with the aid of technological advancements, could be undertaken surreptitiously or could deceptively appear random. However, when isolated acts in several areas tend to indicate an attempt to destabilize the government or deprive the President of his powers in a specific portion of the Philippine territory, it may be considered rebellion, even if the armed public uprising does not manifest in the whole intended territory. As mentioned by Commissioner Regalado, this is a matter of factual appreciation and evaluation; and based on the facts obtained by President Duterte through intelligence reports, there was sufficient basis to conclude that rebellion was taking place in the whole of Mindanao.

It is high time to revisit the Court's pronouncement in Fortun v. Macapagal-Arroyo.

Perchance it is propitious that through these cases, the Court is given the chance to rectify itself when it made the following pronouncement in *Fortun v. President Macapagal-Arroyo*:[25]

> Consequently, although the Constitution reserves to the Supreme Court the power to review the sufficiency of the factual basis of the proclamation or suspension in a proper suit, it is implicit that the Court must allow Congress to exercise its own review powers, which is automatic rather than initiated. Only when Congress defaults in its express duty to defend the Constitution through such review should the Supreme Court step in as its final rampart. The constitutional validity of the President's proclamation of martial law or suspension of the writ of habeas corpus is first a political question in the hands of Congress before it becomes a justiciable one in the hands of the Court.
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> If the Congress procrastinates or altogether fails to fulfill its duty respecting the proclamation or suspension within the short time expected of it, then the Court can step in, hear the petitions challenging the President's action, and ascertain if it has a factual basis.[26]

Contrary to the above pronouncement, nothing in Section 18, Article VII of the Constitution directs Congress to exercise its review powers prior to the judicial review of the Court. The judicial power of the Court, vested by Section 1, Article VIII of the Constitution, is separate and distinct from the review that may be undertaken by Congress. The judicial review by the Court is set in motion by the filing of an appropriate proceeding by a citizen. Indeed, the Constitution even requires that the Court promulgate its decision within thirty days from the filing of the appropriate proceeding. With this explicit directive in the Constitution, it is beyond doubt that the process of judicial review cannot be conditioned upon the exercise by Congress of its own review power.

All things considered, may I just emphasize that "*[m]artial law is founded upon the principle that the state has a right to*

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[25] 684 Phil. 526 (2012).

[26] *Id.* at 558-561.

protect itself against those who would destroy it, and has therefore been likened to the right of the individual to self-defense. It is invoked as an extreme measure, and rests upon the basic principle that every state has the power of self-preservation, a power inherent in all states, because neither the state nor society would exist without it."[27] Given the series of violent acts and armed hostilities committed and still being committed by the Maute terror group, the Abu Sayyaf group, and the other armed rebel groups, which hostilities have the end view of establishing a DAESH/ISIS *wilayah* or province,[28] no less than a declaration of martial law is to be expected on the part of a circumspect President to whom we entrust our nation's safety and security.

Thus, I vote to **DISMISS** these petitions.

SEPARATE CONCURRING OPINION

TIJAM, *J.*:

I concur in the result reached by Mr. Justice Del Castillo in his *ponencia*. I submit this opinion to offer my views concerning certain issues.

All three petitions seek this Court's judicial review of Proclamation No. 216 dated May 23, 2017 (Proclamation), pursuant to the third paragraph of Section 18, Article VII of the 1987 Constitution which reads:

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

Although mere citizenship gives *locus standi*, there must be *prima*

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[27] *Aquino, Jr. v. Ponce Enrile*, 158-A Phil. 1, 65 (1974).

[28] Consolidated Comment dated 12 June 2017.

***facie* showing of insufficiency of the factual basis for the Proclamation.**

As a rule, a party must be able to establish a direct and personal interest in the controversy to clothe him with the requisite *locus standi*. He must be able to show, not only that the government act is invalid, but also that he sustained or is in imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way.[1] The Constitution, however, has relaxed this rule with respect to petitions assailing the sufficiency of the factual basis of a proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, requiring only that the petitioner be any Filipino citizen. The exception was so provided to facilitate the institution of any judicial challenge to such proclamation or suspension. This is just one of the several safeguards placed in Section 18, Article VII of the Constitution to avert, check or correct any abuse of the extraordinary powers, lodged in the President, of imposing martial law and suspending the privilege of the writ of *habeas corpus*. Nevertheless, this should not result in the Court taking cognizance of every petition assailing such proclamation or suspension, if it appears to be *prima facie* unfounded. That the Court has the authority to outright deny patently unmeritorious petitions is clear from the above-quoted provision, which uses the permissive term "may" in referring to the Court's exercise of its power of judicial review. The term "may" is indicative of a mere possibility, an opportunity or an option.[2] When used in law, it is directory and operates to confer discretion.[3]

Indeed, given that any citizen can file the action, it must be required that the petition should allege sufficient grounds for the Court to take further action. For instance, a petition that

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[1] *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014.

[2] *Social Security Commission v. Court of Appeals*, G.R. No. 152058, September 27, 2004.

[3] See *Office of the Ombudsman v. Andutan, Jr.*, G.R. No. 164679, July 27, 2011.

simply invokes the court's judicial power to review the proclamation without alleging specific grounds, or is based on a general, unsubstantiated and conclusory allegation that the President was without or had false factual basis for issuing the proclamation or suspension, could be dismissed outright. Otherwise, in the absence of a personal stake or direct injury which will ordinarily infuse one with legal standing to file the case, the Court can theoretically be saddled with hundreds of petitions and be compelled to entertain them simply because they were filed. The requirement of a *prima facie* showing of insufficiency of the factual basis in the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* becomes even more important if, as the *ponencia* declares, this Court's review is to be confined only to the Proclamation, the President's Report to Congress, and the pleadings.

Action questioning the sufficiency of the factual basis of the Proclamation is *sui generis*.

I am in agreement with the *ponente* in treating the proceedings filed pursuant to the third paragraph of Section 18, Rule VII of the 1987 Constitution as *sui generis*.

The action questioning the sufficiency of the factual basis of the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* is neither a criminal nor a civil proceeding. Its subject is unique unto itself as it involves the use of an extraordinary power by the President as Commander-in-Chief and matters affecting national security. Furthermore, the exercise of such power involves not only the executive but also the legislative branch of the government; it is subject to automatic review by Congress which has the power to revoke the declaration or suspension. To ensure that any unwarranted use of the extraordinary power is promptly discontinued, the Constitution limits the period for the Court to decide the case. And to facilitate a judicial inquiry into the declaration or suspension, the Constitution allows any citizen to bring the action. The Constitution likewise specifies the ground upon which this particular action can be brought, i.e. the sufficiency

of the factual basis of the declaration or suspension. As an express exception to the rule that the Court is not a trier of facts, the Court is asked to make a factual determination, at the first instance, of whether the President had adequate reasons to justify the declaration or suspension. Moreover, as an exception to the doctrine of hierarchy courts, the Constitution provides that the case be filed directly with this Court. Finally, the Court's jurisdiction was conferred as an additional safeguard against any abuse of the extraordinary power to declare martial law and suspend the privilege of the writ of *habeas corpus*. Taken together, these elements make the Court's jurisdiction under Section 18 *sui generis*.

Verily, considering the magnitude of the power sought to be checked or reviewed, bearing in mind the evil sought to be prevented by constitutionalizing the Court's power to inquire into the sufficiency of the factual basis of the declaration or suspension, and taking into account the requirements specified by the Constitution for such review, an action brought pursuant to the third paragraph of Section 18, Article VII of the 1987 Constitution is indeed a class of its own.

Accordingly, any action that invokes this Court's jurisdiction under Section 18, Article VII of the 1987 Constitution to determine the sufficiency of the factual basis of the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus*, satisfies the constitutional requirement that the challenge be made "in an appropriate proceeding."

That a proceeding under Section 18, Article VII is not included in the enumeration of actions over which the Court has jurisdiction under Section 5, Article VIII of the Constitution is of no moment. After all, the Court's judicial power, as defined in the same Article, is not an exhaustive list of this Court's jurisdiction. The definition provides that "(j)udicial power **includes** the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the

Government." It, therefore, does not preclude this Court from assuming such jurisdiction as may have been conferred elsewhere in the Constitution but not specifically indicated in Article VIII.

Congress' action precedes the Court's review but Congressional imprimatur is not conclusive on the Court. The Court's independence is not necessarily compromised by awaiting Congressional action.

Addressing respondents' assertion that due deference must be given to the actions of the two co-equal branches of government — the President's resort to martial law and suspension of the privilege of the writ of *habeas corpus*, and Congress' support thereof, the *ponencia* stresses the independence of this Court's judicial review and holds that such review can be made simultaneously with and independently from Congress' power to revoke. The *ponencia*, thus, would have the Court re-examine, reconsider and set aside its pronouncement in *Fortun v. Macapagal-Arroyo*[4] that the Court "must allow Congress to exercise its own review powers," and should hear petitions challenging the President's action only when Congress defaults in its duty to review the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*.

I agree with the *Fortun* pronouncement insofar as it instructs that the Court must allow Congress to exercise its own review powers ahead of the Court's inquiry. I do not agree, however, that the Court can "step in" only when Congress **defaults** in its duty to review. The Court can inquire into the sufficiency of the factual basis of the proclamation or suspension not only when Congress fails to undertake such review, but also if it decides to support the proclamation or suspension as in this case. The Court is not bound by Congress' decision not to revoke the proclamation or suspension. The system of checks and balances as built in Section 18, Article VII demands that the

[4] G.R. No. 190293, March 20, 2012.

proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* be within reach of judicial scrutiny. It is only when Congress decides to revoke the proclamation or suspension that the Court shall withhold review as such revocation will render any prayer for the nullification of the proclamation or suspension moot; and, even if the Court finds the existence of the conditions for the proclamation or suspension, it cannot require or compel the President to exercise his martial law or suspension power.

The exercise by the President, Congress and the Court of their powers under Section 18, Article VII is sequential. Accordingly, Congress' review must precede judicial inquiry, for the following reasons:

First. As observed in *Fortun*, the President's power to declare martial law or to suspend the privilege of the writ of *habeas corpus* is essentially shared with Congress. Under the Constitution, Congress has the power to revoke the declaration or suspension, and the President is absolutely without authority to set the revocation aside. As stated in *Fortun*, since only Congress can maintain the declaration or suspension based on its own evaluation of the facts, the President and Congress, in a sense, exercise the martial law and suspension power jointly. Thus, Congress' review of the declaration or suspension must perforce take place before the Court's judicial examination of the factual basis of the President's action.

Second. As a measure to rein in the President's use of the extraordinary powers under Section 18, Article VII, the framers of the 1987 Constitution originally intended for the martial law and suspension power to be exercised by the President **with the concurrence of Congress**.[5] They intended for Congress to act, not even sequentially, but jointly, in the President's exercise of the martial law or suspension power. In lieu of such concurrence, however, they ultimately settled on Congress' revocation power, taking into account that the President would

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[5] Deliberations on the 1987 Constitution, Vol. II, pp. 485 & 732 (Explanations of Commissioners Sarmiento and Quesada on their votes).

need to act immediately if there is indeed rebellion or invasion and public safety is endangered. That the framers of the Constitution, if not for such time element, would have Congress take part in the decision whether to exercise the martial law or suspension power, supports the view that Congress' action should precede judicial inquiry.

Third. The Constitution requires the President to submit his Report to Congress, either in person or in writing, within forty-eight (48) hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*. After receiving the President's Report, Congress' review of the proclamation or suspension is automatic. Judicial review, on the other hand, has to be initiated by a citizen. The imposition on the President of a duty to report to Congress within such a short period from the proclamation or suspension, and Congress' automatic review of the Report, show that Congress is expected to initially act on the President's proclamation or suspension for the purpose of deciding whether it must continue.

Fourth. As safeguards or remedies against an unjustified use of the extraordinary powers under Section 18, Article VII, the Constitution provides for both Congressional review, which is automatic, and judicial review, which must be initiated by any citizen. Being automatic, Congressional review of the proclamation or suspension is instantly an available remedy to address any misuse of the extraordinary powers under Section 18, Article VII. With its power of revocation which the President cannot set aside, Congress' action offers an adequate remedy against any unwarranted use of the martial law and suspension power. To ensure an orderly procedure and in the interest of preserving comity with a co-equal branch of the government, Congressional review of the proclamation or suspension must be allowed to take place before the Court intervenes.[6] Indeed, it is sound practice to exhaust all available and adequate remedies before resort to judicial review.

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[6] The same principle has been applied in upholding the doctrine of exhaustion of administrative remedies.

Fifth. The Court should not pre-empt Congress' possible revocation of the President's proclamation or suspension. Furthermore, conflicting decisions from the Court and Congress, which will not be in the interest of judicial stability or Congressional independence, will be avoided. Indeed, it will not promote judicial stability if Congress can still exercise its power to revoke notwithstanding a decision from this Court finding sufficient factual basis for the proclamation or suspension. Furthermore, if the Court decides to nullify the proclamation or suspension ahead of Congress' action, Congress may still assert its independence to evaluate the President's decision. These may lead to a constitutional crisis involving two (2) co-equal branches of government, each endowed with power to review the President's action. Thus, for the sake of orderly procedure, one must precede the other, and since the Court has been considered as the "last bulwark of justice and democracy,"[7] it is but logical that it should undertake its review after the legislature has performed its duty. This is consistent with the principle of separation of powers which has been explained as follows:

> The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government. x x x And the judiciary in turn, with **the Supreme Court as the final arbiter, effectively checks the other departments** in the exercise of its power to determine the law, and hence to declare executive and legislative acts void if violative of the Constitution.[8] (Emphasis supplied)

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[7] *Roxas v. De Zuzuarregui, Jr.*, G.R. No. 152072, July 12, 2007.

[8] *Francisco, Jr. v. House of Representatives*, G.R. No. 160261, November 10, 2003, citing *Angara v. Electoral Commission*, 63 Phil. 139 (1936).

However, consistent with *Fortun*, should Congress procrastinate or default on its duty to review, the Court will proceed to hear petitions challenging the President's action.

To be sure, legislative imprimatur on the proclamation or suspension will not consequentially bring such proclamation or suspension outside the ambit of judicial review. It should be noted that under Section 18, Article VII, even **extensions** of the proclamation or suspension, which only Congress can declare upon the Presidents initiative, can be the subject of this Court's inquiry in an appropriate proceeding that questions the factual basis thereof.

It must be stressed, too, that the Court's independence will not be compromised by allowing Congressional review to take place before the Court exercises its judicial authority. This Court's independence will still be preserved as it will not be bound by the findings of Congress but will have to make an independent assessment of the facts upon which the President relied in issuing his proclamation or suspension. There is no abdication of duty on the part of the Court as it will proceed to hear the case if Congress decides not to revoke the Proclamation.

Any concern that the Court may not be able to decide within the thirty-day (30) period (from filing of the appropriate proceeding), as fixed by the Constitution, if the exercise of the powers under Section 18, Article VII is to be sequential, has been addressed in *Fortun*. The Court explained that since Congress is expected to act swiftly upon submission of the President's Report, the 30-day period would be enough for the Court to exercise its review power, and in any case, the expiration of the period would not divest the Court of its jurisdiction since jurisdiction once acquired is not lost until the case has been terminated.

At this juncture, it bears noting that while the *Fortun* pronouncement, as quoted in the *ponencia*, speaks of the Court's intervention taking place only when Congress defaults on its duty to review the President's action, subsequent statements in the *Fortun* Decision suggests that the Court would still hear

petitions questioning the factual basis of the proclamation or suspension even after Congress' review, thus:

> But **those 30 days, fixed by the Constitution, should be enough for the Court to fulfill its duty without pre-empting congressional action**. Section 18, Article VII, requires the President to report his actions to Congress, in person or in writing, within 48 hours of such proclamation or suspension. In turn, the Congress is required to convene without need of a call within 24 hours following the Presidents proclamation or suspension. **Clearly, the Constitution calls for quick action on the part of the Congress. Whatever form that action takes, therefore, should give the Court sufficient time to fulfill its own mandate to review the factual basis of the proclamation or suspension within 30 days of its issuance.** (Emphasis supplied)

Therefore, based on the entirety of its Decision in *Fortun*, it cannot be said that the Court has, as the *ponencia* states, "abdicated from its bounden duty to review" the factual basis of the proclamation or suspension, or "surrendered the same to Congress."

The Court cannot supplant the President's choice of which of the three powers under Section 18, Article VII of the Constitution to use.

Section 18, Article VII of the 1987 Constitution gives the President, under prescribed conditions, the powers to call out the armed forces, to suspend the privilege of the writ of *habeas corpus*, and to place the Philippines or any part thereof under martial law.

I agree with the *ponente* in holding that this Court's review cannot extend to calibrating the President's decision pertaining to which of said powers to avail given a set of facts or conditions.

It is not within this Court's power to rule that the President should have used his "calling out" powers instead. To do so is to encroach on an entirely executive prerogative and violate the principle of separation of powers. It is not this Court's duty to supplant the President's decision but merely to determine

whether it satisfies the conditions prescribed in the Constitution for the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus*.

The Court, in exercising its power of judicial review, is not imposing its own will upon a co-equal body but rather simply making sure that any act of government is done in consonance with the authorities and rights allocated to it by the Constitution.[9]

Recommendation of or consultation with the Defense Secretary or other high-ranking military officials is not a condition imposed by the Constitution.

Indeed, as the *ponencia* holds, a plain reading of Section 18, Article VII of the Constitution will reveal no such condition for the President's exercise of the power to proclaim martial law or to suspend the privilege of the writ of *habeas corpus*. It should also be pointed out that as the Chief Executive, the President has access to all kinds of information, not necessarily from the military. Furthermore, the President himself is from Mindanao and has served as a local chief executive of Davao City for many years. It cannot be said, therefore, that he is not privy to the realities on the ground in Mindanao and that his knowledge is superficial or will not enable him, absent a recommendation from or consultation with military officials, to make an informed judgment in the exercise of the martial law and suspension powers under Section 18, Article VII.

Constitutionality of the Proclamation is determined under the sufficiency of factual basis test.

Based on the *ponencia*, there are two (2) tests to determine the constitutionality of a declaration of martial law or a suspension of the privilege of the writ of *habeas corpus*: the arbitrariness test, as applied in the 1971 case of *Lansang v.*

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[9] *Biraogo v. The Philippine Truth Commission*, G.R. No. 192935, December 7, 2010.

Garcia,[10] and the sufficiency of factual basis test, introduced in Section 18, Article VII of the 1987 Constitution.

Section 18, however, specifies the scope of this Court's judicial review, i.e., the determination of the sufficiency of the factual basis of the imposition of martial law or the suspension of the privilege of the writ of *habeas corpus*. The factual basis, as provided in the Constitution, lies in the existence of an actual rebellion or invasion where public safety requires the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus*. The Court's review is, thus, confined to the determination of whether the facts upon which the President relied in issuing such declaration or suspension show a case of actual rebellion or invasion that poses a danger to public safety. The Constitution does not require the Court to look into the fairness or arbitrariness of such imposition or suspension. Otherwise, the framers of the Constitution would have stated so, considering that they introduced the concept of judicial review of grave abuse of discretion under Section 1 of Article VIII of the Constitution. In other words, in reviewing the President's Proclamation, this Court's criterion is factual and will not involve a determination of whether the President acted in a whimsical, capricious or despotic manner by reason of passion or personal hostility.

Petitioners have the burden of proving insufficiency of factual basis.

Under our Rules of Court, it is presumed that an official duty has been regularly performed.[11] It has likewise been held that a public officer is presumed to have acted in good faith in the performance of his duties.[12] It is also a settled rule that he who alleges must prove,[13] and the rule applies even to negative assertions.[14]

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[10] G.R. No. L-33964, December 11, 1971.

[11] Section 2(m), Rule 131.

[12] *Araullo v. Aquino*, G.R. No. 209287, February 3, 2015.

[13] *Republic v. Roque, Jr.*, G.R. No. 203610, October 10, 2016.

[14] *People v. Castillo*, G.R. Nos. 131592-93, February 15, 2000; *Cheng v. Javier*, G.R. No. 182485, July 3, 2009.

Thus, the burden of proving that the President's factual basis for declaring martial law and suspending the privilege of the writ of *habeas corpus* in Mindanao was insufficient, lies with the petitioners.

Notably, in *Sanlakas v. Executive Secretary*,[15] involving President Gloria Macapagal-Arroyo's declaration of a state of rebellion, the Court decided the case on the premise that petitioners therein had the burden of proving that the President exceeded her authority as Chief Executive or Commander-in-Chief in issuing such declaration and in calling out the armed forces to suppress the rebellion, thus:

> It is not disputed that the President has full discretionary power to call out the armed forces and to determine the necessity for the exercise of such power. While the Court may examine whether the power was exercised within constitutional limits or in a manner constituting grave abuse of discretion, none of the petitioners here have, by way of proof, supported their assertion that the President acted without factual basis.
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> The petitions do not cite a specific instance where the President has attempted to or has exercised powers beyond her powers as Chief Executive or as Commander-in-Chief. The President, in declaring a state of rebellion and in calling out the armed forces, was merely exercising a wedding of her Chief Executive and Commander-in-Chief powers. These are **purely executive** powers, vested on the President by Sections 1 and 18, Article VII, as opposed to the **delegated legislative** powers contemplated by Section 23 (2), Article VI.

In the same vein, the Court, in *Ampatuan v. Puno*,[16] involving President Macapagal-Arroyo's Proclamation 1946 which placed the Provinces of Maguindanao and Sultan Kudarat and the City of Cotabato under a state of emergency, and called out the Armed Forces of the Philippines and the Philippine National Police to prevent and suppress all incidents of lawless violence therein,

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[15] G.R. No. 159085, February 3, 2004.

[16] G.R. No. 190259, June 7, 2011.

the burden of proof was likewise placed upon the petitioners questioning the President's decision, thus:

> Here, petitioners failed to show that the declaration of a state of emergency in the Provinces of Maguindanao, Sultan Kudarat and Cotabato City, as well as the President's exercise of the calling out power had no factual basis. They simply alleged that, since not all areas under the ARMM were placed under a state of emergency, it follows that the take over of the entire ARMM by the DILG Secretary had no basis too.
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> Since petitioners are not able to demonstrate that the proclamation of state of emergency in the subject places and the calling out of the armed forces to prevent or suppress lawless violence there have clearly no factual bases, the Court must respect the President's actions.

Considering that the foregoing cases also involve the exercise of the President's power as Commander-in-Chief and they likewise inquire into the factual basis of the executive action, the Court's ruling that the burden of proof lies with the petitioners impugning the exercise of such power, should similarly apply to the instant case.

Petitioners failed to discharge their burden of proof.

Petitioners were unable to show that the President had no sufficient factual basis in issuing Proclamation No. 216. The attempt of petitioners in G.R. No. 231658 and 231771 to discredit some of the President's reasons for issuing his Proclamation must perforce fail as it was based merely on news articles they found online. Such news reports amount to "hearsay evidence, twice removed" and are, therefore, "not only inadmissible but without any probative value at all whether objected to or not, unless offered for a purpose other than proving the truth of the matter asserted."[17] Indeed, it appears that not even an effort to verify said news reports was made, or affidavits of witnesses presented, to directly refute the President's factual assertions.

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[17] *Feria v. Court of Appeals*, G.R. No. 122954, February 15, 2000.

In any event, of the several incidents mentioned by the President in his Proclamation and Report to Congress, petitioners in G.R. No. 231658 imputed falsity and inaccuracy only to some of the events so stated. Granting *arguendo* that the President's claims as regards these events were inaccurate or false, the other incidents enumerated in the President's Proclamation and Report to Congress still establish conditions upon which the President can exercise his martial law and suspension powers.

Furthermore, reliance of petitioners, in G.R. No. 231658, on the maxim of *falsus in uno, falsus in omnibus* is greatly misplaced. Firstly, their allegation of falsehood, based on mere newspaper reports, is unsubstantiated. Secondly, the legal maxim of *falsus in uno, falsus in omnibus* is not a positive rule of law and is not strictly applied in this jurisdiction.[18] Thirdly, it has been held that said principle presupposes the existence of a positive testimony on a material point contrary to subsequent declarations in the testimony.[19] It has not been shown, however, that there was a self-contradiction or an inconsistency in the President's rationale for issuing Proclamation No. 216. Finally, for the principle of *falsus in uno, falsus in omnibus* to apply, there should be a conscious and deliberate intention to falsify.[20] Petitioners have not been able to establish that there was at least a conscious and deliberate intention on the part of the President to falsify his reasons for declaring martial law and suspending the privilege of the writ of *habeas corpus*.

Proclamation No. 216 and the President's Report to Congress sufficiently establish the existence of actual rebellion that endangers public safety.

The conditions prescribed in the Constitution for a valid proclamation of martial law or suspension of the privilege of

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[18] *Northwest v. Chiong*, G.R. No. 155550, January 31, 2008.

[19] *Id*.

[20] *People v. Mirandilla, Jr.*, G.R. No. 186417, July 27, 2011.

the writ of *habeas corpus* are as follows: (1) there must be an actual invasion or rebellion; and (2) public safety requires the proclamation or suspension.

I agree that considering the urgency of the situation, which may not give the President opportunity to verify with precision the facts reported to him, the President only needs to be satisfied that there is probable cause to conclude that the aforesaid conditions exist. As a standard of proof, probable cause has been defined thus:

> x x x Probable cause is meant such set of facts and circumstances, which would lead a reasonably discreet and prudent man to believe that the offense charged in the Information, or any offense included therein, has been committed by the person sought to be arrested. In determining probable cause, **the average person weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused**. Probable cause demands more than bare suspicion, but it requires less than evidence that would justify a conviction.[21] (Emphasis supplied)

There was probable cause for the President to believe that rebellion was being committed.

The facts, upon which the President based his Proclamation and which have not been satisfactorily controverted, show that more likely than not, there was rebellion and public safety required the exercise of the President's powers to declare martial law and to suspend the privilege of the writ of *habeas corpus* in Mindanao.

Article 134 of the Revised Penal Code, as amended by Republic Act No. 6968, defines "rebellion" as follows:

> Article 134. *Rebellion or insurrection — How committed.* — The crime of rebellion or insurrection is committed by **rising and taking**

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[21] *Clay & Feather International, Inc. v. Lichaytoo*, G.R. No. 192105, May 30, 2011.

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**. (Emphasis supplied.)

That there is an armed uprising in Marawi City is not disputed. The bone of contention lies in the element of culpable purpose.

However, the facts and incidents, as put forward by the President in his Proclamation and Report to Congress, show that there is probable cause to conclude that the uprising is aimed at removing Mindanao from its allegiance to the Philippine Government and depriving the President of his powers over the territory.

As reported by the President, the Maute Group, along with the Abu Sayyaf Group and their sympathizers, attacked, laid siege and burned both government and privately-owned facilities in Marawi City, including hospitals and schools, and caused casualties to both government personnel and civilians. They took hostages and searched for Christians to execute. They prevented Maranaos from leaving their homes, and forced young male Muslims to join their groups. They occupied several areas in Marawi City and set up road blockades and checkpoints at the Iligan City-Marawi City junction. These acts, viewed in the light of the Maute Group's declaration of allegiance to the DAESH[22] and their brazen display of the ISIS[23] flag in several areas in Marawi City, sufficiently establish the Group's intention to remove the City's allegiance to the Philippine Government, to reinforce their Group and create a stronghold in Marawi City, and to establish a DAESH *wilayat* or province in Mindanao.

Furthermore, as the President stated in his Report to Congress, the Maute Group and their sympathizers had been responsible for cutting vital lines of transportation and power, which

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[22] Acronym of a group's full Arabic name, al-Dawla al-Islamiya fi al-Iraq wa al-Sham, translated as "Islamic State in Iraq and Syria."

[23] Islamic State of Iraq and Syria.

prevented the government from delivering basic services and from sending troop reinforcements to restore peace in Marawi City. By such act, the Maute Group and their cohorts clearly intended to prevent the Executive from exercising its functions to deliver basic services and to maintain peace and order in Marawi City.

Clearly, therefore, by the standard of probable cause, the culpable purpose required under Article 134 of the Revised Penal Code has been shown to exist.

Petitioners in G.R. No. 231658 also argue that the alleged siege of Marawi City was actually an armed resistance, not to remove the City's allegiance from the Republic, but to shield a high profile terrorist, Isnilon Hapilon, following a government operation to capture him. The argument, however, fails to persuade. The acts perpetrated by the Maute Group are more consistent with the intention to establish a seat of power in Marawi City, than an effort to shield Hapilon from capture. Indeed, it taxes credulity to assume that the act of setting a school on fire, or of recruiting young male Muslims to strengthen the group's force, or the killing of teachers, as cited in the President's Report, is simply for the purpose of shielding the group's leader. Thus, if anything, the government operation only set in motion the group's plan to lay siege and take over Marawi City for and in the name of ISIS. In fact, the group's resources and weapons, which have enabled them to continue fighting the Philippine military more than a month since Proclamation No. 216. was issued, confirm that they were preparing to carry out an armed uprising to establish a DAESH *wilayat*.

The same petitioners likewise maintain that the Maute Group's act of hoisting the DAESH flag is mere cheap propaganda and is not indicative of removing Marawi City from its allegiance to the Republic or of depriving the President of his powers and prerogatives. On the contrary, this act, in light of the group's declaration of allegiance to DAESH, demonstrated an intention to subject the city to the DAESH's rule. It is not even necessary that the DAESH recognize the group or acknowledge its allegiance; what matters is the group's intent to bring the City

under its regime. The brazen display of the DAESH flag in several areas of Marawi City cannot but be considered as laying claim over the City for and on behalf of DAESH. To dismiss it as cheap propaganda may not be prudent and may not serve the best interest of national security.

Public safety requires the proclamation of martial law and the suspension of the privilege of the writ of habeas corpus.

The events as reported by the President to Congress show that the violent attacks of the Maute group and its sympathizers have resulted in destruction of government and privately-owned properties as well as human casualties. The government has been prevented from delivering basic services and from sending troop reinforcements to restore peace in Marawi City. Civilians and government personnel have no easy access to and from the City. All of these were taking place as part of the plan of the Maute Group and its sympathizers to establish their seat of power in Marawi City and create a DAESH *wilayat* in Mindanao. Clearly, the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* have been firmly grounded on the requirements of public safety.

Scope of Review

I agree that past events may be considered in justifying the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* if they are connected or related to the situation at hand. Such events may also be considered if material in assessing the extent and gravity of the current threat to national security.

In Proclamation No. 216, the President averred that the Maute terrorist group who attacked government and private facilities, inflicted casualties, and hoisted the DAESH/ISIS flag in several areas, in Marawi City, on May 23, 2017, is the very same group that had been responsible for a series of violent acts for which the President issued Proclamation No. 55 in February 2016, declaring a state of emergency on account of lawless violence

in Mindanao. These violent acts included an attack on the military outpost in Butig, Lanao del Sur in February 2016, the killing and wounding of several soldiers, and the mass jailbreak in Marawi City in August 2016 which freed the group's comrades and other detainees.

These past incidents are clearly relevant to the assessment of the Maute group's intention and capability to implement a plan of establishing a DAESH *wilayat* in Mindanao.

Similarly, events subsequent to the issuance of the proclamation or suspension may be considered in the Court's determination of the sufficiency of the factual basis. Subsequent events confirm the existence or absence of the conditions for the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*.

I have my reservations, however, as regards the statement in the *ponencia* that the Court's review is confined to the sufficiency, not accuracy, of the information at hand during the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus*. The accuracy or veracity of the information upon which the President based his decision, if properly challenged before the Court, would have to be passed upon and determined.

Rebellion and Terrorism

It is true, as Mr. Justice Leonen pointed out, that martial law is not a constitutionally prescribed solution to terrorism. This is so, however, because terrorism was not as pronounced or prevalent when the 1987 Constitution was drafted as it is today. I reckon that if it were it would have been considered and indeed included by the framers of the Constitution among the conditions for the exercise of the martial law power, given that like rebellion or invasion, it is inimical to national security, and because it is, as described in Republic Act No. (RA) 9372,[24] a crime against the Filipino people and against humanity.[25]

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[24] Human Security Act of 2007.

[25] Section 2, RA 9372.

Terrorism, under RA 9372 is committed when specific crimes under the Revised Penal Code (RPC) or special laws, are perpetrated, thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand. Rebellion under Article 134 of the RPC, as well as murder, kidnapping and arson, are some of the offenses subsumed in the crime of terrorism.

However, while rebellion is included in the crime of terrorism under RA 9372, said law did not have the effect of obliterating rebellion as a crime in itself. Thus, even as rebellion can qualify as an act of terrorism, it does not cease to be a ground for the declaration of martial law if the elements under the RPC are present. In this case, it has been established by the standard of probable cause that the armed uprising of the Maute group and its sympathizers is for the purpose of establishing as DAESH *wilayat* or province in Mindanao. The argument, therefore, that the acts of the Maute group and their sympathizers constitute mere acts of terrorism, outside the ambit of the martial law power, will not hold water.

In fact, RA 9372 specifically states that "(n)othing in (said) Act shall be interpreted as a curtailment, restriction or diminution of constitutionally recognized powers of the executive branch of the government." It can be deduced, therefore, that even if rebellion qualifies as terrorism, the President is still empowered to exercise the martial law and suspension powers under Section 18, Article VII of the 1987 Constitution.

"(A)s set of rules and principles, (the International Humanitarian Law) aims, **for humanitarian reasons**, to limit the effects of armed conflict."[26] If the reason for the law is to protect human rights and to promote human welfare, it cannot possibly be a source of protection for the acts of rebellion perpetrated by the Maute group and its cohorts since their acts

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[26] http://www.ijrcenter.org/international-humanitarian-law/ (Last accessed July 5, 2017).

constitute or qualify as acts of terrorism. Terrorism is the very antithesis of human rights.[27]

Proclamation covering the entire Mindanao has sufficient factual basis.

In his Report to Congress, the President, in part, stated:

(a) The attacks of the Maute group and their sympathizers on May 23, 2017 constitute not simply a display of force, but a clear attempt to establish the group's seat of power in Marawi City for their planned establishment of a DAESH *wilayat* or province covering the entire Mindanao.

(b) The acts of the Maute group and their sympathizers have emboldened other armed groups in Mindanao, resulted in the deterioration of public order and safety in Mindanao, and compromised the security of the entire Mindanao.

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

(d) The Maute terrorist group is composed of 263 fully armed members (as of the end of 2016). It chiefly operates in Lanao del Sur but has extensive networks with foreign and local armed groups such as the Jemaah Islamiyah, Mujadin Indonesia Timur and the Abu Sayyaf Group. It adheres to the principles of DAESH and has declared its allegiance to the DAESH. Reports show that the group receives financial and logistical support from foreign-based terrorist groups, the ISIS in particular, and from illegal drug money. And,

(e) Considering the network and alliance-building activities among terrorist groups, local criminals and lawless armed men, the siege of Marawi City is a vital step towards achieving absolute control over the entirety of Mindanao.

In arriving at these conclusions, the President is presumed to have taken into account intelligence reports, including

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[27] "A Human Rights Watch Briefing Paper for the 59th Session of the United Nations Commission on Human Rights March 25, 2003," https://www.hrw.org/legacy/un/chr59/counter-terrorism-bck.pdf (last accessed July 5, 2017).

classified information, regarding the actual situation on the ground. Absent any countervailing evidence, these statements indicate a plan and an alliance among armed groups to take over and establish absolute control over the entire Mindanao. Thus, there appears to be sufficient basis for the imposition of martial law and the suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao.

In their Consolidated Comment, respondents averred that the intelligence reports submitted by the Armed Forces of the Philippines to the President showed that the Maute Group has banded with three other radical terrorist organizations (the Abu Sayyaf Group from Basilan, Ansarul Khilafah Philippines from Saranggani and Sultan Kudarat, and the Bangsamoro Islamic Freedom Fighters from Maguindanao); that due to their uniform pledge of allegiance to ISIS and a common purpose of establishing an ISIS *wilayah* in Mindanao, an alliance was formed among these rebel groups; that Hapilon was appointed *emir* or leader of all ISIS forces in the Philippines and hailed as the *mujahid* or leader of the soldiers of the Islamic State in the Philippines; that Hapilon performed a symbolic *hijra* or pilgrimage to unite the ISIS-inspired groups in mainland Mindanao; that after Hapilon was appointed as *emir*, multiple atrocities, including bombings, abductions and beheadings, were committed in the wake of the consolidation of the forces of said rebel groups and foreign terrorists; that these widespread atrocities were to fulfill the last step before they are presented to the ISIS for approval and recognition; and that said rebel groups chose Marawi City as the starting point of establishing its *wilayah* in Mindanao because it is at the heart of Mindanao, within reach of nearby provinces and cities, and because of its cultural and religious significance to Muslims.

It does not appear that the admissibility, weight or credibility of these reports have been challenged in such manner as to override the presumption of regularity in the exercise of the President's power to declare martial law and to suspend the privilege of the writ of *habeas corpus*. Likewise, a demand for respondents to validate these findings or reports does not appear to have been made. As they stand, these findings will reasonably

engender a belief that the rebel groups seek and intend to make Mindanao an ISIS *wilayah* or province, with Marawai City, given its strategic location and cultural and religious significance, as the starting point of their occupation in the name of ISIS. Considering the alliance of these rebel groups, the violent acts they have perpetrated in different parts of Mindanao for the shared purpose of establishing an ISIS *wilayah*, and the extent of the territory they intend to occupy in the name of ISIS, it cannot be said that the imposition of martial law over the entire Mindanao is without factual basis.

The location of the armed uprising should not be the only basis for identifying the area or areas over which martial law can be declared or the privilege of the writ of *habeas corpus* can be suspended. Thus, that the subject armed uprising appears to be taking place only in Marawi City should not be a reason to nullify the declaration or suspension over the rest of Mindanao. Foremost, it has been shown that there is factual basis to include the rest of Mindanao in the Proclamation. So also, the Constitution does not require that the place over which the martial law or suspension will be enforced, should be limited to where the armed uprising is taking place, thus, giving the President ample authority to determine its coverage. Furthermore, as noted in *Aquino, Jr. v. Enrile*,[28] modern day rebellion has other facets than just the taking up of arms — including financing, recruitment and propaganda that may not necessarily be found or occurring in the place of the armed conflict, thus:

> x x x The argument that while armed hostilities go on in several provinces in Mindanao there are none in other regions except in isolated pockets in Luzon, and that therefore there is no need to maintain martial law all over the country, ignores the sophisticated nature and ramifications of rebellion in a modern setting. It does not consist simply of armed clashes between organized and identifiable groups on fields of their own choosing. It includes subversion of the most subtle kind, necessarily clandestine and operating precisely where there is no actual fighting. Underground propaganda, through printed news sheets or rumors disseminated in whispers; recruitment of armed

[28] G.R. No. L-35546, September 17, 1974.

and ideological adherents, raising of funds, procurement of arms and material, fifth-column activities including sabotage and intelligence — all these are part of the rebellion which by their nature are usually conducted far from the battle fronts. They cannot be counteracted effectively unless recognized and dealt with in that context.

Moreover, the geography of Marawi City provides easy access for rebels to escape to nearby provinces or cities. If martial rule will be limited to Marawi City, rebels may simply move to neighboring areas to elude arrest. The recent apprehension of the parents of the Maute brothers in Davao City and Lanao del Sur, under Arrest Order No. 1, and of another suspected rebel, Sultan Fahad Salic, in Misamis Oriental, indicates that rebels may already be taking advantage of the easy access afforded by Marawi's location. These arrests, made outside Marawi City, lend support to the President's decision to make Proclamation No. 216 apply to the whole of Mindanao.

Proclamation No. 216 is not void for vagueness for the absence of guidelines/operational parameters.

The validity of a proclamation of martial law or suspension of the privilege of the writ of *habeas corpus* is to be measured against the conditions set in the Constitution. The only conditions prescribed in the Constitution are that actual rebellion or invasion exists and public safety requires the proclamation or suspension. There is nothing in the Constitution that requires that guidelines or operational parameters be included in the proclamation. Thus, the proclamation cannot be voided on the ground that they are not set out therein. Besides, as noted by Mr. Justice Del Castillo in his *ponencia*, guidelines or operational parameters are merely tools for the implementation of the proclamation.

Furthermore, as the situation calls for immediate action, the President cannot be expected to at once specify the guidelines and operational parameters in the proclamation. In any event, safeguards have been incorporated in the Constitution to ensure that rights are protected. Thus, Section 18, Article VII, in part, states:

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

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

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

Conclusion

Martial law is not intrinsically wrong. If it were, the framers of the Constitution composed of staunch nationalists and defenders of human rights, would have deleted it altogether from the 1935, 1973 and 1987 Constitutions. These learned men understood that martial law was a necessary constitutional weapon to defend the integrity and sovereignty of the Republic.

Those who criticize martial law are haunted by the abuses of the past and fearful of the potential dangers it may entail. But these apprehensions have no bearing when the noble objectives sought to be accomplished are the protection of the people and the defense of the state.

The foregoing considered, I vote to **DISMISS** the consolidated petitions.

SEPARATE OPINION

PERLAS-BERNABE, *J.*:

These consolidated petitions assail the sufficiency of the factual basis of Proclamation No. 216, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao," issued by President Rodrigo Roa Duterte (President Duterte) on May 23, 2017.

I. Nature of the Proceeding/Parameter of Review

Section 18, Article VII of the 1987 Constitution vests unto this Court special jurisdiction to review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law, *viz.*:

> Section 18. x x x.
>
> x x x x x x x x x
>
> The Supreme Court may review, in an **appropriate proceeding** filed by any citizen, the **sufficiency of the factual basis** of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

As Section 18, Article VII confers unto this Court the power to review a particular class of cases, *i.e.*, the factual basis of a martial law proclamation, it is clearly a jurisdiction-vesting provision, and not one that merely affects the exercise of jurisdiction.[1] As explicitly worded, Section 18, Article VII does not merely pertain to the Court's "decision of x x x questions arising in the case;"[2] nor "the correctness or righteousness of the decision or ruling made by [it]."[3] Rather, it provides the "authority to hear and determine a cause — the right to act in a particular case."[4]

The nature and import of the phrase "appropriate proceeding" as well as the parameter "sufficiency of factual basis" under Section 18, Article VII are unique constitutional concepts that have yet to be elucidated, much less defined, in our existing rules of procedure and jurisprudence. That being said, the Court

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[1] "Jurisdiction over the subject-matter is the power to hear and determine cases of the general class to which the proceedings in question belong and is conferred by the sovereign authority which organizes the court and defines its powers." (*Reyes v. Diaz,* 73 Phil. 484, 486 [1941].)

[2] See *Salvador v. Patricia*, G.R. No. 195834, November 9, 2016.

[3] *Palma v. Q & S, Inc.*, 123 Phil. 958, 960 (1966).

[4] *Id*.

is now confronted with the delicate task of fleshing out these concepts in light of their true constitutional intent.

It is my view that the term "appropriate proceeding" can only be classified as a *sui generis* proceeding that is exclusively peculiar to this Court's special jurisdiction to review the factual basis of a martial law declaration. Being a class of its own, it cannot therefore be equated or even approximated to any of our usual modes of review, such as a petition for review on *certiorari* under Rule 45 of the Rules of Court (which is an appeal) or a petition for *certiorari* under Rule 65 (which is a special civil action). Clearly, a petition based on Section 18, Article VII is not an appeal to review errors committed by a lower court; neither is it a special civil action for it is in fact, attributed as a type of "proceeding." Under Section 3 (a), Rule I of the Rules of Court:

> Section 3. *Cases governed.* — These Rules shall govern the procedure to be observed in actions, civil or criminal and special proceedings.
>
> (a) A civil action is one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong.
>
> A civil action may either be ordinary or special. Both are governed by the rules for ordinary civil actions, subject to the specific rules prescribed for a special civil action.
>
> x x x x x x x x x

A petition under Section 18, Article VII is not one whereby a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong. In fact, there is no cause of action[5] in this type of proceeding, as it is only intended to determine the sufficiency of the factual basis of a proclamation. In this limited sense, it can be argued that this proceeding, at most, resembles — albeit cannot be classified as — a special proceeding, which under the Rules of Court is "a remedy by

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[5] "Cause of action is defined as the act or omission by which a party violates a right of another." (*Heirs of Magdaleno Ypon v. Ricaforte*, 713 Phil. 570, 574 (2013), citing Section 2, Rule 2 of the Rules of Court.)

which a party seeks to establish [among others] a particular fact"[6] (that being the factual basis of a martial law proclamation).

That a petition anchored on Section 18, Article VII is a case originally filed before this Court, or that it would eventually result in the nullification of a governmental act does not — as it should not — mean that it can be classified as an action for *certiorari*. The similarities between the two begin and end there. As earlier stated, a Section 18, Article VII petition carries no cause of action and is instead, a proceeding meant to establish a particular factual basis. This fundamental difference alone already precludes the above-supposition. Besides, other cases, such as for prohibition, *mandamus, quo warranto,* and *habeas corpus*, are equally impressed with the feature of being originally filed before the Court, yet their nature and parameters remain conceptually distinct from one another. Meanwhile, the resulting nullification of a martial law proclamation (if so found by this Court to rest on insufficient factual basis) is not a conclusion exclusive to an action for *certiorari*; rather, the proclamation would be nullified on the ground that it violates the requirements of the Constitution. In fine, the cosmetic similarities between a Section 18, Article VII proceeding and a *certiorari* action are not valid reasons to confound the nature of the former with the latter.

Since Section 18, Article VII petition is a *sui generis* proceeding, the usual standards of review, such as to determine errors of judgment in a Rule 45 petition, or grave abuse of discretion amounting to lack or excess of jurisdiction in a Rule 65 petition, should therefore find no application. The standards used in Rule 45 and Rule 65 petitions trace their jurisdictional bases from Section 5, Article VIII of the 1987 Constitution, which pertinently reads:

> Section 5. The Supreme Court shall have the following powers:
>
> (1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, mandamus, *quo warranto*, and *habeas corpus*.

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[6] See Section 3 (c), Rule I of the Rules of Court.

(2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

(b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.

(c) All cases in which the jurisdiction of any lower court is in issue.

(d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.

(e) All cases in which only an error or question of law is involved.

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To my mind, the Court's jurisdiction in these cases should be considered to be general in nature as compared to its special jurisdiction under Section 18, Article VII, the latter being utilized only in one specific context, *i.e.*, when the factual basis of a martial law declaration is put into question. In this relation, the rule in statutory construction of *lex specialis derogat generali*, which conveys that where two statutes are of equal theoretical application to a particular case, the one specially designed therefor should prevail,[7] ought to apply.

In fact, the textual placement of Section 18, Article VII fortifies the *sui generis* nature of this "appropriate proceeding." It may be readily discerned that Section 18, Article VII is only one of two provisions relative to a Supreme Court power that is found in Article VII (Article on the Executive Department), and not in Article VIII (on the Judicial Department) of the 1987 Constitution. The other one is found in Section 4, Article VII, which states that "[t]he Supreme Court, sitting *en banc*, shall

[7] See *Jalosjos v. Commission on Elections*, 711 Phil. 414, 431 (2013).

be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose." Similar to it acting as Presidential Electoral Tribunal (PET),[8] the Court is tasked to thresh out the factual issues in the case, as if acting as a trial court; thus, Section 18, Article VII's peculiar standard of "sufficiency of factual basis." The provision's location in Article VII on the Executive Department reveals the correlative intent of the Framers to instill the proceeding as a specific check on a particular power exercised by the President. In this regard, the Court is not called on to exercise its expanded power of judicial review to determine "whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government";[9] rather, the Court is called to exercise its special jurisdiction to determine the sufficiency of the President's factual basis in declaring martial law. This parameter of review is not only explicit in Section 18, Article VII; it is, in fact, self-evident. Thus, all the more should this Court debunk the notion that the "appropriate proceeding" under Section 18, Article VII is a *certiorari* action with the parameter of grave abuse of discretion.

The parameter of review denominated as "sufficient factual basis" under Section 18, Article VII is both conceptually novel and distinct. Not only does it defy any parallelism with any of the Court's usual modes of review, but it also obviates the usage of existing thresholds of evidence, such as the threshold of substantial evidence as applied in administrative cases, preponderance of evidence in civil actions, and proof of guilt beyond reasonable doubt in criminal cases. Concomitantly, the burdens of proof utilized in these cases should not apply.

The same holds true for the evidentiary threshold of probable cause, which is but "the amount of proof required for the filing

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[8] The 2010 Rules of Procedure of the PET provide for the procedures on Revision of Votes, Technical Examination, Subpoenas, and Reception of Evidence, among others, in order to thresh out issues of fact raised in election protests and petitions for *quo warranto*.

[9] See Section 1, Article VIII of the 1987 Constitution.

of a criminal information by the prosecutor and for the issuance of an arrest warrant by a judge."[10] Probable cause is ascertained from the vantage point of a "reasonably discreet and prudent man to believe that the offense charged in the Information or any offense included therein has been committed by the person sought to be arrested."[11] "In determining probable cause, the average man weighs the facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He [merely] relies on common sense."[12] While it had been previously opined that probable cause, being merely "premised on common sense, is the most reasonable, most practical, and most expedient standard by which the President can fully ascertain the existence or non-existence of rebellion, necessary for a declaration of martial law or suspension of the writ,"[13] it is my view that the purpose of and vantage point assumed by a prosecutor or judge in a determination of probable cause are fundamentally different from the purpose of and vantage point assumed by the President when he proclaims martial law. Verily, the standard of probable cause cannot be applied to the decision-making process of the highest-ranking public official in the country, who, through credible information gathered by means of the executive machinery, is not only tasked to determine the existence of an actual rebellion but must also calibrate if the demands of public safety require a martial law proclamation. Commissioner Fr. Joaquin G. Bernas, S.J. (Fr. Bernas), acting as *amicus curiae* in the case of *Fortun v. Macapagal-Arroyo*[14] (*Fortun*), had occasion to explain that "the function of the President is far different from the function of a judge trying to decide whether to convict a person for rebellion or not":

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[10] See Dissenting Opinion of Associate Justice Antonio T. Carpio in *Fortun v. Macapagal-Arroyo*, 684 Phil. 526, 597 (2012).

[11] *Id*. at 598.

[12] *Id*.

[13] *Id*.

[14] Cited in the Dissenting Opinion of Associate Justice Presbitero J. Velasco, Jr. in *Fortun, id.* at 629.

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

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

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

the Penal Code is different from looking for rebellion under the Constitution.[15] (Emphasis supplied)

It is my opinion that Fr. Bernas' reasoning is equally relevant when comparing the function of the President under Section 18, Article VII to the functions of a prosecutor or a judge who determines probable cause to respectively file a criminal case in court or issue a warrant for the arrest of an accused. Hence, however reasonable, practical or expedient it may seem, it is my position that this Court should not apply the probable cause standard in a Section 18, Article VII case.

For another, the Office of the Solicitor General has invoked the case of *In the Matter of the Petition for Habeas Corpus of Lansang*[16] (*Lansang*), as affirmed in *Aquino, Jr. v. Enrile*[17] (*Aquino, Jr.*) and thereby, argues that the parameter of "sufficient factual basis" is equivalent to the gauge of arbitrariness (in contrast to correctness).[18] However, as will be gleaned below, these are not proper authorities to construe the term "sufficient factual basis" since the provision regarding the power of the Court to check the President's declaration of martial law never existed in the past Constitutions under which these two cases were decided.

To briefly contextualize, *Lansang* is a 1971 case, decided under the 1935 Constitution, which involved the propriety of the suspension of the privilege of the writ of *habeas corpus*. In that case, the Court held that it had the "authority to inquire into the existence of said factual bases in order to determine the constitutional sufficiency thereof."[19] The Court cited and affirmed *Lansang* in *Aquino, Jr.*, which was a case decided in 1974 under the 1973 Constitution. There, this Court ruled:

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[15] *Id*. at 629-630.

[16] 149 Phil. 547 (1971).

[17] 158-A Phil. 1 (1974).

[18] See respondents' Memorandum dated June 19, 2017, pp. 45-46.

[19] *In the Matter of the Petition for Habeas Corpus of Lansang*, *supra* note 16, at 585-586.

The recognition of justiciability accorded to the question in Lansang, it should be emphasized, is there expressly distinguished from the power of judicial review in ordinary civil or criminal cases, and is limited to ascertaining "merely whether he (the President) has gone beyond the constitutional limits of his jurisdiction, not to exercise the power vested in him or to determine the wisdom of his act." **The test is not whether the President's decision is correct but whether, in suspending the writ, he did or did not act arbitrarily**.[20] (Emphasis supplied)

The pertinent provisions on martial law under the 1935 and 1973 Constitutions respectively read:

Section 10, Article VII of the 1935 Constitution

Section 10. x x x.

x x x x x x x x x

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

x x x x x x x x x

Section 12, Article IX of the 1973 Constitution

Section 12. The Prime Minister shall be commander-in-chief of all armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privilege of the writ of habeas corpus, or place the Philippines or any part thereof under martial law.

As above-mentioned, these past constitutional provisions on martial law do not reflect the Court's power to "review, in an appropriate proceeding filed by any citizen, the sufficiency of

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[20] *Aquino, Jr. v. Enrile*, *supra* note 17, at 47.

the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof" under the 1987 Constitution. Clearly, the variance in the constitutional context under which *Lansang* and *Aquino, Jr.* were decided negates the notion that the Framers of the 1987 Constitution applied the pronouncements made in those cases when they were crafting a novel constitutional provision which had no existing equivalent at that time. Thus, it is my impression that there could have been no contemporary construction of the term "sufficient factual basis" in reference to the *Lansang* and *Aquino, Jr.* pronouncements.

At any rate, the deliberations, and more significantly, the actual text of Section 18, Article VII do not reflect the insinuation that the term "sufficient factual basis" is equivalent to the gauge of arbitrariness, as espoused in *Lansang* and *Aquino, Jr.* If such was their intention, then the Framers should have so indicated. Instead, the Framers created a new safeguard under Section 18, Article VII to effectively prevent the aberration of a Marcosian martial law from again happening in our country:

> Section 18, Article VII is meant to provide additional safeguard against possible Presidential abuse in the exercise of his power to declare martial law or suspend the privilege of the writ of *habeas corpus*. Reeling from the aftermath of the Marcos martial law, the framers of the Constitution deemed it wise to insert the now third paragraph Section 18, Article VII. This is clear from the records of the Constitutional Commission when its members were deliberating on whether the President could proclaim martial law even without the concurrence of Congress. Thus:
>
> MR. SUAREZ: Thank you, Madam President.
>
> The Commissioner is proposing a very substantial amendment because this means that he is vesting exclusively unto the President the right to determine the factors which may lead to the declaration of martial law and the suspension of the writ of *habeas corpus*. I suppose he has strong and compelling reasons in seeking to delete this particular phrase. May we be informed of his good and substantial reasons?
>
> MR. MONSOD: This situation arises in cases of invasion or rebellion. And in previous interpellations regarding this phrase,

even during the discussions on the Bill of Rights, as I understand it, the interpretation is a situation of actual invasion or rebellion. In these situations, the President has to act quickly. Secondly, this declaration has a time fuse. It is only good for a maximum of 60 days. At the end of 60 days, it automatically terminates. **Thirdly, the right of the judiciary to inquire into the sufficiency of the factual basis of the proclamation always exists, even during those first 60 days.**

MR. SUAREZ: Given our traumatic experience during the past administration, if we give exclusive right to the President to determine these factors, especially the existence of an invasion or rebellion and the second factor of determining whether the public safety requires it or not, may I call the attention of the Gentleman to what happened to us during the past administration. Proclamation No. 1081 was issued by Ferdinand E. Marcos in his capacity as President of the Philippines by virtue of the powers vested upon him purportedly under Article VII, Section 10 (2) of the Constitution:

x x x x x x x x x

And he gave all reasons in order to suspend the privilege of the writ of *habeas corpus* and declare martial law in our country without justifiable reason. Would the Gentleman still insist on the deletion of the phrase and, with the concurrence of at least a majority of all the members of the Congress"?

MR. MONSOD: ***Yes, Madam President, in the case of Mr. Marcos, he is undoubtedly an aberration in our history and national consciousness. But given the possibility that there would be another Marcos, our Constitution now has sufficient safeguards. As I said, it is not really true, as the Gentleman has mentioned, that there is an exclusive right to determine the factual basis because the paragraph beginning on line 9 precisely tells us that the Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof and must promulgate its decision on the same within 30 days from its filing.***

I believe that there are enough safeguards. The Constitutions is supposed to balance the interests of the country. And here we are trying to balance the public interest in case of invasion

> or rebellion as against the rights of citizens. And I am saying that there are enough safeguards, unlike in 1972 when Mr. Marcos was able to do all those things mentioned.[21]

To adopt and validate the gauge of arbitrariness in a Section 18, Article VII case would dangerously emasculate this Court's power to serve as a potent check against the possible abuses of martial law. This is because the gauge of arbitrariness is the substantial equivalent of the concept of grave abuse of discretion which is one of the most difficult thresholds for a citizen-petitioner to hurdle since it denotes an abuse of discretion "too patent and gross as to amount to an evasion of a positive duty, or a virtual refusal to perform the duty enjoined or act [at all] in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion and personal hostility."[22] Notably, Fr. Bernas, one of the Framers of the new Constitution, stated that the new provision means more than just empowering the Court to review the suspension of the privilege of the writ of *habeas corpus* as held in *Lansang*. More significantly, he expressed that "[t]he new text gives to the Supreme Court the power not just to determine executive arbitrariness in the manner of arriving at the suspension but also the power to determine 'the sufficiency of the factual basis of the suspension'":

> What is the scope of this review power of the Supreme Court[?] It will be recalled that in *Lansang v. Garcia* the Supreme Court accepted the Solicitor General's suggestion that the Court 'go *no* further than to satisfy [itself] *not* that the President's decision is *correct* and that public safety was endangered by the rebellion and justified the suspension of the writ, but that in suspending the writ, the President did not act arbitrarily. **Is this all that the 1987 provision means**?
>
> The new provision quite obviously means more than just the empowerment in *Lansang*. **The new text gives to the Supreme Court the power not just to determine executive arbitrariness in the**

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[21] See *ponencia*, pp. 23-25, citing Record of the 1987 Constitutional Commission No. 043, Vol. II, July 30, 1986, pp. 476-477.

[22] *Romy's Freight Service v. Castro*, 523 Phil. 540, 546 (2006); citation omitted.

manner of arriving at the suspension but also the power to determine 'the sufficiency of the factual basis of the suspension. Hence, the Court is empowered to determine whether in fact actual invasion and rebellion exists and whether public safety requires the suspension. Thus, quite obviously too, since the Court will have to rely on the fact-finding capabilities of the executive department, the executive department, if the President wants his suspension sustained, will have to open whatever findings the department might have to the scrutiny of the Supreme Court. It is submitted that the Supreme Court's task of verifying the sufficiency of the factual basis for the suspension will not be as difficult as under the old system because the 1987 Constitution has radically narrowed the basis for suspension.[23]

In fine, the parameters under our usual modes of review, much more the pronouncements in *Lansang* and *Aquino, Jr.*, are clearly inappropriate references for this Court to divine the meaning of the term "sufficient factual basis" as a parameter in resolving a Section 18, Article VII petition.

In light of this legal lacuna, I submit that this Court should therefore construe the term "sufficient factual basis" in its generic sense. "[T]he general rule in construing words and phrases used in a statute is that, in the absence of legislative intent to the contrary, they should be given their plain, ordinary and common usage meaning; the words should be read and considered in their natural, ordinary, commonly accepted usage, and without resorting to forced or subtle construction. Words are presumed to have been employed by the lawmaker in their ordinary and common use and acceptation."[24] Moreover, "a word of general signification employed in a statute should be construed, in the absence of legislative intent to the contrary, to comprehend not only peculiar conditions obtaining at the time of its enactment but those that may normally arise after its approval as well.

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[23] Bernas, Joaquin G., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 1996 ed., pp. 485-486, as cited in the *ponencia*, pp. 47-48.

[24] See Concurring Opinion of Associate Justice Arturo D. Brion in *Orceo v. Commission on Elections*, 630 Phil. 670, 689 (2010), citing Ruben E. Agpalo, *Statutory Construction,* p. 180 (2003).

This rule of construction, known as *progressive interpretation*, extends by construction the application of a statute to all subjects or conditions within its general purpose or scope that come into existence subsequent to its passage, and thus keeps legislation from becoming ephemeral and transitory."[25]

"Sufficient" commonly means "adequate";[26] it may also mean "enough to meet the needs of a situation or a proposed end."[27] Logically, the "end" to be established in a petition under Section 18, Article VII is the factual basis of a proclamation of martial law. **Martial law can only be proclaimed legally under the 1987 Constitution upon the President's compliance of two (2) conditions, namely: (1) that there exists an actual invasion or rebellion; and (2) that the public safety so requires the same. Therefore, it is reasonable to conclude that "sufficient factual basis," as a parameter of review under Section 18, Article VII of the 1987 Constitution, should simply mean that this Court has been satisfied that there exists adequate proof of the President's compliance with these two (2) requirements to legally proclaim martial law.** This parameter of review should not be diluted by bringing in the need to prove arbitrariness. As a fact-finding tribunal operating under a special kind of jurisdiction, this Court is therefore tasked to ascertain, plain and simple, if there indeed exists (1) an actual invasion or rebellion, and (2) that public safety requires the proclamation of martial law. As will be discussed below, the first requirement is a more concrete question of law that may be resolved by applying existing legal principles. On the other hand, the second requirement is a more malleable concept of discretion, whereby deference to the prudential judgment of the President, as Commander-in-Chief, to meet the exigencies of the situation should be properly accorded. **Being a proceeding directly meant to establish the factual basis of a governmental action, it**

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[25] *Id*., citing Ruben E. Agpalo, *Statutory Construction*, p. 185 (2003).

[26] <https://en.oxforddictionaries.com/definition/sufficient> (visited June 30, 2017).

[27] <https://www.merriam-webster.com/dictionary/sufficient> (visited June 30, 2017).

follows that the government bears the burden of proving compliance with the requirements of the Constitution for clearly, the petitioner, who may be any citizen, does not have possession of the information used by the President to justify the imposition of martial law. Nonetheless, the petitioner has the burden of evidence to debunk the basis proffered by the government and likewise, prove its own affirmative assertions.

II. Requirements to Proclaim Martial Law.

The above-stated requirements for the President to legally place the Philippines or any part thereof under martial law are found in the first paragraph of Section 18, Article VII of the 1987 Constitution:

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

In the case of *Integrated Bar of the Philippines v. Zamora*,[28] this Court explained that:

> [U]nder 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.[29]

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[28] 392 Phil. 618, 643 (2000).

[29] *Id*. at 643; emphasis and underscoring supplied.

The deliberations of the Framers of the 1987 Constitution make it sufficiently clear that there must be an actual rebellion and not merely an imminent danger thereof, which was formerly, a ground to impose martial law under the 1935 and 1973 Constitutions but demonstrably deleted in the present Constitution. Fr. Bernas explained that the phrase "imminent danger thereof" "could cover a multitude of sins and could be a source of a tremendous amount of irresistible temptation. And so, to better protect the liberties of the people, we preferred to eliminate that."[30] Commissioner Florenz D. Regalado (Commissioner Regalado) adds that:

> There is a fear that the President could base the suspension of the writ on alleged intelligence reports which cannot be looked into and the veracity of which is dependent on the classification by the military. This could lead to a situation where these reports could easily be manufactured and attributed to anybody, without even the judiciary being in a position to refuse or look into the truth of the same.[31]

In his opinion in the case of *Fortun*, Senior Associate Justice Antonio T. Carpio elucidated that the "[t]he term 'rebellion' in Section 18, Article VII of the 1987 Constitution must be understood as having the same meaning as the crime of 'rebellion' that is defined in Article 134 of the Revised Penal Code, as amended."[32] Among others, he properly reasoned that:

> [T]he Revised Penal Code definition of rebellion is the only legal definition of rebellion known and understood by the Filipino people when they ratified the 1987 Constitution. Indisputably, the Filipino people recognize and are familiar with only one meaning of rebellion, that is, the definition provided in Article 134 of the Revised Penal Code. To depart from such meaning is to betray the Filipino people's understanding of the term "rebellion" when they ratified the Constitution. There can be no question that "the Constitution does not derive its force from the convention which framed it, but from the people who ratified it."[33]

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[30] I RECORD, CONSTITUTIONAL COMMISSION, 773 (July 18, 1986).

[31] II RECORD, CONSTITUTIONAL COMMISSION, p. 474 (July 30, 1986).

[32] *Supra* note 10, at 592.

[33] *Id*. at 593.

The same thought is reflected in the exchange between Commissioners De Los Reyes and Regalado:

MR. DE LOS REYES: As I see it now, the Committee envisions actual rebellion and no longer imminent rebellion. Does the Committee mean that there should be actual shooting, or actual attack on the legislature or Malacañang, for example? x x x.

MR. REGALADO: If we consider the definition of rebellion under Articles 134 and 135 of the Revised Penal Code, that presupposes an actual assemblage of men in an armed public uprising, for the purposes mentioned in Article 134 and by the means employed under Article 135.[34]

Under Article 134 of the Revised Penal Code (RPC), as amended by Republic Act No. 6968,[35] rebellion is committed in the following manner:

[B]y 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 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.[36]

In *People v. Lovedioro*,[37] this Court stated that "[t]he gravamen of the crime of rebellion is an armed public uprising against the government. By its very nature, rebellion is essentially a crime of masses or multitudes involving crowd action, which **cannot be confined *a priori* within predetermined bounds**."[38]

Rebellion is, by nature, not a singular act, like the other common crimes under the RPC such as murder or rape, which

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[34] II RECORD, CONSTITUTIONAL COMMISSION, p. 412 (July 29, 1986).

[35] Entitled "AN ACT PUNISHING THE CRIME OF *COUP D'ETAT* BY AMENDING ARTICLES 134, 135 AND 136 OF CHAPTER ONE, TITLE THREE OF ACT NUMBERED THIRTY-EIGHT HUNDRED AND FIFTEEN, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES" (October 26, 1990).

[36] See Section 2 of RA 6968.

[37] *People v. Lovedioro*, 320 Phil. 481 (1995).

[38] *Id*. at 488; emphasis and underscoring supplied.

place of commission can be situated in a particular locality. Rather, **rebellion is "a vast movement of men and a complex net of intrigues and plots."**[39] However, the gravamen of rebellion is the armed public uprising against the government. "Gravamen" is defined as "the material or significant part of a grievance or complaint."[40] This means that while rebellion is, by nature a movement, the significant aspect thereof to prosecute the same is that the men involved in this movement actually take up arms against the government; otherwise, rebellion under the RPC is not deemed to have been consummated and the persons accused thereof cannot be penalized/convicted of the same.

The nature of rebellion as a movement is the reason why, as jurisprudence states, this crime "cannot be confined *a priori* within predetermined bounds." A "movement" has been defined as "a series of organized activities working toward an objective; also: an organized effort to promote or attain an end."[41] Complementary to this attribution, rebellion has been also classified as a "continuing crime." A continuing crime or *delito continuado* is "a single crime consisting of a series of acts arising from a single criminal resolution or intent not susceptible of division."[42] In *Gamboa v. Court of Appeals*,[43] this Court expounded on the concept of a continuing crime:

> Apart and isolated from this plurality of crimes (ideal or real) is what is known as "*delito continuado*" or "continuous crime." This is a single crime consisting of a series of acts arising from a single criminal resolution or intent not susceptible of division. For Cuello Calon, when the actor, there being unity of purpose and of right violated, commits diverse acts, each of which, although of a delictual

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[39] Reyes, Luis B., *The Revised Penal Code*, Book II, Eighteenth Edition (2012), p. 86; emphasis and underscoring supplied.

[40] <https://www.merriam-webster.com/dictionary/gravamen> (visited June 30, 2017).

[41] <https://www.merriam-webster.com/dictionary/movement> (visited June 30, 2017).

[42] *Gamboa v. Court of Appeals*, 160-A Phil. 962, 969 (1975).

[43] *Id*.

character, merely constitutes a partial execution of a single particular delict, such concurrence or delictual acts is called a "*delito continuado*." In order that it may exist, there should be "plurality of acts performed separately during a period of time; unity of penal provision infringed upon or violated and unity of criminal intent and purpose, which means that two or more violations of the same penal provision are united in one and the same intent leading to the perpetration of the same criminal purpose or aim."[44]

Anent its temporality, a "continuing offense" has been characterized as "a continuous, unlawful act or series of acts set on foot by a single impulse and **operated by an unintermittent force, however long a time it may occupy**."[45] It is "[o]ne consisting of a continuous series of acts which **endures after the period of consummation** x x x."[46]

Being a movement involving a plurality of acts, which, however, is animated by a single criminal resolution or intent, common crimes committed in furtherance of the rebellion are deemed absorbed. In the landmark case of *People v. Hernandez*,[47] this Court classified rebellion as a political crime and explained the doctrine of absorption:

> [P]olitical crimes are those directly aimed against the political order, as well as such common crimes as may be committed to achieve a political purpose. The decisive factor is the intent or motive. If a crime usually regarded as common like homicide, is perpetrated for the purpose of removing from the allegiance "to the Government the territory of the Philippines Islands or any part thereof," then said offense becomes stripped of its "common" complexion, inasmuch as, being part and parcel of the crime of rebellion, the former acquires the political character of the latter.
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> x x x x x x x x x

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[44] *Id*.

[45] Reyes, Luis B., *The Revised Penal Code*, Book I, Eighteenth Edition (2012), p. 702, citing 22 C.J.S., 52; emphasis and underscoring supplied.

[46] <https://dictionary.thelaw.com/continuous-crime/> (visited June 30, 2017); emphasis and underscoring supplied.

[47] *People v. Hernandez*, 99 Phil. 515 (1956).

Thus, national, as well as international, laws and jurisprudence overwhelmingly favor the proposition that common crimes, perpetrated in furtherance of a political offense [such as rebellion], are divested of their character as "common" offenses and assume the political complexion of the main crime of which they are mere ingredients, and, consequently, cannot be punished separately from the principal offense, or complexed with the same, to justify the imposition of a graver penalty.[48]

Accordingly, in light of the nature of rebellion (1) as a movement, (2) as a complex net of intrigues and plots, (3) as a continuing crime, and (4) as a political offense, it is my view that this Court cannot confine the concept of rebellion to the actual exchange of fire between the accused rebels and the forces of the government. As above-intimated, the taking up of arms against the government is only what consummates the crime of rebellion in order to prosecute those accused thereof under the RPC. However, up until that movement stops (for instance, when the rebels surrender or are caught by government operatives), it is my opinion that the rebellion continues to survive in legal existence.

For instance, when rebels temporarily cease with their offensive and later on regroup, it is illogical to posit that the rebellion had already ended. Skirmishes at various places, at different times, are common occurrences in a surviving rebellion. This reality had, in fact, been the subject of the exchange of Commissioners De Los Reyes and Regalado, wherein it was conveyed that isolated attacks in different provinces, despite the lack of any attack on the capital, are enough to show that an actual rebellion exists, provided, however, that there is clearly an attempt to destabilize the government in order to supplant it with a new government:

MR. DE LOS REYES: The public uprisings are not concentrated in one place, which used to be the concept of rebellion before.

MR. REGALADO: No.

MR. DE LOS REYES: But the public uprisings consist of isolated attacks in several places — **for example in one camp here; another**

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[48] *Id.* at 535-541.

in the province of Quezon; and then in another camp in Laguna; no attack in Malacañang — but there is complete paralysis of the industry in the whole country. If we place these things together, the impression is clear — that there is an attempt to destabilize the government in order to supplant it with the new government.[49]

Likewise, we should not lose sight of a rebellion's intricate workings. Reconnaissance of government movement and espionage on military strategy are very well essential to both a brooding and an ongoing rebellion. The establishment of outposts and installations, escape routes and diversion points, all spread over numerous areas of interest, also entails tactical activity to further the rebellion. In the same vein, the recruitment/radicalization of conscripts and the resupply of provisions and arms, are incidents to a rebellion whose wheels have been put into motion.

In *Aquino, Jr.*, the Court pointed out that:

> The state of rebellion continues up to the present. The argument that while armed hostilities go on in several provinces in Mindanao there are none in other regions except in isolated pockets in Luzon, and that therefore there is no need to maintain martial law all over the country, ignores the sophisticated nature and ramifications of rebellion in a modern setting. It does not consist simply of armed clashes between organized and identifiable groups on fields of their own choosing. It includes subversion of the most subtle kind, necessarily clandestine and operating precisely where there is no actual fighting. Underground propaganda, through printed news sheets or rumors disseminated in whispers; recruitment of armed and ideological adherents, raising of funds, procurement of arms and materiel, fifth-column activities including sabotage and intelligence — all these are part of the rebellion which by their nature are usually conducted far from the battle fronts. They cannot be counteracted effectively unless recognized and dealt with in that context.[50]

We need not look any further than the published chronicles about the Abu Sayyaf Group (ASG) — currently led by Isnilon

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[49] II RECORD, CONSTITUTIONAL COMMISSION, p. 413 (July 29, 1986); Emphasis and underscoring supplied.

[50] *Aquino, Jr. v. Enrile*, *supra* note 17, at 48-49.

Hapilon (Hapilon) and affiliated with the Maute Group — to paint a picture of how a rebellion may intricately operate:

Logistics, Tactics and Training of the ASG

x x x x x x x x x

In tactics, the ASG fighters are capable of reinforcing beleaguered comrades when in the general area of conflict, or sometimes from one island to another island like in the case of the ASG from Basilan reinforcing comrades in Sulu by watercraft. It can conduct offensive action against platoon, section, or squad-sized military formations, and disable armor assets using rocket propelled grenades, 90mm, and 57 mm recoilless rifles. Its fighters usually employ "hit and run" tactics in view of their limited ammunition. Having no concern even for the Muslim residents, it resorts to hostage taking, to delay pursuing government troops and whenever cornered. Tactically, the ASG cannot sustain a prolonged armed engagement against the government forces. The islands and vast water area favors the ASG as it affords freedom of movement. Therefore, the curtailment of movement along mobility corridors would be their critical vulnerability.

The ASG creates political, economic, and social disorders to force Christians and non-Muslims to vacate areas it claims as its own. This is best exemplified by the ASG's raid and massacre in Ipil town mentioned earlier, but the results were obviously unfavorable to them. It has exploited the power of media to discredit the administration and prop up their cause. This included the use of a popular Filipino actor who is an Islam convert, as a negotiator in one of their hostage activity in their Basilan jungle hideout.

While some of the ASG members were former MNLF rebels, it is most certain that some of them were trained in the Middle East and Malaysia. Most of the recruits were locally trained on guerrilla warfare in Basilan and Sulu. Their training included combat tactics, demolition, marksmanship, and other military subjects. Comparatively speaking, the ASG is inferior to the military forces arrayed against it. However, the mastery of the terrain and ability to survive in extreme jungle conditions makes the ASG fighter more adept to his environment. This is a major challenge in Philippine counter terrorism operations.[51]

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[51] <http://www.dtic.mil/dtic/tr/fulltext/u2/a404925.pdf> (visited June 30, 2017).

With all of these in tow, I believe that the crime of rebellion defies our ordinary impression that a crime's occurrence can be pinpointed to a definite territory, much less its existence bounded to a particular moment in time. **Because of its nature, rebellion is hardly compatible with the norms of spatial and temporal limitability, as usually applied in our criminal law.** It is in this specific light that we should understand the concept of an actual rebellion under the Constitution's martial law provision.

That being said, I therefore submit that, for the purposes of assessing compliance with the first requirement of Section 18, Article VII of the 1987 Constitution, this Court should ascertain whether there is adequate proof to conclude that a rebellion, in light of its elements under the RPC, has already been consummated. **Once these elements are established, a state of actual rebellion (and not merely an "imminent danger thereof") already exists as a fact, and thus, it may be concluded that the said first requisite has already been met.**

Consequently, the President would then have ample discretion to determine the territorial extent of martial law, provided that the requirement of public safety justifies this extent. **Since as above-discussed rebellion, by nature, defies spatial limitability, the territorial scope of martial law becomes pertinent to Section 18, Article VII's second (when public safety requires) and not its first requirement (actual rebellion).** By these premises, it is also erroneous to think that the territorial extent of martial law should be only confined to the area/s where the actual exchange of fire between the rebels and government forces is happening. To reiterate, rebellion is, by nature, a movement; it is much more than the actual taking up of arms. While the armed public uprising consummates the crime for purposes of prosecuting the accused under the RPC, its legal existence is not confined by it. It is a complex net of intrigues and plots, a movement that ceases only until the rebellion is quelled. Commissioner Regalado had, in fact, observed that it is not necessary for an armed public uprising to happen "all over the country" so as to consider the situation "within the ambit of rebellion":

MR. REGALADO: **x x x If they conclude that there is really an armed public 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.** x x x.[52]

At any rate, the 1987 Constitution or its deliberations did not mention anything regarding the need to show the presence of armed attacks all over a certain territory in order to declare martial law therein. The President is, in fact, empowered to "place the Philippines or any part thereof under martial law," provided that a rebellion already exists and that the public safety requires it.

As above-intimated, it is this second requirement of public safety which determines the territorial coverage of martial law. The phrase "when the public safety requires it" under Section 18, Article VII is similarly uncharted in our jurisprudence. Since it has not been technically defined, the term "public safety" may be likewise construed under its common acceptation — that is, "[t]he welfare and protection of the general public, usually expressed as a governmental responsibility."[53] For its part, "public welfare" has been defined as "[a] society's well-being in matters of health, safety, order, morality, economics and politics."[54] Under Section 18, Article VII, the obvious danger against public safety and the society's well-being is the existence of an actual invasion or rebellion. Adopting the generic definition of the term "public safety," it may then be concluded that the phrase "when the public safety requires it" under Section 18, Article VII would refer to the government's responsibility to declare martial law in a particular territory as may be reasonably necessary to successfully quell the invasion or rebellion. In this sense, the territorial extent of martial law is therefore malleable in nature, as it should always be relative to the exigencies of the situation.

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[52] II RECORD, CONSTITUTIONAL COMMISSION, 413 (July 29, 1986); Emphasis and underscoring supplied.

[53] *Black's Law Dictionary*, Eighth Edition, p. 1268.

[54] *Id*. at 1625.

Under our prevailing constitutional order, no one except the President is given the authority to impose martial law. By necessary implication, only he has the power to delimit its territorial bounds. In the case of *Spouses Constantino, Jr. v. Cuisia*,[55] the Court had occasion to discuss the extraordinary nature of the President's power to declare martial law, stating that the exercise thereof, among others, call for the supersedence of executive prerogatives:

> These distinctions hold true to this day as they remain embodied in our fundamental law. There are certain presidential powers which arise out of exceptional circumstances, and if exercised, would involve the suspension of fundamental freedoms, or at least **call for the supersedence of executive prerogatives over those exercised by co-equal branches of government**. The **declaration of martial law**, the suspension of the writ of *habeas corpus*, and the exercise of the pardoning power, notwithstanding the judicial determination of guilt of the accused, **all fall within this special class that demands the exclusive exercise by the President of the constitutionally vested power**. The list is by no means exclusive, but there must be a showing that the executive power in question is of similar *gravitas* and exceptional import.[56]

In the same vein, this Court, in *Villena v. The Secretary of the Interior*,[57] stated that:

> There are certain constitutional powers and prerogatives of the Chief Executive of the Nation which must be exercised by him in person and no amount of approval or ratification will validate the exercise of any of those powers by any other person. Such, for instance, is his power to suspend the writ of *habeas corpus* and **proclaim martial law**.[58]

Considering the Constitution's clear textual commitment of the power to impose martial law to the President, this Court,

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[55] 509 Phil. 486 (2005).

[56] *Id*. at 518; emphases and underscoring supplied.

[57] 67 Phil. 451 (1939).

[58] *Id*. at 462-463; emphasis supplied.

in assessing compliance with Section 18, Article VII's public safety requisite, must give due deference to his prudential judgment in not only determining the need to declare martial law in the Philippines, but also determine its territorial coverage. However, as will be elaborated below, our deference to the President must be circumscribed within the bounds of truth and reason. Otherwise, our constitutional authority to check the President's power to impose martial law would amount to nothing but an empty and futile exercise.

While the Court's power under Section 18, Article VII is designed as an important check to the President's martial law power, the reality is that this Court carries no technical competence to assess the merits of a particular military strategy. Meanwhile, "the President as Commander-in-Chief has a vast intelligence network to gather information, some of which may be classified as highly confidential or affecting the security of the state. In the exercise of the power to call [(as well as the power to declare martial law]), on-the-spot decisions may be imperatively necessary in emergency situations to avert great loss of human lives and mass destruction of property."[59] This resonates with the fact that:

> [The] President is the ceremonial, legal and administrative head of the armed forces. The Constitution does not require that the President must be possessed of military training and talents, but as Commander-in-Chief, he has the power to direct military operations and to determine military strategy. Normally, he would be expected to delegate the actual command of the armed forces to military experts; but the ultimate power is his. As Commander-in-Chief, he is authorized to direct the movements of the naval and military forces placed by law at his command, and to employ them in the manner he may deem most effectual.[60]

With these in mind, **the Court's task — insofar as the second requisite under Section 18, Article VII is concerned — should therefore be limited to ascertaining whether the facts stated**

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[59] *Integrated Bar of the Philippines v. Zamora*, *supra* note 28, at 644.

[60] *Kulayan v. Tan*, 690 Phil. 72, 90-91 (2012).

as basis for a martial law proclamation are reasonable enough to warrant its imposition and that its territorial extent is likewise rationally commensurate with the perceived exigencies attending an actual invasion or rebellion.

As I see it, the reasonableness of the President's declaration of martial law as well as its extent may be determined by multiple factors. This Court may, for instance, consider the reported armed capabilities, resources, influence, and connections of the rebels; the more capable, wealthy, influential, and connected the rebels are, the greater the danger to the public's safety and consequently, the greater the necessity to impose martial law on a larger portion of territory. Also, this Court may consider the historical background of the rebel movement. Past acts may reflect the propensity of a rebel group to cause serious damage to the public. Further, the Court should give leeway to the President's estimation of the rebels' future plan of action. If the estimation, when taken together with all the foregoing factors, does not seem implausible or farfetched, then this Court should defer to the President's military strategy.

In this relation, Fr. Bernas, in the *Fortun* case, pointed out that:

> [The issue of] whether there exists a need to take action in favor of public safety is a factual issue different in nature from trying to determine whether rebellion exists. **The need of public safety is an issue whose existence, unlike the existence of rebellion, is not verifiable through the visual or tactile sense. Its existence can only be determined through the application of prudential estimation of what the consequences might be of existing armed movements.**[61]

Truth be told, there are no fixed factors or requisites that go into this standard of reasonableness. However, as a guiding principle, this Court should always keep in mind that martial law is but a means to an end. It is an extraordinary measure that empowers the President to act as if he were a commanding general engaged in the theater of war;[62] a legal mechanism which — as history

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[61] *Fortun v. Macapagal-Arroyo*, *supra* note 10, at 629-630; emphasis and underscoring supplied.

[62] II RECORD, CONSTITUTIONAL COMMISSION, p. 398 (July 29, 1986).

has taught us — may bear unintended consequences to the liberties of our people. Therefore, this Court should always ask itself whether or not the President's call to impose martial law in a certain territory is rationally commensurate to the needs of the public. For after all, the dangers to society's well-being, both actual and perceived, are what justify the imposition of martial law.

Summary of Adjudicative Process under Section 18, Article VII

To recap, the parameter "sufficient factual basis" under Section 18, Article VII of the Constitution simply means that there is adequate proof to show that the President had complied with the two requisites to impose martial law. These requisites are: (1) that there exists an actual invasion or rebellion; and (2) that the public safety so requires the same.

There is adequate proof that the President complied with the first requisite if the elements of rebellion as defined in Article 134 of the RPC concur; this means that the rebellion is not merely imminent but has been actually consummated.

On the other hand, there is adequate proof that the President complied with the second requisite if it is shown that the public safety demands the imposition of martial law under a particular territorial extent; since public safety is a malleable concept, the Court should then gauge whether or not there is a reasonable need to impose martial law in light of the exigencies of the situation and concomitantly, whether its territorial extent is rationally commensurate to the said exigencies.

In proving compliance with these two requisites, it goes without saying that the Court should first ascertain the veracity of the facts presented by the government. This is for the obvious reason that the Court applies its legal analysis only to established facts. As a general rule, the information provided by the executive agencies to the President is presumed to have been acquired and released to the public in the regular performance of their official functions. Moreover, as the information would be contained in public documents issued in the performance of a duty by a public officer, they constitute *prima facie* evidence

of the facts stated therein.[63] Therefore, it is incumbent upon the citizen-petitioner to overcome this burden and debunk the information's veracity. If the objections against the facts stand unobjected or turn out to be invalid, then this Court may take them as true and correct, *unless* the falsity of the facts is apparent on its face, or that their inaccuracy surfaces throughout the court proceedings (for instance, when conflicting statements are made by the executive in their pleadings or during oral argumentation). This is because of the Court's institutional incapacity to externally vet the information submitted by the executive, as some of them may be even classified as confidential.

It should be clarified that the foregoing evidentiary rules do not negate the government's burden of proving compliance with the requirements of Section 18, Article VII of the 1987 Constitution. The government's initial burden of stating the factual basis of a martial law proclamation is likewise not dispensed with. To be sure, the presumption of regularity *in the sense discussed above* is only limited to the quality of the information that the government presents. **This presumption is not equivalent to a presumption of the entire proclamation's constitutionality or validity.** The facts sought to be established through such information must still be shown to legally comply with the adjudicative parameters set forth above. Verily, the presumption of regularity should only apply to issues of fact and not to conclusions of law. For instance, the fact that events A, B, and C, as presented by the government through official reports, have indeed occurred does not mean that an actual rebellion already exists or that martial law over the whole of Mindanao is already reasonable under the circumstances. Clearly, the duty of the Court is to determine the **sufficiency** of the proclamation's factual basis. Such presumption only touches on the facts' veracity, which is but one aspect of the standard of "sufficiency." To reiterate, the presumption does not amount

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[63] RULES OF COURT, Rule 132, Section 23. *Public documents as evidence*. — Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

to a presumption of constitutionality or validity. The government remains duty bound to assert the factual basis of the martial law proclamation and prove compliance with the requirements of the Constitution. The petitioner then holds the burden of evidence to debunk the basis proffered by the government and likewise, prove its own affirmative assertions.

III. Factual Basis for the Imposition of Martial Law

After a careful study of this case, it is my view that the President had sufficient factual basis to issue Proclamation No. 216 and thereby, legally proclaimed martial law over the whole of Mindanao.

It is apparent that the tipping point for President Duterte's issuance of Proclamation No. 216 was the May 23, 2017 Marawi siege. The events leading thereto were amply detailed by the government as follows:

(a) At 2:00 PM, members and sympathizers of the Maute Group and ASG attacked various government and privately-owned facilities;

(b) At 4:00 PM, around fifty (50) armed criminals forcibly entered the Marawi City Jail; facilitated the escape of inmates; killed a member of a PDEA; assaulted and disarmed on-duty personnel and/or locked them inside the cells; confiscated cellphones, personnel-issued firearms, and vehicles;

(c) By 4:30 PM, interruption of power supply; sporadic gunfights; city-wide power outage by evening;

(d) From 6:00 PM to 7:00PM, Maute Group ambushed and burned the Marawi Police Station; commandeered a police car;

(e) BJMP personnel evacuated the Marawi City Jail and other affected areas;

(f) Control over three bridges in Lanao del Sur, namely, Lilod, Bangulo, and Sauiaran, fell to the rebels;

(g) Road blockades and checkpoints set up by lawless armed groups at the Iligan-Marawi junction;

(h) Burning of Dansalan College Foundation, Cathedral of Maria Auxiliadora, the nun's quarters in the church, and the Shia Masjid Moncado Colony;

(i) Taking of hostages from the church;

(j) Killing of five faculty members of Dansalan College;

(k) Burning of Senator Ninoy Aquino College Foundation and the Marawi Central Elementary Pilot School;

(l) Overrunning of Amai Pakpak Hospital;

(m) Hoisting of ISIS flag in several areas;

(n) Attacking and burning of the Filipino-Libyan Friendship Hospital;

(o) Ransacking of a branch of Landbank of the Philippines and commandeering an armored vehicle;

(p) Reports regarding Maute Group's plan to execute Christians;

(q) Preventing Maranaos from leaving their homes;

(r) Forcing young Muslims to join their group; and

(s) Intelligence reports regarding the existence of strategic mass action of lawless armed groups in Marawi City, seizing public and private facilities, perpetrating killings of government personnel, and committing armed uprising against and open defiance of the Government.[64]

Petitioners attempted to debunk some of the factual details attendant to the foregoing events with the following counter-evidence:[65]

FACTUAL STATEMENTS	COUNTER EVIDENCE
1. that the Maute group attacked Amai Pakpak Hospital and hoisted the DAESH flag there, among several locations. As of 0600H of 24 May 2017, members of the Maute group were seen guarding the entry gates of the Amai Pakpak Hospital and that they held	Statements made by: (a) Dr. Amer Saber, Chief of the Hospital; (b) Health Secretary Paulyn Ubial; (c) PNP Spokesperson Senior Supt. Dionardo Carlos; (d) AFP Public Affairs Office Chief Co. Edgard Arevalo; and

[64] See Report of President Duterte to Congress, pp. 4-5.

[65] See *ponencia*, pp. 63-64; emphases in the original.

hostage the employees of the Hospital and took over the PhilHealth office located thereat (Proclamation No. 216 and Report);	(e) Marawi City Mayor Majul Gandamra denying that the hospital was attacked by the Maute Group **citing on-line news articles of Philstar, Sunstar, Inquirer, and Bombo Radyo.**
2. that the Maute Group ambushed and burned the Marawi Police Station (Proclamation No. 216 and the Report);	Statements made by PNP Director General Ronald dela Rosa and Marawi City Mayor Majul Gandamra **in the on-line news reports of ABS CBN New and CNN Philippines** denying that the Maute group occupied the Marawi Police Station.
3. that lawless armed groups likewise ransacked the Landbank of the Philippines and commandeered one of its armored vehicles (Report);	Statement made by the bank officials **in the on-line news article of Philstar** that the Marawi City branch was not ransacked but sustained damages from the attacks.
4. that the Marawi Central Elementary Pilot School was burned (Proclamation No. 216 and the Report);	Statements **in the on-line news article of Philstar** made by the Marawi City Schools Division Assistant Superintendent Ana Alonto denying that the school was burned and Department of Education Assistant Secretary Tonisito Umali stating that they have not received any report of damage.
5. that the Maute Group attacked various government facilities (Proclamation No. 216 and the Report).	Statement **in the on-line news articles of Inquirer** made by Marawi City Mayor Majul Gandamra stating that the ASG and the Maute Terror Groups have not taken over any government facility in Marawi City.

However, the counter-evidence presented by petitioners largely consist of uncorroborated news reports, which are therefore

inadmissible in evidence on the ground that they are hearsay. In *Feria v. Court of Appeals*:[66]

> [N]ewspaper articles amount to "hearsay evidence, twice removed" and are therefore not only inadmissible but without any probative value at all whether objected to or not, unless offered for a purpose other than proving the truth of the matter asserted.[67]

That being said, and without any other cogent reason to hold otherwise, the government's account of the May 23, 2017 events as above-detailed are to be taken as true and correct. In fact, even if the objections of petitioners are admitted, there are other incidents which remain unrefuted.

In his Report relative to Proclamation No. 216, President Duterte explained that the events of May 23, 2017 "put on public display the [Maute] group's clear intention to establish an Islamic State and their capability to deprive the duly constituted authorities — the President, foremost — of their powers and prerogatives."[68] In consequence, "[l]aw enforcement and other government agencies now face pronounced difficulty sending their reports to the Chief Executive due to the city-wide power outages. Personnel from the BJMP have been prevented from performing their functions. Through the attack and occupation of several hospitals, medical services in Marawi City have been adversely affected. The bridge and road blockades set up by the groups effectively deprive the government of its ability to deliver basic services to its citizens. Troop reinforcements have been hampered, preventing the government from restoring peace and order in the area. Movement by both civilians and government personnel to and from the city is likewise hindered."[69]

To understand the Maute Group's political motive, a brief discussion on the origin and cause behind the Islamic State movement (ISIS or DAESH) remains imperative.

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[66] 382 Phil. 412 (2000).

[67] *Id*. at 423; citations omitted.

[68] Report of President Duterte to Congress, pp. 3-4.

[69] *Id*. at 6.

According to the OSG, the Maute Group from Lanao del Sur led by Omar Maute is but one of the four (4) ISIS-linked local rebel groups that operate in the different parts of Mindanao. These groups — the other three (3) being (*a*) the ASG from Basilan (ASG-Basilan), led by Hapilon, (*b*) the Ansarul Khilafah Philippines, also known as the Maguid Group from Saranggani and Sultan Kudarat led by Mohammad Jaafar Maguid, and (*c*) the Bangsamoro Islamic Freedom Fighters (BIFF) based in Liguasan Marsh, Maguindanao — have formed an alliance for the purpose of establishing a *wilayah* or Islamic Province, in Mindanao. The establishment of different *wilayah* provinces is part of ISIS's grand plan to impose its will and influence worldwide. It captures and administers territories all over the world, which conquered territories are referred to as a caliphate. The success of ISIS in conquering territories means that it has the capacity to acquire fighters and modern weaponry. As conveyed by the OSG, the United Nations has labeled ISIS as the world's most wealthiest organization (with an estimated income of $400 to $500 Million in 2015 alone), pointing out that it derives its income from operating seized oil fields, obtaining protection money from businesses, and profits from black market transactions.[70]

Based on military intelligence, Hapilon performed a symbolic *hijra* or pilgrimage to unite with the ISIS-linked groups in mainland Mindanao. This was geared towards realizing the five step process of establishing a *wilayah*, which are: first, the pledging of allegiance to the Islamic State; second, the unification of all terrorist groups who have given *bay'ah* or their pledge of allegiance; **third, the holding of consultations to nominate a *wali* or a governor of a province; fourth, the achievement of consolidation for the caliphate through the conduct of widespread atrocities and uprisings all across Mindanao**; and finally, the presentation of all these to the ISIS leadership for approval or recognition.[71] In this light, the OSG asserted that the ISIS had already appointed Hapilon as the *emir* in the

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[70] See respondents' Consolidated Comment dated June 12, 2017, pp. 4-5.

[71] See respondents' Memorandum, pp. 7-8.

Philippines, which is the third step in the establishment of *wilayah* in Mindanao.[72] This fact was validated through an announcement in the ISIS weekly newsletter, Al Naba, and confirmed in a June 21, 2016 video by ISIS entitled "The Solid Structure."[73] Notably, the foregoing evidence belie petitioners' supposition, based once more on an uncorroborated news article, that "the Maute Group is more of the clan's private militia latching into the IS brand to inflate perceived capability."[74]

In gauging the danger to the public safety, President Duterte provided information on the Maute Group's armed capability, as well as its connections. He disclosed that "[b]ased on verified intelligence reports, the Maute Group, as of the end of 2016, consisted of around 263 members, fully armed and prepared to wage combat in furtherance of its aims. The group chiefly operates in the province of Lanao del Sur, but has extensive networks and linkages with foreign and local armed groups such as the Jemaah Islamiyah, Mujahadin Indonesia Timur and the ASG. It adheres to the ideals being espoused by the DAESH, as evidenced by [the ISIS publication and video footage as above-stated]."[75]

Also, it remains evident that President Duterte considered the history of Mindanao in calibrating the gravity of the danger presented by the ISIS situation. In fact, he began his Report to Congress by stating that "Mindanao has been the hotbed of the violent extremism and a brewing rebellion for decades. In more recent years, we have witnessed the perpetration of numerous acts of violence challenging the authority of the duly constituted authorities, *i.e.*, the Zamboanga siege, the Davao bombing, the Mamasapano carnage, and the bombings in Cotabato, Sultan Kudarat, Sulu, and Basilan x x x."[76] According to the President,

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[72] See *id*. at 8.

[73] *Id*. at 7.

[74] See Petition (G.R. No. 231658), p. 15.

[75] Report of President Duterte to Congress, p. 3.

[76] *Id*.

"two armed groups [(which are the same armed groups involved in this case)] have figured prominently in all these, namely, the [ASG] and the ISIS-backed Maute Group."[77]

In light of the foregoing, it is my conclusion that the President was justified in declaring martial law over the whole Mindanao. Indeed, there exists sufficient factual basis that he had complied with the requirements of Section 18, Article VII of the 1987 Constitution, namely: (1) that there exists an actual invasion or rebellion; and (2) that the public safety so requires the same.

In particular, the government has established that an actual rebellion (and not merely an imminent danger thereof) already exists at the time President Duterte issued Proclamation No. 216. The May 23, 2017 Marawi siege is evidently an armed public uprising, which motive is to further the ISIS's global agenda of establishing a *wilayah* in Mindanao, and in so doing, remove from the allegiance of the Philippine Government or its laws, the aforesaid territory. Furthermore, it was amply demonstrated that the incidents in furtherance thereof would deprive the Chief Executive wholly or partially, of his powers or prerogatives. As the President correctly explained, the events of May 23, 2017 "constitute not simply a display of force, but a clear attempt to establish the groups' seat of power in Marawi City for their planned establishment of a DAESH [*wilayah*] or province covering the entire Mindanao."[78] "The cutting of vital lines for transportation and power; the recruitment of young Muslims to further expand their ranks and strengthen their force; the armed consolidation of their members throughout Marawi City; the decimation of a segment of the city population who resist; and the brazen display of DAESH flags constitute a clear, pronounced, and unmistakable intent to remove Marawi City, and eventually the rest of Mindanao, from its allegiance to the Govemment."[79] Accordingly, "[t]here exists no doubt that lawless armed groups are attempting to deprive the President of his

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[77] *Id*.

[78] *Id*. at 6.

[79] *Id*.

power, authority and prerogatives within Marawi City as a precedent to spreading their control over the entire Mindanao, in an attempt to undermine his control over executive departments, bureaus, and offices in said area; defeat his mandate to ensure that all laws are faithfully executed; and remove his supervisory powers over local governments."[80]

Likewise, the second requirement of public safety was met. It is my opinion that President Duterte's imposition of martial law over the whole of Mindanao is rationally proportionate to meet the exigencies of the situation at the time he made such declaration. Without a doubt, the potency of the ISIS threat to complete its mission in establishing a *wilayah* here is a public safety concern, which affects not only Marawi City but the entire Mindanao. Again, as uncovered through unrefuted intelligence reports, the ISIS is already on the third step of this establishment process. The next step would be the consolidation for the caliphate through the conduct of widespread atrocities and uprisings all across Mindanao. Surely, the President could not sit idly by and wait for the ISIS's plan to reach its full fruition before declaring martial law in order to respond to this exigent situation. More so, the historical actuations of the Maute Group and ISIS-related Groups, as well as that of the ISIS itself,[81]

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[80] *Id*.

[81] Other events were cited by the government to demonstrate that the atrocities were not confined to Marawi City:

a. On January 13, 2017, an improvised explosive device (IED) exploded in Barangay Campo Uno, Basilan. A civilian was killed while another was wounded.
b. On January 19, 2017, the ASG kidnapped three (3) Indonesians near Bakungan Island, Tawi-Tawi.
c. On January 29, 2017 the ASG detonated an IED in Barangay Danapah, Basilan resulting in the death of two children and the wounding of three others.
d. From February to May 2017, there were eleven (11) separate instances of IED explosions by the BIFF in Mindanao. This resulted in the death and wounding of several personalities.
e. On February 26, 2017, the ASG beheaded its kidnap victim, Juergen Kantner in Sulu.
f. On April 11, 2017, the ASG infiltrated Inabaga, Bohol resulting in firefights between rebels and government troops.

showcase that the danger to Mindanao is not only apparent but real. In other words, a widespread outbreak of violence, if left unpacified, looms in the horizon.

The President also factored-in the armed capability of the Maute Group, which platoon of 263 armed members as of the year 2016, further coordinates with other ISIS-related groups operating all over various areas in Mindanao. As such, the government is faced with the possibility of a consolidated offensive from the Maute Group together with these other groups, such as the ASG-Basilan, the AKP, and the BIFF. Amidst all these, President Duterte similarly considered the historical and cultural context of Mindanao. It is a known fact that the secessionist movement has been extant in Mindanao for decades. Likewise, Islam has been used as a rallying cry to radicalize fellow Muslims. These historical and cultural factors tend to provide fertile ground for the ISIS to capitalize and foster its mission in establishing a firm foothold not only in minor sections but, in fact, in the entire Mindanoan province. By and large, I find it reasonable to conclude that all of the foregoing factors could very well coalesce into a perfect storm of disaster that genuinely endangers the public safety of those in Mindanao.

Finally, it is important to note that the source of the Maute Group's support does not merely remain local. The main ISIS caliphate abroad, which is one of the world's richest organizations according to the UN, including its other cell groups all over the world, can be variably tapped as funding or arms sources. In this regard, President Duterete aptly stated that "[t]he taking up of arms by lawless armed groups in the area, with support being provided by foreign-based terrorists and illegal drug money, and their blatant acts of defiance which embolden other armed groups in Mindanao, have resulted in the deterioration of public order and safety in Marawi City; they have likewise compromised the security of the entire Island of Mindanao."[82] "Considering the network and alliance-building activities among

g. On April 13, 2017, the ASG beheaded Filipino kidnap victim Noel Besconde.
h. On April 20, 2017, the ASG kidnapped SSg. Anni Siraji and beheaded him three days later. (See respondents' Memorandun, pp. 10-11.)

[82] Report of President Duterte to Congress, p. 6.

terrorist groups, local criminals, and lawless armed men, the siege of Marawi City is a vital cog in attaining their long-standing goal: absolute control over the entirety of Mindanao. These circumstances demand swift and decisive action to ensure the safety and security of the Filipino people and preserve our national integrity."[83]

In fine, since it was adequately proven that Proclamation No. 216 rests on sufficient factual basis and thus, complies with both requirements of Section 18, Article VII of the Constitution, I therefore vote to **DISMISS** the petitions. After all, it is this Court's bounden duty to rule based on what the law requires, unswayed by unfounded fears or speculation. The ghosts of our past should not haunt, but instead, teach us to become a braver, wiser and more unified nation.

DISSENTING OPINION

SERENO, *C.J.*:

The President was unable to lay down sufficient factual basis to declare martial law and suspend the privilege of the writ of *habeas corpus* in the **entire** islands group of Mindanao in Proclamation No. 216.[1] Neither was he able to accomplish that in his Report to Congress dated 25 May 2017. At most, he was able to establish the existence of actual rebellion, and the danger to public safety, in Marawi City.

Thus, the position taken by Justice Antonio T. Carpio that martial law[2] is valid only in Marawi City is correct, considering that respondents, who bear the burden of proving the existence of sufficient facts to justify the declaration of martial law, were unable to do so. However, I took one unique aspect of this case

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[83] *Id*. at 7.

[1] Entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao" dated 23 May 2017.

[2] Unless the context otherwise indicates, I refer to the declaration of martial law here by President Rodrigo Roa Duterte to refer also to his suspension of the privilege of the writ of *habeas corpus*, both of which are contained in Proclamation No. 216.

into consideration, and as a result, concluded that it is valid not only in the city of Marawi, but in the entire province of Lanao del Sur of which Marawi is a part, and in the provinces of Maguindanao and Sulu as well.

It must be borne in mind that this is the first post-Marcos examination of martial law that this Court will be undertaking under the 1987 Constitution. Neither rules nor jurisprudence exist to sufficiently guide the President on the declarative pronouncements and the evidentiary threshold that must be met for a martial law declaration to pass the test of constitutionality. A significant amount of interpretation and drawing up from analogous rules was therefore rendered necessary during the Court's handling of this proceeding.

Thus, this opinion takes a more permissive approach in weighing and admitting evidence or drawing from interpretative sources, simply because this Court had no time to vet the same for precision, accuracy, and comprehensiveness.

This is but fair to the President and his security and military officials. It is difficult to conclude that on 23 May 2017 when they had to urgently respond to the violent resistance by the Maute and Hapilon group of supporters, that the President and his officials should have also foreseen the possibility that they would be required by this Court to state in both the proclamation order and the report to Congress, all the acts constituting rebellion that form the basis to declare martial law. The circumstances of this case compel me to accept the explanation subsequently made to this Court by the Defense Secretary and the AFP[3] Chief of Staff, as evidence to clarity Proclamation No. 216 and the President's Report to Congress.

The sworn statements of Secretary Delfin M. Lorenzana and General Eduardo M. Año were submitted to the Court on the 19 June 2017; no examination of the two thereafter could be undertaken under the timeline of this Court. Shorn of the ability to further question the two on their affidavits, this opinion has drawn from sources that are publicly available to understand the context of some of their material claims.

[3] Armed Forces of the Philippines.

The approach taken in this opinion, like the *sui generis* proceeding under Article VII, Section 18, is also a "one-off" or *pro hac vice* approach, i.e., applicable only for these petitions, considering the paucity of rules and jurisprudence to guide the procedural, especially the evidentiary, aspects of the same. I have sought out what was procedurally fair to both sides in the present situation where the rules are not clear. And what do fairness and procedural due process require in such a situation?

> Due process has never been and perhaps can never be precisely defined. It is not a technical conception with a fixed content unrelated to time, place and circumstances. The phrase expresses the requirement of fundamental fairness, a requisite whose meaning can be as opaque as its importance is lofty. In determining what fundamental fairness consists of in a particular situation, relevant precedents must be considered and the interests that are at stake; private interests, as well as the interests of the government must be assessed.[4]

As examples, the Court refused in two decisions, to apply retroactively what purported to be the rules governing agrarian courts and the DARAB[5] rules of procedure. In *Land Bank of the Phils. v. De Leon*,[6] we emphasized that our ruling on the novel issue concerning proper procedure for appeals of decisions of Special Agrarian Courts must only be applied prospectively. We explained that prior to that case, there was no authoritative guideline on the matter and the Court of Appeals has, in fact, rendered conflicting decisions on that issue. Consequently, a prospective application of the ruling was necessitated by equity and fair play.

The same underlying principle was also applied in *Limkaichong v. Land Bank of the Philippines*[7] to justify our refusal to retroactively apply the 15-day period for appeal provided in

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[4] *People v. Lacson*, 459 Phil. 330 (2003) and *Lassiter v. Department of Social Service of Durham City*, 452 U.S. 18, 101 S.Ct. 2153, 2158, 68 L. Ed. 2d 640 (U.S. 1981).

[5] Department of Agrarian Reform Adjudicative Board.

[6] 447 Phil. 495 (2003).

[7] G.R. No. 158464, 2 August 2016.

the DARAB Rules of Procedure. The Court recognized that the "jurisprudential conundrum" involving the applicability of those provisions was only made clear after the institution of the suit;[8] hence, the new rule could not be fairly applied in that case.

In addition to the effort to be fair to the President and his officials, the second reason this permissive approach to the evidence is being adopted is to demonstrate that with enough effort, even if we were deprived of the ability to ask interrogatory questions to Secretary Lorenzana and General Año in relation to their affidavits, the Court should still have undertaken a factual review of the coverage of martial law. Instead, in refusing to make such effort, the majority has effectively given a *carte blanche* to the President to exclusively determine this matter. Validating a Mindanao-wide coverage is indeed convenient for the Court, but it is not right. If, to use the words of the *ponencia*, the most important objective of Article VII, Section 18 is to "curtail the extent of the power of the President," then this Court has miserably failed.

After all, both the phraseology of the Constitution and jurisprudence require us to undertake a review of "where" martial law will be declared.

This opinion will demonstrate that the Court could have avoided defaulting on its duty to fully review the action of the President. Instead, the majority emaciated the power of judicial review by giving excessive leeway to the President, resulting in the absurdity of martial law in places as terrorism and rebellion-free as Dinagat Islands or Camiguin. The military has said as much: there are places in Mindanao where the Mautes will never gain a foothold.[9] If this is so, why declare martial law over the whole of Mindanao?

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[8] *Id.*

[9] JUSTICE LEONEN:

If they go to Dinagat, they will stick out like a sore tongue [thumb]?

GENERAL PURISIMA:

Yes, Your Honor.

The military admitted it succeeded repelling the Abu Sayyaf in Bohol without martial law,[10] should the fact that they can repeat the attempt mean that martial law can be imposed in Bohol?

What Proclamation No. 216 and the President's Report Contain

Proclamation No. 216 enumerates the following acts of the Maute group as follows:

> . . . today, 23 May 2017, the same Maute terrorist group has taken over a hospital in Marawi City, Lanao del Sur,

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JUSTICE LEONEN:

They do not have *pintakasi* there?

GENERAL PURISIMA:

Yes, Your Honor.

JUSTICE LEONEN:

They do not have relations there, correct? So, why is it extended to Dinagat?

GENERAL PURISIMA:

Sir, the declaration of martial law is the whole of Mindanao that means, as I said before, the military is implementing martial law in the whole of Mindanao and we shall implement martial law if there is a necessity. For example, a group of Maute/ISIS escaped from Marawi and they go to Siargao or Dinagat then we can use the special power of martial law in order to get those people immediately. But if you go there, there is no semblance of martial law there even in other areas of Mindanao.

JUSTICE LEONEN:

I understand.

GENERAL PURISIMA:

We just implemented curfew and checkpoint in key areas, selected areas that we believe might have connection with the Marawi uprising, Your Honor.

[10] JUSTICE LEONEN:

Let me be more specific by a concrete example. Abu Sayyaf went to Bohol?

GENERAL PURISIMA:

Yes, Your Honor.

JUSTICE LEONEN:

And martial law was not in place but you were able to quell the intrusion of the fighters in Bohol?

GENERAL PURISIMA:

Yes, Your Honor.

> 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 States 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;

The President's Report, on the other hand, attempts to detail facts supporting his claim of rebellion — on pages 4 and 5 — but again, falls short of claiming any other act committed by any other group in any other place in Mindanao other than in Marawi City.

No amount of strained reading of the two presidential documents comes close to a claim that rebellion is taking place anywhere else outside of Marawi City. Neither does the recitation of facts by the Office of the Solicitor General (OSG) in its Comment, add anything to the conclusion. The *ponencia* has already narrated all the events that happened in Marawi City in concluding that actual rebellion took place, so I will not repeat them here.

In addition, allow me to summarize the arguments of Justice Carpio, for brevity's sake, on why martial law is valid only in Marawi City: a) the Proclamation and Report contains no evidence of actual rebellion outside of Marawi City; b) they keep on referring to the Maute group's intent to remove from the Republic only "this part of Mindanao"; and c) the plan of the group was to wage the rebellion first in Marawi as a prelude to waging war in the rest of Mindanao, which means rebellion has not actually taken place in any other part.

What Lorenzana and Año Testified to

As earlier explained, I took the additional step of examining the evidence more closely with a view to actually understanding what the correct description of the realities in Mindanao should

have been, beyond what has been described in Proclamation No. 216, the President's Report and the OSG's Comment.

During the Court's examination of General Año, it was clear that he believed that the military was doing its best within all available legitimate means, to bring peace and order to Mindanao and to crush the lawless violence that was taking place in its various parts. However, when further prodded, he stressed that the matter of declaring martial law was the sole prerogative of the President to which the AFP fully defers.

I have chosen to examine the totality of the President's claim that the whole of Mindanao is vulnerable to the ISIS-inspired rebellion led by the Maute group. I have listened very carefully to what the Secretary of Defense and the Chief of Staff of the Armed Forces of the Philippines (AFP) had to say about the realities on the ground.

It is true, what they said, that hundreds of violent incidents have wracked Mindanao. However, a large majority of them are unrelated to the alleged ISIS-inspired rebellion. They may have been committed by the MNLF, the MILF, or the NPA/INDF, but there is no causal nor factual nexus between those acts and the acts of rebellion alleged in the presidential proclamation.

Unless the President is saying that the publicly-announced peace negotiations being conducted with the MNLF, the MILF, and the NPA/NDF are being completely abandoned, acts attributable to these three rebel groups cannot serve as the factual basis for Proclamation No. 216.

Note that the justification presented by the President in Proclamation No. 216 is only the actual rebellion being waged in Marawi City by the Maute group and its capability to sow terror, and cause damage and death to property not only in Lanao del Sur but also in other parts of Mindanao.

In his Report, the President said:

> Considering the network of alliance-building activities among terrorist groups, local criminals and lawless armed men, the siege of Marawi City is a vital cog in attaining

> their long-standing goal: absolute control over the entirety of Mindanao. These circumstances demand swift and decisive action to ensure the safety and security of the Filipino people and preserve our national integrity.

All the claims of violence and networking in the President's Report refer solely to those perpetrated and nurtured by the Maute Group and its claimed ally, the Abu Sayyaf. The nexus therefore, must be demonstrated to these two groups' alleged alliance to establish an ISIS *wilayat* to justify coverage under Proclamation No. 216.

It is important to explain that martial law is not, under our Constitution, justifiable by the presence of violence alone. The unconstitutionality of Proclamation No. 216 in the entire islands group of Mindanao arises not because there is no violence in other parts of Mindanao; there is. It is not because the dangers posed by the Maute fighters are not serious; they are. Rather, it is because in parts of Mindanao other than in Lanao del Sur, Maguindanao, and Sulu, the requisites for a valid declaration of martial law have not been proven.

Our military and law enforcement establishments have always treated responses to the incidents in Mindanao as law enforcement or military actions against lawless violence. In response to this Court's questions, the military maintains that with or without martial law, it will perform its duty to quell rebellion, stop lawless violence, and preserve the territorial integrity of this country. This stance goes directly into the question of necessity; whether indeed, the military needed martial law in the entire islands group of Mindanao to restore order in Marawi City. Or is the armed conflict in Marawi City the only allowable purview of martial law under the present circumstances?

Should the Court allow the President to use martial law to solve all the problems in Mindanao as he himself has intimated, or should the Court remind him that martial law is a measure employable only when there is actual rebellion, and only when public safety requires the imposition of martial law? The President cannot broaden its use to solve other social ills.

The danger of misusing martial law is related to the need to protect the military from returning to its misshapen role during Marcos' Martial Law. Contrary to the sentiment of the *ponencia*, it is not fear and bias that animates magistrates of this Court when they seek to faithfully apply the words of the Constitution in the review of Proclamation No. 216; rather, it is the need to zealously protect the institutions of law and governance that have been very carefully designed by the Constitution. Of course, the Court is unanimous that all safeguards of constitutional rights must be kept in place as well.

I must emphasize that since 2005, the military establishment has taken institutional steps to professionalize its ranks in accordance with its constitutional role.[11] It is of utmost importance therefore, that this Court not derail the reform efforts of the military to remove themselves from adventurism or from being unconstitutionally misdirected.

Further, this Court must ensure that any decision it will render does not unwittingly give the Maute gang of criminals a legal status higher than that of common local criminals or terrorists, or give them international notoriety that will facilitate financial and moral support from like-minded criminals. I agree with the caution being aired by Justice Marvic M.V.F. Leonen that any action this Court or the President takes may have international repercussions.

Points of Disagreement with the *Ponencia*'s Arguments

I wish to diverge from the arguments in the *ponencia* on several points:

1) The duty of the Court to inquire into the necessity of declaring martial law to protect public safety logically and inevitably requires the determination of proportionality of the powers sought to be exercised by the President. As

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[11] See Philippine Military Academy Roadmap 2015 (2005); Philippine Navy Strategic Sail Plan 2020 (2006); Army Transformation Roadmap 2028 (2010); AFP Transformation Roadmap 2028 (2012).

pointed out by the *ponencia*, the exercise of the powers of the President under Section 18, Article VII "can be resorted to only under specified conditions."[12] This means that greater powers are needed only when other less intrusive measures appear to be ineffective. When it is deemed that the power exercised is disproportional to what is required by the exigencies of the situation, any excess therefore is deemed not required to protect public safety, and should be invalidated.

2) The duty of the Court to inquire into the necessity of declaring martial law to protect public safety logically and inevitably requires the definition of the metes and bounds of the areas to be validly covered by martial law. This is another aspect of proportionality. Put differently, if martial law is not necessary to protect public safety in a certain locality, then that locality cannot be included in the coverage of martial law. If it were otherwise, then this Court would be rendering nugatory the requirements of the Constitution that martial law can only be declared in case of an invasion or rebellion, and when the public safety requires it. This much was clarified by *Lansang*.

3) Contrary to the thinking of the *ponencia*, it is possible and feasible to define the territorial boundaries of martial law. No less than Section 18, Article VII provides that the President can place the entire country "or any part thereof" under martial law. For example, if the province is the largest administrative unit for law enforcement that covers the area of actual conflict, then that unit can be used. This opinion actually recognizes that the areas for a valid martial law operation cover much more than the actual area of combat. As will be shown below, there are only a handful of violent incidents in specific localities in which the elements of publicly taking up of arms against the government and endangerment to public safety are alleged by respondents.

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[12] Decision, p. 31.

4) When the Court makes a determination on the area coverage of martial law in accordance with the necessity of public safety test, the Court does not substitute its wisdom for that of the President, nor its expertise (actually, non-expertise) in military strategy or technical matters for that of the military's. The Court has to rely on the allegations put forward by the President and his subalterns and on that basis apply a trial judge's reasonable mind and common sense on whether the sufficiency and necessity tests are satisfied. The Court cannot be defending vigorously its review power at the beginning, with respect to the sufficiency-of-factual basis question, then be in default when required to address the questions of necessity, proportionality, and coverage. Such luxury is not allowed this Court by express directive of the Constitution. Such position is no different from ducking one's head under the cover of the political question doctrine. But we have already unanimously declared that Section 18, Article VII does not allow government a political question defense. When the military states that present powers are sufficient to resolve a particular violent situation, then the Court must deem them as sufficient, and thus martial law should be deemed as not necessary.

Sufficiency of the Factual Basis for Proclamation No. 216

a. Actual Rebellion

The Court is unanimous that there must be an actual invasion or rebellion, and that public safety calls for the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus*, in order that the declaration or suspension can be constitutional.

Article 134 of the Revised Penal Code defines rebellion as the act of rising publicly and taking arms against the government for the purpose of removing, from allegiance to that government or its laws, the territory of the Republic of the Philippines or any part thereof — any body of land, naval or other armed forces; or for the purpose of depriving the Chief Executive or

the Legislature, wholly or partially, of any of its powers or prerogatives.

Since the Court is unanimous in affirming that only actual rebellion and not the imminence of rebellion is required for the declaration of martial law, then it follows as a matter of course that martial law can only be declared where the actual rebellion is taking place.

To construe otherwise is to validate martial law in any place where there is mere presence, actual or potential, of rebel forces or their supporters. It is to allow a limitless exercise of the President's power under Section 18, Article VII since there have always been rebellion in parts of the country from the 1920's.

It has only been in Marawi City where the element of rebellion that consists in the culpable purpose "of removing, from allegiance to that government or its laws, the territory of the Republic of the Philippines or any part thereof — any body of land, naval or other armed forces; or for the purpose of depriving the Chief Executive or the Legislature, wholly or partially, of any of its powers or prerogatives" has been indisputably proven in the record.

For reasons already explained, I have stretched the limits of the allowable coverage of Proclamation No. 216 to areas which are the nesting grounds of human, financial, and logistical support to the Maute fighters that launched the actual rebellion in Marawi, and where actual acts of rebellion, even if not mentioned by Proclamation No. 216 and the President's Report, are described with sufficient specificity by the AFP Chief of Staff in his sworn statement. The same does not hold true with respect to supply corridors, or spillover arenas for as long as they remain only as potential, and not actual, areas of combat amounting to rebellion. Ordinary military blockades and other modes of interdiction are sufficient to address spillover and supply corridor situations as impressed upon us during the closed door session.

b. When Public Safety Requires It

Public safety has been said to be the objective of martial law. However, unlike the traditional concept of martial law, the 1987

Constitution removes from the military the power to replace civilian government except in an area of combat where the civilian government is unable to function. Attention must be paid to the categorical unction of the Constitution that legislative assemblies and civil courts must continue to function even in a state of martial law. It is only when civil courts are unable to function that military courts and agencies can conceivably acquire jurisdiction over civilians. Such is not the case here as civil courts in Marawi City continue to function from their temporary location in Iligan City. I will use excerpts from American jurists cited by Fr. Joaquin Bernas in describing martial law:

> In the language of Justice Black, it authorizes "the military to act vigorously for the maintenance of an orderly civil government." Or in the language of Chief Justice Stone, it is
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> > the exercise of the power which resides in the executive branch of the government to preserve order and insure the public safety in times of emergency, when other branches of the government are unable to function, or their functioning would itself threaten the public safety . . . It is the law of necessity to be prescribed and administered by the executive power. Its object, the preservation of the public safety and good order, defines the scope which will vary the circumstances and necessities of the case. The exercise of the power may not extend beyond what is required by the exigency which calls it forth . . .[13]

c. Sufficiency and necessity test requires calibration and delimitation of the coverage of martial law

The Court's statements in *Lansang* must be admired for their prescience. It pronounced that the suspension of the privilege of the writ of *habeas corpus* is a) judicially reviewable; b) such

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[13] JOAQUIN G. BERNAS, *THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY*, pp. 901-902 (2009).

suspension is not covered by the political question exception; and c) its necessity for public safety must be reviewed according to the intensity of the rebellion, its location and time. In response to the question of the extent of review that the Court must undertake, the *ponencia* of Chief Justice Roberto Concepcion said:

> Indeed, the grant of power to suspend the privilege is neither absolute nor unqualified. The authority conferred by the Constitution, both under the Bill of Rights and under the Executive Department, is limited and conditional. The precept in the Bill of Rights establishes a general rule, as well as an exception thereto. What is more, it postulates the former in the *negative*, evidently to stress its importance, by providing that "(t)he privilege of the writ of *habeas corpus* shall *not* be suspended . . . ." It is only by way of *exception* that it permits the suspension of the privilege "in cases of invasion, insurrection, or rebellion"— or, under Art. VII of the Constitution, "imminent danger thereof" — "when the public safety requires it, in any of which events the same may be suspended wherever during such period the necessity for such suspension shall exist." For from being full and plenary, **the authority to suspend the privilege of the writ is thus circumscribed, confined and restricted, not only by the prescribed setting or the conditions essential to its existence, but, also, as regards the time when and the place where it may be exercised. These factors and the aforementioned setting or conditions mark, establish and define the extent, the confines and the limits of said power, beyond which it does not exist. And, like the limitations and restrictions imposed by the Fundamental Law upon the legislative department, adherence thereto and compliance therewith may, within proper bounds, be inquired into by courts of justice**. Otherwise, the explicit constitutional provisions thereon would be meaningless. Surely, the framers of our Constitution could not have intended to engage in such a wasteful exercise in futility.[14] (emphasis supplied)

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[14] *In re: Lansang v. Garcia*, *supra* note 4, at 586.

Indeed, the Court had described instances of actual rebellion and the corresponding declaration of martial law as being often limited in geographical scope.

> This [referring to the area of actual rebellion] is apparent from the very provision of the Revised Penal Code defining the crime of rebellion, which may be limited in its scope to "any part" of the Philippines, and, also, from paragraph (14) of section 1, Article III of the Constitution, authorizing the suspension of the privilege of the writ "wherever" — in case of rebellion "the necessity for such suspension shall exist." In fact, the case of *Barcelon v. Baker* referred to a proclamation suspending the privilege in the provinces of Cavite and Batangas only. The case of *In re Boyle* involved a valid proclamation suspending the privilege in a smaller area — a county of the state of Idaho.
>
> **The magnitude of the rebellion has a bearing on the second condition essential to the validity of the suspension of the privilege — namely, that the suspension be required by public safety.**[15]

While *Lansang* recognized that actual rebellion can be limited in geographical area, it nevertheless upheld the nationwide suspension of the privilege of the writ of *habeas corpus* because the evidence that the Court detailed in the Decision spoke of a nationwide spread of acts of rebellion and anarchy.

The only conclusion from the Court's pronouncements in *Lansang* is that this Court is required not only to determine the existence of actual rebellion, but also, **the time for and the place over which martial law can be declared**. The intensity of the rebellion, the areas over which it is being waged are matters that the Court must carefully examine.

Let us recall the relevant portions of the martial law provision in the Constitution in Article VII:

> Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever

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[15] *Id*. at 591-592.

> it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. **In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law.** Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extends such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.
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> The Supreme Court may **review**, in an appropriate proceeding filed by any citizen, **the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*** or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

The phraseology of the Constitution is purposive and directed. Martial law can only be declared: a) when there is actual invasion or rebellion; b) when public safety requires it; and c) over the entire Philippines or any part thereof. This Court cannot render inutile the second sentence of Article VII, Section 18 by refusing to review the presidential decision on the coverage of martial law vis-a-vis the place where actual rebellion is taking place, and the necessity to public safety of declaring martial law in such places. The use of the phrase "when public safety requires it" can only mean that the Court must ask whether the powers being invoked is proportional to the state of the rebellion, and corresponds with its place of occurrence.

d. Terrorism and Rebellion

A question has been asked on the distinction between terrorism and rebellion and whether acts of terrorism can serve as factual basis for declaring martial law. *People v. Hernandez*[16] describes the various means by which rebellion may be committed, namely: "resort to arms, requisition of property and services, collection of taxes and contributions, restraint of liberty, damage to property, physical injuries and loss of life, and the hunger, illness and unhappiness that war leaves in its wake — except that, very often, it is worse than war in the international sense, for it involves internal struggle, a fight between brothers, with a bitterness and passion or ruthlessness seldom found in a contest between strangers."[17] Hence, rebellion encompasses the entire portfolio of acts that a rebel group may commit in furtherance thereof and can include terrorism.

Republic Act No. (R.A.) 9372 (Human Security Act) defines terrorism as any punishable act that sows or creates a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand.[18] Among the punishable acts enumerated in the definition of terrorism are those that may also fall under rebellion. It would thus appear that the crime of terrorism covers an even larger universe of crimes. Apparently, while terrorism does not always amount to a rebellion, acts of terrorism may be committed in furtherance of a rebellion.

Significantly, the Court in *Lansang* had the luxury of information on the ideology and methodologies utilized by the rebels in pursuance of their beliefs. Thus, bombing incidents, assassinations, attacks on the civilian population, violent demonstrations, the paralyzation of basic utilities, and even the establishment of front organizations were conclusively acknowledged as acts done in furtherance of rebellion.

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[16] 99 Phil. 1956 (1956).

[17] *Id*. at 521.

[18] R.A. 9372, Sec. 3.

That, however, is not the situation here.

Unlike the *Lansang* Court that was not constitutionally constrained to issue its Decision within a 30-day period from the filing of a petition questioning the factual basis for the declaration of martial law, this Court, because of the time limit, has not been able to vet evidence that were sought to be submitted by respondents to support a finding of the existence of the rebellious purpose behind the public taking up of arms.

At this point, I have chosen to rely on the Affidavit of General Eduardo M. Año dated 17 June 2017 in which he attested to the culpable political purpose of the rebels. According to Año, sometime in 2016, Isnilon Hapilon, head of the Abu Sayyaf Group in Basilan, was appointed *emir* or governor of the forces of the Islamic State of Iraq and Syria (ISIS) in the Philippines.[19] Hapilon's appointment started "the unification of the ISIS-linked rebel groups that have the common unified goal of establishing a *wilayat*, or Islamic province, in Mindanao."[20]

While it was ideal for the Court to have had the chance to examine General Año more closely, I am constrained to take at face value, that it was Hapilon's appointment as emir of ISIS in 2016 that is evidence of the culpable purpose of the ISIS-inspired Maute group's rebellion in Marawi City.

e. Existence of Rebellion and the Need for Martial Law in the Three Provinces

I have already expressed my agreement with the *ponencia* that the President has established the sufficiency of the factual basis for the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* in Marawi City.

Assuming the statement of General Año to be true, I believe that there is sufficient factual basis for the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* in three provinces, including the one where Marawi City is situated.

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[19] Memorandum of the OSG, Annex 2 (Affidavit of General Eduardo M. Año), p. 5.

[20] *Id*.

I will enumerate below the following incidents alleged by General Año to have been orchestrated by ISIS-related groups that threaten the peace and security situation in other parts of Mindanao other than Marawi, after which I will analyze the same according to the tests earlier described:

Involving the Abu Sayyaf Group

1. Killing of 15 soldiers in a skirmish in Patikul, Sulu, on 29 August 2016[21]
2. Kidnapping of three Indonesian crew members near the east of Bakungan Island, Taganak, Tawi-Tawi on 19 January 2017[22]
3. Kidnapping of the six Vietnamese crew members of Giang Hai 05 in the north of Pearl Bank, Tawi-Tawi, on 19 February 2017[23]
4. Beheading of German kidnap victim Juergen Gustav Kantner on 26 February in Sulu[24]
5. Kidnapping of Jose and Jessica Duterte on 3 March 2017[25]
6. Kidnapping of Filipino crew members Laurencio Tiro and Aurelio Agac-Ac on 23 March 2017[26]
7. Beheading of Filipino kidnap victim Noel Besconde on 13 April 2017[27]
8. Kidnapping of Staff Sergeant (SSg) Anni Siraji of the Philippine Army (PA) on 20 April 2017 and his beheading on 23 April 2017[28]

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[21] Proclamation No. 55 dated 4 September 2016 (Declaring a State of National Emergency on Account of Lawless Violence in Mindanao).

[22] Memorandum of the Office of the Solicitor General (OSG), Annex 9 (Significant Atrocities in Mindanao Prior to the Marawi Incident), p. 1.

[23] *Id*.

[24] *Id*.

[25] *Id*.

[26] *Id*.

[27] *Id*.

[28] *Id*.

9. Kidnapping of Filipinos Alidznur Halis and Aljimar Ahari on 29 April 2017[29]
10. Explosion of an improvised explosive device (IED) in *Barangay* Campo Uno, Lamitan City, Basilan, on 13 January 2017 resulting in the death of one civilian and the injury of another[30]
11. Explosion of an IED in *Barangay* Danapah, Albarka, Basilan, on 29 January 2017 causing the death of two civilians and the wounding of three others[31]

Involving the Maute Group

1. Attack against the 51st Infantry (INF) Battalion, PA, based in *Barangay* Bayabao, Butig, Lanao del Sur, on 20 February 2016[32]
2. Kidnapping of six sawmill workers and the beheading of two of the victims on 4 and 11 April 2016, respectively[33]
3. Attack on the Lanao del Sur Provincial Jail in Marawi City on 27 August 2016 to free detained rebels[34]
4. IED attack on a night market in Roxas Avenue, Davao City, on 2 September 2016, leading to the death of 15 people and the injury of 67 others[35]
5. Siege in Butig, Lanao del Sur, from 26 November to 1 December 2016, resulting in skirmishes with government troops and the injury of 32 civilians[36]
6. Carnapping in Iligan City on 24 February 2017, which led to government pursuit operations that killed two

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[29] *Id*.

[30] *Id*.

[31] *Id*.

[32] *Id*. at Annex 2 (Affidavit of General Eduardo M. Año), p. 4.

[33] *Id*.

[34] *Id*.

[35] *Id*.

[36] *Id*.

members of the Maute Group, as well as the apprehension of one member in Tagaloan, Lanao del Norte, on the same day[37]

7. Kidnapping of Omera Lotao Madid in Saguiaran, Lanao del Sur, on 5 March 2017[38]

Involving the Bangsamoro Islamic Freedom Fighters (BIFF)

1. Liquidation by BIFF elements of Corporal (Cpl) Joarsin K Baliwan (INF, PA) in *Barangay* Tambunan, Guindulungan, Maguindanao, on 16 February 2017[39]
2. Liquidation by BIFF elements of SSg Zaldy M Caliman (INF, PA) in *Barangay* Meta, Datu Unsay, Maguindanao, on 18 February 2017[40]
3. Two IED attacks against a government security patrol in Brgy. Timbangan, Shariff Aguak, on 3 March 2017, which resulted in the wounding of a military personnel[41]
4. IED attack against a government security patrol along the national highway of Brgy. Labu-Labu, Datu Hoffer Ampatuan, Maguindanao, on 30 March 2017, which resulted in one wounded in action[42]
5. Harassment against government personnel in Brgy. Balanaken, Datu Piang, Maguindanao on 31 March 2017, which resulted in the killing of one Civil Aviation Authority personnel[43]
6. IED explosion in front of the AFC eatery in Brgy. Poblacion 5, Midsayap, North Cotabato, on 1 April 2017, which resulted in the wounding of a civilian[44]

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[37] *Id*.

[38] *Id*. at p. 5.

[39] *Id*. at Annex 9 (Significant Atrocities in Mindanao Prior to the Marawi Incident), p. 2.

[40] *Id*.

[41] *Id*.

[42] *Id*.

[43] *Id*.

[44] *Id*.

7. Liquidation by BIFF elements of Cpl. Tamana U. Macadatar, PA, in *Barangay* Tukanalipao, Mamasapano, Maguindanao, on 4 April 2017[45]
8. Two IED explosions targeting the Dragon Gas Station in Tacurong City, Sultan Kudarat, on 17 April 2017, which resulted in the wounding of eight persons (1 AFP, 1 Philippine National Police (PNP), and 6 civilians)[46]
9. IED attack on NGCP Tower #68 in *Barangay* Pagangan II, Aleosan, North Cotabato, on 18 April 2017[47]
10. IED explosion in Maitumaig Elementary School in *Barangay* Maitumaig, Datu Unsay, Maguindanao, on 5 May 2017[48]
11. Harassment of military detachments in *Barangay* Pagatin, Datu Salibo, Maguindanao, on 6 May 2017, which resulted in the wounding of seven military personnel[49]
12. IED attack targeting a PNP vehicle in Brgy. Mamasapano, Mamasapano, Maguindanao, on 9 May 2017 resulting in four wounded PNP personnel[50]
13. IED explosion while government troops were conducting a route security patrol in *Barangay* Timbangan, Shariff Aguak, Maguindanao, on 18 May 2017 resulting in one government personnel killed and another wounded[51]
14. IED explosion in lsulan Public Market, lsulan, Sultan Kudarat, on 22 May 2017[52]

All of the above incidents are acts of lawless violence directed against either civilians or government forces. Not only did they

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[45] *Id*.

[46] *Id*.

[47] *Id*.

[48] *Id*. at p. 3.

[49] *Id*.

[50] *Id*.

[51] *Id*.

[52] *Id*.

cause disturbance of the peace in the areas where they were committed; they were all criminal acts punishable under our laws to begin with.

Analysis of the Incidents Committed by the Abu Sayyaf Group

There can be no definitive conclusion that the welfare and general protection of the community are endangered by the kidnapping of foreigners in Tawi-Tawi and Sulu. The two incidents in Tawi-Tawi involved foreign crew members whose capture might have been perpetrated for various reasons, including illegal fishing. The killing of the German kidnap victim was absolutely deplorable. Nevertheless, as they were directed against tourists in the area, the kidnappings may be considered isolated incidents that have limited effect on the public safety of civilians in the community of course and cannot be counted as acts of rebellion.

The four cases of kidnapping of Filipinos committed by the Abu Sayyaf Group are a different matter, however. As the victims are members of the community, their kidnapping hits closer to home and creates a chilling effect on the people who may feel that their welfare is endangered. While public safety is endangered, it is not clear whether the kidnappings were committed for business or were in furtherance of a rebellion.

The two incidents involving IED explosions in Basilan that caused the death of civilians have absolutely created fear in the community. However, because this is not being related to an ongoing rebellion, we can only characterize them for now as acts of terrorism.

While the kidnapping and killing of SSg Anni Siraji (PA) may not necessarily endanger the public safety of the people, as the incident is directed against a member of government forces, it is definitely a form of publicly taking up arms against the government — an element of rebellion.

But it is the killing of 15 soldiers in Patikul, Sulu, upon which the element of publicly taking up arms against the government and the endangerment of public safety converge.

The attack was directed against government forces. Considering the nature of a skirmish, which is not a respecter of time or place, the civilian population in the area could have been caught in the crossfire. It is also of common knowledge that the attacks on the soldiers are part of the ongoing campaign in Sulu to rid its islands of the Abu Sayyaf terrorist-rebel groups.

This is part of the continuous perpetration of attacks by the rebel group throughout the province of Sulu, wherein it is known to primarily operate.[53] Aside from the encounters between the rebels and the army, such as that which occurred just last April 2017,[54] there had been numerous assassinations of members of the armed forces and police in the province.[55] Further, many of its high-profile kidnappings have taken place in Sulu, specifically that of American missionary Charles Watson in 14 November 1993;[56] that of television evangelist Wilde Almeda in July 2000;[57] and that of American Jeffrey Schilling in 28 August 2000.[58] The protracted violence caused by the Abu Sayyaf

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[53] Garrett Atkinson, Abu Sayyaf: The Father of the Swordsman, A review of the rise of Islamic insurgency in the southern Philippines, American Security Project, March 2012, Available: <https://www.americansecurity project.org/wp-content/uploads/2012/03/Abu-Sayyaf-The-Father-of-the-Swordsman.pdf> (Accessed: 4 July 2017).

[54] Roel Pareno, 10 Abu Sayyaf Killed, 32 Soldiers Hurt in Sulu Encounter, Available: http://www.philstar.com/nation/2017/04/03/1687306/10-abu-sayyaf-killed-32-soldiers-hurt-sulu-encounter (Acccessed: 4 July 2017).

[55] Victor Taylor, Terrorist Activities of the Abu Sayyaf, The Mackenzie Institute, Available: http://mackenzieinstitute.com/terrorist-activities-abu-sayyaf/#reference-1 (Accessed: 4 July 2017).

[56] Zachary Abuza, Balik-Terrorism: The Return of the Abu Sayyaf, 4 (2005): Available:<https://ssi.armywarcollege.edu/pdffiles/PUB625.pdf> (Accessed: 4 July 2017).

[57] Abu Sayyaf Kidnappings, Bombings, and Other Attacks, Available: <http://www.gmanetwork.com/news/news/content/154797/abu-sayyaf-kidnappings-bombings-and-other-attacks/story/> (Accessed: 4 July 2017).

[58] Abu Sayyaf Kidnappings, Bombings, and Bther Attacks, Available: <http://www.gmanetwork.com/news/news/content/154797/abu-sayyaf-kidnappings-bombings-and-other-attacks/story/> (Accessed: 4 July 2017).

group has affected the civilians in the community as well, as when members of the rebel group fired on two passenger jeepneys in Talipao, Sulu, killing 21 persons and wounding 11 in July 2014.[59]

To view and understand the killing of the soldiers in Patikul, Sulu within the foregoing context of protracted violence being perpetrated by the group in the entire province, would confirm the conclusion that the requirements for the declaration of martial law and suspension of the privilege of the writ are present in Sulu.

Analysis of the Incidents Committed by the Maute Group

The incidents of kidnapping of Filipinos and beheading of two of them, as well as the IED explosion in Davao City, endangered the public safety of the community. The same is true with regard to the incident of carjacking in Iligan City. However, while government forces were involved in the incident that led to the killing of two Maute Group members and the apprehension of another, the element of publicly taking up arms against the government has not been established. This is because the involvement of the government forces may have resulted from their pursuit of the perpetrators.

The element of publicly taking up arms against the government was present in the ambush of military elements in Marawi City, although it might not have necessarily endangered the public because the target of the ambush was government forces.

The rest of the incidents orchestrated by the Maute Group involved both the element of publicly taking up arms against the government and public safety endangerment.

The attack on the 51st Infantry Battalion and the siege that resulted in skirmishes, both in Butig, Lanao del Sur, were directed at government forces. The attack necessarily created fear in the community, considering that such a brazen act could be

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[59] Julie S. Alipala, Abu Sayyaf Gunmen Kill 21 in Sulu attack, Available: <http://newsinfo.inquirer.net/624137/abu-sayyaf-gunmen-kill-at-least-16-villagers#ixzz4lr5CQIb4> (Accessed: 4 July 2017).

directed at an armed government facility. The siege resulted in the injury of 32 civilians caught in the crossfire.

The attack on the Lanao del Sur Provincial Jail endangered the welfare of the community as a result of the escape of jailed rebels, among others. It may also be considered an act of publicly taking up arms against the government.

Analysis of the Incidents Committed by the Bangsamoro Islamic Freedom Fighters

The context of the killing of Cpl Joarsin K Baliwan (INF, PA), SSg Zaldy M Caliman (INF, PA), and Cpl Tamana U Macadatar (PA) has not been established. It is unclear whether the element of publicly taking up arms against the government was present. The lack of more information also militates against a finding on whether the incident endangered the safety of the community.

The welfare of the community was endangered by the IED explosions in Midsayap, North Cotabato; Tacurong City, Sultan Kudarat; and Isulan, Sultan Kudarat. In fact, two of these explosions resulted in the wounding of civilians. However, other aspects of these incidents are unclear.

The IED attacks on a tower of the National Grid Corporation of the Philippines and on an elementary school in Datu Unsay, Maguindanao also endangered the welfare of the community, especially since one of these attacks was directed against a children's school. However, the element of publicly taking up arms against the government was not established, because the government facilities attacked were civilian in nature.

Neither was the element of publicly taking up arms against the government established in the IED attacks against a government security patrol in Datu Hoffer Ampatuan, Maguindanao; and against a PNP vehicle in Mamasapano, Maguindanao. In these cases, the government personnel attacked were also civilians. The same is true with regard to the harassment committed against government personnel in Datu Piang, Maguindanao. It is clear however, that these incidents endangered the welfare and safety of the community.

The two IED attacks against a government security patrol in *Barangay* Timbangan, Sharif Aguak, which resulted in the wounding of one military personnel, may be considered publicly taking up arms against the government because of the target, the number of attacks and the casualty.

Two incidents show the concurrence of the element of publicly taking up arms against the government and the endangerment of public safety: the harassment of military detachments in Datu Salibo, Maguindanao, which resulted in the wounding of seven military personnel; and the IED explosion directed against government troops in Sharif Aguak, Maguindanao, resulting in the death of one personnel and the wounding of another.

About 100 BIFF members were reportedly closing in on the military detachment in *Barangay* Gadong, Datu Salibo, on 4 May 2017 but government forces used air strikes to drive them away.[60] Reinforcements sent to the government soldiers manning the detachment became the target of a roadside improvised bomb. Meanwhile, another roadside bomb was set off about 15 kilometers away to divert the attention of the government forces. On 6 May 2017, elements of the 57th Infantry Battalion were on their way as reinforcements to the detachment in *Barangay* Pagatin, Datu Salibo, when they were ambushed by rocket-propelled grenades, injuring seven of them.[61]

The IED in Sharif Aguak was planted along the route of the 40th Infantry Battalion patrolling *Barangay* Timbangan.[62] It was detonated with the use of a cellular phone.

These attacks against government forces were clearly deliberate. The use of diversionary tactics and the attacks on

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[60] http://newsinfo.inquirer.net/895173/biff-sub-leader-killed-in-maguindanao-clash-with-soldiers. (Last accessed 4 July 2017).

[61] *Id*.

[62] http://www.philstar.com/nation/2017/05/18/1701212/2-soldiers-hurt-ied-blast-maguindanao. The news report stated that the casualty of the incident were two wounded soldiers. (Last accessed 4 July 2017)

reinforcements betrayed the clear intent of the BIFF members to take over the military detachment in Datu Salibo, Maguindanao. On the other hand, there was premeditation in the planting and detonation of the IED along the patrol route of the government forces.

In contrast, the other incidents perpetrated by the BIFF satisfy only one of the two elements of publicly taking up of arms against the government and endangerment to public safety. In others still, it is unclear whether any of the two are present.

Significantly, respondents have not cited any incident anywhere in Mindanao committed by Ansarul Khilafah Philippines (also known as "The Maguid Group"), which hails from Saranggani and Sultan Kudarat.

Based on the foregoing, actual rebellion and the endangerment of public safety took place and may still be taking place in three provinces: Sulu, Lanao del Sur, and Maguindanao.

Parenthetically, the Maute Group originated from Lanao del Sur, while the BIFF is from Maguindanao. Abu Sayyaf members largely come from Sulu.[63]

Thus, the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* appear to have sufficient factual basis in the following three provinces: Lanao del Sur, Maguindanao, and Sulu. Other than these provinces, the respondents have not alleged any other incident reasonably related to the Maute attack in Marawi City.

It is no coincidence that the acts of rebellion alleged by the AFP occurred in the nesting grounds of the combined Maute-Abu Sayyaf and BIFF forces. Such extension is not unwarranted, especially considering that these are forces who, at the same time, do not seek peace with government. Such would not be the case if the New People's Army (NPA), Moro National Liberation Front (MNLF), and Moro Islamic Liberation Front

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[63] Memorandum of the OSG, Annex 2 (Affidavit of General Eduardo M. Año), p. 3.

(MILF) forces were involved. Another analytical lens, this time involving the ongoing peace negotiations must then be employed.

Parameters for the Implementation of Martial Law and the Suspension of the Privilege of the Writ of *Habeas Corpus*

During the oral arguments, it became evident that there is a variety of ideas on what additional powers martial law provides. This question was not definitively settled in the *ponencia*. It also became evident that there were serious concerns on whether constitutional rights will deteriorate in a martial law setting. One way of answering these questions is to provide the parameters for the valid implementation of martial law and the accompanying suspension of the privilege of the writ of habeas corpus.

The validity of the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* in the three provinces specified above does not vest the President and his officials with unhampered discretion to wield his powers in any way and whichever direction he desires. Their actions must meet legal standards even in a martial law setting. These standards ensure that Marcosian martial law does not happen again and the foundations of a just and humane society envisioned by the Constitution remain intact. At the very core, the bedrock of these standards is the fourth paragraph of Section 18, Article VII of the Constitution:

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

From the foregoing provision springs a series of inhibitions in existing laws that are imposed on the government during martial law. It behooves this Court, as the guardian of the Constitution and protector of the constitutional rights of the citizens, to specify these limitations. It is this Court's duty, upon recognizing government's own difficulty with the concept of martial law, to sufficiently outline the legal framework upon

which the implementation of martial law depends; and to ensure that the power to declare martial law is discharged in full accordance with this framework. To shirk from this duty would be a disservice to our men and women in uniform who, at this very moment, are rendering sacrificial service in the field as implementors of martial law. Ultimately, it would be a disservice to the Filipino people.

The following discussion outlines the salient aspects of a martial law declaration that is accompanied by the suspension of the privilege of the writ of *habeas corpus* and what these mean to martial law implementors.

a. Ability to Legislate

The Constitution specifically provides that a state of martial law does not supplant the functioning of the legislative assemblies. Therefore, as reflected in the deliberations of the framers,[64] the President is not automatically vested with plenary legislative powers. Ordinary legislation continues to belong to the national and local legislative bodies even during martial law.[65] This necessarily connotes the continued operation of all statutes, even during a state of martial rule.

It has been opined that the martial law administrator has the authority to issue orders that have the effect of law, but strictly only within the theater of war[66] — an area that is not necessarily

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[64] FATHER BERNAS: 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 *Aquino vs. 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. (II Record, CONSTITUTIONAL COMMISSION 398 ([29 July 1986]).

[65] BERNAS, *supra* note 12 at 920.

[66] FATHER BERNAS: The question now is: During martial law, can the President issue decrees? The answer we gave to that question in the Committee

the same as the entire territorial scope of the martial law declaration. Should it happen that this opinion is upheld by this Court, it must however be noted that this does not give the administrator plenary legislative powers, since the orders issued must still be in accordance with the Constitution, especially the Bill of Rights. But outside the so-called theater of war, the operative law is ordinary law.[67]

b. Operation of Civil and Military Courts

The rule under the Constitution is that the civil courts cannot be supplanted by military courts.[68] Therefore, the civil courts remain open and fully functioning, and the Rules of Court continue to be applicable.

It seems to be implied that in an actual theater of war where the civil courts are closed and unable to function, military courts shall have jurisdiction even over civilians in that area. It must be emphasized that all courts, including that in Marawi City are functioning, albeit in a nearby municipality.

c. Ability to Effect Arrests

***i.* Crime of Rebellion**

As in the conduct of searches, the continued operation of the Constitution during martial law necessarily connotes that the constitutional guarantee against arbitrary arrests under the Bill of Rights remains in full effect. As a general rule, a warrant of arrest is necessary before an arrest can be validly affected as provided in Section 2, Article III of the Constitution.

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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 theatre 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 theatre of war. (II Record, CONSTITUTIONAL COMMISSION 398 [29 July 1986]).

[67] BERNAS, *supra* note 12 at 920.

[68] Constitution, Article VII, Sec. 18.

However, because rebellion, conspiracy, or proposal to commit rebellion and crimes or offenses committed in furtherance thereof constitute direct assaults against the State, they are in the nature of continuing crimes.[69] As such, arrests without warrant of persons involved in rebellion are justified because they are essentially committing an offense when arrested.[70] The interest of the state in the arrest of persons involved in rebellion is explained in *Parong v. Enrile*:[71]

> The arrest of persons involved in the rebellion whether as its fighting armed elements, or for committing non-violent acts but in furtherance of the rebellion, is more an act of capturing them in the course of an armed conflict, to quell the rebellion, than for the purpose of immediately prosecuting them in court for a statutory offense. The arrest, therefore, need not follow the usual procedure in the prosecution of offenses which requires the determination by a judge of the existence of probable cause before the issuance of a judicial warrant of arrest and the granting of bail if the offense is bailable. Obviously, the absence of a judicial warrant is no legal impediment to arresting or capturing persons committing overt acts of violence against government forces, or any other milder acts but equally in pursuance of the rebellious movement. The arrest or capture is thus impelled by the exigencies of the situation that involves the very survival of society and its government and duly constituted authorities.[72]

The arrest of persons involved in rebellion is thus synonymous with a valid warrantless arrest of a person committing a crime in the presence of the arresting officer.

Since the privilege of the writ of *habeas corpus* is suspended under Proclamation No. 216, Section 18, Article VII of the

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[69] *Umil v. Ramos*, 265 Phil. 325 (1990).

[70] *Id*.

[71] 206 Phil. 392 (1983).

[72] *Id*. at 417.

Constitution mandates that all persons arrested or detained for rebellion or offenses directly connected with invasion shall be judicially charged within three days; otherwise they shall be released.

ii. Crime of Terrorism

Arrests of persons charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism may be made without judicial warrant only upon authority in writing by the Anti-Terrorism Council.[73] Immediately after taking custody, the arresting officers shall notify in writing the judge of the court nearest the place of apprehension or arrest.

The officer is allowed to detain the person for a period not exceeding three days from the moment the latter has been taken into custody.[74]

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[73] R.A. 9372, Sec. 18.

[74] SECTION 18. *Period of Detention Without Judicial Warrant of Arrest*. — The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any police or law enforcement personnel, who, having been duly authorized in writing by the Anti-Terrorism Council has taken custody of a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities, deliver said charged or suspected person to the proper judicial authority within a period of three days counted from the moment the said charged or suspected person has been apprehended or arrested, detained, and taken into custody by the said police, or law enforcement personnel: *Provided*, That the arrest of those suspected of the crime of terrorism or conspiracy to commit terrorism must result from the surveillance under Section 7 and examination of bank deposits under Section 27 of this Act.

The police or law enforcement personnel concerned shall, before detaining the person suspected of the crime of terrorism, present him or her before any judge at the latter's residence or office nearest the place where the arrest took place at any time of the day or night. It shall be the duty of the judge, among other things, to ascertain the identity of the police or law enforcement personnel and the person or persons they have arrested and presented before him or her, to inquire of them the reasons why they have arrested the person and determine by questioning and personal observation whether or not the suspect has been subjected to any physical, moral or psychological torture by whom and why. The judge shall then submit a written

Within three days, the arresting officers shall present the person suspected of the crime of terrorism before any judge of the place where the arrest took place at any time of the day or night. Judges shall ascertain the identity of the arresting officers and the persons presented and inquire as to the reasons for the arrest. They shall also determine by questioning and personal

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report of what he/she had observed when the subject was brought before him to the proper court that has jurisdiction over the case of the person thus arrested. The judge shall forthwith submit his/her report within three calendar days from the time the suspect was brought to his/her residence or office.

Immediately after taking custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism, the police or law enforcement personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest: *Provided*, That where the arrest is made during Saturdays, Sundays, holidays or after office hours, the written notice shall be served at the residence of the judge nearest the place where the accused was arrested.

The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon the police or law enforcement personnel who fails to notify and judge as *Provided* in the preceding paragraph.

SECTION 19. *Period of Detention in the Event of an Actual or Imminent Terrorist Attack.* — In the event of an actual or imminent terrorist attack, suspects may not be detained for more than three days without the written approval of a municipal, city, provincial or regional official of a Human Rights Commission or judge of the municipal, regional trial court, the Sandiganbayan or a justice of the Court of Appeals nearest the place of the arrest. If the arrest is made during Saturdays, Sundays, holidays or after office hours, the arresting police or law enforcement personnel shall bring the person thus arrested to the residence of any of the officials mentioned above that is nearest the place where the accused was arrested. The approval in writing of any of the said officials shall be secured by the police or law enforcement personnel concerned within five days after the date of the detention of the persons concerned: *Provided, however*, That within three days after the detention the suspects, whose connection with the terror attack or threat is not established, shall be released immediately.

SECTION 20. *Penalty for Failure to Deliver Suspect to the Proper Judicial Authority within Three Days.* — The penalty often (10) years and one day to twelve (12) years of imprisonment shall be imposed upon any police or law enforcement personnel who has apprehended or arrested, detained and taken custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism and fails to deliver such charged or suspected person to the proper judicial authority within the period of three days. (R.A. 9372)

observation whether or not the suspect has been subjected to any physical, moral or psychological torture. They shall submit a written report within three calendar days to the proper court that has jurisdiction over the case of the person thus arrested.[75]

iii. **Other Crimes**

Because the civil courts remain open and fully functional during martial rule, warrants of arrest can be issued only by a judge on the basis of probable cause. The regular operation of the courts necessarily maintains the applicability of the Rules of Court; thus, the procedure under Rule 112 of the Rules of Court on the issuance of an arrest order must be followed.

As in the case of searches, there can be instances of valid arrests without a warrant. The exceptions the Court recognizes that allow law enforcers or private persons to effect an arrest without a warrant are the following:

1. *When, in their presence, the persons to be arrested have committed, are actually committing, or are attempting to commit an offense.*[76] This arrest is also called an *in flagrante delicto* arrest, which is an exception that requires the concurrence of two elements for it to apply: (1) the person to be arrested must execute an overt act indicating that they have just committed, are actually committing, or are attempting to commit a crime; and (2) the overt act is done in the presence or within the view of the arresting officers.[77]
2. *When an offense has just been committed and the officers have probable cause to believe based on their personal knowledge of facts or circumstances, that the persons to be arrested have committed it.*[78] There are two elements for this exception to apply: (1) an offense has

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[75] *Id*.

[76] Rules of Court, Rule 113, Sec. 5(a).

[77] *People v. Chua*, 444 Phil. 757 (2003).

[78] Rules of Court, Rule 113, Sec. 5(b).

just been committed; and (2) the arresting officers have probable cause to believe, based on personal knowledge of facts or circumstances, that the persons to be arrested have committed it.[79] It is a precondition that, more than suspicion or hearsay,[80] the arresting officers know for a fact that a crime has just been committed.[81]

Too, this Court held in *Pestilos v. Generoso*[82] that the elements that "*the offense has just been committed*" and "*personal knowledge of facts and circumstances that the person to be arrested committed it*" depends on the particular circumstances of the case. Nevertheless, the Court clarified that the determination of probable cause and the gathering of facts or circumstances should be made immediately after the commission of the crime in order to comply with the element of *immediacy*.[83]

3. When the persons to be arrested are prisoners who have escaped from a penal establishment or place where they are serving final judgment, or are temporarily confined while their cases are pending, or have escaped while being transferred from one place of confinement to another.[84]

4. If the persons lawfully arrested escape or are rescued.[85]

5. If the accused who are released on bail attempt to depart from the Philippines without permission of the court where the case is pending.[86]

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[79] *Pestilos v. Generoso*, G.R. No. 182601, 10 November 2014.

[80] *Pestilos v. Generoso*, *supra*.

[81] *Sindac v. People*, G.R. No. 220732, 6 September 2016.

[82] *Pestilos v. Generoso*, *supra* note 69.

[83] *Pestilos v. Generoso*, *supra* note 69.

[84] RULES OF COURT, Rule 113, Sec. 5(c).

[85] RULES OF COURT, Rule 113, Sec. 13.

[86] RULES OF COURT, Rule 114, Sec. 23.

The manner of the arrest, with or without a warrant, must be in accordance with Sections 7[87] and 8,[88] Rule 113 of the Rules of Court.

Once a valid arrest has been affected, the procedure laid down in Section 3, Rule 113, shall be followed — the person arrested shall be delivered to the nearest police station or jail without unnecessary delay.[89] If it is a case of warrantless arrest under exception nos. 1 and 2 above, the arrested person shall be proceeded against in accordance with Section 6 (formerly section 7) of Rule 112, or through inquest proceedings.[90] If there is a warrant of arrest, it must be executed within 10 days from its receipt, after which the officer executing it shall make a report to the judge issuing the warrant within 10 days after its expiration.[91]

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[87] RULES OF COURT, Rule 113, Sec. 7.

Section 7. *Method of arrest by officer by virtue of warrant.* — When making an arrest by virtue of a warrant, the officer shall inform the person to be arrested of the cause of the arrest and the fact that a warrant has been issued for his arrest, except when he flees or forcibly resists before the officer has opportunity to so inform him, or when the giving of such information will imperil the arrest. The officer need not have the warrant in his possession at the time of the arrest but after the arrest, if the person arrested so requires, the warrant shall be shown to him as soon as practicable.

[88] RULES OF COURT, Rule 113, Sec. 8:

Section 8. *Method of arrest by officer without warrant.* — When making an arrest without a warrant, the officer shall inform the person to be arrested of his authority and the cause of the arrest, unless the latter is either engaged in the commission of an offense, is pursued immediately after its commission, has escaped, flees, or forcibly resists before the officer has opportunity to so inform him, or when the giving of such information will imperil the arrest.

[89] RULES OF COURT, Rule 113, Sec. 5: "In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail"; Rule 113, Section 3, Rules of Court: "It shall be the duty of the officer executing the warrant to arrest the accused and deliver him to the nearest police station or jail without unnecessary delay"; *Pestilos v. Generoso*, G.R. No. 182601, 10 November 2014.

[90] RULES OF COURT, Rule 113, Sec. 5.

[91] RULES OF COURT, Rule 113, Sec. 4: *Execution of warrant.* — The head of the office to whom the warrant of arrest was delivered for execution shall cause the warrant to be executed within ten (10) days from its receipt. Within

In view of the regular operation of the courts, the rules on arraignment and plea under Rule 116 of the Rules of Court would have to be followed after the arrested person has been judicially charged.

d. Period of Detention

The allowable periods of detention in cases of valid warrantless arrests are based on the laws prescribing the period of time within which the arrested person must be judicially charged. These laws apply even during martial law, in view of the provision mandating the continued operation of the civil courts and applicability of the Rules of Court. Detained persons ought to be charged for acts and omissions punished by the Revised Penal Code and other special penal laws. It must be remembered that the theory that a person may be detained indefinitely without any charges and that the courts cannot inquire into the legality of the restraint not only goes against the spirit and letter of the Constitution, but also does violence to the basic precepts of human rights and a democratic society.[92]

***i.* Crime of Rebellion**

Since the privilege of the writ of *habeas corpus* has been suspended, Section 18, Article VII of the Constitution mandates that that the arrested persons shall be judicially charged within three days from the arrest. Otherwise they shall be released.

***ii.* Crime of Terrorism**

In case of a valid warrantless detention under the Human Security Act, the officer is allowed to detain the person arrested for terrorism or conspiracy to commit terrorism for a period not exceeding three days from the moment the latter has been taken into custody by the law enforcement personnel.[93]

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ten (10) days after the expiration of the period, the officer to whom it was assigned for execution shall make a report to the judge who issued the warrant. In case of his failure to execute the warrant, he shall state the reasons therefor.

[92] *In Re: Salibo v. Warden*, G.R. No. 197597, 8 April 2015, 755 SCRA 296.

[93] SECTION 18. *Period of Detention Without Judicial Warrant of Arrest.* — The provisions of Article 125 of the Revised Penal Code to the

In case the warrantless arrest was made during an actual or imminent terrorist attack, the arrested suspect may be detained for more than three days provided that arresting officer is able to secure the written approval of a municipal, city, provincial,

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contrary notwithstanding, any police or law enforcement personnel, who, having been duly authorized in writing by the Anti-Terrorism Council has taken custody of a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities, deliver said charged or suspected person to the proper judicial authority within a period of three days counted from the moment the said charged or suspected person has been apprehended or arrested, detained, and taken into custody by the said police, or law enforcement personnel: *Provided,* That the arrest of those suspected of the crime of terrorism or conspiracy to commit terrorism must result from the surveillance under Section 7 and examination of bank deposits under Section 27 of this Act.

The police or law enforcement personnel concerned shall, before detaining the person suspected of the crime of terrorism, present him or her before any judge at the latter's residence or office nearest the place where the arrest took place at any time of the day or night. It shall be the duty of the judge, among other things, to ascertain the identity of the police or law enforcement personnel and the person or persons they have arrested and presented before him or her, to inquire of them the reasons why they have arrested the person and determine by questioning and personal observation whether or not the suspect has been subjected to any physical, moral or psychological torture by whom and why. The judge shall then submit a written report of what he/she had observed when the subject was brought before him to the proper court that has jurisdiction over the case of the person thus arrested. The judge shall forthwith submit his/her report within three calendar days from the time the suspect was brought to his/her residence or office.

Immediately after taking custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism, the police or law enforcement personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest: *Provided*, That where the arrest is made during Saturdays, Sundays, holidays or after office hours, the written notice shall be served at the residence of the judge nearest the place where the accused was arrested.

The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon the police or law enforcement personnel who fails to notify and judge as *Provided* in the preceding paragraph.

or regional official of a Human Rights Commission or judge of the municipal, regional trial court, the Sandiganbayan or a justice of the Court of Appeals nearest the place of the arrest.[94]

If the arrest was made during Saturdays, Sundays, holidays, or after office hours, the arresting police or law enforcement personnel shall bring the arrested suspect to the residence of any of the officials mentioned above that is nearest the place where the accused was arrested. It is necessary, however, that the approval in writing of any of the said officials be secured by the police or law enforcement personnel concerned within five days after the date of the detention of the persons concerned.

The arrested individuals whose connection with the terror attack or threat is not established, shall be released immediately and within three days after the detention.

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SECTION 20. *Penalty for Failure to Deliver Suspect to the Proper Judicial Authority within Three Days*. — The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon any police or law enforcement personnel who has apprehended or arrested, detained and taken custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism and fails to deliver such charged or suspected person to the proper judicial authority within the period of three days.

[94] SECTION 19. *Period of Detention in the Event of an Actual or Imminent Terrorist Attack*. — In the event of an actual or imminent terrorist attack, suspects may not be detained for more than three days without the written approval of a municipal, city, provincial or regional official of a Human Rights Commission or judge of the municipal, regional trial court, the Sandiganbayan or a justice of the Court of Appeals nearest the place of the arrest. If the arrest is made during Saturdays, Sundays, holidays or after office hours, the arresting police or law enforcement personnel shall bring the person thus arrested to the residence of any of the officials mentioned above that is nearest the place where the accused was arrested. The approval in writing of any of the said officials shall be secured by the police or law enforcement personnel concerned within five days after the date of the detention of the persons concerned: *Provided, however*, That within three days after the detention, the suspects, whose connection with the terror attack or threat is not established, shall be released immediately.

The Human Security Act penalizes the law enforcers who shall fail to deliver the arrested suspects to the proper judicial authorities within three days.[95]

iii. **Other Crimes**

In case of a warrantless arrest for a legal ground involving other crimes, the period of detention allowed under the Revised Penal Code shall apply. The detained person must be judicially charged within

a. 12 hours for crimes or offenses punishable with light penalties, or their equivalent;

b. 18 hours for crimes or offenses punishable with correctional penalties, or their equivalent;

c. 36 hours for crimes or offenses punishable with afflictive or capital penalties, or their equivalent.[96]

Failure to judicially charge within the prescribed period renders the public officer effecting the arrest liable for the crime of delay in the delivery of detained persons under Article 125 of the Revised Penal Code.[97] Further, if the warrantless arrest was

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[95] SECTION 20. *Penalty for Failure to Deliver Suspect to the Proper Judicial Authority within Three Days*.— The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon any police or law enforcement personnel who has apprehended or arrested, detained and taken custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism and fails to deliver such charged or suspected person to the proper judicial authority within the period of three days.

[96] REVISED PENAL CODE, Art. 125: *Delay in the delivery of detained persons to the proper judicial authorities*. — The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of; twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent.

[97] *Id*.

without any legal ground, the arresting officers become liable for arbitrary detention under Article 124.[98] However, if the arresting officers are not among those whose official duty gives them the authority to arrest, they become liable for illegal detention under Article 267 or 268.[99] If the arrest is for the

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[98] Art. 124. *Arbitrary detention*.— Any public officer or employee who, without legal grounds, detains a person, shall suffer;

1. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if the detention has not exceeded three days;

2. The penalty of *prision correccional* in its medium and maximum periods, if the detention has continued more than three but not more than fifteen days;

3. The penalty of *prision mayor*, if the detention has continued for more than fifteen days but not more than six months; and

4. That of *reclusion temporal*, if the detention shall have exceeded six months.

The commission of a crime, or violent insanity or any other ailment requiring the compulsory confinement of the patient in a hospital, shall be considered legal grounds for the detention of any person.

[99] Art. 267. *Kidnapping and serious illegal detention*.— Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

1. If the kidnapping or detention shall have lasted more than five days.

2. If it shall have been committed simulating public authority.

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.

4. If the person kidnapped or detained shall be a minor, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

Art. 268. *Slight illegal detention*. — The penalty of *reclusion temporal* shall be imposed upon any private individual who shall commit the crimes described in the next preceding article without the attendance of any of circumstances enumerated therein.

The same penalty shall be incurred by anyone who shall furnish the place for the perpetration of the crime.

purpose of delivering the person arrested to the proper authorities, but it is done without any reasonable ground or any of the circumstances for a valid warrantless arrest, the arresting persons become liable for unlawful arrest under Article 269.[100]

e. Treatment During Detention

The rights of a person arrested or detained must be respected at all costs, even during martial law. The main source of these rights is Section 12, paragraphs 1 and 2, Article III of the Constitution, which provide as follows:

> (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
>
> (2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, *incommunicado*, or other similar forms of detention are prohibited.

Section 19(2), Article III of the Constitution further provides:

> The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.[101]

If the offender shall voluntarily release the person so kidnapped or detained within three days from the commencement of the detention, without having attained the purpose intended, and before the institution of criminal proceedings against him, the penalty shall be *prision mayor* in its minimum and medium periods and a fine not exceeding seven hundred pesos.

[100] Art. 269. *Unlawful arrest*. — The penalty of *arresto mayor* and a fine not exceeding 500 pesos shall be imposed upon any person who, in any case other than those authorized by law, or without reasonable ground therefor, shall arrest or detain another for the purpose of delivering him to the proper authorities.

[101] CONSTITUTION, Art. III, Sec. 19(2).

These rights are further spelled out in R.A. 7438:[102]

1. The right to be assisted by counsel at all times;[103]
2. The right to remain silent;[104]
3. The right to be informed of the above rights;[105]
4. The right to be visited by the immediate members of their family, by their counsel, or by any nongovernmental organization, whether national or international.[106]

R.A. 7438 likewise includes persons under custodial investigation within the ambit of its protection. The concept of custodial investigation was expanded by the law to include the practice of issuing an "invitation" to persons who are investigated in connection with an offense they are suspected to have committed.[107]

R.A. 7438 further requires any extrajudicial confession made by persons arrested, detained, or under custodial investigation to be in writing and signed by these persons in the presence of their counsel or, in the latter's absence, upon a valid waiver; and in the presence of any of their parents, elder brothers or sisters, their spouse, the municipal mayor, the municipal judge, the district school supervisor, or a priest or minister of the gospel chosen by them. Otherwise, the extrajudicial confession shall be inadmissible as evidence in any proceeding.[108]

The law provides that any waiver by persons arrested or detained under the provisions of Article 125 of the Revised Penal Code, or under custodial investigation, shall be in writing

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[102] An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations Thereof.

[103] R.A. 7438, Sec. 2(a).

[104] R.A. 7438, Sec. 2(b).

[105] *Id*.

[106] R.A. 7438, Sec. 2(f).

[107] R.A. 7438, Sec. 2.

[108] R.A. 7838, Sec. 2(d).

and signed by these persons in the presence of their counsel. Otherwise, the waiver shall be null and void and of no effect.[109]

The rights of persons detained for the crime of terrorism or conspiracy to commit terrorism are addressed and specifically provided for in the Human Security Act. These rights are the following:[110]

1. The right to be informed of the nature and cause of their arrest;
2. The right to remain silent;
3. The right to have competent and independent counsel;
4. The right to be informed of the cause or causes of their detention in the presence of their legal counsel;
5. The right to communicate freely with their legal counsel and to confer with them at any time without restriction;
6. The right to communicate freely and privately without restrictions with the members of their family or with their nearest relatives and to be visited by them;

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[109] R.A. 7838, Sec. 2(e).

[110] R.A. 9372, Sec. 21: *Rights of a Person under Custodial Detention.* — The moment a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism is apprehended or arrested and detained, he shall forthwith be informed, by the arresting police or law enforcement officers or by the police or law enforcement officers to whose custody the person concerned is brought, of his or her right: (a) to be informed of the nature and cause of his arrest, to remain silent and to have competent and independent counsel preferably of his choice. If the person cannot afford the services of counsel of his or her choice, the police or law enforcement officers concerned shall immediately contact the free legal assistance unit of the Integrated Bar of the Philippines (IBP) or the Public Attorney's Office (PAO). It shall be the duty of the free legal assistance unit of the IBP or the PAO thus contacted to immediately visit the person(s) detained and provide him or her with legal assistance. These rights cannot be waived except in writing and in the presence of the counsel of choice; (b) informed of the cause or causes of his detention in the presence of his legal counsel; (c) allowed to communicate freely with his legal counsel and to confer with them at any time without restriction; (d) allowed to communicate freely and privately without restrictions with the members of his family or with his nearest relatives and to be visited by them; and, (e) allowed freely to avail of the service of a physician or physicians of choice.

7. The right to freely avail themselves of the service of a physician or physicians of choice; and
8. The right to be informed of the above rights.

R.A. 9745 (Anti-Torture Act of 2009) strengthens the right of an arrested person not to be subjected to physical or mental torture[111] while under detention. This law provides that, the freedom from torture and other cruel, inhuman, and degrading treatment and punishment is an absolute right, even during a public emergency.[112] Further, an "order of battle" cannot be invoked as a justification for torture and other cruel, inhuman and degrading treatment or punishment.[113] As in R.A. 7438, any confession, admission, or statement obtained as a result of torture shall be inadmissible in evidence in any proceeding, except if the same is used as evidence against a person or persons accused of committing torture.[114]

The Human Security Act also protects those detained, who are under investigation for the crime of terrorism or conspiracy

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[111] Republic Act No. (R.A.) 9745 (Anti-Torture Act of 2009) defines torture as an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. (Sec. 3[a]).

[112] R.A. 9745, Sec. 6: *Freedom from Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, an Absolute Right*. — Torture and other cruel, inhuman and degrading treatment or punishment as criminal acts shall apply to all circumstances. A state of war or a threat of war, internal political instability, or any other public emergency, or a document or any determination comprising an "order of battle" shall not and can never be invoked as a justification for torture and other cruel, inhuman and degrading treatment or punishment.

[113] *Id*.

[114] R.A. 9745, Sec. 8.

to commit terrorism, from any form of torture.[115] However, while the Anti-Torture Act allows evidence obtained as a result of torture to be used against the person or persons accused of committing torture, the Human Security Act absolutely prohibits the admissibility of that evidence in any judicial, quasi-judicial, legislative, or administrative investigation, inquiry, proceeding, or hearing.[116]

f. Ability to Conduct Searches

Pursuant to the provision that the Constitution remains operational during martial law, the constitutional guarantee against unreasonable searches under the Bill of Rights continues to accord the people its mantle of protection. Further, as previously discussed, the regular operation of the courts even under martial rule, necessarily maintains the applicability of the Rules of Court.

The rule is that the Constitution bars State intrusions upon a person's body, personal effects or residence, except if conducted by virtue of a valid search warrant issued in compliance with the procedure outlined in the Constitution and reiterated in the Rules of Court.[117] Specifically, "no search warrant x x x shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the

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[115] R.A. 9372 (Human Security Act of 2007), Sec. 24.

Section 24. *No Torture or Coercion in Investigation and Interrogation*. — No threat, intimidation, or coercion, and no act which will inflict any form of physical pain or torment, or mental, moral, or psychological pressure, on the detained person, which shall vitiate his free-will, shall be employed in his investigation and interrogation for the crime of terrorism or the crime of conspiracy to commit terrorism; otherwise, the evidence obtained from said detained person resulting from such threat, intimidation, or coercion, or from such inflicted physical pain or torment, or mental, moral, or psychological pressure, shall be, in its entirety, absolutely not admissible and usable as evidence in any judicial, quasi-judicial, legislative, or administrative, investigation, inquiry, proceeding, or hearing.

[116] *Id*.

[117] *People v. Canton*, 442 Phil. 743 (2002).

complainant and the witnesses he may produce, and particularly describing the place to be searched."[118] Rule 126 of the Rules of Court, in turn, lays down the procedure for the issuance of a valid search warrant.

It must be emphasized that the requirement of probable cause before a search warrant can be issued is mandatory and must be complied with; a search warrant not based on probable cause is a nullity or is void; and the issuance thereof is, in legal contemplation, arbitrary.[119] Further, any evidence obtained therefrom shall be inadmissible for any purpose in any proceeding.[120]

Nevertheless, the interdiction against warrantless searches and seizures is not absolute, as there are exceptions known as valid warrantless searches. The following are the instances of valid warrantless searches:[121]

1. *Warrantless search incidental to a lawful arrest* recognized under Section 12, Rule 126 of the Rules of Court, and by prevailing jurisprudence. In searches incident to a lawful arrest, the arrest must precede the search; generally, the process cannot be reversed. Nevertheless, a search substantially contemporaneous with an arrest can precede the arrest if the police have probable cause to make the arrest at the outset of the search.[122]
2. *Seizure of evidence in "plain view."* Under the plain view doctrine, objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be presented as evidence. The plain view doctrine applies when the

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[118] CONSTITUTION, Art. III, Sec. 2.

[119] *Columbia Pictures, Inc. v. Court of Appeals*, 329 Phil. 875 (1996).

[120] *Miclat, Jr. y Cerbo v. People*, 612 Phil. 191 (2011).

[121] *People v. Aruta*, 351 Phil. 868 (1998).

[122] *Sy v. People*, 671 Phil. 164 (2011).

following requisites concur: (1) law enforcement officers in search of evidence have a prior justification for an intrusion or are in a position from which they can view a particular area; (2) the discovery of the evidence in plain view is inadvertent; and (3) it is immediately apparent to the officers that the item they observed may be evidence of a crime, a contraband or is otherwise subject to seizure.[123]

3. *Search of a moving vehicle.* The rules governing search of a moving vehicle have over the years been steadily liberalized whenever a moving vehicle is the object of the search on the basis of practicality. This is so considering that before a warrant can be obtained, the place, things and persons to be searched must be described to the satisfaction of the issuing judge—a requirement that borders on the impossible in the case of smuggling effected by the use of a moving vehicle that can transport contraband from one place to another with impunity.[124] Further, a warrantless search of a moving vehicle is justified on the ground that it is not practicable to secure a warrant, because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant is sought. The mere mobility of these vehicles, however, does not give the police officers unlimited discretion to conduct indiscriminate searches without warrants if made within the interior of the territory and in the absence of probable cause; still and all, the important thing is that there is probable cause to conduct the warrantless search.[125]

4. *Consented* warrantless search. It is fundamental that to constitute a waiver, it must first appear that (1) the right exists; (2) the person involved had knowledge, either

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[123] *Sanchez v. People*, 747 Phil. 552 (2014).

[124] *People v. Lo Ho Wing*, 271 Phil. 120 (1991).

[125] *Caballes v. Court of Appeals*, 424 Phil. 263 (2002).

actual or constructive, of the existence of this right; and (3) that person had an actual intention to relinquish the right.[126]

5. *Customs search.* It has been traditionally understood that persons exercising police authority under the customs law may effect search and seizure without a search warrant in the enforcement of customs laws.[127]

6. *Stop and Frisk.* A "stop and frisk" situation, also known as the *Terry* search, refers to a case in which a police officer approaches a person who is acting suspiciously for the purpose of investigating possible criminal behavior, in line with the general interest of effective crime prevention and detection.[128] The objective of a stop and frisk search is either to determine the identity of a suspicious individual or to maintain the *status quo* momentarily while the police officer seeks to obtain more information. A basic criterion is that the police officers, with their personal knowledge, must observe the facts leading to the suspicion of an illicit act. The concept of "suspiciousness" must be present in the situation in which the police officers find themselves in.[129]

7. *Exigent and Emergency Circumstances.* The doctrine of "exigent circumstance" was applied in *People v. De Gracia*[130] which was decided during a time of general chaos and disorder brought about by the *coup d'etat* attempts of certain rightist elements. Appellant was convicted of illegal possession of firearms in furtherance of rebellion. He was arrested during a warrantless raid conducted by the military operatives inside the Eurocar building, wherein they were able to find and confiscate

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[126] *Dela Cruz v. People*, G.R. No. 209387, 11 January 2016.

[127] *Papa v. Mago*, 130 Phil. 886 (1968).

[128] *People v. Canton*, *supra* note 7.

[129] *People v. Cogaed*, 740 Phil. 212 (2014).

[130] 304 Phil. 118 (1994).

high-powered bombs, firearms, and other ammunition. According to the military, they were not able to secure a search warrant due to ongoing disorder, with Camp Aguinaldo being "mopped up" by the rebel forces and the simultaneous firing within the vicinity of the Eurocar building, aside from the fact that the courts were consequently closed.

Admittedly, the absence of a search warrant was not squarely put into issue. Nevertheless, the Court proceeded to delve into the legality of the raid due to the gravity of the offense involved. The Court then analyzed the context, taking into consideration the following facts: (1) the raid was precipitated by intelligence reports and surveillance on the ongoing rebel activities in the building; (2) the presence of an unusual quantity of high-powered firearms and explosives in a automobile sales office could not be justified; (3) there was an ongoing chaos at that time because of the simultaneous and intense firing within the vicinity of the office and in the nearby Camp Aguinaldo which was under attack by rebel forces; and (4) the courts in the surrounding areas were obviously closed and, for that matter, the building and houses therein were deserted.

The Court ruled that the "case falls under one of the exceptions to the prohibition against a warrantless search. In the first place, the military operatives, taking into account the facts obtaining in this case, had reasonable ground to believe that a crime was being committed. There was consequently more than sufficient probable cause to warrant their action. Furthermore, under the situation then prevailing, the raiding team had no opportunity to apply for and secure a search warrant from the courts. The trial judge himself manifested that on December 5, 1989 when the raid was conducted, his court was closed. Under such urgency and exigency of the moment, a search warrant could lawfully be dispensed with."[131]

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[131] *Id*. at 113.

> It is under this rare situation that a valid warrantless search or raid may be conducted in times of ongoing conflict, as when there is an ongoing fighting between rebels and the armed forces. However, great care must be observed before this exception can apply. The searching officers must take into consideration: (1) the urgency and exigency of the situation, (2) the attendant circumstances of chaos or disorder, and (3) the availability of the courts. It bears reiteration that all courts in the country are currently functioning.

Law enforcers may avail themselves of these exceptions, provided the requisites for their application are present. It must be emphasized that these exceptions do not give searching officers license to declare a "field day." The essential requisite of probable cause must always be satisfied before any warrantless search and seizure can be lawfully conducted.[132]

g. Ability to Enter Private Properties

The ability to enter private properties is closely related to the conduct of searches, so it must be exercised under the authority of a search warrant, unless it falls under any of the exceptions discussed above. This constitutional guarantee likewise finds its roots in Section 2, Article III of the Constitution, whose main purpose is to protect the sanctity and privacy of the home. This principle was affirmed as early as 1904 in *U.S. v. Arceo*:[133]

> The inviolability of the home is one of the most fundamental of all the individual rights declared and recognized in the political codes of civilized nations. No one can enter into the home of another without the consent of its owners or occupants.
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> *The privacy of the home — the place of abode, the place where man with his family may dwell in peace and enjoy*

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[132] *People v. Aruta*, *supra* note 111.

[133] 3 Phil. 381, 384 (1904).

> *the companionship of his wife and children unmolested by anyone, even the king, except in rare cases — has always been regarded by civilized nations as one of the most sacred personal rights to whom men are entitled.* Both the common and the civil law guaranteed to man the right to absolute protection to the privacy of his home. The king was powerful; he was clothed with majesty; his will was the law, but, with few exceptions, the humblest citizen or subject might shut the door of his humble cottage in the face of the monarch and defend his intrusion into that privacy which was regarded as sacred as any of the kingly prerogatives x x x.
>
> 'A man's house is his castle,' has become a maxim among the civilized peoples of the earth. His protection therein has become a matter of constitutional protection in England, America, and Spain, as well as in other countries.[134]

The limitations on the manner in which the search warrant shall be secured and implemented can be found in the Revised Penal Code, specifically as follows:

1. If public officers procure a search warrant without a just cause or, having legally procured the warrant, they exceed their authority or use unnecessary severity in executing the search, they shall be liable under Article 129 of the Revised Penal Code;

2. If public officers authorized to implement a search warrant or warrant of arrest (1) enter any dwelling against the will of the owner thereof; (2) search papers or other effects found therein without the prior consent of the owner; or (3) having surreptitiously entered the dwelling, and being required to leave the premises, shall refuse to do so, they shall be liable for violation of domicile under Article 128 of the Revised Penal Code.

h. Military Blockades

The ability to set up military blockades around the affected areas is related to the people's constitutionally protected freedom

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[134] *Id*. at 384.

of movement, specifically the liberty of abode and right to travel. The limitations on this ability are found in Section 6, Article III of the Constitution, which provides as follows:

> The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

Under the first paragraph, the liberty of abode and of changing it may be impaired only "upon lawful order of the court" as guided by the "limits prescribed by law."[135] The clear intent is to proscribe "*hamletting*" or the herding of people into a militarily-quarantined sanctuary within rebel areas as was done during the Marcos regime.[136] Therefore, the restrictive type of military blockade is not countenanced by law.

The impairment of the right to travel under the second paragraph can be done even without court order. However, the limitations can be imposed only on the basis of "national security, public safety, or public health, as may be provided by law."

Under the Human Security Act, the liberty of abode and right to travel of a person charged with terrorism may be restricted as follows:

> Section 26. *Restriction on Travel*. — In cases where evidence of guilt is not strong, and the person charged with the crime of terrorism or conspiracy to commit terrorism is entitled to bail and is granted the same, the court, upon application by the prosecutor, shall limit the right of travel of the accused to within the municipality or city where he resides or where the case is pending, in the interest of national security and public safety, consistent with Article III, Section 6 of the Constitution. Travel outside of said municipality or city, without the authorization of

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[135] BERNAS, *supra* note 12 at 375-376.

[136] BERNAS, *supra* note 12 at 376.

> the court, shall be deemed a violation of the terms and conditions of his bail, which shall then be forfeited as provided under the Rules of Court.
>
> He/she may also be placed under house arrest by order of the court at his or her usual place of residence.
>
> While under house arrest, he or she may not use telephones, cellphones, e-mails, computers, the internet or other means of communications with people outside the residence until otherwise ordered by the court.
>
> The restrictions abovementioned shall be terminated upon the acquittal of the accused or of the dismissal of the case filed against him or earlier upon the discretion of the court on motion of the prosecutor or of the accused.[137]

An allowable and "less restrictive" version of a military blockades is the setting up of police or military checkpoints, which has been ruled by this Court as not illegal *per se*.[138] Checkpoints are allowed for as long as they are warranted by the exigencies of public order and are conducted in a manner least intrusive to motorists.[139] As explained by this Court in *Caballes v. Court of Appeals*:[140]

> A checkpoint may either be a mere routine inspection or it may involve an extensive search.
>
> Routine inspections are not regarded as violative of an individual's right against unreasonable search. The search which is normally permissible in this instance is limited to the following instances: (1) where the officer merely draws aside the curtain of a vacant vehicle which is parked on the public fair grounds; (2) simply looks into a vehicle;

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[137] R.A. 9372, Sec. 26.

[138] *People v. Manago*, G.R. No. 212340, 17 August 2016; *Caballes v. Court of Appeals*, 424 Phil. 263 (2002).

[139] *Caballes v. Court of Appeals*, *supra* note 115.

[140] *Caballes y Taiño v. Court of Appeals*, *supra*.

(3) flashes a light therein without opening the car's doors; (4) where the occupants are not subjected to a physical or body search; (5) where the inspection of the vehicles is limited to a visual search or visual inspection; and (6) where the routine check is conducted in a fixed area.[141]

However, subjecting a vehicle to an extensive search, as opposed to a mere routine inspection, has been held to be valid only for as long as the officers conducting the search have reasonable or probable cause to believe before the search that they will find the instrumentality, or evidence pertaining to a crime, in the vehicle to be searched.[142]

i. Ability to Conduct Surveillance

As provided in the Bill of Rights, the privacy of communication and correspondence shall be inviolable, except upon a lawful order of the court, or when public safety or order requires otherwise as prescribed by law.[143] Since the Constitution and the laws remain in effect during martial law, government authorities must comply with the following procedure for the conduct of a valid surveillance.

Under R.A. 4200 (Anti-Wire Tapping Law), the tapping of any wire or cable; or the use of any other device or arrangement to secretly overhear, intercept, or record communication or spoken word by using a device commonly known as a dictaphone or dictagraph or detectaphone or walkie-talkie or tape recorder — or however described otherwise — shall be allowed only upon a written order of the Regional Trial Court (RTC) for cases involving the following crimes:

1. Treason,
2. Espionage,
3. Provoking war and disloyalty in case of war,
4. Piracy,

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[141] *Id*. at 280.

[142] *People v. Manago y Acut*, *supra* note 124.

[143] CONSTITUTION, Article III, Section 3(1).

5. Mutiny in the high seas,
6. Rebellion,
7. Conspiracy and proposal to commit rebellion,
8. Inciting to rebellion,
9. Sedition,
10. Conspiracy to commit sedition,
11. Inciting to sedition,
12. Kidnapping as defined by the Revised Penal Code, and
13. Violations of Commonwealth Act No. 616, which punishes espionage and other offenses against national security.[144]

The written order of the RTC shall only be issued or granted upon a written application and the examination, under oath or affirmation, of the applicants and the witnesses they may produce, as well as a showing

1. that there are reasonable grounds to believe that any of the crimes enumerated above has been committed or is being committed or is about to be committed: *Provided, however,* that in cases involving the offenses of rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, and inciting to sedition, such authority shall be granted only upon prior proof that a rebellion or act of sedition, as the case may be, have actually been or are being committed;

2. that there are reasonable grounds to believe that evidence will be obtained essential to the conviction of any person for, or towards the solution, or the prevention of, any of those crimes; and

3. that there are no other means readily available for obtaining the evidence.[145]

The recordings made under court authorization shall be deposited with the court in a sealed envelope or sealed package

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[144] R.A. 4200, Sec. 3.

[145] *Id*.

within 48 hours after the expiration of the period fixed in the order. The envelope must be accompanied by an affidavit of the peace officer who was granted that authority, stating the number of recordings made; the dates and times covered by each recording; the number of tapes, discs, or records included in the deposit and certifying that no duplicates or copies of the whole or any part thereof have been made or, if made, that all those duplicates or copies are included in the envelope or package deposited with the court. The envelope or package so deposited shall not be opened; or the recordings replayed or used in evidence; or their contents revealed, except upon order of the court. The court order shall not be made except upon motion, with due notice and opportunity to be heard afforded to the person or persons whose conversations or communications have been recorded.[146]

If the subjects of the surveillance are members of a judicially declared and outlawed terrorist organization, association, or group of persons, or is any person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism, the provisions of the Human Security Act shall apply. Under that law, the interception and recording of communications of terrorists are allowed upon a written order of the Court of Appeals.[147] Any

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[146] *Id*.

[147] R.A. 9372, Sec. 7: *Surveillance of Suspects and Interception and Recording of Communications*. — The provisions of Republic Act No. 4200 (Anti-Wire Tapping Law) to the contrary notwithstanding, a police or law enforcement official and the members of his team may, upon a written order of the Court of Appeals, listen to, intercept and record, with the use of any mode, form, kind or type of electronic or other surveillance equipment or intercepting and tracking devices, or with the use of any other suitable ways and means for that purpose, any communication, message, conversation, discussion, or spoken or written words between members of a judicially declared and outlawed terrorist organization, association, or group of persons or of any person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism.

Provided, That surveillance, interception and recording of communications between lawyers and clients, doctors and patients, journalists and their sources and confidential business correspondence shall not be authorized.

organization, association, or group of persons may be declared a terrorist and outlawed organization, association, or group of persons by the RTC upon application of the Department of Justice.[148]

j. Ability to Examine Bank Deposits, Accounts, and Records and to Freeze Properties or Funds

In *Subido Pagente Certeza Mendoza and Binay Law Offices v. Court of Appeals*,[149] the Court ruled that that the source of the right to privacy governing bank deposits is statutory, not constitutional. Nevertheless, the regular operation of the legislative assemblies and civil courts even under martial rule necessarily maintains the applicability of the statutes and the Rules of Court. Therefore, there is a mandate to comply with the procedure existing in our laws with respect to the investigation and freezing of bank accounts and other properties.

Under the Human Security Act, only upon a written order of the Court of Appeals may there be an examination and gathering of any relevant information on the deposits, placements, trust accounts, assets, and records in a bank or financial institution of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism; or of a judicially declared and outlawed terrorist organization, association, or group of persons; or of a member of such judicially declared and outlawed organization, association, or group of

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[148] *Id*. at Sec. 17: *Proscription of Terrorist Organizations, Association, or Group of Persons*. — Any organization, association, or group of persons organized for the purpose of engaging in terrorism, or which, although not organized for that purpose, actually uses the acts to terrorize mentioned in this Act or to sow and create a condition of widespread and extraordinary fear and panic among the populace in order to coerce the government to give in to an unlawful demand shall, upon application of the Department of Justice before a competent Regional Trial Court, with due notice and opportunity to be heard given to the organization, association, or group of persons concerned, be declared as a terrorist and outlawed organization, association, or group of persons by the said Regional Trial Court.

[149] G.R. No. 216914, 6 December 2016.

persons.[150] The bank or financial institution concerned cannot refuse to allow the examination or to provide the desired information, when so ordered by and served with the written order of the Court of Appeals.[151]

The financing of terrorism was more specifically dealt with under R.A. 10168 (Terrorism Financing Prevention and Suppression Act).[152] Under this law, the Anti-Money Laundering Council (AMLC), either upon its own initiative or at the request of the Anti-Terrorism Council (ATC), is authorized to investigate (a) any property or funds that are in any way related to financing of terrorism or acts of terrorism; (b) property or funds of any person or persons in relation to whom there is probable cause to believe that such person or persons are committing or attempting or conspiring to commit, or participating in or facilitating the financing of terrorism or acts of terrorism as defined in the law.[153] For purposes of the foregoing investigation, the AMLC is authorized to inquire into or examine deposits

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[150] R.A. 9372, Sec. 27: *Judicial Authorization Required to Examine Bank Deposits, Accounts, and Records*. — The provisions of Republic Act No. 1405 as amended, to the contrary notwithstanding, the justices of the Court of Appeals designated as a special court to handle anti-terrorism cases after satisfying themselves of the existence of probable cause in a hearing called for that purpose that: (1) a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism, (2) of a judicially declared and outlawed terrorist organization, association, or group of persons; and (3) of a member of such judicially declared and outlawed organization, association, or group of persons, may authorize in writing any police or law enforcement officer and the members of his/her team duly authorized in writing by the anti-terrorism council to: (a) examine, or cause the examination of, the deposits, placements, trust accounts, assets and records in a bank or financial institution; and (b) gather or cause the gathering of any relevant information about such deposits, placements, trust accounts, assets, and records from a bank or fmancial institution. The bank or financial institution concerned shall not refuse to allow such examination or to provide the desired information, when so ordered by and served with the written order of the Court of Appeals.

[151] *Id*.

[152] Promulgated on 18 June 2012.

[153] R.A. 10168, Sec. 10.

and investments in any banking institution or non-bank financial institution without a court order.[154]

R.A. 10168 further authorizes the AMLC, either upon its own initiative or at the request of the ATC, to issue an *ex parte* order to freeze, without delay, (a) property or funds that are in any way related to the financing of terrorism or acts of terrorism; or (b) property or funds of any person, group of persons, terrorist organization, or association, in relation to which there is probable cause to believe that it is committing or attempting or conspiring to commit, or is participating in or facilitating the commission of the financing of terrorism or acts of terrorism.[155]

The freeze order shall be effective for a period not exceeding 20 days, which may be extended up to a period not exceeding six months upon a petition filed by the AMLC with the Court of Appeals before the expiration of the period.[156]

However, if it is necessary to comply with binding terrorism-related resolutions, including Resolution No. 1373 of the UN Security Council pursuant to Article 41 of the Charter of the UN, the AMLC shall be authorized to issue a freeze order with respect to the property or funds of a designated organization, association, group, or any individual. The freeze order shall be effective until the basis for its issuance shall have been lifted. During the effectivity of the freeze order, an aggrieved party may file with the Court of Appeals a petition to determine the basis of the freeze order within 20 days from its issuance.[157]

If the property or funds, subject of the freeze order, are found to be in any way related to the financing of terrorism or acts of terrorism committed within the jurisdiction of the Philippines,

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[154] *Id*.

[155] R.A. 10168, Sec. 11.

[156] *Id*.

[157] *Id*.

the property or funds shall be the subject of civil forfeiture proceedings as provided in R.A. 10168.[158]

k. Media Restrictions

The Bill of Rights guarantees that no law shall be passed abridging the freedom of speech, of expression, or of the press.[159] Under this guarantee, all forms of media, whether print or broadcast, are entitled to the broad protection of the freedom of speech and expression clause.[160] This proscription applies during martial law. To restrict media coverage and publication during a state of martial rule constitutes prior restraint, which is prohibited by the Constitution.

Nevertheless, there are exceptions under which expression may be subject to prior restraint. In this jurisdiction, prior restraint may be applied to four categories of expression, namely: pornography, false or misleading advertisement, advocacy of imminent lawless action, and danger to national security.[161]

Ultimately, the test for limitations on freedom of expression continues to be the clear and present danger rule — that words used in those circumstances are of such nature as to create a clear and present danger that they would bring about the substantive evils that the lawmaker has a right to prevent. As this Court ruled in *Eastern Broadcasting Corp. v. Dans, Jr.*,[162] the government has a right to be protected against broadcasts that incite the listeners to violently overthrow it. Radio and television may not be used to organize a rebellion or to signal the start of widespread uprising.[163] During a state of martial law, media restrictions may be countenanced, provided

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[158] *Id*.

[159] CONSTITUTION, Article III, Sec. 4.

[160] *Eastern Broadcasting Corp. v. Dans, Jr.*, 222 Phil. 151 (1985).

[161] Concurring Opinion of *J.* Carpio, *Chavez v. Gonzales*, 569 Phil. 155 (2008).

[162] *Eastern Broadcasting Corp. v. Dans, Jr.*, *supra* note 150.

[163] *Id*.

there is a danger to national security as justified by the clear and present danger rule.

l. Treatment of civilians and non-combatants

The obligations under the International Humanitarian Law (IHL) continue to be effective even during a state of martial law. R.A. 9851 (The Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity) continues to impose obligations on those who implement martial law.

If the declaration of martial law was precipitated by an armed conflict,[164] whether international[165] or non-international,[166] the parties thereto are obligated to protect persons who are not, or are no longer, participating in hostilities. Otherwise, the commission of any of the prohibited acts under the law as enumerated below will render the responsible person liable.

Specifically, in case of an international armed conflict, the following acts constitute "war crimes" and shall be penalized under R.A. 9851:

1. Willful killing;
2. Torture or inhuman treatment, including biological experiments;
3. Willfully causing great suffering or serious injury to body or health;

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[164] R.A. 9851, Sec. 3(c): "Armed conflict" means any use of force or armed violence between States or a protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. *Provided*, That such force or armed violence gives rise, or may give rise, to a situation to which the Geneva Conventions of 12 August 1949, including their common Article 3, apply.

[165] R.A. 9851, Sec. 3(c): Armed conflict may be international, that is, between two (2) or more States, including belligerent occupation.

[166] R.A. 9851, Sec. 3(c): Armed conflict may be non-international, that is, between governmental authorities and organized armed groups or between such groups within a State. It does not cover internal disturbances or tensions such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

4. Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly;
5. Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial; and
6. Arbitrary deportation or forcible transfer of population or unlawful confinement.[167]

In case of a non-international armed conflict, any of the following acts committed against persons taking no active part in the hostilities — including members of the armed forces who have laid down their arms and those placed *hors de combat*[168] by sickness, wounds, detention or any other cause — is considered a war crime and is penalized by the law:

1. Violence to life and person — in particular, willful killing, mutilation, cruel treatment and torture;
2. Outrages committed against personal dignity — in particular, humiliating and degrading treatment;
3. Taking of hostages; and
4. Passing of sentences and carrying out of executions without any previous judgment pronounced by a regularly constituted court, which affords all judicial guarantees which are generally recognized as indispensable.[169]

Whether international or non-international, the following serious violations of the laws and customs applicable to an armed conflict within the established framework of international law are likewise considered war crimes and penalized by R.A. 9851:

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[167] R.A. 9851, Sec. 4.

[168] R.A. 9851, Sec. 3(k): "*Hors de combat*" means a person who: (1) is in the power of an adverse party; (2) has clearly expressed an intention to surrender; or (3) has been rendered unconscious or otherwise incapacitated by wounds or sickness and therefore is incapable of defending himself: *Provided*, That in any of these cases, the person abstains from any hostile act and does not attempt to escape.

[169] R.A. 9851, Sec. 4.

1. Intentionally directing attacks against the civilian population as such or against individual civilians not taking a direct part in hostilities;
2. Intentionally directing attacks against civilian objects, that is, against those that are not military objectives;
3. Intentionally directing attacks against buildings, materiel, medical units and modes of transport, and personnel using the distinctive emblems of the Geneva Conventions or Additional Protocol III in conformity with international law;
4. Intentionally directing attacks against personnel, installations, materiel, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
5. Launching an attack in the knowledge that the attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment, which would be excessive in relation to the concrete and direct military advantage anticipated;
6. Launching an attack against works or installations containing dangerous forces in the knowledge that the attack will cause excessive loss of life, injury to civilians or damage to civilian objects, and cause death or serious injury to body or health;
7. Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings that are undefended and are not military objectives, or making non-defended localities or demilitarized zones the objects of attack;
8. Killing or wounding persons in the knowledge that they are *hors de combat*, including combatants who, having laid down their arms, or no longer having any means of defense, have surrendered at discretion;

9. Making improper use of a flag of truce, of the flag or the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions or other protective signs under International Humanitarian Law, resulting in death, serious personal injury or capture;

10. Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives. In case of doubt whether a building or place has been used to make an effective contribution to military action, it shall be presumed not to have been so used;

11. Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind, or to removal of tissue or organs for transplantation, which are neither justified by the medical, dental or hospital treatment of the persons concerned nor carried out in their interest, and which cause death to or seriously endanger the health of those persons;

12. Killing, wounding or capturing an adversary by resort to perfidy;

13. Declaring that no quarter will be given;

14. Destroying or seizing the enemy's property unless the destruction or seizure is imperatively demanded by the necessities of war;

15. Pillaging a town or place, even when it is taken by assault;

16. Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians is involved, or imperative military reasons so demand;

17. Transferring, directly or indirectly by the occupying power, of parts of its own civilian population into the

territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

18. Committing outrages upon personal dignity, in particular, humiliating and degrading treatment;

19. Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions or a serious violation of common Article 3 to the Geneva Conventions;

20. Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

21. Intentionally using the starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided under the Geneva Conventions and their Additional Protocols;

22. In an international armed conflict, compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

23. In an international armed conflict, declaring that the rights and actions of the nationals of the hostile party are abolished, suspended or inadmissible in a court of law;

24. Committing any of the following acts;
    a. Conscripting, enlisting or recruiting children under the age of 15 years into the national armed forces;
    b. Conscripting, enlisting or recruiting children under the age of 18 years into an armed force or group other than the national armed forces; and
    c. Using children under the age of 18 years as active participants in hostilities; and

25. Employing means of warfare that are prohibited under international law, such as
    a. poison or poisoned weapons;
    b. asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
    c. bullets that expand or flatten easily in the human body, such as bullets with hard envelopes that do not entirely cover the core or are pierced with incisions; and
    d. weapons, projectiles and material and methods of warfare that are of such nature as to cause superfluous injury or unnecessary suffering, or that are inherently indiscriminate in violation of the international law of armed conflict.[170]

R.A. 9851 prohibits and penalizes genocide or any of the following acts with intent to destroy, in whole or in part, a national, ethnic, racial, religious, social or any other similar stable and permanent group as such, as well as directly and publicly incite others to commit genocide:

1. Killing members of the group;
2. Causing serious bodily or mental harm to members of the group;
3. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
4. Imposing measures intended to prevent births within the group; and
5. Forcibly transferring children of the group to another group.[171]

Lastly, "other crimes against humanity" or any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, are penalized by R.A. 9851:

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[170] R.A. 9851, Sec. 4.

[171] R.A. 9851, Sec. 5.

1. Willful killing;
2. Extermination;
3. Enslavement;
4. Arbitrary deportation or forcible transfer of population;
5. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
6. Torture;
7. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
8. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, sexual orientation or other grounds that are universally recognized as impermissible under international law;
9. Enforced or involuntary disappearance of persons;
10. Apartheid; and
11. Other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health.[172]

It must be emphasized that the crimes defined and penalized under R.A. 9851, their prosecution, and the execution of sentences imposed on their account, are not subject to any period of prescription.[173]

Further, the law specifically provides for the irrelevance of official capacity, so that it shall apply equally to all persons without any distinction based on official capacity, subject to the conditions specified therein.[174]

Lastly, the fact that a crime under R.A. 9851 has been committed by a person pursuant to an order of a government or a superior, whether military or civilian, shall not relieve that person of criminal responsibility, unless all of the following elements concur:

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[172] R.A. 9851, Sec. 6.

[173] R.A. 9851, Sec. 11.

[174] R.A. 9851, Sec. 9.

1. The person was under a legal obligation to obey the orders of the government or the superior in question.
2. The person did not know that the order was unlawful.
3. The order was not manifestly unlawful.[175]

Implication in International Law

As a final point, I believe that it is necessary to clarify the international law implications of a declaration by this Court that there is rebellion in Marawi, in particular, its impact on the obligations of the Philippines under international humanitarian law (IHL). I submit that the characterization of the situation in Marawi is a crucial matter because it determines the applicable legal regime not only under domestic statutes, but also under international law.

As a state party to the 1949 Geneva Conventions and their Additional Protocols, the Philippines is bound to observe the laws and customs of war, in the course of its involvement in an international or non-international armed conflict. The existence of an armed conflict, and the exact nature thereof, determines the status, protections, rights, and obligations of both our armed forces and the opposing groups. In the case of an international armed conflict, i.e., the existence of war or armed hostilities between two or more states,[176] we are obligated to comply with the provisions of the four Geneva Conventions,[177] Additional

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[175] R.A. 9851, Sec. 12.

[176] Common Article 2 to the 1949 Geneva Conventions provides:

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

[177] Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 U.N.T.S. 31; Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949,

Protocol I,[178] and relevant customary law.[179] On the other hand, a non-international armed conflict, i.e. the occurrence of "protracted armed violence between governmental authorities and organised armed groups or between such groups within a State,"[180] would bring into effect the provisions of Additional Protocol II[181] and norms of customary law applicable to such internal conflicts.[182]

The question now arises — would a declaration by this Court that there is actual rebellion in Marawi be tantamount to a recognition that there is an armed conflict that brings IHL into operation? I submit that it need not be.

Although both determinations are rooted in factual circumstances and evidence of a similar tenor, the factors that must be examined to reach a conclusion under domestic and international law are distinct. As earlier discussed, the existence of rebellion domestically is determined by looking at two elements: (a) the taking up of arms against the government; and (b) the purpose for which the acts are committed. In contrast, the determination of whether there is an armed conflict under

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75 UNTS 85; Convention (III) relative to the Treatment of Prisoners of War, 12 August 1949, 75 UNTS 135; Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 287.

[178] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3.

[179] See HENCKAERTS, J. M., *STUDY ON CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, INTERNATIONAL REVIEW OF THE RED CROSS*, Volume 87 Number 857, pp. 198-212, March 2005; International Committee of the Red Cross, Customary IHL Database, Available at: <https://www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf>, accessed on 30 June 2017.

[180] *The Prosecutor v. Dusko Tadic*, International Criminal Tribunal for the Former Yugoslavia, IT-94-1-AR72, Appeals Chamber Decision, 2 October 1995.

[181] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, 1125 UNTS 609.

[182] *See* Henckaerts, *supra* note 169.

IHL entails an examination of completely different factors, such as the parties involved, i.e., whether they are states or non-state entities; the level of organization of the parties to the conflict, for instance, whether they are organized armed groups or dissident armed forces; the intensity of the violence, and even the length of time that the conflict has been ongoing.[183] These factors are particularly important in making a distinction between a non-international armed conflict and mere internal disturbances or domestic tensions.

In this case, I submit that our recognition that there is rebellion in Marawi and that the circumstances are sufficient to warrant the declaration of Martial Law does not automatically mean that there is an armed conflict that warrants the application of IHL. However, should the President or this Court characterize the Marawi conflict as an international one, then complications may set in.

Thus, I believe that a word of caution is necessary. As is evident from the foregoing discussion, the characterization of the conflict in Marawi is exceptionally significant with respect to our obligations under IHL. It is therefore important for this Court, the President, the military and other government officials to exercise the utmost prudence in characterizing the Maute group and describing the nature of the ongoing conflict. Lack of precision in this regard may trigger the provisions of IHL and unwittingly elevate the status of the members of the Maute group from common criminals to combatants or fighters under IHL. This would only invite further complications for the country.

Conclusion

Martial law is an extraordinary measure necessitating the exercise of extraordinary powers. Nevertheless, the President, in the exercise of his commander-in-chief powers, does not

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[183] *See* International Committee of the Red Cross, *How is the Term 'Armed Conflict' Defined in International Humanitarian Law?* (Opinion Paper), March 2008.

have unbridled discretion as to *when*, *where*, and *how* martial law is to be declared.

This is apparent in the parameters clearly set forth in the Constitution. The Supreme Court, as the guardian of the Constitution, has the obligation to see to it that these parameters are complied with. The Constitution itself makes this a mandate of this Court by removing the matter of sufficiency of the factual basis of the declaration of martial law from the untouchable arena of political questions.

Further, the manner as to how martial law is implemented is not subject to the plenary discretion of the President. There are clear legal standards dictating what he can and cannot do. The Court, as the vanguard of the rule of law, must see to it that the rule of law is upheld.

By engaging in the foregoing tasks, the Supreme Court realizes the fullness of its existence as envisioned in our Constitution.

Accordingly, I vote to declare that the President had sufficient factual basis for the issuance of Proclamation No. 216 only insofar as it covers the following provinces: Lanao del Sur, Maguindanao, and Sulu.

Proclamation No. 216 should be struck down insofar as it covers the following provinces and cities: Agusan del Norte, Agusan del Sur, Basilan, Bukidnon, Butuan City, Cagayan de Oro City, Camiguin, City of Isabela, Compostela Valley, Cotabato City, Davao City, Davao del Norte, Davao del Sur, Davao Occidental, Davao Oriental, Dinagat Islands, General Santos City, Iligan City, Lanao del Norte, Misamis Occidental, Misamis Oriental, North Cotabato, Sarangani, South Cotabato, Sultan Kudarat, Surigao del Norte, Surigao del Sur, Tawi-Tawi, Zamboanga City, Zamboanga del Norte, Zamboanga del Sur, and Zamboanga Sibugay.

The Petitions are hereby accordingly **PARTLY GRANTED**.

DISSENTING OPINION

CARPIO, *J.*:

The Case

These consolidated petitions are filed under the Court's power to review the sufficiency of the factual basis of the proclamation of martial law and suspension of the privilege of the writ of *habeas corpus* (writ) under paragraph 3, Section 18, Article VII of the 1987 Constitution. These petitions challenge the constitutionality of Presidential Proclamation No. 216 dated 23 May 2017 (Proclamation No. 216),[1] which declared a state of martial law and suspended the privilege of the writ in the whole Mindanao group of islands.

The Antecedent Facts

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

> 11. On April 2016, the [Islamic State of Iraq and Syria's] weekly newsletter, *Al Naba*, announced the appointment of Abu Sayyaf leader [Isnilon] Hapilon as the *emir* or leader of all ISIS forces in the Philippines. x x x.
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> x x x x x x x x x
>
> 20. On 22 to 25 April 2017, the rebel group, led by Hapilon, engaged in armed offensives against the military in Piagapo, Lanao del Sur. The government offensives, which involved a combination of ground assaults and airstrikes, forced the rebel group to flee to Marawi City.
>
> 21. Military forces spotted Hapilon in Marawi City sometime in early May 2017. Specifically, on 18 May 2017, intelligence reports revealed that the ISIS-inspired local rebel groups were planning to raise the ISIS flag at the provincial capitol. x x x.

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[1] Annex "A" of Lagman Petition; Annex "A" of Cullamat Petition; Annex "A" of Mohamad Petition; Annex "10" of OSG Consolidated Comment.

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

x x x x x x x x x

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

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

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

PROCLAMATION NO. 216

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

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[2] OSG Consolidated Comment, pp. 6, 9-10; citations omitted.

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

WHEREAS, Section 18 Article VII of the Constitution provides that "x x x In case of invasion or rebellion, when the public safety requires it, he (the President) may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law x x x";

WHEREAS, Article 134 of the Revised Penal Code, as amended by R.A. No. 6968, provides that "the crime of rebellion or insurrection is committed by rising and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or ay part thereof, of any body of land, naval or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives";

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

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

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

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

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

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

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

On 25 May 2017, President Duterte submitted his Report to Congress in accordance with Section 18, Article VII of the 1987 Constitution, which states in part that "[w]ithin forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress." In his Report, President Duterte presented the following justifications for imposing martial law and suspending the privilege of the writ in the whole of Mindanao:

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

x x x x x x x x x

Mindanao has been the hotbed of violent extremism and a brewing rebellion for decades. In more recent years, we have witnessed the perpetration of numerous acts of violence challenging the authority

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[3] Annex "A" of Lagman Petition; Annex "A" of Cullamat Petition; Annex "A" of Mohamad Petition; Annex "10" of OSG Consolidated Comment.

of the duly constituted authorities, i.e., the Zamboanga siege, the Davao bombing, the Mamasapano carnage, and the bombings in Cotabato, Sultan Kudarat, Sulu, and Basilan, among others. Two armed groups have figured prominently in all these, namely, the Abu Sayyaf Group (ASG) and the ISIS-backed Maute Group.

On 23 May 2017, a government operation to capture Isnilon Hapilon, senior leader of the ASG, and Maute Group operational leaders, Abdullah and Omarkhayam Maute, was confronted with armed resistance which escalated into open hostility against the government. Through these groups' armed siege and acts of violence directed towards civilians and government authorities, institutions and establishments, they were able to take control of major social, economic, and political foundations of Marawi City which led to its paralysis. This sudden taking of control was intended to lay the groundwork for the eventual establishment of a DAESH[4] *wilayat* or province in Mindanao.

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

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

— At 1400H members of the Maute Group and ASG, along with their sympathizers, commenced their attack on various facilities — government and privately owned — in the City of Marawi.

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

— At 1600H around fifty (50) armed criminals assaulted Marawi City Jail being managed by the Bureau of Jail Management and Penology (BJMP).

— The Maute Group forcibly entered the jail facilities, destroyed its main gate, and assaulted on-duty personnel. BJMP personnel were disarmed, tied, and/or locked inside the cells.

— The group took cellphones, personnel-issued firearms, and vehicles (i.e., two [2] prisoner vans and private vehicles).

— By 1630H, the supply of power into Marawi City had been interrupted, and sporadic gunfights were heard and felt everywhere. By evening, the power outage had spread citywide. (As of 24 May 2017, Marawi City's electric supply was still cut off, plunging the city into total black-out.)

— From 1800 to 1900H, the same members of the Maute Group ambushed and burned the Marawi Police Station. A patrol car of the Police Station was also taken.

— A member of the Provincial Drug Enforcement Unit was killed during the takeover of the Marawi City Jail. The Maute Group facilitated the escape of at least sixty-eight (68) inmates of the City Jail.

— The BJMP directed its personnel at the Marawi City and other affected areas to evacuate.

— By evening of 23 May 2017, at least three (3) bridges in Lanao del Sur, namely, Lilod, Bangulo, and Sauiaran, fell under the control of these groups. They threatened to bomb the bridges to pre-empt military reinforcement.

— As of 2222H, persons connected with the Maute group had occupied several areas in Marawi City, including Naga Street, Bangolo Street, Mapandi, and Camp Keithly, as well as the following barangays: Basak Malutlot, Mapandi, Saduc, Lilod Maday, Bangon, Saber, Bubong, Marantao, Caloocan, Banggolo, Barionaga, and Abubakar.

— These lawless armed groups had likewise set up road blockades and checkpoints at the Iligan City-Marawi City junction.

— Later in the evening, the Maute Group burned Dansalan College Foundation, Cathedral of Maria Auxiliadora, the nun's quarters in the church, and the Shia Masjid Moncado Colony. Hostages were taken from the church.

— About five (5) faculty members of Dansalan College Foundation had been reportedly killed by the lawless groups.

— Other educational institutions were also burned, namely, Senator Ninoy Aquino College Foundation and the Marawi Central Elementary Pilot School.

— The Maute Group also attacked Amai Pakpak Hospital and hoisted the DAESH flag there, among other several locations. As of 0600H of 24 May 2017, members of the Maute Group were seen guarding the entry gates of the Amai Pakpak Hospital. They held hostage the employees of the Hospital and took over the Phil-Health office located thereat.

— The groups likewise laid siege to another hospital, Filipino-Libyan Friendship Hospital, which they later set ablaze.

— Lawless armed groups likewise ransacked the Landbank of the Philippines and commandeered one its armored vehicles.

— Latest information indicated that about seventy-five percent (75%) of Marawi City has been infiltrated by lawless armed groups composed of members of the Maute Group and the ASG. As of the time of this Report, eleven (11) members of the Armed Forces and the Philippine National Police have been killed in action, while thirty-five (35) others have been seriously wounded.

— There are reports that these lawless armed groups are searching for Christian communities in Marawi City to execute Christians. They are also preventing Maranaos from leaving their homes and forcing young male Muslims to join their groups.

— Based on various verified intelligence reports from the AFP and the PNP, there exists a strategic mass action of lawless armed groups in Marawi City, seizing public and private facilities, perpetrating killings of government personnel, and committing armed uprising against and open defiance of the government.

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

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

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

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

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

The groups' occupation of Marawi City fulfills a strategic objective because of its terrain and the easy access it provides to other parts ofMindanao. Lawless armed groups have historically used provinces

adjoining Marawi City as escape routes, supply lines, and backdoor passages.

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

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

These petitions impugn the constitutionality of Proclamation No. 216.

The Issue

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

Discussion

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

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

According to the OSG, Section 18, Article VII of the 1987 Constitution must be construed in conjunction with the power of judicial review, and the original jurisdiction in petitions

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[5] Annex "B" of Lagman Petition; Annex "B" of Mohamad Petition; Annex "11" of OSG Consolidated Comment.

for *certiorari*, of the Court as defined under Sections 1 and 5, respectively, of Article VIII of the 1987 Constitution. For this reason, the OSG concludes that the "appropriate proceeding" referred to in Section 18, Article VII of the 1987 Constitution is a special civil action for *certiorari* under Rule 65 of the Rules of Court.[6]

I disagree.

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

> Sec. 18. x x x.
>
> x x x x x x x x x
>
> The Supreme Court may review, in an **appropriate proceeding** filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* or the extension thereof, and must promulgate its decision thereon within thirty days from its filing. (Emphasis supplied)

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

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

Second, the Court is vested by the 1987 Constitution with the power to determine the "sufficiency of the factual basis"

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[6] OSG Consolidated Comment, pp. 20-22.

[7] II RECORD, CONSTITUTIONAL COMMISSION 392 (July 29, 1986).

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

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

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

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

What is assailed in a petition for *certiorari* under Rule 65 of the Rules of Court are acts of government officials or tribunals

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[8] The first paragraph of Section 15, Article VIII of the 1987 Constitution reads:

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

exercising **judicial or quasi-judicial functions**. In contrast, what is assailed in a proceeding under paragraph 3, Section 18, Article VII of the 1987 Constitution is an **executive act of the President not involving judicial or quasi-judicial functions**.

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

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

However, paragraph 3, Section 18, Article VII of the 1987 Constitution uses the phrase "**sufficiency** of the factual basis," which means that the declaration must not only have factual basis, but the factual basis must also be **sufficient**. This rules

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

[10] *De Vera v. De Vera*, 602 Phil. 886, 877 (2009).

[11] *Id*.

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

The cases cited by the OSG[12] are also not in point.

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

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

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[12] OSG Consolidated Comment, pp. 23-26.

[13] 392 Phil. 618 (2000).

[14] *Id*. at 642.

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

> Sec. 11. (1) x x x.
>
> (2) The President shall be commander-in-chief of all armed forces of the Philippines, and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privileges of the writ of *habeas corpus*, or place the Philippines or any part thereof under martial law.

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

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[15] 149 Phil. 547 (1971).

[16] *Id*. at 592-594.

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

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

I disagree.

Being a *sui generis* petition intended as a checking mechanism against the abusive imposition of martial law or suspension of the privilege of the writ, the proceeding under paragraph 3, Section 18, Article VII of the 1987 Constitution places the burden of proof on the Government. It is the Government that must justify the resort to extraordinary powers that are subject to the extraordinary review mechanisms under the Constitution. This is only logical because it is the Government that is in possession of facts and intelligence reports justifying the declaration of martial law or suspension of the privilege of the writ. Ordinary citizens are not expected to be in possession of such facts and reports. **Hence, to place the burden of proof on petitioners pursuant to the doctrine of "he who alleges must prove" is to make this Constitutional checking mechanism a futile and empty exercise. The Court cannot interpret or apply a provision of the Constitution as to make the provision inutile or meaningless.** This is especially true to a constitutional provision designed to check the abusive use of emergency powers that could lead to the curtailment of the cherished Bill of Rights of the people.

The Court, in reviewing the sufficiency of the factual basis of the declaration of martial law or suspension of the privilege of the writ, can rely on evidence from the Government such as the Proclamation and Report issued by the President himself,

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[17] OSG Consolidated Comment, p. 27; OSG Memorandum, p. 45.

[18] *Id*.

General Orders and Implementing Orders issued pursuant to the Proclamation, the Comment of the Solicitor General in defense of the Proclamation, and briefings made by defense and military officials before the Court.

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

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

Applying these two elements, the Court's review power is to determine whether there are sufficient facts establishing rebellion and requiring, for the protection of public safety, the imposition of martial law or the suspension of the privilege of the writ. The Court is tasked by the 1987 Constitution to review an executive act of the President, an act that involves discretion because the President has the prerogative to decide how to deal with the rebellion — whether only to call out the armed forces to suppress the rebellion, or to declare martial law — with or

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[19] *Supra*.

without the suspension of the privilege of the writ. If the President decides only to call out the armed forces, the review power of the Court under the "sufficiency of the factual basis" standard does **not** apply because this standard, as paragraph 3, Section 18, Article VII of the 1987 Constitution itself states, applies only in case martial law is imposed or the privilege of the writ is suspended.

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

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

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

> FR. BERNAS. x x x. When he (the President) judges that it is necessary to impose martial law or suspend the privilege of the writ of *habeas corpus*, his judgment is subject to review. **We are making it subject to review by the Supreme Court** and subject to concurrence by the National Assembly. x x x.[20] (Emphasis supplied)

Justices of the Court took an oath to preserve and defend the Constitution. Their oath of office does not state that they must trust the President when he declares martial law or suspends

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[20] II RECORD, *supra* note 7, at 409.

the privilege of the writ. On the contrary, paragraph 3, Section 18, Article VII of the 1987 Constitution expressly authorizes and specifically tasks the Court to review the judgment of the President as one of the two checking mechanisms on the President's power to declare martial law or suspend the privilege of the writ. The 1987 Constitution would not have entrusted this specific review power to the Court if it intended the Justices to simply trust the judgment or wisdom of the President. Such obeisance to the President by the Court is an abject abdication of a solemn duty imposed by the Constitution.

Similarly, the power of the Court to review under paragraph 3, Section 18, Article VII of the 1987 Constitution is separate and independent of any action taken by Congress. In case of conflict, the decision of the Court, being the ultimate arbiter of constitutional issues, prevails over the decision of Congress.

The quantum of evidence required is probable cause.[21]

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

The President need not gather proof beyond reasonable doubt, the highest quantum of evidence, which is the standard required for convicting an accused charged with a criminal offense under Section 2, Rule 133 of the Rules of Court.[22] To require the

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

[22] Section 2, Rule 133 of the Rules of Court reads in its entirety:

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

President to establish the existence of rebellion or invasion with such amount of proof before declaring martial law or suspending the privilege of the writ constitutes an excessive restriction on "the President's power to act as to practically tie (his) hands and disable (him) from effectively protecting the nation against threats to public safety."[23]

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

Not even preponderance of evidence under Section 1, Rule 133 of the Rules of Court,[25] which is the degree of proof necessary

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[23] *Fortun*, *supra*, at 596, quoting from the Brief of *Amicus Curiae* Father Joaquin Bernas, S.J.

[24] In *Manalo v. Roldan-Confesor*, 290 Phil. 311, 323 (1992), the Court held:

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

[25] Section 1, Rule 133 of the Rules of Court reads in its entirety:

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

in civil cases, is demanded for a lawful declaration of martial law or suspension of the privilege of the writ. Preponderance of evidence is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[26] This quantum of evidence likewise curtails the President's emergency powers because he has to weigh the superiority of the evidence on hand, from at least two opposing sides, before he can act and impose martial law or suspend the privilege of the writ.

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

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

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

x x x. **In determining probable cause, the average man weighs the facts and circumstances without resorting to the calibrations**

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[26] *Raymundo v. Lunaria*, 590 Phil. 546, 553 (2008).

[27] Section 5, Rule 133 of the Rules of Court provides:

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

[28] *Santos v. Orda, Jr.*, 634 Phil. 452, 461 (2010).

[29] *Viudez II v. Court of Appeals*, 606 Phil. 337 (2009).

of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. x x x.[30] (Emphasis supplied)

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

> Sec. 18. x x x.
>
> x x x x x x x x x
>
> The suspension of the privilege of the writ of *habeas corpus* shall apply only to persons **judicially charged** for rebellion or offenses inherent in, or directly connected with, invasion.
>
> During the suspension of the privilege of the writ of *habeas corpus*, any person thus arrested or detained shall be **judicially charged** within three days, otherwise he shall be released. (Emphasis supplied)

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

Probable cause, basically premised on common sense, is the most reasonable, most practical, and most expedient standard

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[30] *Id*. at 349.

[31] OSG Memorandum, pp. 49-51; TSN, 14 June 2017, pp. 210-211.

[32] *Aguilar v. Department of Justice*, 717 Phil. 789, 800 (2013).

[33] *People v. Court of Appeals,* 361 Phil. 401, 410-413 (1999).

by which the President can fully ascertain the existence or non-existence of rebellion necessary for a declaration of martial law or suspension of the privilege of the writ. Lacking probable cause of the existence of rebellion, a declaration of martial law or suspension of the privilege of the writ is without any basis and thus, unconstitutional.

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

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

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

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

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

In exercising his Commander-in-Chief power to declare martial law or suspend the privilege of the writ, the 1987 Constitution requires that the President establish the following: **(1) the existence of actual rebellion or invasion; and (2) public safety requires the declaration of martial law or suspension of the privilege of the writ to suppress the rebellion or invasion**. Needless to say, the absence of either element will not authorize

the President, who is sworn to defend the Constitution, from exercising his Commander-in-Chief power to declare martial law or suspend the privilege of the writ.

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

Article 134 of the Revised Penal Code, as amended by Republic Act No. 6968,[36] defines the crime of rebellion:

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

Based on its statutory definition, the crime of rebellion has the following elements: (1) there is a (a) public uprising and (b) taking arms against the Government; and (2) the purpose of the uprising is either (a) to remove from the allegiance to

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

[35] Proclamation No. 216 states in part:

"WHEREAS, Article 134 of the Revised Penal Code, as amended by R.A. No. 6968, provides that "the crime of rebellion or insurrection is committed by rising and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives."

[36] An Act Punishing the Crime of *Coup D'etat* by Amending Articles 134, 135 and 136 of Chapter One, Title Three of Act Numbered Thirty-Eight Hundred and Fifteen, Otherwise Known as The Revised Penal Code, and for Other Purposes.

the Government or its laws: (1) the territory of the Philippines or any part thereof; or (2) any body of land, naval, or other armed forces; or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives.[37]

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

Moreover, imminent danger or threat of rebellion or invasion is not sufficient. The 1987 Constitution requires the existence of **actual rebellion or actual invasion**. "Imminent danger" as a ground to declare martial law or suspend the privilege of the writ, which was present in both the 1935 and 1973 Constitutions, was intentionally removed in the 1987 Constitution.[38] By the intentional deletion of the words "imminent danger" in the 1987 Constitution, the President can no longer use imminent danger of rebellion or invasion as a ground to declare martial law or suspend the privilege of the writ. Thus, the President cannot proclaim martial law or suspend the privilege of the writ absent an **actual rebellion or actual invasion**. This is the clear, indisputable letter and intent of the 1987 Constitution.

However, the existence of actual rebellion or invasion **alone** would not justify the declaration of martial law or suspension of the privilege of the writ. Another requisite must be satisfied, that is, **public safety requires the declaration of**

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[37] *Ladlad v. Velasco*, 551 Phil. 313, 329 (2007).

[38] During the deliberations of the Constitutional Commission, Fr. Bernas clarified:

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

martial law or suspension of the privilege of the writ to suppress rebellion or invasion. The 1987 Constitution mandates that the President must establish that the gravity of the rebellion or invasion is such that public safety requires the imposition of martial law or suspension of the privilege of the writ to suppress the rebellion or invasion. If a single armed fighter takes up arms against the Government for the purpose of removing a part of the Philippines from allegiance to the Government, public safety would not justify the President's imposition of martial law or suspension of the privilege of the writ. Although a single armed fighter can commit rebellion, public safety is certainly not endangered to require the imposition of martial law or suspension of the privilege of the writ in suppressing such rebellion.

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

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

This is the specific review power that the framers of the 1987 Constitution and the people who ratified the 1987 Constitution expressly tasked the Court as a checking mechanism to any

abusive use by the President of his Commander-in-Chief power to declare martial law or suspend the privilege of the writ. Needless to say, the Court has no option but to perform its solemn constitutional duty in the present petitions.

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

Applying the evidentiary threshold required in a proceeding challenging the sufficiency of the factual basis of a declaration of martial law and suspension of the privilege of the writ. I find that probable cause exists that there is actual rebellion in Marawi City and that public safety requires the declaration of martial law and suspension of the privilege of the writ in Marawi City to suppress the rebellion.

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

Proclamation No. 216 likewise enumerates the belligerent acts of the Maute-Hapilon armed fighters **within Marawi City** on

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[39] 100 Phil. 90 (1956).

[40] 320 Phil. 481 (1995).

[41] *Supra* note 37, at 329.

23 May 2017. Among these are the following: (1) hostile takeover of a hospital; (2) establishment of several checkpoints around the city; (3) burning down of certain government and private facilities; (4) inflicting of casualties on Government forces; and (5) waving of the ISIS flag in several areas. In addition, President Duterte in his Report to Congress disclosed the following hostile acts committed by the Maute-Hapilon armed fighters: (1) ambushed and burned the Marawi Police Station; (2) cut off vital lines for transportation and electricity; (3) burned several educational institutions; (4) displayed DAESH flags, and (5) killed the segment of the population of Marawi City who resisted the Maute-Hapilon group.

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

However, the same does not apply to the rest of Mindanao. Proclamation No. 216 and the President's Report to Congress **do not contain any evidence whatsoever of actual rebellion outside of Marawi City**. In fact, the Proclamation itself states that the Maute-Hapilon armed fighters in Marawi City intended to remove "**this part of Mindanao**," referring to Marawi City, from Philippine sovereignty. The Proclamation itself admits that only "**this part of Mindanao**" is the subject of separation from Philippine sovereignty by the rebels. **The President's Report did not mention any other city, province or territory in Mindanao, other than Marawi City, that had a similar public uprising by a rebel group, an element of actual rebellion.** Thus, the President's Report concludes that "**based on various verified intelligence reports from the AFP and the PNP, there exists a strategic mass action of lawless armed groups *in Marawi City***."

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

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

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

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

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

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

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

This clearly violates the 1987 Constitution.

Capability to rebel, **absent an actual rebellion or invasion**, is not a ground to declare martial law or suspend the privilege of the writ under the 1987 Constitution. Respondents cannot rely on the Maute-Hapilon group's ***intention*** to establish an Islamic State in the whole of Mindanao or even on its ***capability*** to deprive duly constituted authorities of their powers as a justification to the imposition of martial law or suspension of the writ in the other areas of Mindanao where there is in fact no actual rebellion. The fear that the rebellion in Marawi City will spread to other areas in Mindanao is a **mere danger or threat** and may not even amount to an imminent danger or threat. In any event, to allow martial law outside Marawi City on the basis of an imminent danger or threat would unlawfully reinstate the ground of "imminent danger" of rebellion or invasion, a ground that was intentionally removed from the 1987 Constitution. Allowing a state of martial law or suspension of the privilege of the writ in the rest of Mindanao where there is no actual rebellion is a gross violation of the clear letter and intent of the 1987 Constitution as gleaned from the following deliberations of the Constitutional Commission:

> MR. DE LOS REYES. As I see it now, the **Committee envisions actual rebellion and no longer imminent rebellion.** Does the Committee mean that there should be actual shooting or actual attack on the legislature or Malacañang, for example? Let us take for example a contemporary event — this Manila Hotel incident; everybody knows what happened. Would the committee consider that an actual act of rebellion?
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> MR. REGALADO. If we consider the definition of rebellion under Articles 134 and 135 of the Revised Penal Code, **that presupposes an actual assemblage of men in an armed public uprising for the**

purposes mentioned in Article 134 and by the means employed in Article 135. x x x.[43] (Emphasis supplied)

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

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

> The gravamen of the crime of rebellion is an armed public uprising against the government. By its very nature, **rebellion** is essentially a crime of masses or multitudes involving crowd action, which **cannot be confined a *priori* within predetermined bounds. One aspect noteworthy in the commission of rebellion is that other acts committed in its pursuance are, by law, absorbed in the crime itself because they acquire a political character**. This peculiarity was underscored in the case of *People v. Hernandez*, thus:
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> > In short, political crimes are those directly aimed against the political order, as well as such common crimes as may be committed to achieve a political purpose. The decisive factor is the intent or motive. If a crime usually regarded as common, like homicide, is perpetrated for the purpose of removing from the allegiance to the Government the territory of the Philippine Islands or any part thereof, then it becomes stripped of its "common" complexion, inasmuch as, being part and parcel of

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[43] II RECORD, *supra* note 7, at 412.

[44] *Supra* note 39, at 96.

[45] *Supra* note 40, at 488.

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

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

The rebels who escape Marawi City may be issued a warrant of arrest anywhere within the Philippines without the need to declare martial law or suspend the privilege of the writ outside of Marawi City. The rebels may even be arrested by a civilian pursuant to the provision on warrantless arrests under the Rules of Court. To allow martial law in the whole of Mindanao on the sole basis of securing the arrest of rebels who escape Marawi City would not only violate the 1987 Constitution, but also render useless the provisions of the Revised Penal Code and the Rules of Court. The act of the rebels in fleeing or escaping to other territories outside of the place of rebellion will certainly not constitute armed public uprising for the purpose of removing from allegiance to the Philippines the territory where the rebels flee or escape to.

Moreover, sporadic bombings in other areas of Mindanao outside of Marawi City, **in the absence of an armed public uprising against the Government and sans an intent to remove from allegiance to the Government the areas where the bombings take place, *cannot* constitute actual rebellion**. Such bombings constitute terrorism,[46] but certainly not rebellion as

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

understood in the 1987 Constitution and as defined in the Revised Penal Code. Otherwise, a few bombings in Metro Manila, even without any armed public uprising in Metro Manila, would justify the imposition of martial law in Metro Manila.

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

Consequences of a proclamation of a state of martial law.

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

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

a. x x x.

x x x x x x x x x

d. Article 248 (Murder);
e. Article 267 (Kidnapping and Serious Illegal Detention);
f. Article 324 (Crimes Involving Destruction), or under
1. Presidential Decree No. 1613 (The Law on Arson);
2. Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990);

x x x x x x x x x

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

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

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

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

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

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

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

Considering that rebellion is a continuing crime in our jurisdiction, any suspected rebel can be the subject of a warrantless arrest within Philippine territory wherever he or she goes. Under the Rules of Criminal Procedure, any person who has committed, is actually committing, or is attempting to commit an offense in the presence of the arresting officer can be arrested without warrant; or if it be an offense which had just been committed, that the police officer making the arrest has personal knowledge of facts or circumstances that the person to be arrested has committed it.[49] Once there is a rebellion, any

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[47] 265 Phil. 325 (1990).

[48] *Id*. at 336.

[49] RULES OF COURT, Rule 113, Sec. 5.

rebel is deemed to be **continuously committing the crime of rebellion wherever he or she may be in the Philippines, even if the rebel has hidden his or her firearm to avoid arrest**. In short, with or without a state of martial law, a suspected rebel of a **known** rebellion such as the present communist CCP-NPA rebellion, can be arrested anywhere in the Philippines, with or without a warrant. Trial courts can take judicial notice of the ongoing communist rebellion in the country.

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

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

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

Under Section 18, Article VII of the 1987 Constitution, "[a] state of martial law does not suspend the operation of the Constitution," including Article III on the Bill of Rights. However, these rights are not absolute and their continued

enjoyment is subject to certain limitations, **as may be prescribed by law**. Among these are the right to privacy of communication and the freedom to travel, both of which can be restricted through a law when public safety requires it. Article III, or the Bill of Rights, of the 1987 Constitution provides:

> Sec. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when **public safety or order requires otherwise as prescribed by law**.
>
> x x x x x x x x x
>
> Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, **public safety**, or public health, **as may be provided by law**. (Emphasis supplied)

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

Republic Act No. 4200, otherwise known as the *Anti-Wiretapping Act*, allows any peace officer, upon court authorization in cases involving **rebellion**, "to tap any wire or cable, or by using any other device or arrangement, to secretly overhear, intercept, or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or dictaphone or walkie-talkie or tape recorder, or however otherwise described."[50] Similarly, Republic Act

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[50] Section 3, R.A. No. 4200 reads in pertinent part:

> Sec. 3. Nothing contained in this Act, however, shall render it unlawful or punishable for any peace officer, who is authorized by a written order of the Court, to execute any of the acts declared to be unlawful in the two preceding sections **in cases involving** the crimes of treason, espionage, provoking war and disloyalty in case of war, piracy, mutiny in the high seas, **rebellion, conspiracy and proposal**

No. 10173, or the *Data Privacy Act of 2012*, sanctions the "collection, recording, x x x [and] use"[51] of one's personal information, even without the consent of the data subject, whenever "necessary in order to respond to **national emergency**, to comply with the requirements of **public order and safety**, or to fulfill functions of public authority which necessarily includes the processing of personal data for the fulfillment of (the National Privacy Commission's) mandate."[52] Further, Section 4 of Republic Act No. 8239, or the *Philippine Passport Act of 1996*, authorizes the Secretary of Foreign Affairs to cancel the passport of a citizen for cause after due hearing in the interest of **national security** or **public safety**.[53]

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to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, inciting to sedition, kidnapping as defined by the Revised Penal Code, and violations of Commonwealth Act No. 616, punishing espionage and other offenses against national security: *Provided*, That such written order shall only be issued or granted upon written application and the examination under oath or affirmation of the applicant and the witnesses he may produce and a showing: (1) that there are reasonable grounds to believe that any of the crimes enumerated hereinabove has been committed or is being committed or is about to be committed: *Provided, however*, That in cases involving the offenses of rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, and inciting to sedition, such authority shall be granted only upon prior proof that a rebellion or acts of sedition, as the case may be, have actually been or are being committed; (2) that there are reasonable grounds to believe that evidence will be obtained essential to the conviction of any person for, or to the solution of, or to the prevention of, any of such crimes; and (3) that there are no other means readily available for obtaining such evidence. (Emphasis supplied)

[51] Sec. 3 (j), R.A. No. 10173.

[52] Sec. 12 (e), R.A. No. 10173.

[53] Section 4 of R.A. No. 8239 reads in pertinent part:

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

x x x x x x x x x

In the interest of national security, public safety and public health, the **Secretary or any of the authorized consular officers may, after due hearing and in their proper discretion, refuse to issue a passport, or restrict its use or withdraw or cancel a passport**: Provided, however,

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

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

> Sec. 23. (1) x x x.
>
> (2) In times of war or other national emergency, the Congress may, **by law**, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof. (Emphasis supplied)

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

In *David v. Macapagal-Arroyo*,[54] this Court held that the term "**emergency**" in the above-quoted constitutional provision includes **rebellion**, to wit:

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

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That such act shall not mean a loss or doubt on the person's citizenship: Provided, further, That the issuance of a passport may not be denied if the safety and interest of the Filipino citizen is at stake: Provided, finally, That refusal or cancellation of a passport would not prevent the issuance of a Travel Document to allow for a safe return journey by a Filipino to the Philippines.

[54] 522 Phil. 705 (2006).

epidemic, typhoon, flood, or other similar catastrophe of nationwide proportions or effect. This is evident in the Records of the Constitutional Commission, thus:

> MR. GASCON. Yes. What is the Committee's definition of 'national emergency' which appears in Section 13, page 5? It reads:
>
> When the common good so requires, the State may temporarily take over or direct the operation of any privately owned public utility or business affected with public interest.
>
> MR. VILLEGAS. What I mean is threat from external aggression, for example, calamities or natural disasters.
>
> MR. GASCON. There is a question by Commissioner de los Reyes. What about strikes and riots?
>
> MR. VILLEGAS. Strikes, no; those would not be covered by the term 'national emergency.'
>
> MR. BENGZON. Unless they are of such proportions such that they would paralyze government service.
>
> x x x x x x x x x
>
> MR. TINGSON. May I ask the committee if 'national emergency' refers to **military national emergency** or could this be economic emergency?'
>
> MR. VILLEGAS. Yes, it could refer to **both military or economic** dislocations.
>
> MR. TINGSON. Thank you very much.[55] (Emphasis supplied)

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

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

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[55] *Id*. at 790-792.

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

> Generally, Congress is the repository of emergency powers. This is evident in the tenor of Section 23 (2), Article VI authorizing it to delegate such powers to the President. Certainly, a body cannot delegate a power not reposed upon it. However, knowing that during grave emergencies, it may not be possible or practicable for Congress to meet and exercise its powers, the Framers of our Constitution deemed it wise to allow Congress to grant emergency powers to the President, subject to certain conditions, thus: x x x
>
> Section 17, Article XII must be understood as an aspect of the emergency powers clause. The taking over of private business affected with public interest is just another facet of the emergency powers generally reposed upon Congress. Thus, when Section 17 states that the "the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately owned public utility or business affected with public interest," it refers to Congress, not the President. Now, whether or not the President may exercise such power **is dependent on whether Congress may delegate it to him pursuant to a law prescribing the reasonable terms thereof**. x x x.
>
> x x x x x x x x x
>
> Let it be emphasized that while the President alone can declare a state of national emergency, however, without legislation, he has no power to take over privately-owned public utility or business affected with public interest. The President cannot decide whether exceptional circumstances exist warranting the take over of privately-owned public utility or business affected with public interest. Nor can he determine when such exceptional circumstances have ceased. Likewise, **without legislation**, the President has no power to point out the types of businesses affected with public interest that should be taken over. In short, the President has no absolute authority to exercise all the powers of the State under Section 17, Article VII **in the absence of an emergency powers act passed by Congress**.[56] (Emphasis supplied)

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[56] *Id*. at 788-789, 793-794.

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

> Sec. 3. *Authorized Powers*. — Pursuant to Article VI, Section 23 (2) of the Constitution, and to implement the declared national policy, the President is hereby authorized to issue such rules and regulations as may be necessary to carry out any or all of the following powers:
>
> x x x x x x x x x
>
> (3) To temporarily take over or direct the operation of any privately-owned public utility or business affected with public interest that violates the herein declared national policy: Provided, however, That to the extent feasible, management shall be retained, under the direction and supervision of the President or her duly designated representative who shall render a full accounting to the President of the operations of the utility or business taken over: Provided, further, That whenever the President shall determine that the further use or operation by the Government of any such public service or enterprise is no longer necessary under existing conditions, the same shall be restored to the person entitled to the possession thereof;

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

> Sec. 5. *Right of the Government*. — A **special right is hereby reserved to the President of the Philippines, in times of** war, **rebellion**, public peril, calamity, **emergency**, disaster **or serious disturbance of peace and order; to temporarily take over and operate the stations or facilities of the grantee**; to temporarily suspend the operation of any station or facility in the interest of public

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[57] R.A. No. 6826, Sec. 1.

safety, security and public welfare; or to authorize the temporary use and operation thereof by any agency of the government, upon due compensation to the grantee, for the use of the stations or facilities of the grantee during the period when these shall be so operated.[58]

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

Sec. 5. *Right of the Government*. — A **special right is hereby reserved to the President of the Philippines, in times of** war,

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

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

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

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

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

The franchise of Philippine Long Distance Telephone Company also authorizes the President to take over in times of "**rebellion,**

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[59] Section 14 of R.A. No. 8479 reads in pertinent part:

> Sec. 14. *Monitoring*. – a) x x x
>
> x x x x x x x x x
>
> e) In times of national emergency, when the public interest so requires, the DOE may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any person or entity engaged in the industry.

x x x emergency, x x x or disturbance of peace and order." Act No. 3436, as amended by Republic Act No. 7082, thus reads:

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

Fourth, under paragraph 2, Section 18, Article VII of the Constitution, a state of martial law may "authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are not able to function."[60] However, this also needs a law to be enacted by Congress since a state of martial law does not suspend the operation of the 1987 Constitution and it is Congress that is empowered by law "to define, prescribe, and apportion the jurisdiction of various courts."[61] To date, no statute confers jurisdiction on military courts and agencies over civilians where civil courts are unable to function. On the contrary, Republic Act No. 7055[62] even strengthened civilian supremacy over the military by returning to the civil courts the jurisdiction over certain offenses involving members of the

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[60] Section 18, Article VII of the 1987 Constitution reads in pertinent part:

> Sec. 18. x x x.
>
> x x x x x x x x x
>
> A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.

[61] CONSTITUTION, Art. VIII, Sec. 2.

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

Armed Forces of the Philippines, other persons subject to military law, and the members of the Philippine National Police, repealing for the purpose certain presidential decrees promulgated during the Marcos dictatorship.

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

A Final Word

Immediately after issuing Proclamation No. 216, President Duterte announced to the entire nation and to the world that his martial law "**will not be any different from what Marcos did**."[63] The Court must take this public and official statement seriously for this is no trivial matter. When President Ferdinand Marcos declared martial law in 1972 under the 1935 Constitution, he abolished Congress, shut down media, imprisoned leaders of the political opposition, packed the Supreme Court with his

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[63] See InterAksyon, *Duterte praises Marcos' iron-fisted rule, eyes declaring martial law nationwide*<http://www.interaksyon.com/duterte-praises-marcos-iron-fisted-rule-eyes-declaring-martial-law-nationwide/> [last updated May 26, 2017]; John Paolo Bencito, *Rody: Martial law in entire PH if . . .* <http://manilastandard.net/news/top-stories/237568/rody-martial-law-in-entire-ph-if-.html> [published May 25, 2017]; Audrey Modrallo, *Duterte praises Marcos' Martial law as 'very good'* <http://www.philstar.com/headlines/2017/05/24/1703241/drawing-parallels-marcos-duterte-says-martial-law-period-good> [last updated May 25, 2017]; Michael Peel & Grace Ramos, *Philippines' Duterte declares martial law on Mindanao home island* <https://www.ft.com/content/67736a20-3fd6-lle7-82b6-896b95f30f58?mhq5j=e3> [published May 24, 2017]; *Duterte threatens martial law for all of Philippines* <http://www.japantimes.co.jp/news/2017/05/25/asia-pacific/duterte-threatens-martial-law-philippines/#.WVuL07wQgU0> [published May 25, 2017]; *Philippines' Duterte warns of harsh measures as civilians flee fighting* <http://www.channelnewsasia.com/news/asiapacific/philippines-duterte-warns-terrorists-i-ll-be-harsh-8878082> [last updated May 24, 2107]), attached as Annexes "A" to "A-5", respectively, of Lagman Memorandum.

law school classmates and loyalists, and ruled by decree — thereby making himself a dictator for over 13 years until the people ousted him from power in 1986.

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

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

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

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

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

"When you declare martial law, you have to use your coconut, the grey matter between your ears. **It's easy to escape because there is no division in terms of land. You can go anywhere, there can be a spillover,"he added.**[64]

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

ACCORDINGLY, I vote to **PARTIALLY GRANT** the petitions in G.R. Nos. 231658, 231771, and 231774, and **DECLARE** Proclamation No. 216 **UNCONSTITUTIONAL as to geographic areas of Mindanao outside of Marawi City**, for failure to comply with Section 18, Article VII of the 1987 Constitution. Proclamation No. 216 is valid, effective and **CONSTITUTIONAL** only within Marawi City.

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

DISSENTING OPINION

LEONEN, *J.*:

I dissent.

I cannot agree to granting the President undefined powers of martial law over the entire Mindanao region. My reading of the Constitution is that we should be stricter, more precise, and more vigilant of the fundamental rights of our people.

Terrorism merits calibrated legal and political responses executed by the decisive and professional actions of our coercive forces. The Constitution, properly read in the context of all its provisions and in the light of our history, does not allow a vague declaration of martial law which contains no indication as to who it actually empowers and what fundamental rights will be suspended or bargained. Terrorism does not merit a vague declaration of martial law and in a wide undefined geographical area containing other localities where no act of terrorism exists.

Terrorists will win when we suspend the meaning of our Constitution due to our fears. This happens when through judicial interpretation, we accord undue and unconstitutional deference to the findings of facts made by the President or give him a blank check in so far as the implementation of martial law within the whole of Mindanao.

The group committing atrocities in Marawi are terrorists. They are not rebels. They are committing acts of terrorism. They are not engaged in political acts of rebellion. They do not have the numbers nor do they have the sophistication to be able to hold ground. Their ideology of a nihilist apocalyptic future inspired by the extremist views of Salafi Jihadism will sway no community especially among Muslims.

The armed hostilities were precipitated by government's actions to serve a judicial warrant on known terrorist personalities. Many of them already had pending warrants of arrests for the commission of common crimes. They resisted,

fought back, and together with their followers, are continuing to violently evade arrest.

The timely action of government, with a judicially issued warrant, disrupted their plans.

In order to establish their terrorist credentials and to sow fear, they commit acts which amount to murder, mutilation, arson, and use and possession of illegal firearms, ammunition, and explosives among others. They are also able to magnify our basest fears through two means. First, they project themselves as capable of doing barbaric acts in the name of misguided religious fervor founded on a nihilistic apocalyptic future. Second, when they succeed in creating an aura of invisibility either by our unquestioned acceptance of their claim of community support or simply because law enforcement has not been professional or sophisticated enough to meet the demands of these terrorist threats.

The actual acts of the criminal elements in Marawi are designed to slow down the advance of government forces and facilitate their escape. They are not designed to actually control seats of governance. The provincial and city governments are existing and are operating as best as they could under the circumstances. They are not rendered inutile such that there is now a necessity for the military to take over all aspects of governance. Civilians are also helping recover other civilians caught in the crossfire as well as attend to the wounded and the thousands displaced. Even as we decide this case, a masterplan for the rehabilitation of Marawi is in the works.

At no time was there any doubt that our armed forces would be able to quell the lawlessness in Marawi.

There is no rebellion that justifies martial law. There is terrorism that requires more thoughtful action.

The Constitution does not only require that government alleges facts, it must show that the facts are sufficient. The facts are sufficient when (a) it is based on credible intelligence and (b) taken collectively establishes that there is actual rebellion and that public safety requires the suspension of the privilege

of the writ of Habeas Corpus and the exercise of defined powers within the rubric of martial law. We cannot use the quantum of evidence that is used by a prosecutor or a judge. We have to assume what a reasonable President would do given the circumstances.

The facts presented are not sufficient to reasonably conclude that the armed hostilities and lawless violence happening in Marawi City is "for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval or other armed forces, or of depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives."[1]

Based on the facts inferred by the respondents from their intelligence sources, the perpetrators of the atrocities are not numerous or have sufficient resources or even community support to hold any territory. Extremist beliefs by those who adhere to Salafist Jihadism are alien to most cultures in Mindanao. It is a bastardization of Islam as this is understood.

Neither do the facts show convincingly that "public safety" requires martial law. Respondents did not show how the available legal tools magnified by the call out of the armed forces would not be sufficient. Public safety is always the aim of the constitutional concept of police power. Respondents failed to show what martial law would add.

Martial law is not the constitutionally allowed solution to terrorism. It is an emergency grant of power in cases where civilian authority has been overrun due to actual hostilities motivated by a demonstrable purpose of actually seizing government. As an emergency measure, the capability and commitment of the lawless group must also be shown.

Martial law in the past has been used as a legal shortcut: in the guise of perceived chaos, to install a strongman undermining

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[1] REV. PEN. CODE, Art. 134.

the very principle of our Constitutional order. The Constitution allows us now to take pause through judicial review and not be beguiled by authoritarianism due to our frustrations of government.

Unlike the previous versions, the present Constitution provides for the limitations for the declaration of martial law. Therefore, any declaration must clearly articulate the powers that would be exercised by the President as Commander-in-Chief. It cannot now just be a declaration of a state of Martial Law. Otherwise, it would be unconstitutionally vague. It would not be possible to assess the sufficiency of the facts used as basis to determine "when public safety requires it." "It" refers to the powers that are intended to be exercised by the President under martial law.

The scope of Martial law as contained in Proclamation No. 216 issued last May 23, 2017 expands with every new issuance from its administrators. Proclamation No. 1081 of 1972, which ironically was more specific, evolved similarly. Martial law as proclaimed is vague, thus unconstitutional.

General Order No. 1 issued by the President expands martial law by instructing the Armed Forces of the Philippines to "undertake all measures to prevent and suppress all acts of rebellion ***and lawless violence in the whole of Mindanao***, including any and all acts in relation thereto, in connection therewith, or in furtherance thereof." ***All acts of lawless violence throughout Mindanao, even if unrelated to the ongoing hostilities in Marawi, have been included in the General Order.***

The second paragraph of Article 3 of General Order No. 1 orders the Armed Forces' "arrest of persons and/or groups who have committed, are committing, or attempting to commit" both rebellion and any other kind of lawless violence.

The vagueness of Proclamation No. 216 hides its real intent. Thus, Operational Directive for the Implementation of martial law issued by the Chief of Staff of the Armed Forces of the Philippines orders his forces to: **"*dismantle the NPA, other terror-linked private armed groups, illegal drug syndicates, peace spoilers and other lawless armed groups*."**

Arresting illegal drug syndicates and "peace spoilers" under martial law also unduly expands Proclamation No. 216. ***The factual bases for the declaration of Martial Law as presented by the respondents do not cover these illegal acts as rationale for its proclamation. They do not also fall within the concept of "rebellion."*** It is made possible by a vague and overly broad Proclamation.

Due to the lack of guidance from Proclamation No. 216, the Armed Forces of the Philippines as implementor of martial law defines it as the taking over of civilian government:

> "Martial Law. ***The imposition of the highest-ranking military officer (the President being the Commander-in-Chief) as the military governor or as the head of the government. It is usually imposed temporarily when the government or civilian authorities fail to function effectively or when either there is near-violent civil unrest*** or in cases of major natural disasters or during conflicts or cases of occupations, where the absence of any other civil government provides for the unstable population."[2] (Emphasis supplied)

Even by their own definition, the armed forces do not seem to believe martial law to be necessary. Certainly, no civilian government in Mindanao is failing to function.

The presentation of facts made by the respondents who bear the burden in these cases was wanting. Many of the facts presented by the respondents are simply allegations. Most are based on inference contradicted by the documents presented by the respondents themselves.

Respondents did not exert any effort to either show their sources or the cogent analysis of intelligence information that led to their present level of confidence with respect to the cogency of their interpretation. Even the sources of the respondents show the lack of credibility of some of their conclusions.

Even with a charitable view that all the bases of the factual allegations are credible, the facts as presented by the parties

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[2] OSG Memorandum, Annex 4 of Annex 2, Rules of Engagement (ROE) for Operational Directive 02-17, p. 12.

are still not sufficient to justify the conclusion that martial law, as provided in Proclamation No. 216, General Order No. 1, and in the Operational Directive of the Chief of Staff of the Armed Forces of the Philippines (AFP), should be declared and that it cover the entire Mindanao Region. None of the directives also specifies which island or island groups belong to Mindanao.

Elevating the acts of a lawless criminal group which uses terrorism as tactic to the constitutional concept of rebellion acknowledges them as a political group. Rebellion is a political crime. We have acknowledged that if rebels are able to capture government, their rebellion, no matter how brutal, will be justified.

Also, by acknowledging them as rebels, we elevate their inhuman barbarism as an "armed conflict of a non-international character" protected by International Humanitarian Law. We will be known worldwide as the only country that acknowledges them, not as criminals, but as rebels entitled to protection under international law.

Hostilities and lawless violence and their consequences can be addressed by many of the prerogatives of the President as Chief Executive and Commander-in-Chief. In my view, there is no showing that martial law has become necessary for the safety of entire Mindanao.

Martial law creates a false sense of security. Terrorism cannot be rooted out with military force alone. Military rule, authoritarianism, and an iron hand do not substitute for precision, sophistication, and professionalism in our law enforcement. The false sense of security will disappoint. It is that disappointment that will foster the creation of more terrorists and more chaos.

For these reasons, Proclamation No. 216 issued in Russia on May 23, 2017 along with all other issuances made pursuant to this declaration should be declared unconstitutional.

The declaration that Proclamation No. 216 as unconstitutional will not affect the ongoing military operations in Marawi pursuant

to Proclamation No. 55. The latter proclamation is not an issue in this case and the proportionate response to the violence being committed by the criminals would be to use the appropriate force.

There is no doubt that even without martial law, legal tools already exist to quell the hostilities in Marawi and to address terrorism.

Upholding Proclamation No. 216 is based on extravagant and misleading characterizations of the events fraught with many dangers to our liberties.

I

The present petitions are justiciable. I concur that the petitions are the "appropriate proceedings" filed by "any citizen" which appropriately invokes sui generis judicial review contained in the Constitution. However, in addition to the remedy available in Article VII, Section 18 of the Constitution, any proper party may also file a Petition invoking Article VIII, section 1. The remedies are not exclusive of each other. Neither does one subsume the other.

Furthermore, the context and history of the provisions on judicial review point to a more heightened scrutiny when the Commander-in-Chief provision is used.

As the Commander-in-Chief provision, Article VII, Section 18 of the 1987 Constitution establishes the parameters of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus*. It prescribes limited instances when the President may resort to these extraordinary remedies. Section 18 likewise gives the two (2) other branches their respective roles to counterbalance the President's enormous power as Commander-in-Chief:

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

hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

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

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

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

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

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

The Government posits that the "appropriate proceeding" referred to in Article VII, Section 18 is a petition for *certiorari* as evidenced by Article VIII, Section 1, which states:[3]

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

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[3] OSG Memorandum, pp. 28-29.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

The Government further argues that by correlating Section 1 and Section 5(1)[4] of Article VIII, a petition for *certiorari* becomes the sole "appropriate remedy" referred to under Article VII, Section 18 as it is the only "logical, natural and only recourse."[5]

I concur with the ponencia in holding that respondents are mistaken.

The power of judicial review is the Court's authority to strike down acts of the executive and legislative which are contrary to the Constitution. This is inherent in all courts, being part of their power of judicial review.[6] Article VIII, Section 1 includes, but does not limit, judicial power to the duty of the courts to settle actual controversies and determine whether or not any branch or instrumentality of the Government has committed grave abuse of discretion.

Traditionally, *Angara v. Electoral Commission*[7] clarifies that judicial review is not an assertion of the superiority of the judiciary over other departments. Rather, it is the judiciary's promotion of the superiority of the Constitution:

The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The

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[4] CONST., Art. VIII, Sec. 5 provides:

Section 5. The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.

[5] OSG Memorandum, p. 30.

[6] *Angara v. Electoral Commission*, 63 Phil. 139, 156-157 (1936) [Per *J.* Laurel, *En Banc*].

[7] 63 Phil. 139 (1936) [Per *J.* Laurel, *En Banc*].

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. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution.[8]

The traditional concept of judicial review or "that the declaration of the unconstitutionality of a law or act of government must be within the context of an actual case or controversy brought before the courts,"[9] calls for compliance with the following requisites before a court may take cognizance of a case:

(1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.[10]

Despite adherence to its traditional jurisdiction, the Court has also embraced and acted on a more articulated jurisdiction provided for under Article VIII, Section 1 of the 1987

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[8] *Id*. at 158.

[9] See *J*. Brion's concurring opinion in *Villanueva v. Judicial and Bar Council*, G.R. No. 211833, April 7, 2015, 755 SCRA 182, 217-218 [Per *J*. Reyes, *En Banc*].

[10] *Biraogo v. The Philippine Truth Commission of 2010*, 651 Phil. 374,438 (2010) [Per *J*. Mendoza, *En Banc*], citing *Senate of the Philippines v. Ermita*, 522 Phil. 1, 27 (2006) [Per *J*. Carpio-Morales, *En Banc*] and *Francisco v. House of Representatives*, 460 Phil. 830, 842 (2003) [Per *J*. Carpio-Morales, *En Banc*].

Constitution.[11] In emphasizing the Court's jurisdiction, the 1987 Constitution broadened the Court's power of judicial review from settling actual controversies involving legally demandable and enforceable rights, to determining if a Government branch or instrumentality has committed grave abuse of discretion amounting to lack or excess of jurisdiction.[12] By deliberately increasing the Court's power of judicial review, the framers of the 1987 Constitution intended to prevent courts from seeking refuge behind the political question doctrine to avoid resolving controversies involving acts of the Executive and Legislative branches, as what happened during martial law under President Ferdinand Marcos.[13]

The Constitution further provides for a stricter type of judicial review in Article VII, Section 18. It mandates the Supreme Court to review "in an appropriate proceeding the sufficiency of the factual basis of the proclamation of martial law or the suspension of the writ of *habeas corpus* or the extension thereof."[14]

The "appropriate proceeding" referred to under Article VII, Section 18 cannot simply be classified under the established types of judicial power, since it does not possess any of the usual characteristics associated with either traditional or expanded powers of judicial review.

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[11] *Belgica v. Ochoa*, 721 Phil. 416, 526-527 (2013) [Per *J.* Perlas-Bernabe, *En Banc*]; *Spouses Imbong v. Ochoa*, 732 Phil. 1, 120-121 (2014) [Per *J.* Mendoza, *En Banc*]; *Araullo v. Aquino*, 737 Phil. 457, 524-525 (2014) [Per *J.* Bersamin, *En Banc*].

[12] *Estrada v. Desierto*, 406 Phil. 1, 42-43 (2001) [Per *J.* Puno, *En Banc*].

[13] See Justice Marvic M.V.F. Leonen's concurring opinion in *Belgica v. Ochoa*, 721 Phil. 416, 670-671 (2013) [Per *J.* Perlas-Bernabe, *En Banc*], citing I RECORDS OF THE CONSTITUTIONAL COMMISSION (1986) No. 27.

"[T]he role of the judiciary during the deposed regime was marred considerably by the circumstance that in a number of cases against the government, which then had no legal defense at all, the Solicitor General set up the defense of political questions and got away with it."

[14] CONST., Art. Vll, Sec. 18.

"Appropriate proceeding" under the martial law provision is a *sui generis* proceeding or in a class by itself, as seen by how it is treated by the 1987 Constitution and the special mandate handed down to the Supreme Court in response to the President's declaration of martial law or the suspension of the privilege of the writ of *habeas corpus*.

An indicator that the Court's authority under the martial law provision is distinct from its more recognized power of judicial review is that it can be found in Article VII (Executive) and not Article VIII (Judiciary) of the 1987 Constitution. It emphasizes the additional role of the Supreme Court which should assume a vigilant stance when it comes to reviewing the factual basis of the President's declaration of martial law or suspension of the privilege of the writ of *habeas corpus*. A similar though not identical role is vested on Congress in the same Commander-in-Chief provision. The Constitution expects both Houses to check on the wisdom of the President's proclamation since they have been given a blanket authority to revoke the proclamation or suspension.

Traditionally, the Court is not a trier of facts.[15] However, under Article VII, Section 18, the Court is tasked to review the sufficiency of the factual basis for the President's proclamation of martial law within thirty (30) days from the time the petition is filed.

The rule on standing is also significantly relaxed when the provision allows "any citizen" to question the proclamation of martial law. This is in stark contrast with the requirement under the Rules of Court that "every action must be prosecuted or defended in the name of the real party in interest."[16] Justice Antonio Carpio asserted in his dissent in *Fortun v. Macapagal-Arroyo*[17] that the deliberate relaxation of *locus standi* was designed

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[15] *Pascual v. Burgos*, G.R. No. 171722, January 11, 2016, 778 SCRA 189, 204 [Per *J.* Leonen, Second Division].

[16] RULES OF COURT, Rule 3, Sec. 2.

[17] 684 Phil. 526 (2012) [Per *J.* Abad, *En Banc*].

to provide immediate relief from the possible evils and danger of an illegal declaration of martial law or suspension of the writ:

> It is clear that the Constitution explicitly clothes "**any citizen**" with the legal standing to challenge the constitutionality of the declaration of martial law or suspension of the writ. The Constitution does not make any distinction as to who can bring such an action. As discussed in the deliberations of the Constitutional Commission, the "citizen" who can challenge the declaration of martial law or suspension of the writ need not even be a taxpayer. This was deliberately designed to arrest, without further delay, the grave effects of an illegal declaration of martial law or suspension of the writ, and to provide immediate relief to those aggrieved by the same. Accordingly, petitioners, being Filipino citizens, possess legal standing to file the present petitions assailing the sufficiency of the factual basis of Proclamation No. 1959.[18] (Emphasis in the original)

The jurisprudential principle respecting the hierarchy of courts[19] does not apply. The provision allows any petitioner to seek refuge directly with this Court. Nonetheless, the hierarchy of courts doctrine is not an iron-clad rule.[20]

It is true that Article VIII, Section 5 provided for instances when the Court exercises original jurisdiction:

> Section 5. The Supreme Court shall have the following powers:
> 1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, mandamus, *quo warranto*, and *habeas corpus*.

However, the enumeration in Article VIII, Section 5 is far from exclusive as the Court was also endowed with original jurisdiction under Section 1 of the same article and over the *sui generis* proceeding under Article VII, Section 18.

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[18] *Id.* at 586, citing BERNAS, *THE INTENT OF THE 1986 CONSTITUTION WRITERS* 474 (1995 ed.).

[19] *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 329-330 (2015) [Per *J.* Leonen, *En Banc*].

[20] *Roque, Jr., et al. v. Commission on Elections*, 615 Phil. 149, 201 (2009) [Per *J.* Velasco, *En Banc*].

Notwithstanding the *sui generis* proceeding, a resort to a petition for *certiorari* pursuant to the Court's jurisdiction under Article VIII, Section 1 or Rule 65 is also proper to question the properiety of any declaration or implementation of the suspension of the writ of Habeas Corpus or martial law.

The jurisdiction of the Court in Article VIII, section 1 was meant "to ensure the potency of the power of judicial review to curb grave abuse of discretion by 'any branch or instrumentalities of government[.]'"[21] It was a reaction to the abuses of martial law under President Marcos, ensuring that the courts will not evade their duty on the ground of non-justiciability for being a political question.[22] *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association*[23] instructed that in a petition for *certiorari* filed directly with the Court, the petition must reflect a *prima facie* showing of grave abuse of discretion in order to trigger this Court's jurisdiction to determine whether a government agency or instrumentality committed grave abuse of discretion. [24]

Grave abuse of discretion is present "when an act is (1) done contrary to the Constitution, law, or jurisprudence or (2) executed whimsically, capriciously or arbitrarily, out of malice, ill will, or personal bias."[25]

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[21] *Francisco v. The House of Representatives*, 460 Phil. 830, 883 (2003) [Per *J*. Carpio-Morales, *En Banc*].

[22] See *J*. Leonen's Concurring Opinion in *Belgica v. Ochoa*, 721 Phil. 416, 670-671 (2013) [Per *J*. Perlas-Bernabe, *En Banc*], citing I RECORDS OF THE CONSTITUTIONAL COMMISSION (1986), No. 27.

[23] *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, G.R. Nos. 207132 & 207205, December 6, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/207132.pdf> [Per *J*. Brion, *En Banc*].

[24] *Id*. at 12.

[25] *Ocampo v. Enriquez*, G.R. Nos. 225973, 225984, 226097, 226116, 226117, 226120 & 226294, November 8, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/225973.pdf> 15 [Per *J*. Peralta, *En Banc*], citing *Almario, et al. v. Executive Secretary, et al.*, 714 Phil. 127, 169 (2013) [Per *J*. Leonardo-De Castro, *En Banc*].

However, Article VII, Section 18 provides specific requirements for the President to exercise his Commander-in-Chief powers and declare martial law. Absent those requirements, it is beyond question that the assailed proclamation should be stricken down for being constitutionally infirm.

II

The text as well as the evolution of doctrines corrected by the text of the Constitutional provision reveals an approach which shows a demonstrable mandate for the Supreme Court not to give full deference to the discretion exercised by the Commander in Chief. The provision requires a heightened and stricter mode of review.

As a mere spectator and silent witness, the Court has been given limited participation as an active participant when it comes to determining the sufficiency of the factual basis for the proclamation of martial law and suspension of the privilege of the writ of *habeas corpus*.

Even before the 1935 Constitution, the Court in *Barcelon v. Baker*[26] has already been faced with the question of whether the President's exercise of the Commander-in-Chief powers is subject to judicial review. Section 5, paragraph 7 of the Philippine Bill of 1902 stated:

> That the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion, insurrection, or invasion the public safety may require it, in either of which events the same may be suspended by the President, or by the Governor, with the approval of the Philippine Commission, whenever during such period the necessity for such suspension shall exist.

In *Barcelon v. Baker*,[27] the Court limited its review of the suspension of the privilege of the writ of *habeas corpus* in Batangas to two (2) questions: (1) whether Congress was authorized to confer upon the President or the Governor-General

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[26] 5 Phil. 87 (1905) [Per *J.* Johnson, *En Banc*].

[27] *Id*.

the authority to suspend the privilege of the writ of *habeas corpus* and if the authority was indeed conferred; and (2) whether the Governor-General and the Philippine Commission acted within the authority conferred upon them.[28]

Barcelon ruled that the factual basis upon which the Governor-General and Philippine Commission suspended the privilege of the writ was beyond judicial review being exclusively political in nature:

> In short, the status of the country as to peace or war is legally determined by the political (department of the Government) and not by the judicial department. When the decision is made the courts are concluded thereby, and bound to apply the legal rules which belong to that condition. The same power which determines the existence of war or insurrection must also decide when hostilities have ceased —that is, when peace is restored. In a legal sense the state of war or peace is not a question *in pais* for courts to determine. It is a legal fact, ascertainable only from the decision of the political department.[29]

The Court in *Barcelon* reasoned out that each branch of government is presumed to be properly dispensing its distinct function and role within the framework of government, thus, "No presumption of an abuse of *these discretionary powers* by one department will be considered or entertained by another."[30]

After *Barcelon* came *Montenegro v. Castañeda*,[31] where the President once again suspended the privilege of the writ of *habeas corpus*. This time, the 1935 Constitution was already in effect and Article VII, Section 10(2) of the 1935 Constitution stated:

> Section 10
>
> . . . . . .
>
> (2) The President shall be commander-in-chief of all armed forces of the Philippines, and, whenever it becomes necessary, he may call

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[28] *Id*. at 96.

[29] *Id*. at 107.

[30] *Id*. at 115.

[31] 91 Phil. 882 (1952) [Per *J.* Bengzon].

out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of invasion, insurrection, or rebellion or imminent danger thereof, when the public safety requires it, he may suspend the privilege of the writ of habeas corpus, or place the Philippines or any part thereof under Martial Law.

Montenegro served as a strong reiteration of the political question doctrine:

> [I]n 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 whenever the exigency has arisen requiring the suspension belongs to the President and "his decision is final and conclusive" upon the courts and upon all other persons.[32]

The policy of non-interference in *Barcelon*, as repeated in *Montenegro v. Castañeda*,[33] was reversed unanimously[34] by the Court in *In the Matter of the Petition for Habeas Corpus of Lansang v. Garcia*.[35] *Lansang* clarified that the Court "has the authority to inquire into the existence of said factual bases in order to determine the constitutional sufficiency therefor."[36] The Court asserted that the President's power to suspend the privilege was limited and conditional, thus, the courts may inquire upon his adherence and compliance with the Constitution:

> Indeed, the grant of power to suspend the privilege is neither absolute nor unqualified. The authority conferred by the Constitution, both under the Bill of Rights and under the Executive Department, is limited and conditional. The precept in the Bill of Rights establishes a general rule, as well as an exception thereto. What is more, it postulates the former in the *negative*, evidently to stress its importance, by providing that "(t)he privilege of the writ of habeas corpus shall

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[32] *Id*. at 887.

[33] 91 Phil. 882 (1952) [Per *J.* Bengzon].

[34] *In the Matter of the Petition for Habeas Corpus of Lansang, et al. v. Garcia*, 149 Phil. 547, 585-586 (1971) [Per *C.J.* Concepcion, *En Banc*].

[35] 149 Phil. 547 (1971) [Per *C.J.* Concepcion, *En Banc*].

[36] *Id*. at 585-586.

not be suspended . . .” It is only by way of *exception* that it permits the suspension of the privilege “in cases of invasion, insurrection, or rebellion” — or, under Art. VII of the Constitution, “imminent danger thereof” — “when the public safety requires it, in any of which events the same may be suspended wherever during such period the necessity for such suspension shall exist.” For from being full and plenary, the authority to suspend the privilege of the writ is thus circumscribed, confined and restricted, not only by the prescribed setting or the conditions essential to its existence, but, also, as regards the time when and the place where it may be exercised. These factors and the aforementioned setting or conditions mark, establish and define the extent, the confines and the limits of said power, beyond which it does not exist. And, like the limitations and restrictions imposed by the Fundamental Law upon the legislative department, adherence thereto and compliance therewith may, within proper bounds, be inquired into by courts of justice. Otherwise, the explicit constitutional provisions thereon would be meaningless. Surely, the framers of our Constitution could not have intended to engage in such a wasteful exercise in futility.[37]

Nonetheless, the Court upheld President Marcos’ suspension of the privilege of the writ of *habeas corpus* under Proclamation Nos. 889 and 889-A, ruling that the existence of a rebellion[38] and that public safety[39] necessitated the suspension of the privilege of the writ of *habeas corpus* were sufficiently proven by the Government.

A year after President Marcos suspended the writ, or on September 21, 1972, he proceeded to place the entire country under martial by virtue of Proclamation No. 1081. Portions of Proclamation No. 1081 read:

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines by virtue of the powers vested upon me by Article VII, Section 10, Paragraph (2) of the Constitution, do hereby place the entire Philippines as defined in Article I, Section 1 of the

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[37] *Id*. at 586.

[38] *Id*. at 591.

[39] *Id*. at 598-599.

Constitution under martial law and, in my capacity as their Commander-in-Chief, do hereby command the Armed Forces of the Philippines, to maintain law and order throughout the Philippines, prevent or suppress all forms of lawless violence as well as any act of insurrection or rebellion and to enforce obedience to all the laws and decrees, orders and regulations promulgated by me personally or upon my direction.

In addition, I do hereby order that all persons presently detained, as well as all others who may hereafter be similarly detained for the crimes of insurrection or rebellion, and all other crimes and offenses committed in furtherance or on the occasion thereof, or incident thereto, or in connection therewith, for crimes against national security and the law of nations, crimes against public order, crimes involving usurpation of authority, rank, title and improper use of names, uniforms and insignia, crimes committed by public officers, and for such other crimes as will be enumerated in orders that I shall subsequently promulgate, as well as crimes as a consequence of any violation of any decree, order or regulation promulgated by me personally or promulgated upon my direction shall be kept under detention until otherwise ordered released by me or by my duly designated representative.[40]

On September 22, 1972, President Marcos issued General Order No. 2 and this became the basis for the arrest and detention of the petitioners in the consolidated petitions of *In the Matter of the Petition for Habeas Corpus of Aquino, et al. v. Ponce Enrile*.[41] Petitioners in *Aquino* were arrested and detained "for being participants or having given aid and comfort in the conspiracy to seize political and state power in the country and to take over the Government by force."[42]

The majority in *Aquino* ruled that the constitutional sufficiency of the declaration of martial law was purely political in nature, therefore, not justiciable. The *ponente*, Chief Justice Makalintal, also added that the issue of justiciability was rendered

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[40] *In the Matter of the Petition for Habeas Corpus of Benigno S. Aquino, Jr., et al. v. Enrile*, 158-A Phil. 1, 45 (1974) [Per *C.J.* Makalintal, *En Banc*).

[41] *Id*.

[42] *Id*. at 49.

moot[43] by the affirmative result of the general referendum of July 27-28, 1973, which posed this question to the voters: "Under the (1973) Constitution, the President, if he so desires, can continue in office beyond 1973. Do you want President Marcos to continue beyond 1973 and finish the reforms he initiated under martial law?"[44]

While some of the members of the Court disagreed and insisted that the issue was justiciable, they nonetheless joined the majority in dismissing the petitions on the ground that President Marcos did not act arbitrarily when he declared martial law pursuant to the 1935 Constitution:

> Arrayed on the side of justiciability are Justices Castro, Fernando, Teehankee and Muñoz Palma. They hold that the constitutional sufficiency of the proclamation may be inquired into by the Court, and would thus apply the principle laid down in Lansang although that case refers to the power of the President to suspend the privilege of the writ of *habeas corpus*. The recognition of justiciability accorded to the question in Lansang, it should be emphasized, is there expressly distinguished from the power of judicial review in ordinary civil or criminal cases, and is limited to ascertaining "merely whether he (the President) has gone beyond the constitutional limits of his jurisdiction, not to exercise the power vested in him or to determine the wisdom of his act." The test is not whether the President's decision is correct but whether, in suspending the writ, he did or did not act arbitrarily. Applying this test, the finding by the Justices just mentioned is that there was no arbitrariness in the President's proclamation of martial law pursuant to the 1935 Constitution; and I concur with them in that finding. The factual bases for the suspension of the privilege of the writ of *habeas corpus*, particularly in regard to the existence of a state of rebellion in the country, had not disappeared, indeed had been exacerbated, as events shortly before said proclamation clearly demonstrated. On this Point the Court is practically unanimous; Justice Teehankee merely refrained from discussing it.[45]

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[43] *Id*. at 49-50.

[44] *Id*.

[45] *Id*. at 47-48.

The President's Commander-in-Chief powers under the 1935 Constitution were merely repeated under the 1973 Constitution, particularly in Article VII, Section 11:

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

Nine (9) years after the *Aquino* ruling, *In the Issuance of the Writ of Habeas Corpus for Parong, et al. v. Enrile*[46] reverted to the ruling of political question and non-justiciability expounded on in *Barcelon* and *Montenegro*:

In times of war or national emergency, the legislature may surrender a part of its power of legislation to the President. Would it not be as proper and wholly acceptable to lay down the principle that during such crises, the judiciary should be less jealous of its power and more trusting of the Executive in the exercise of its emergency powers in recognition of the same necessity? Verily, the existence of the emergencies should be left to President's sole and unfettered determination. His exercise of the power to suspend the privilege of the writ of *habeas corpus* on the occasion thereof, should also be beyond judicial review. Arbitrariness, as a ground for judicial inquiry of presidential acts and decisions, sounds good in theory but impractical and unrealistic, considering how well-nigh impossible it is for the courts to contradict the finding of the President on the existence of the emergency that gives occasion for the exercise of the power to suspend the privilege of the writ. For the Court to insist on reviewing Presidential action on the ground of arbitrariness may only result in a violent collision of two jealous powers with tragic consequences, by all means to be avoided, in favor of adhering to the more desirable and long-tested doctrine of "political question" in reference to the power of judicial review.

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[46] 206 Phil. 392 (1983) [Per *J*. De Castro, *En Banc*]. (Note: This case is more commonly referred to as *Garcia-Padilla v. Enrile*.)

Amendment No. 6 of the 1973 Constitution, as earlier cited, affords further reason for the reexamination of the Lansang doctrine and reversion to that of *Barcelon vs. Baker* and *Montenegro vs. Castañeda*.[47]

In his dissent, Justice Claudio Teehankee emphasized that *Lansang* recognized and deferred to the President's wisdom in determining the necessity of the suspension of the privilege of the writ of *habeas corpus*. Notwithstanding this recognition, the Court in *Lansang* acted within the scope of its power of judicial review when it established "the constitutional confines and limits of the President's power."[48] The Court's exercise of judicial review was not meant to undermine the correctness or wisdom of the President's decision, but rather to ensure that "the President's decision to suspend the privilege not suffer from the constitutional infirmity of arbitrariness."[49]

However, barely six (6) days later, the Court promulgated *In the Matter of the Petition for Habeas Corpus of Morales, Jr. v. Enrile*[50] which reiterated[51] *Lansang*. *Morales* held that the power of judicial review necessitated that the Court must look into "every phase and aspect of petitioner's detention . . . up to the moment the court passes upon the merits of the petition" because only then can the court be satisfied that there was no violation of the due process clause.[52]

The pliability of the past Courts under martial law as declared by Ferdinand E. Marcos through the convenient issues of justiciability or non-justiciability was finally laid to rest in the 1987 Constitution when the Court was directed by Article VII, Section 18 to review the sufficiency of the factual basis of the

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[47] *Id*. at 431-432.

[48] *Id*. at 453-454.

[49] *Id*. at 454.

[50] 206 Phil. 466 (1983) [Per *J*. Concepcion, Jr., *En Banc*].

[51] *Id*. at 496.

[52] *Id*.

declaration or suspension, thus, making the issue justiciable and within the ambit of judicial review. Furthennore, the Court was mandated to promulgate its decision within thirty (30) days from the filing of an appropriate proceeding by any citizen.

David v. Senate Electoral Tribunal[53] points out that legal provisions oftentimes result from the re-adoption or re-calibration of existing rules, with the resulting legal provisions meant to address the shortcomings of the previously existing rules:

> Interpretation grounded on textual primacy likewise looks into how the text has evolved. Unless completely novel, legal provisions are the result of the re-adoption — often with accompanying re-calibration — of previously existing rules. Even when seemingly novel, provisions are often introduced as a means of addressing the inadequacies and excesses of previously existing rules.
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> One may trace the historical development of text: by comparing its current iteration with prior counterpart provisions, keenly taking note of changes in syntax, along with accounting for more conspicuous substantive changes such as the addition and deletion of provisos or items in enumerations, shifting terminologies, the use of more emphatic or more moderate qualifiers, and the imposition of heavier penalties. The tension between consistency and change galvanizes meaning.[54]

The expansion of judicial review from 1905 all the way to 1987 shows the unmistakable intent of the Constitution for the Judiciary to play a more active role to check on possible abuses by the Executive. Furthermore, not only was the Court given an express grant to review the President's Commander-in-Chief powers, it was also denied the discretion to decline exercising its power of judicial review.[55] Thus, as it stands, the Court is duty bound to carefully and with deliberate intention, scrutinize

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[53] *David v. Senate Electoral Tribunal*, G.R. No. 221538, September 20, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/september2016/221538.pdf> [Per *J.* Leonen, *En Banc*].

[54] *Id*.

[55] See Separate Opinion of *J.* Puno in *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 666-667 (2000) [Per *J.* Kapunan, *En Banc*].

the President's exercise of his or her Commander-in-Chief powers. The express grant likewise implies that the Court is expected to step in when the minimum condition materializes (i.e. an appropriate proceeding filed by any citizen) and review the sufficiency of the factual basis which led to the declaration or suspension.

Unlike the Court which is empowered to strike out a proclamation of martial law or suspension of the privilege of the writ of *habeas corpus* only on the ground of lack of sufficient factual basis, the Congress is given a much wider latitude in its power to revoke the proclamation or suspension, with the President powerless to set aside or contest the said revocation.

The framers also intended for the Congress to have a considerably broader review power than the Judiciary and to play an active role following the President's proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*. Unlike the Court which can only act upon an appropriate proceeding filed by any citizen, Congress may, by voting jointly and upon a majority vote, revoke such proclamation or suspension. The decision to revoke is not premised on how factually correct the President's invocation of his Commander-in-Chief powers are, rather, Congress is permitted a wider latitude in how it chooses to respond to the President's proclamation or suspension. While the Court is limited to reviewing the sufficiency of the factual basis behind the President's proclamation or suspension, Congress does not operate under such constraints and can strike down the President's exercise of his Commander-in-Chief powers as it pleases without running afoul of the Constitution.

With its veto power and power to extend the duration of martial law upon the President's initiative and as a representative of its constituents, Congress is also expected to continuously monitor and review the situation on the areas affected by martial law. Unlike the Court which is mandated to promulgate its decision within thirty (30) days from the time a petition questioning the proclamation is filed, Congress is not saddled with a similar duty. While the Court is mandated to look into

the sufficiency of the factual basis and whether or not the proclamation was attended with grave abuse of discretion, Congress deals primarily with the wisdom behind the proclamation or suspension. Much deference is thus accorded to Congress and is treated as the President's co-equal when it comes to determining the wisdom behind the imposition or continued imposition of martial law or suspension of the writ.

The Supreme Court cannot shirk from its responsibility drawn from a historical reading of the context of the provision of the Constitution through specious procedural devices. As experienced during the darker Marcos Martial Law years, even magistrates of the highest court were not immune from the significant powerful and coercive hegemony of an authoritarian. It is in this context that this Court should regard its power. While it does not substitute its own wisdom for that of the President, the sovereign has assigned it the delicate task of reviewing the reasons stated for the suspension of the writ of habeas corpus or the declaration of martial law. This Court thus must not be deferential. Its review is not a disrespect of a sitting President, it is rather its own Constitutional duty.

III

History shows that there can be many variants of martial law. Under the present constitution, the President must be clear as to which variant is encompassed in Proclamation No. 216. Otherwise it would be too vague that it will violate the fundamental right to due process as well as evading review under Article VII Section 18 of the Constitution.

The President is both the Chief Executive and the Commander-in-Chief. He is responsible for the preservation of peace and order, as well as the protection of the security of the sovereignty and the integrity of the national territory, and all the inherent powers necessary to fulfil said responsibilities reside in him.

As the Chief Executive, the President controls the police, and his role is civilian in character.[56] Thus, as Chief Executive,

[56] Article XVI, Section 6 and Article X, Section 21 of the Constitution.

the President's peace and order efforts are focused on preventing the commission of crimes, protecting life, liberty, and property, and arresting violators of laws.[57]

Article VII, Section 18 designates the President as the Commander-in-Chief of all the armed forces of the Philippines, and the command, control, and discipline of the armed forces are all under his authority. Relevant to this are several other provisions in the Constitution.

Article II, Section 3 of the Constitution provides:

Section 3. Civilian authority is, at all times, supreme over the military. The Armed Forces of the Philippines is the protector of the people and the State. Its goal is to secure the sovereignty of the State and the integrity of the national territory.

Article VII, Section 16 provides:

Section 16. The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution . . .

Article XVI, Section 4 provides:

Section 4. The Armed Forces of the Philippines shall be composed of a citizen armed force which shall undergo military training and serve, as may be provided by law. It shall keep a regular force necessary for the security of the State.

The President was called the "guardian of the Philippine archipelago" in *Saguisag v. Ochoa, Jr.*:[58]

The duty to protect the State and its people must be carried out earnestly and effectively throughout the whole territory of the

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[57] Rep. Act No. 4864, Sec. 7 or the The Police Act of 1966.

[58] G.R. Nos. 212426 & 212444, January 12, 2016, 779 SCRA 241 [Per *C.J.* Sereno, *En Banc*].

Philippines in accordance with the constitutional provision on national territory. Hence, the President of the Philippines, as the sole repository of executive power, is the guardian of the Philippine archipelago, including all the islands and waters embraced therein and all other territories over which it has sovereignty or jurisdiction. These territories consist of its terrestrial, fluvial, and aerial domains; including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas; and the waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions.

To carry out this important duty, the President is equipped with authority over the Armed Forces of the Philippines (AFP), which is the protector of the people and the state. The AFP's role is to secure the sovereignty of the State and the integrity of the national territory. In addition, the Executive is constitutionally empowered to maintain peace and order; protect life, liberty, and property; and promote the general welfare. In recognition of these powers, Congress has specified that the President must oversee, ensure, and reinforce our defensive capabilities against external and internal threats and, in the same vein, ensure that the country is adequately prepared for all national and local emergencies arising from natural and man-made disasters.[59]

While the President is both the Chief Executive and the Commander-in-Chief, the President's role as a *civilian* Commander-in-Chief was emphasized in *Gudani v. Senga*:[60]

The vitality of the tenet that the President is the commander-in-chief of the Armed Forces is most crucial to the democratic way of life, to civilian supremacy over the military, and to the general stability of our representative system of government. The Constitution reposes final authority, control and supervision of the AFP to the President, a civilian who is not a member of the armed forces, and whose duties as commander-in-chief represent only a part of the organic duties imposed upon the office, the other functions being clearly civil in nature. Civilian supremacy over the military also countermands the notion that the military may bypass civilian authorities, such as civil courts, on matters such as conducting warrantless searches and seizures.

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[59] *Id*. at 301-302.

[60] 530 Phil. 399 (2006) [Per *J*. Tinga, *En Banc*].

Pursuant to the maintenance of civilian supremacy over the military, the Constitution has allocated specific roles to the legislative and executive branches of government in relation to military affairs. Military appropriations, as with all other appropriations, are determined by Congress, as is the power to declare the existence of a state of war. Congress is also empowered to revoke a proclamation of martial law or the suspension of the writ of *habeas corpus*. The approval of the Commission on Appointments is also required before the President can promote military officers from the rank of colonel or naval captain. Otherwise, on the particulars of civilian dominance and administration over the military, the Constitution is silent, except for the commander-in-chief clause which is fertile in meaning and implication as to whatever inherent martial authority the President may possess.

The commander-in-chief provision in the Constitution is denominated as Section 18, Article VII, which begins with the simple declaration that "[t]he President shall be the Commander-in-Chief of all armed forces of the Philippines . . ." Outside explicit constitutional limitations, such as those found in Section 5, Article XVI, the commander-in-chief clause vests on the President, as commander-in-chief, absolute authority over the persons and actions of the members of the armed forces. Such authority includes the ability of the President to restrict the travel, movement and speech of military officers, activities which may otherwise be sanctioned under civilian law.[61]

The President exercises the powers inherent to the positions of Chief Executive and Commander-in-Chief at all times. As a general principle, his execution of these powers is not subject to review. However, the powers provided under Article VII, Section 18, are extraordinary powers, to be exercised in extraordinary times, when the ordinary powers as Commander-in-Chief and Chief Executive will not suffice to maintain peace and order. Article VII, Section 18 constitutionalized the actions the President can take to respond to cases of invasion, rebellion, and lawless violence, but these are exceptions to the ordinary rule of law.

These powers have been characterized as having a graduated sequence, from the most benign, to the harshest. The most benign

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[61] *Id.* at 420-422.

of these extraordinary powers is the calling out power, whereby the President recedes as Chief Executive and law enforcement functions take a back seat to the urgent matter of addressing the matter of lawless violence, invasion, or rebellion. As the most benign of the powers, it is the power that the President may exercise with the greatest leeway; he may exercise it at his sole discretion. The distinctions between the amount of presidential discretion and the great leeway accorded to the President's calling out power of the army, were elaborated upon in *Kulayan v. Tan*:[62]

> The power to declare a state of martial law is subject to the Supreme Court's authority to review the factual basis thereof. By constitutional fiat, the calling-out powers, which is of lesser gravity than the power to declare martial law, is bestowed upon the President alone. As noted in *Villena*, "(t)here are certain constitutional powers and prerogatives of the Chief Executive of the Nation which must be exercised by him in person and no amount of approval or ratification will validate the exercise of any of those powers by any other person. Such, for instance, is his power to suspend the writ of *habeas corpus* and proclaim martial law[.]["]

> Indeed, while the President is still a civilian, Article II, Section 3 of the Constitution mandates that civilian authority is, at all times, supreme over the military, making the civilian president the nation's supreme military leader. The net effect of Article II, Section 3, when read with Article VII, Section 18, is that a civilian President is the ceremonial, legal and administrative head of the armed forces. The Constitution does not require that the President must be possessed of military training and talents, but as Commander-in-Chief, he has the power to direct military operations and to determine military strategy. Normally, he would be expected to delegate the actual command of the armed forces to military experts; but the ultimate power is his. As Commander-in-Chief, he is authorized to direct the movements of the naval and military forces placed by law at his command, and to employ them in the manner he may deem most effectual.

> In the case of *Integrated Bar of the Philippines v. Zamora*, the Court had occasion to rule that the calling-out powers belong solely to the President as commander-in-chief:

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[62] 690 Phil. 70 (2012) [Per *J.* Sereno, *En Banc*].

When the President calls the armed forces to prevent or suppress lawless violence, invasion or rebellion, he necessarily exercises a discretionary power solely vested in his wisdom. This is clear from the intent of the framers and from the text of the Constitution itself. The Court, thus, cannot be called upon to overrule the President's wisdom or substitute its own. However, this does not prevent an examination of whether such power was exercised within permissible constitutional limits or whether it was exercised in a manner constituting grave abuse of discretion. In view of the constitutional intent to give the President full discretionary power to determine the necessity of calling out the armed forces, it is incumbent upon the petitioner to show that the President's decision is totally bereft of factual basis.

There 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.

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.

That the power to call upon the armed forces is discretionary on the president is clear from the deliberation of the Constitutional Commission:

FR. BERNAS.

It will not make any difference. I may add that **there is a graduated power of the President as Commander-in-Chief. First, he can call out such Armed Forces as may be necessary to suppress lawless violence; then he can suspend the privilege of the writ of *habeas corpus*, then he can impose martial law. This is a graduated sequence**.

When he judges that it is necessary to impose martial law or suspend the privilege of the writ of *habeas corpus*, his

judgment is subject to review. We are making it subject to review by the Supreme Court and subject to concurrence by the National Assembly. But when he exercises this lesser power of calling on the Armed Forces, when he says it is necessary, it is my opinion that his judgment cannot be reviewed by anybody.

. . . . . .

MR. REGALADO.

That does not require any concurrence by the legislature nor is it subject to judicial review.

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.

. . . **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.**

In the more recent case of *Constantino, Jr. v. Cuisia*, the Court characterized these powers as exclusive to the President, precisely because they are of exceptional import:

These distinctions hold true to this day as they remain embodied in our fundamental law. There are certain presidential powers which arise out of exceptional circumstances, and if exercised, would involve the suspension of fundamental freedoms, or at least call for the supersedence of executive prerogatives over those exercised by co-equal branches of government. The declaration of martial law, the suspension of the writ of *habeas corpus*, and the exercise of the pardoning power, notwithstanding the judicial determination of guilt of the accused, all fall within this special class that demands the exclusive exercise by the President of the constitutionally vested power. The list is by no means exclusive, but there must be a showing

that the executive power in question is of similar *gravitas* and exceptional import.[63] (Emphasis in the original, citations omitted)

The other two extraordinary powers may be reviewed by Congress and the Judiciary, as they involve the curtailment and suppression of basic civil rights and individual freedoms.

The writ of habeas corpus was devised as a remedy to ensure the constitutional protection against deprivation of liberty without due process. It is issued to command the production of the body of the person allegedly restrained of his or her liberty.

The suspension of the privilege of the writ of habeas corpus is simply a suspension of a remedy. The suspension of the privilege does not make lawful otherwise unlawful arrests, such that all detentions, regardless of circumstance, are legal. Rather, the suspension only deprives a detainee of the remedy to question the legality of his detention.

In *In re Salibo v. Warden*,[64] this Court explained that while the privilege may be suspended, the writ itself could not be suspended.

> Called the "great writ of liberty[,]" the writ of habeas corpus "was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom." The remedy of habeas corpus is extraordinary and summary in nature, consistent with the law's "zealous regard for personal liberty."
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> Under Rule 102, Section 1 of the Rules of Court, the writ of habeas corpus "shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto." The primary purpose of the writ "is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal." "Any restraint which will preclude freedom of action is sufficient."

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[63] *Id*. at 90-93.

[64] 755 Phil. 296 (2015) [Per *J*. Leonen, Second Division].

The nature of the restraint of liberty need not be related to any offense so as to entitle a person to the efficient remedy of habeas corpus. It may be availed of as a post-conviction remedy or when there is an alleged violation of the liberty of abode. In other words, habeas corpus effectively substantiates the implied autonomy of citizens constitutionally protected in the right to liberty in Article III, Section 1 of the Constitution. Habeas corpus being a remedy for a constitutional right, courts must apply a conscientious and deliberate level of scrutiny so that the substantive right to liberty will not be further curtailed in the labyrinth of other processes.

In *Gumabon, et al. v. Director of the Bureau of Prisons*, Mario Gumabon (Gumabon), Bias Bagolbagol (Bagolbagol), Gaudencio Agapito (Agapito), Epifanio Padua (Padua), and Paterno Palmares (Palmares) were convicted of the complex crime of rebellion with murder. They commenced serving their respective sentences of *reclusion perpetua*.

While Gumabon, Bagolbagol, Agapito, Padua, and Palmares were serving their sentences, this court promulgated *People v. Hernandez* in 1956, ruling that the complex crime of rebellion with murder does not exist.

Based on the *Hernandez* ruling, Gumabon, Bagolbagol, Agapito, Padua, and Palmares filed a Petition for Habeas Corpus. They prayed for their release from incarceration and argued that the *Hernandez* doctrine must retroactively apply to them.

This court ruled that Gumabon, Bagolbagol, Agapito, Padua, and Palmares properly availed of a petition for habeas corpus. Citing *Harris v. Nelson*, this court said:

[T]he writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action . . . . The scope and flexibility of the writ — its capacity to reach all manner of illegal detention — its ability to cut through barriers of form and procedural mazes — have always been emphasized and jealously guarded by courts and lawmakers. The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected.

In *Rubi v. Provincial Board of Mindoro*, the Provincial Board of Mindoro issued Resolution No. 25, Series of 1917. The Resolution ordered the Mangyans removed from their native habitat and compelled

them to permanently settle in an 800-hectare reservation in Tigbao. Under the Resolution, Mangyans who refused to establish themselves in the Tigbao reservation were imprisoned.

An application for habeas corpus was filed before this court on behalf of Rubi and all the other Mangyans being held in the reservation. Since the application questioned the legality of deprivation of liberty of Rubi and the other Mangyans, this court issued a Writ of Habeas Corpus and ordered the Provincial Board of Mindoro to make a Return of the Writ.

A Writ of Habeas Corpus was likewise issued in *Villavicencio v. Lukban*. "[T]o exterminate vice," Mayor Justo Lukban of Manila ordered the brothels in Manila closed. The female sex workers previously employed by these brothels were rounded up and placed in ships bound for Davao. The women were expelled from Manila and deported to Davao without their consent.

On application by relatives and friends of some of the deported women, this court issued a Writ of Habeas Corpus and ordered Mayor Justo Lukban, among others, to make a Return of the Writ. Mayor Justo Lukban, however, failed to make a Return, arguing that he did not have custody of the women.

This court cited Mayor Justo Lukban in contempt of court for failure to make a Return of the Writ. As to the legality of his acts, this court ruled that Mayor Justo Lukban illegally deprived the women he had deported to Davao of their liberty, specifically, of their privilege of domicile. It said that the women, "despite their being in a sense lepers of society[,] are nevertheless not chattels but Philippine citizens protected by the same constitutional guaranties as are other citizens[.]" The women had the right "to change their domicile from Manila to another locality."

The writ of habeas corpus is different from the final decision on the petition for the issuance of the writ. It is the writ that commands the production of the body of the person allegedly restrained of his or her liberty. On the other hand, it is in the final decision where a court determines the legality of the restraint.

Between the issuance of the writ and the final decision on the petition for its issuance, it is the issuance of the writ that is essential. The issuance of the writ sets in motion the speedy judicial inquiry on the legality of any deprivation of liberty. Courts shall liberally issue writs of habeas corpus even if the petition for its issuance "on

[its] face [is] devoid of merit[.]" Although the privilege of the writ of habeas corpus may be suspended in cases of invasion, rebellion, or when the public safety requires it, the writ itself may not be suspended.[65]

The Constitution does not spell out what martial law is, or the powers that may be exercised under a martial law regime. It only states what martial law is *not*, and cannot accomplish. The concept does not have a precise meaning in this jurisdiction. We have no legal precedent because President Ferdinand Marcos created an aberration of martial law in 1972. Thus, a historical approach at the concept may be edifying.

The Early History of Martial Law in England from the Fourteenth Century to the Petition of Right[66] discusses the beginnings of martial law in England from 1300 to 1628:

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

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[65] *Id*. at 311-316.

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

In the American case of *Duncan v. Kahanamoku*,[67] martial law was defined as the "exercise of the military power which resides in the Executive Branch of Government to preserve order, and insure the public safety in domestic territory in time of emergency, when other branches of the government are unable to function or their functioning would itself threaten the public safety."[68] In *Ex Parte Milligan*,[69] Justice Davis noted a limit on this power, that "martial rule can never exist where the courts are open and in the proper and unobstructed exercise of their jurisdiction."[70]

Thus, martial law arises out of necessity, in extraordinary times, when the civilian government in an area is unable to maintain peace and order, such that the military must step in and govern the area until the civilian government can be restored. Its imposition is dependent on the inability of civil government agencies to function. It takes on different forms, as needed.

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

In 1896, the provinces of Manila, Laguna, Cavite, Batangas, Pampanga, Bulacan, Tarlac, and Nueva Ecija were declared to be in a state of war and under martial law because of the open revolution of the Katipunan against Spain.[71] The proclamation declaring martial law stated:

The acts of rebellion of which armed bodies of the people have been guilty during the last few days at different points of the territory of this province, seriously disturbing public tranquillity, make it

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[67] 327 U.S. 304 (1946) [Per *J.* Stone] citing *Luther v. Borden*, 48 U.S. (7 How.) 1 (1849) [Per *J.* Taney].

[68] *Id*.

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

[70] *Id*.

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

imperative that the most severe and exemplary measures be taken to suppress at its inception an attempt as criminal as futile.[72]

The first article declared a state of war against the eight (8) provinces, and the following nine (9) articles described rebels, their acts, and how they would be treated.[73]

The Philippines was placed under martial law during the Second Republic by virtue of Proclamation No. 29 signed by President Jose P. Laurel on September 21, 1944. It cited the danger of invasion being imminent and the public safety so requiring it as the justification for the imposition of the same.[74] The proclamation further declared that:

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

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

3. The Commissioners for each of said Administrative Districts shall have command, respectively, of the first seven military districts herein created, and shall bear the title of Military Governor; and the Mayors and Provincial Governors of the cities and provinces compromised therein shall be their principal deputies, with the title of deputy city or provincial

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

[73] *Id*.

[74] Proc. No. 29 (1944).

military governor, as the case may be. The Mayor of the City of Manila shall be Military Governor for the eight Military District; and the Vice-Minister of Home Affairs, in addition to his other duties, shall be the Military Governor for the ninth Military District.

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

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

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

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

8. The proclamation of martial law being an emergency measure demanded by imperative necessity, it shall continue as long as the need for it exists and shall terminate upon proclamation of the President of the Republic of the Philippines.

The next day, Proclamation No. 30 was issued, which declared the existence of a state of war in the Philippines. The proclamation cited the attack by the United States and Great Britain in certain parts of the Philippines in violation of the territorial integrity of the Republic, causing death or injury to its citizens and destruction or damage to their property. The Proclamation also stated that the Republic entered into a Pact of Alliance[75] with Japan, based on mutual respect of sovereignty and territories, to safeguard the territorial integrity and independence of the Philippines.[76]

The traditional concept of martial law changed in 1972. On September 21, 1972, the Philippines was again placed under martial law upon President Ferdinand Marcos' issuance of Proclamation No. 1081. It read:

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested upon me by Article VII, Section 10, Paragraph (2) of the Constitution, do hereby place the entire Philippines as defined in Article I, Section 1 of the Constitution under martial law and, in my capacity as their commander-in-chief, do hereby command the armed forces of the Philippines, to maintain law and order throughout the Philippines, prevent or suppress all forms of lawless violence as well as any act of insurrection or rebellion and to **enforce obedience to all the laws and decrees, orders and regulations promulgated by me personally or upon my direction**.

In addition, I do hereby order that all persons presently detained, as well as all others who may hereafter be similarly detained for the

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

[76] Proc. No. 30 (1944).

crimes of insurrection or rebellion, and all other crimes and offenses committed in furtherance or on the occasion thereof, or incident thereto, or in connection therewith, for crimes against national security and the law of nations, crimes against public order, crimes involving usurpation of authority, rank, title and improper use of names, uniforms and insignia, crimes committed by public officers, and for such other crimes as will be enumerated in Orders that **I shall subsequently promulgate**, as well as crimes as a consequence of any violation of **any decree, order or regulation promulgated by me personally or promulgated upon my direction shall be kept under detention until otherwise ordered released by me or by my duly designated representative**.[77] (Emphasis supplied)

The next day, on September 22, 1972, President Marcos promulgated General Order Nos. 1 to 6, detailing the powers he would be exercising under martial law.

General Order No. 1 gave President Marcos the power to "govern the nation and, direct the operation of the entire Government, including all its agencies and instrumentalities, in [his] capacity and . . . exercise all the powers and prerogatives appurtenant and incident to [his] position as such Commander-in-Chief of the Armed Forces of the Philippines."[78]

General Order No. 2 ordered the arrest of several individuals.[79] The same was followed by General Order No. 3, which stated that "all executive departments, bureaus, offices, agencies, and instrumentalities of the National Government, government-owned or controlled corporations, as well as governments of all the provinces, cities, municipalities, and barrios throughout the land shall continue to function under their present officers and employees and in accordance with existing laws." However, General Order No. 3 removed from the jurisdiction of the judiciary the following cases:[80]

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

[78] Gen. Order No. 1 (1972).

[79] Gen. Order No. 2 (1972).

[80] Gen. Order No. 3 (1972).

1. Those involving the validity, legality or constitutionality of Proclamation No. 1081 dated September 21, 1972, or of any decree, order or acts issued, promulgated or [performed] by me or by my duly designated representative pursuant thereto. (As amended by General Order No. 3-A, dated September 24, 1972).

2. Those involving the validity, legality or constitutionality of any rules, orders or acts issued, promulgated or performed by public servants pursuant to decrees, orders, rules and regulations issued and promulgated by me or by my duly designated representative pursuant to Proclamation No. 1081, dated Sept. 21, 1972.

3. Those involving crimes against national security and the law of nations.

4. Those involving crimes against the fundamental laws of the State.

5. Those involving crimes against public order.

6. Those crimes involving usurpation of authority, rank, title, and improper use of names, uniforms, and insignia.

7. Those involving crimes committed by public officers.

General Order No. 4 imposed the curfew between the hours of 12 midnight and 4 o'clock in the morning wherein no person in the Philippines was allowed to move about outside his or her residence unless he or she is authorized in writing to do so by the military commander-in-charge of his or her area of residence. General Order No. 4 further stated that any violation of the same would lead to the arrest and detention of the person in the nearest military camp and the person would be released not later than 12 o'clock noon the following day.[81]

General Order No. 5 ordered that

all rallies, demonstrations, and other forms of group actions by persons within the geographical limits of the Philippines, including strikes and picketing in vital industries such as companies engaged in manufacture or processing as well as in the distribution of fuel, gas, gasoline, and fuel or lubricating oil, in companies engaged in the production or processing of essential commodities or products

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[81] Gen. Order No. 4 (1972).

for exports, and in companies engaged in banking of any kind, as well as in hospitals and in schools and colleges, are strictly prohibited and any person violating this order shall forthwith be arrested and taken into custody and held for the duration of the national emergency or until he or she is otherwise ordered released by me or by my designated representative.[82]

General Order No. 6 imposed that "no person shall keep, possess, or carry outside of his residence any firearm unless such person is duly authorized to keep, possess, or carry such firearm and any person violating this order shall forthwith be arrested and taken into custody . . ."[83]

Martial law arises from necessity, when the civil government cannot maintain peace and order, and the powers to be exercised respond to that necessity. However, under his version of martial law, President Marcos placed all his actions beyond judicial review and vested in himself the power to "legally," by virtue of his General Orders, do anything, without limitation. It was clearly not necessary to make President Marcos a dictator to enable civil government to maintain peace and order. President Marcos also prohibited the expression of dissent, prohibiting "rallies, demonstrations . . . and other forms of group actions" in the premises not only of public utilities, but schools, colleges, and even companies engaged in the production of products of exports.[84] Clearly, these powers were not necessary to enable the civil government to execute its functions and maintain peace and order, but rather, to enable him to continue as self-made dictator.

President Marcos' implementation of martial law was a total abuse and bastardization of the concept of martial law. A reading of the powers President Marcos intended to exercise makes it abundantly clear that there was no public necessity that demanded the President be given those powers. Thus, the 1987

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[82] Gen. Order No. 5 (1972).

[83] Gen. Order No. 6 (1972).

[84] Gen. Order No. 5 (1972).

Constitution imposed safeguards in response to President Marcos' implementation of martial law, precisely to prevent similar abuses in the future and to ensure the focus on public safety requiring extraordinary powers be exercised under a state of martial law.

Martial law under President Marcos was an aberration. We must return to the original concept of martial law, *arising from necessity*, declared because civil governance is no longer possible in any way. The authority to place the Philippines or any part thereof under martial law is not a definition of a power, but a declaration of a status — that there exists a situation wherein there is *no capability for civilian government to continue*. It is a declaration of a condition on the ground, that there is a vacuum of government authority, and by virtue of such vacuum, military rule becomes necessary. Further, it is a temporary state, for military rule to be exercised until civil government may be restored.

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

However, while this Court cannot state the parameters for the President's martial law, this Court's constitutional role implicitly requires that the President provide the parameters himself, upon declaring martial law. The proclamation must contain the powers he intends to wield.

This Court has the power to determine the sufficiency of factual basis for determining that public safety requires the proclamation of martial law. The President evades review when he does not specify how martial law would be used.

It may be assumed that any rebellion or invasion will involve arms and hostility and, consequently, will pose some danger to civilians. It may also be assumed that, in any state of rebellion

or invasion, the executive branch of government will have to take some action, exercise some power, to address the disturbance, via police or military force. For so long as the President does not declare martial law or suspend the privilege of the writ of habeas corpus to address a disturbance to the peace, this Court does not have the power to look at whether public safety needs that action.

But if the President does declare martial law or suspends the privilege, this Court does have the power to question whether public safety requires the declaration or the suspension.

In conducting a review of the sufficiency of factual basis for the proclamation of martial law, this Court cannot be made to imagine what martial law is. The President's failure to outline the powers he will be exercising and the civil liberties that may be curtailed will make it impossible for this Court to assess whether public safety requires the exercise of those powers or the curtailment of those civil liberties.

It is not sufficient to declare "there is martial law." Because martial law can only be declared when public safety requires it, it is the burden of the President to state what powers public safety requires be exercised.

IV

I disagree with the proposed ponencia's view that the vagueness of a Presidential Proclamation on martial law can only be done on grounds of alleged violation of freedom of expression. Rather, the vagueness of a declaration of martial law is, in my view unconstitutional as it will evade review of the sufficiency of facts required by the constitutional provision.

We need to distinguish between our doctrines relating to acts being void for vagueness and those which are void due to overbreadth.

The doctrine of void for vagueness is a ground for invalidating a statute or a governmental regulation for being *vague*. The doctrine requires that a statute be sufficiently explicit as to inform those who are subject to it what conduct on their part

will render them liable to its penalties.[85] In *Southern Hemisphere v. Anti-Terrorism Council*:[86]

> A statute or act suffers from the defect of vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application. It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.[87]

In *People of the Philippines v. Piedra*,[88] the Court explained that the rationale behind the doctrine is to give a person of ordinary intelligence a fair notice that his or her contemplated conduct is forbidden by the statute or the regulation.[89] Thus, a statute must be declared void and unconstitutional when it is so indefinite that it encourages arbitrary and erratic arrests and convictions.[90]

In *Estrada v. Sandiganbayan*,[91] the Court limited the application of the doctrine in cases where the statute is "*utterly vague on its face*, i.e. that which cannot be clarified by a saving clause or construction."[92] Thus, when a statute or act lacks comprehensible standards that men of common intelligence must necessarily guess its meaning and differ in its application, the doctrine may be invoked:[93]

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[85] *People of the Philippines v. Piedra*, 403 Phil. 31 (2001) [Per *J*. Kapunan, First Division].

[86] 646 Phil. 452 (2010) [Per *J*. Carpio-Morales, *En Banc*].

[87] *Id*. at 488

[88] 403 Phil. 31 (2001) [Per *J*. Kapunan, First Division].

[89] *Id*. at 47.

[90] *Id*. at 47-48.

[91] 421 Phil. 290 (2001) [Per *J*. Bellosillo, *En Banc*].

[92] *Id*. at 352.

[93] *ld*. at 351-352.

Hence, it cannot plausibly be contended that the law does not give a fair warning and sufficient notice of what it seeks to penalize. Under the circumstances, petitioner's reliance on the "void-for-vagueness" doctrine is manifestly misplaced. The doctrine has been formulated in various ways, but is most commonly stated to the effect that a statute establishing a criminal offense must define the offense with sufficient definiteness that persons of ordinary intelligence can understand what conduct is prohibited by the statute. It can only be invoked against that specie of legislation that is utterly vague on its face, *i.e.*, that which cannot be clarified either by a saving clause or by construction.

A statute or act may be said to be vague when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ in its application. In such instance, the statute is repugnant to the Constitution in two (2) respects — it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of what conduct to avoid; and, it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle. But the doctrine does not apply as against legislations that are merely couched in imprecise language but which nonetheless specify a standard though defectively phrased; or to those that are apparently ambiguous yet fairly applicable to certain types of activities. The first may be "saved" by proper construction, while no challenge may be mounted as against the second whenever directed against such activities. With more reason, the doctrine cannot be invoked where the assailed statute is clear and free from ambiguity, as in this case.[94]

In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*,[95] the Court clarified that the void for vagueness doctrine may only be invoked in *as-applied* cases. The Court explained:

While *Estrada* did not apply the overbreadth doctrine, it did not preclude the operation of the vagueness test on the Anti-Plunder Law *as applied* to the therein petitioner, finding, however, that there was no basis to review the law "on its face and in its entirety." It

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[94] *Id*. at 352.

[95] 646 Phil. 452 (2010) [Per *J*. Carpio-Morales, *En Banc*].

stressed that "statutes found vague *as a matter of due process* typically are invalidated only 'as applied' to a particular defendant."[96]

However, in *Disini v. Secretary of Justice*,[97] the Court extended the application of the doctrine even to facial challenges, ruling that "when a penal statute encroaches upon the freedom of speech, a facial challenge grounded on the void-for-vagueness doctrine is acceptable."[98] Thus, by this pronouncement the void for vagueness doctrine may also now be invoked in facial challenges as long as what it involved is freedom of speech.

On the other hand, the void for overbreadth doctrine applies when the statute or the act "offends the constitutional principle that a governmental purpose to control or prevent activities constitutionally subject to state regulations may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."[99]

In *Adiong v. Commission on Elections*,[100] the Court applied the doctrine in relation to the Due Process Clause of the Constitution. Thus, in *Adiong*, the Commission on Elections issued a Resolution prohibiting the posting of decals and stickers not more than eight and one-half (8 ½) inches in width and fourteen (14) inches in length *in any place, including mobile places whether public or private* except in areas designated by the COMELEC. The Court characterized the regulation as void for being "so broad," thus:

Verily, the restriction as to where the decals and stickers should be posted is so broad that it encompasses even the citizen's private property, which in this case is a privately-owned vehicle. In

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[96] *Id*. at 492.

[97] 727 Phil. 28 (2014) [Per *J*. Abad, *En Banc*].

[98] *Id*. at 327.

[99] *Adiong v. Commission on Elections*, G.R. No. 103956, March 31, 1992, 207 SCRA 712, 719 [Per *J*. Gutierrez, Jr., *En Banc*].

[100] G.R. No. 103956, March 31, 1992, 207 SCRA 712 [Per *J*. Gutierrez, Jr., *En Banc*].

consequence of this prohibition, another cardinal rule prescribed by the Constitution would be violated. Section 1, Article III of the Bill of Rights provides "that no person shall be deprived of his property without due process of law."

> Property is more than the mere thing which a person owns, it includes the right to acquire, *use*, and dispose of it; and the Constitution, in the 14th Amendment, protects these essential attributes.
>
> Property is more than the mere thing which a person owns. It is elementary that it includes the right to acquire, use, and dispose of it. The Constitution protects these essential attributes of property . . . Property consists of the free use, enjoyment, and disposal of a person's acquisitions without control or diminution save by the law of the land.[101] (Citations omitted)

In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*,[102] the Court held that the application of the overbreadth doctrine is limited only to free speech cases due to the rationale of a facial challenge. The Court explained:

> By its nature, the overbreadth doctrine has to necessarily apply a facial type of invalidation in order to plot areas of protected speech, inevitably almost always under situations not before the court, that are impermissibly swept by the substantially overbroad regulation. Otherwise stated, a statute cannot be properly analyzed for being substantially overbroad if the court confines itself only to facts as applied to the litigants.[103]

The Court ruled that as regards the application of the overbreadth doctrine, it is limited only to "a facial kind of challenge and, owing to the given rationale of a facial challenge, applicable only to free speech cases."[104]

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[101] *Id*. at 720-721.

[102] 646 Phil. 452 (2010) [Per *J*. Carpio-Morales, *En Banc*].

[103] *Id*. at 490.

[104] *Id*.

The Court's pronouncements in *Disini v. Secretary of Justice*[105] is also premised on the same tenor. Thus, it held:

> Also, the charge of invalidity of this section based on the overbreadth doctrine will not hold water since the specific conducts proscribed *do not intrude into guaranteed freedoms like speech*. Clearly, what this section regulates are specific actions: the acquisition, use, misuse or deletion of personal identifying data of another. There is no fundamental right to acquire another's personal data.
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> . . . . . .
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> But this rule admits of exceptions. *A petitioner may for instance mount a "facial" challenge to the constitutionality of a statute even if he claims no violation of his own rights under the assailed statute where it involves free speech on grounds of overbreadth or vagueness of the statute.* The rationale for this exception is to counter the "chilling effect" on protected speech that comes from statutes violating free speech. A person who does not know whether his speech constitutes a crime under an overbroad or vague law may simply restrain himself from speaking in order to avoid being charged of a crime. The overbroad or vague law thus chills him into silence.[106] (Emphasis supplied, citations omitted)

It is true that in his Dissenting Opinion in *Estrada v. Sandiganbayan*,[107] Justice V.V. Mendoza expressed the view that "the overbreadth and vagueness doctrines then have special application *only to free speech cases*. They are inapt for testing the validity of penal statutes."[108]

However, the Court already clarified in *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*,[109] that the primary criterion in the application of the doctrine is not whether the case is a freedom of speech case, but rather, whether

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[105] 727 Phil. 28 (2014) [Per *J.* Abad, *En Banc*].

[106] *Id*. at 308-328.

[107] 421 Phil. 290 (2001) [Per *J*. Bellosillo, *En Banc*].

[108] *Id*. at 354.

[109] 646 Phil. 452 (2010) [Per *J*. Carpio-Morales, *En Banc*].

the case involves an as-applied or a facial challenge. The Court clarified:

> The confusion apparently stems from the interlocking relation of the *overbreadth and vagueness* doctrines as grounds for a *facial* or *as-applied* challenge against a penal statute (under a claim of violation of due process of law) or a speech regulation (under a claim of abridgement of the freedom of speech and cognate rights).
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> *To be sure, the doctrine of vagueness and the doctrine of overbreadth do not operate on the same plane.*
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> . . . . . .
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> The allowance of a facial challenge in free speech cases is justified by the aim to avert the chilling effect on protected speech, the exercise of which should not at all times be abridged. As reflected earlier, this rationale is inapplicable to plain penal statutes that generally bear an *in terrorem* effect in deterring socially harmful conduct. In fact, the legislature may even forbid and penalize acts formerly considered innocent and lawful, so long as it refrains from diminishing or dissuading the exercise of constitutionally protected rights.[110]

The Court then concluded that due to the rationale of a facial challenge, the overbreadth doctrine is applicable only to free speech cases. Thus:

> By its nature, the overbreadth doctrine has to necessarily apply a facial type of invalidation in order to plot areas of protected speech, inevitably almost always under situations not before the court, that are impermissibly swept by the substantially overbroad regulation. Otherwise stated, a statute cannot be properly analyzed for being substantially overbroad if the court confines itself only to facts as applied to the litigants.
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> . . . . . .
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> In restricting the overbreadth doctrine to free speech claims, the Court, in at least two cases, observed that the US Supreme Court has not recognized an overbreadth doctrine outside the limited context of the First Amendment, and that claims of facial overbreadth have been entertained in cases involving statutes which, by their terms,

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[110] *Id*. at 488.

seek to regulate only spoken words. In *Virginia v. Hicks*, it was held that rarely, if ever, will an overbreadth challenge succeed against a law or regulation that is not specifically addressed to speech or speech-related conduct. Attacks on overly broad statutes are justified by the "transcendent value to all society of constitutionally protected expression."[111] (Emphasis in the original)

As regards the application of the void for vagueness doctrine, the Court held that vagueness challenges must be examined in light of the specific facts of the case and not with regard to the statute's facial validity.[112] Notably, the case need not be a freedom of speech case as the Court cited previous cases where the doctrine was applied:

In this jurisdiction, the void-for-vagueness doctrine asserted under the due process clause has been utilized in examining the constitutionality of criminal statutes. In at least three cases, the Court brought the doctrine into play in analyzing an ordinance penalizing the non-payment of municipal tax on fishponds, the crime of illegal recruitment punishable under Article 132 (b) of the Labor Code, and the vagrancy provision under Article 202 (2) of the Revised Penal Code. Notably, the petitioners in these three cases, similar to those in the two *Romualdez* and *Estrada* cases, were actually charged with the therein assailed penal statute, unlike in the present case.[113]

From these pronouncements, it is clear that what is relevant in the application of the void-for-vagueness doctrine is not whether it is a freedom of speech case, but rather whether it violates the Due Process Clause of the Constitution for failure to accord persons a fair notice of which conduct to avoid; and whether it leaves law enforcers unbridled discretion in carrying out their functions.

Proclamation No. 216 fails to accord persons a fair notice of which conduct to avoid and leaves law enforcers unbridled discretion in carrying out their functions.

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[111] *Id*. at 490-491.

[112] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 492-493 (2010) [Per *J*. Carpio-Morales, *En Banc*].

[113] *Id*.

Proclamation No. 216 only declared two (2) things, namely, the existence of a state of martial law and the suspension of the privilege of the writ of habeas corpus:

> NOW, THEREFORE, I, RODRIGO ROA DUTERTE, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution and by law, do hereby proclaim, as follows:
>
> SECTION 1. There is hereby declared a state of martial law in the Mindanao group of islands for a period not exceeding sixty days, effective as of the date hereof.
>
> SECTION 2. The privilege of the writ of habeas corpus shall likewise be suspended in the aforesaid area for the duration of the state of martial law.

General Order No. 1 did not provide further guidelines as to what powers would be executed under the state of martial law.

The proclamation that the privilege of the writ of habeas corpus has been suspended is a clear act that needs no further explication. A declaration of a state of martial law is not so clear. It is comparable to congress passing a law that says, "Congress has passed a law," without providing the substance of the law itself. The nation is left at a loss as to how to respond to the proclamation and what conduct is expected from its citizens, and those implementing martial law are left unbridled discretion as to what to address, without any standards to follow. Indeed, it was so vague that the Operations Directive of the Armed Forces, for the implementation of martial law in Mindanao, includes as a key task the dismantling not only of rebel groups, but also *illegal drug syndicates*, among others.[114] The dismantling of illegal drug syndicates has no discernible relation to rebellion, but Proclamation No. 216 and General Order No. 1 had no guidelines or standards to follow for their implementation, leaving law enforcers unbridled discretion in carrying out their functions.

Worse, General Order No. 1 directs law enforcement agencies to arrest persons committing unspecified acts and impliedly imposes a gag order on media:

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[114] OSG Memorandum, Annex 3, pp. 3-6 and 9.

Section 3. Scope and Authority. The Armed Forces of the Philippines shall undertake all measures to prevent and suppress all acts of rebellion and lawless violence in the whole of Mindanao, including any and all acts in relation thereto, in connection therewith, or in furtherance thereof, to ensure national integrity and continuous exercise by the Chief Executive of his powers and prerogatives to enforce the laws of the land and to maintain public order and safety.

Further, the AFP and other law enforcement agencies are hereby ordered to immediately arrest or cause the arrest of persons and/or groups who have committed, are committing, or attempting to commit the above-mentioned acts.

. . . . . .

Section 6. Role of Other Government Agencies and the Media. All other government agencies are hereby directed to provide full support and cooperation to attain the objectives of this Order.

The role of the media is vital in ensuring the timely dissemination of true and correct information to the public. Media practitioners are therefore requested to exercise prudence in the performance of their duties so as not to compromise the security and safety of the Armed Forces and law enforcement personnel, and enable them to effectively discharge their duties and functions under this Order.

Thus, it appears that Proclamation No. 216 and General Order No. 1 not only authorize, but command, law enforcers to ***immediately arrest*** persons who have committed, are committing, or attempting to commit, any and all acts in relation to rebellion and lawless violence in Mindanao, without any guidelines for the citizens to determine what conduct they may be arrested for.

Admittedly, an arrest pursuant to General Order No. 1 is not in issue here. In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*,[115] the Court held that the void for vagueness doctrine may only be invoked in *as-applied* cases. The Court explained:

While *Estrada* did not apply the overbreadth doctrine, it did not preclude the operation of the vagueness test on the Anti-Plunder

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[115] 646 Phil. 452 (2010) [Per *J.* Carpio-Morales, *En Banc*].

Law *as applied* to the therein petitioner, finding, however, that there was no basis to review the law "on its face and in its entirety." It stressed that "statutes found vague *as a matter of due process* typically are invalidated only 'as applied' to a particular defendant."[116]

However, in *Disini v. Secretary of Justice*,[117] the Court extended the application of the doctrine even to facial challenges, in cases where a penal statute attempts to encroach on freedom of speech.[118] Here, General Order No. 1 orders law enforcement agencies to immediately arrest persons who have committed, are committing, or are attempting to commit "any and all acts in relation" to "all acts of rebellion and lawless violence in the whole of Mindanao." This description of the acts meriting arrest under General Order No. 1 is so vague that it could easily be construed to cover any manner of speech. This renders an invocation of the void-for-vagueness doctrine proper, even in a facial challenge such as this.

Section 6 of General Order No. 1 is also void as prior restraint. In *Chavez v. Gonzales*,[119] this Court explained the concept of prior restraint:

> *Prior restraint refers to official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination.* Freedom from prior restraint is largely freedom from government censorship of publications, whatever the form of censorship, and regardless of whether it is wielded by the executive, legislative or judicial branch of the government. Thus, it precludes governmental acts that required approval of a proposal to publish; licensing or permits as prerequisites to publication including the payment of license taxes for the privilege to publish; and even injunctions against publication. Even the closure of the business and printing offices of certain newspapers, resulting in the discontinuation of their printing and publication, are deemed as previous restraint or

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[116] *Id*. at 492.

[117] 727 Phil. 28 (2014) [Per *J*. Abad, *En Banc*].

[118] *Id*. at 121-122.

[119] 545 Phil. 441 (2008) [Per *J*. Puno, *En Banc*].

censorship. Any law or official that requires some form of permission to be had before publication can be made, commits an infringement of the constitutional right, and remedy can be had at the courts.[120]

That General Order No. 1 does not explicitly punish any acts of media will not save it from being declared as prior restraint. In *Babst v. National Intelligence Board*,[121] this Court recognized that under certain circumstances, suggestions from military officers have a more coercive nature than might be immediately apparent:

> Be that as it may, it is not idle to note that ordinarily, an invitation to attend a hearing and answer some questions, which the person invited may heed or refuse at his pleasure, is not illegal or constitutionally objectionable. Under certain circumstances, however, such an invitation can easily assume a different appearance. Thus, where the invitation comes from a powerful group composed predominantly of ranking military officers issued at a time when the country has just emerged from martial rule and when the suspension of the privilege of the writ of habeas corpus has not entirely been lifted, and the designated interrogation site is a military camp, the same can easily be taken, not as a strictly voluntary invitation which it purports to be, but as an authoritative command which one can only defy at his peril, especially where, as in the instant case, the invitation carries the ominous warning that "failure to appear . . . shall be considered as a waiver . . . and this Committee will be constrained to proceed in accordance with law." Fortunately, the NIB director general and chairman saw the wisdom of terminating the proceedings and the unwelcome interrogation.[122]

As in *Babst v. National Intelligence Board*,[123] the "request" that media "exercise prudence in the performance of their duties so as not to compromise the security and safety of the Armed Forces and law enforcement personnel"[124] can easily be taken

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[120] *Id*. at 491-492.

[121] 217 Phil. 302 (1984) [Per *J.* Plana, *En Banc*].

[122] *Id*. at 312.

[123] 217 Phil. 302 (1984) [Per *J.* Plana, *En Banc*].

[124] Gen. Order No. 1 (2017), Sec. 6.

as an authoritative command which one can defy only at his peril, particularly under a state of martial law, and especially where law enforcement personnel have been ordered to immediately arrest persons for committing undefined acts.

V

Additionally, the broad scope of a declaration of martial law is no longer allowed under the present Constitution. Article VII, section 18 requires that:

. . . . . .

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

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

While clear about what martial law does not include, it does not define what the President will want to actually do as a result of the proclamation. A broad declaration of martial law therefore will not be sufficient to inform. It will thus immediately violate due process of law.

Furthermore, it would be difficult if not impossible to determine the sufficiency of the facts to determine when "public safety requires" martial law if the powers of martial law are not clear.

The confusion about what the Court was reviewing was obvious during the oral arguments heard in this case. The Solicitor General was unable to clearly delineate the powers that the President wanted to exercise. Neither was this amply covered in his Memorandum. In truth, the scope of martial law is larger than what was presented in the pleadings.

The *fallo* in Proclamation No. 216 of May 23, 2017 simply provides:

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

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

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

General Order No. 1 also issued by the President revises the scope of the Proclamation:

Section 3. Scope and Authority. The Armed Forces of the Philippines shall undertake all measures to prevent and suppress all acts of rebellion and lawless violence in the whole of Mindanao, including any and all acts in relation thereto, in connection therewith, or in furtherance thereof, to ensure national integrity and continuous exercise by the Chief Executive of his powers and prerogatives to enforce the laws of the land and to maintain public order and safety.

Further, the AFP and other law enforcement agencies are hereby ordered to immediately arrest or cause the arrest of persons and/or groups who have committed, are committing, or attempting to commit the above-mentioned acts.

Section 4. Limits. The Martial Law Administrator, the Martial Law Implementor, the Armed Forces of the Philippines, and other law enforcement agencies shall implement this Order within the limits prescribed by the Constitution and existing laws, rules and regulations.

More specifically, a state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function. During the suspension of the privilege of the writ of *habeas corpus*, any person arrested or detained by virtue thereof shall be judicially charged within three days; otherwise he shall be released.

Section 5. Protection of Constitutional Rights. In the implementation of this Order, the constitutional rights of the Filipino people shall be respected and protected at all times. The Commission on Human Rights is hereby enjoined to zealously exercise its mandate under the 1987 Constitution, and to aid the Executive in ensuring the continued protection of the constitutional and human rights of all citizens.

The Departments of Social Welfare and Development, Education, and Health, among others, shall exert all efforts to ensure the safety and welfare of all displaced persons and families, especially the children.

Section 6. Role of Other Government Agencies and the Media. All other government agencies are hereby directed to provide full support and cooperation to attain the objectives of this Order:

The role of the media is vital in ensuring the timely dissemination of true and correct information to the public. Media practitioners are therefore requested to exercise prudence in the performance of their duties so as not to compromise the security and safety of the Armed Forces and law enforcement personnel, and enable them to effectively discharge their duties and functions under this Order.

Section 7. Guidelines. The Martial Law Administrator may issue further guidelines to implement the provisions of this Order, subject to the limits set forth in the Constitution and other relevant laws, rules, and regulations.

The General Order expands the scope of martial law to include lawless violence and is vague as to the other offense which are "in relation thereto, in connection therewith, or in furtherance thereof."

Disturbingly and perhaps pursuant to the President's General Order, the Chief of Staffs Operational Directive annexed in the OSG's Memoranda shows the true scope of martial law:

2. Mission:

The AFP enforces Martial Law effective 23 May 2017 to destroy the Local Terrorist Groups (Maute, ASG, AKP and BIFF) and their support structures in order to crush the DAESH-inspired rebellion and to restore law and order in the whole of Mindanao within sixty (60) days.

3. Execution:

A. Commanders Intent:

The purpose of this operations is to ensure that normalcy is restored, and the security and safety of the people and communities are assured throughout Mindanao within sixty (60) days where civil authorities, government, non-government and private institutions are able to discharge their normal functions and the delivery of basic services are unhampered.

The following are the Key Tasks for this operation:

1) Destroy the Local Terrorist Groups (Maute, ASG, AKP and BIFF) and their support structures.
2) Dismantle the NPA, other terror-linked private armed groups, illegal drug syndicates, peace spoilers and other lawless armed groups.
3) Arrest all target threat personalities and file appropriate cases within the prescribed time frame.
4) Degrade armed capabilities of the NPA to compel them to remain in the peace process.
5) Clear LTG-affected areas.
6) Enforce curfews, establish control checkpoints and validate identification of persons as necessary.
7) Insulate and secure unaffected areas from extremist violence.
8) Implement the Gun Ban and confiscate illegal firearms and disarm individuals not authorized by the government or by law to carry firearms.
9) Secure critical infrastructures and vital installations.
10) Dominate the information environment.
11) Protect innocent civilians.
12) Restore government services.

In the implementation of Martial Law, AFP troops shall always adhere to the imperatives to the Rule of Law, respect for Human Rights and International Humanitarian Law.

At the end of this operation, the armed threat groups are defeated and rendered incapable of conducting further hostilities; the spread of extremist violence is prevented; their local and international support is severed; the AFP is postured to address

other priority areas; and normalcy is restored wherein the government has full exercise of governance and delivery of basic services are unhampered.

B. Concept of Operations:

I will accomplish this by employing two (2) Unified Commands to conduct the decisive operations and other UCs to conduct the shaping operations. One (1) UC enforces Martial Law in Region 9 and ARMM to destroy the Local Terrorist Groups (Maute, ASG, AKP and BIFF) and their support structures in order to crush the DAESH- inspired rebellion and to restore law and order in the whole of Mindanao within sixty (60) days; and one (1) UC enforces Martial Law in Regions 10, 11, 12 and 13 to dismantle Local Terrorist Groups, private armed groups, illegal drug syndicates, peace spoilers and other lawless elements in order to maintain law and order and prevent spread of extremist violence. All other UCs outside Mindanao conducts insulation and security operations in their respective JAO to prevent spill-over of extremist violence.

The CSAFP is the designated Martial Law Implementer with Commanders, WMC and EMC concurrently designated as the Deputy Martial Law Implementers for their respective JAOs. They shall establish direct coordination with the Local Chief Executives and counterpart PNP officials for the implementation of the Martial Law in respective JAOs. This set up maybe cascaded to the AORs of subordinate unit Commanders.

The AFP shall take the lead in the restoration of peace and order and law enforcement operations with the active support of the Philippine National Police.

Significant to this operation is the ability of the AFP forces to immediately contain the outbreak of violence at specific areas in Mindanao.

Critical to this is the early detection and continuous real time monitoring of the enemy's intention, plans and movements, with the public's support and community cooperation.

Decisive to this operation is the destruction of the DAESH-inspired Rebellion.[125] (Emphasis supplied)

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[125] OSG Memorandum, Annex 3 of Annex 2, Operations Directive 02-2017.

The scope of martial law now includes degrading the capabilities of the New People's Army or the Communist Party of the Philippines, illegal drugs, and other lawless violence. The facts which were used as basis to include these aspects of governance were never presented to Congress through the President's report or to this Court.

The Operational Directive for the Implementation of Martial Law however, has another definition for martial law, thus:

> 12. Martial Law. The imposition of the highest-ranking military officer (the President being the Commander-in-Chief) as the military governor or as the head of the government. It is usually imposed temporarily when the government or civilian authorities fail to function effectively or when either there is near-violent civil unrest or in cases of major natural disasters or during conflicts or cases of occupations, where the absence of any other civil government provides for the unstable population.[126]

This definition emphasizes the taking over of civil government albeit temporarily. This is different from the provision in General Order No. 1 which focuses on arrests and illegal detention or in the first part of the same Operational Directive which involves the neutralization of armed elements whether engaged in rebellion, lawless violence, or illegal drugs.

The government's concept of martial law, from the broad provisions of Proclamation No. 216 therefore partakes of different senses. Rightly so, the public is not specifically guided and their rights are put at risk. This is the ghost of martial law from the Marcos era resurrected. Even Proclamation No. 1081 of September 21, 1972 was more specific than Proclamation No. 216. Yet, through subsequent executive issuances, the scope of martial law became clearer: it attempted to substitute civilian government even where there was no conflagration. It was nothing but an attempt to replace democratically elected government and civilian law enforcement with an iron hand.

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[126] OSG Memorandum, Annex 4 of Annex 2, Rules of Engagement (ROE) for Operational Directive 02-17, p. 12.

For this alone, Proclamation No. 216, General Order No. 1 as well as the Operational Directive should be declared unconstitutional for being vague and for evading review of its factual basis.

VI

Even assuming that the declaration is not unconstitutionally vague, it is the government's burden to prove that there are sufficient facts to support the declaration of martial law. Respondents have not discharged that burden.

This Court should assume that the provisions of the Constitution should not be unworkable and therefore we should not clothe it with an interpretation which will make it absurd. Article VII, section 18 allows "any citizen" to file the "appropriate proceeding."

Certainly, petitioners should not be assumed to have access to confidential or secret information possessed by the respondents. Thus, their burden of proof consists of being able to marshal publicly available and credible sources of facts to convince the Court to give due course to their petition. For this purpose, petitioners are certainly not precluded from referring to news reports or any other information they can access to support their petitions. To rule otherwise would be to ignore the inherent asymmetry of available information to the parties, with the Government possessing all of the information needed to prove sufficiency of factual basis.

Again owing to its *sui generis* nature, these petitions are in the nature of an exercise of a citizen's right to require transparency of the most powerful organ of government. It is incidentally intended to discover or smoke out the needed information for this Court to be able to intelligently rule on the sufficiency of factual basis. The general rule that "he who alleges must prove"[127] finds no application here in light of the

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[127] *Joson v. Mendoza*, 505 Phil. 208, 219 (2005) [Per *J*. Chico-Nazario, Second Division].

government's monopoly of the pertinent information needed to prove sufficiency of factual basis.

As it is, a two-tiered approach is created where petitioners have no choice but to rely on news reports and other second-hand sources to support their prayer to strike down the declaration of suspension because of their lack of access to the intelligence reports funded by taxpayers. At this point, the burden of evidence shifts to the government to prove the constitutionality of the proclamation or suspension and it does this by presenting the actual evidence, not just conclusions of fact, which led the President to decide on the necessity of declaring martial law.

It bears stressing that what is required of this Court is to look into the sufficiency of the factual basis surrounding Proclamation No. 216, hence, determining the quantum of evidence to be used, like substantial evidence, preponderance of evidence, or proof beyond reasonable doubt, becomes immaterial. I cannot agree with the ponencia therefore that the standard of evidence is probable cause similar to either the prima facie evidence required of a prosecutor or the finding that will validate a judge's issuance of a warrant of arrest or search warrant.

Rather, this Court must put itself in the place of the President and conduct a reassessment of the facts as presented to him. The Constitution requires not only that there are facts that are alleged. It requires that these facts are sufficient.

Sufficiency can be seen in two (2) senses. The first sense is that the facts as alleged and used by the President is credible. This entails an examination of what kinds of sources and analysis would be credible for the President as intelligence information. The second sense is whether the facts found to be supported with credible sources of information or evidence sufficiently establishes a conclusion that (a) there is an actual rebellion and (b) public safety requires the use of specific powers under the rubric of martial law allowable by our Constitution.

Necessarily, this Court will not have to weigh which between the petitioner and the respondents have the better evidence. The sufficiency of the factual basis of the declaration of martial

law does not depend on the asymmetry of information between the petitioner and the respondent. It depends simply on whether the facts are indeed sufficient.

However, despite the clear wording of the Constitution as regards what is expected of the Court and the minimal trigger put in place to initiate the Court's involvement, the government intends to create an absurd situation by asserting that petitioners cannot refer to news reports to support their claim of factual insufficiency. The government claims that news reports are unreliable for being hearsay in character and that they might even be manipulated by the Armed Forces of the Philippines as part of its tactic of psychological warfare or propaganda.[128]

This is specious argumentation to say the least. Furthermore, that the information used by the petitioners quoting government sources amounts to psychological warfare or propaganda is only an allegation in the Memorandum of the Solicitor General. It is not supported by any of the affidavits annexed to his Memorandum.

VII

It is the mandate of this Court to assess the facts in determining the sufficiency of the factual basis of the proclamation of martial law and the suspension of the privilege of the writ of habeas corpus.[129] Intelligence information relied upon by the President are credible only when they have undergone a scrupulous process of analysis.

To be sufficient, the facts alleged by the respondents cannot be accepted as per se accurate and credible. Banking on this presumption would be tantamount to a refusal of this Court to perform its mandate under the Constitution. Article VII, Section 18 of the Constitution[130] is extraordinary in the sense that it compels this Court to act as a fact-finding body to determine

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[128] OSG Memorandum, pp. 51-55.

[129] CONST., Art. VII, Sec. 18.

[130] CONST., Art. VII, Sec. 18.

whether there is sufficient basis to support a declaration of martial law or a suspension of the privilege of the writ of habeas corpus.

Insisting on a deferential mode of review suggests that this Court is incapable of making an independent assessment of the facts. It also implies that this Court is powerless to overturn a baseless and unfounded proclamation of martial law or suspension of the privilege of the writ of habeas corpus. Although some may consider the duty imposed in Article VII, Section 18 of the Constitution as a heavy burden, it is one that this Court must willingly bear to ensure the survival of our democratic processes and institutions. The mandate imposed under the Constitution is so important that to blindly yield to the wisdom of the President would be to commit a culpable violation of the Constitution.[131]

The bases on which a proclamation of martial law or the suspension of the privilege of the writ of habeas corpus are grounded must factually be correct with a satisfactory level of confidence at the time when it is presented. Any action based on information without basis or known to be false is arbitrary.

The role of validated information for decision-making is vital. It serves as the foundation from which policy is crafted.

The President, in exercising the powers of a Commander-in-Chief under Article VII, Section 18 of the Constitution, cannot be expected to personally gather intelligence information. The President will have to rely heavily on reports given by those under his or her command to arrive at sound policy decisions affecting the entire country.

It is imperative, therefore, that the reports submitted to the President be sufficient and worthy of belief. The recommendation

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[131] CONST., Art. XI, Sec. 2 provides:

Section 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution[.]

or non-recommendation of the President's alter-egos regarding the imposition of martial law or the suspension of the privilege of the writ of habeas corpus would be indicative of the sufficiency of the factual basis.

Reports containing intelligence information should be shown to have undergone a rigorous process to ensure their veracity and credibility. Good intelligence requires that information gathered by intelligence agencies is collected and subsequently analyzed.[132] Cogent inferences are then drawn from the analyzed facts after which judgments are made.[133]

The Rules on Evidence find no application in testing the credibility of intelligence information. This Court will have to examine the information gathered by intelligence agencies, which collect data through five (5) Intelligence Collection Disciplines, namely: (1) Signals Intelligence (SIGINT); (2) Human Intelligence (HUMINT); (3) Open-Source Intelligence (OSINT); (4) Geospatial Intelligence (GEOINT); and (5) Measurement and Signatures Intelligence (MASINT).[134]

Signals Intelligence (SIGINT) refers to the interception of communications between individuals[135] and "electronic transmissions that can be collected by ships, planes, ground sites, or satellites."[136]

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[132] *See* Background to "Assessing Russian Activities and Intentions in Recent US Elections": The Analytic Process and Cyber Incident Attribution, DEPARTMENT OF NATIONAL INTELLIGENCE, January 6, 2017 <https://www.dni.gov/files/documents/ICA_2017_01.pdf> 1 (last visited June 28, 2017).

[133] *Id*.

[134] Eric Rosenbach and Aki J. Peritz, *Confrontation or Collaboration? Congress and the Intelligence Community*, BELFER CENTER, <http://www.belfercenter.org/sites/default/files/files/publication/intelligence-basics.pdf> 4-5 (visited June 29, 2017).

[135] *Id*. at 4.

[136] *Intelligence Branch*, FEDERAL BUREAU OF INVESTIGATION, <https://www.fbi.gov/about/leadership-and-structure/intelligence-branch> (visited June 29, 2017).

Human Intelligence (HUMINT) refers to information collected from human sources[137] either through witness interviews or clandestine operations.[138]

By the term itself, Open-Source Intelligence (OSINT) refers to readily-accessible information within the public domain.[139] Open-Source Intelligence sources include "traditional media, Internet forums and media, government publications, and professional or academic papers."[140]

Newspapers and radio and television broadcasts[141] are more specific examples of Open-Source Intelligence sources from which intelligence analysts may collect data.

Geospatial Intelligence (GEOINT) pertains to imagery of activities on earth.[142] An example of geospatial intelligence is a "satellite photo of a foreign military base with topography[.]"[143]

Lastly, Measures and Signatures Intelligence (MASINT) refers to "scientific and highly technical intelligence obtained by

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[137] Eric Rosenbach and Aki J. Peritz, *Confrontation or Collaboration? Congress and the Intelligence Community*, BELFER CENTER <http://www.belfercenter.org/sites/default/files/files/publication/intelligence-basics.pdf> 4 (last visited June 29, 2017).

[138] *Intelligence Branch*, FEDERAL BUREAU OF INVESTIGATION, <https://www. fbi.gov/about/leadership-and-structure/intelligence-branch> (last visited June 29, 2017).

[139] Eric Rosenbach and Aki J. Peritz, *Confrontation or Collaboration? Congress and the Intelligence Community*, BELFER CENTER <http://www.belfercenter.org/sites/default/files/files/publication/intelligence-basics.pdf> 4 (last visited June 29, 2017).

[140] *Id*.

[141] *Intelligence Branch*, FEDERAL BUREAU OF INVESTIGATION, <https://www.fbi.gov/about/leadership-and-structure/intelligence-branch> (visited June 29, 2017).

[142] Eric Rosenbach and Aki J. Peritz, *Confrontation or Collaboration? Congress and the Intelligence Community*, BELFER CENTER <http://www.belfercenter.org/sites/default/files/files/publication/intelligence-basics.pdf> 4 (visited June 29, 2017).

[143] *Id*. at 5.

identifying and analyzing environmental byproducts of developments of interests, such as weapons tests."[144] Measures and Signatures Intelligence has been helpful in "identify[ing] chemical weapons and pinpoint[ing] the specific features of unknown weapons systems."[145]

The analysis of information derived from the five (5) Intelligence Collection Disciplines involves the application of specialized skills and the utilization of analytic tools from which inferences are drawn.[146]

By way of example, the Central Intelligence Agency of the United States created the Office of National Estimates in the 1950s to "provide the most informed intelligence judgments on the effects a contemplated policy might have on American national security interests."[147] The Office of National Estimates generates National Intelligence Estimates consisting of analyzed information.[148] National Intelligence Estimates consider questions such as "[w]hat will be the effects of . . . ?[,] [w]hat are the probable developments in . . . ?[,] [w]hat are the intentions of . . . ?[,] [and] [w]hat are the future military capabilities of . . . ?"[149] As a result of analysis, the Office of National Estimates arrives at opinions or judgments that are "likely to be the best-informed and most objective view the decision-maker can get."[150]

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[144] *Id*. at 5.

[145] *Intelligence Branch*, FEDERAL BUREAU OF INVESTIGATION, <https://www.fbi.gov/about/leadership-and-structure/intelligence-branch> (visited June 29, 2017).

[146] Background to "Assessing Russian Activities and Intentions in Recent US Elections": The Analytic Process and Cyber Incident Attribution, DEPARTMENT OF NATIONAL INTELLIGENCE, January 6, 2017 <https://www.dni.gov/files/documents/ICA_2017_01.pdf> 1 (last visited June 28, 2017).

[147] Chester L. Cooper, *The CIA and Decision-Making*, 50 FOREIGN AFF. 223, 224 (1972).

[148] *Id*.

[149] *Id*.

[150] *Id*.

That there are no facts that have absolute truth in intelligence can be seen through an example. Recently, a declassified report[151] of three (3) intelligence agencies in the United States was released and made public. The report extensively discussed the methodology or analytic process that intelligence agencies utilize to arrive at assessments that adhere to well-established and refined standards.[152]

Intelligence analysts determined the reliability and quality of different sources of information[153] and ascribed levels of confidence.[154] A high level of confidence indicates that the assessment is based on high-quality information. On the other hand, a moderate level of confidence indicates that the assessment is backed by information that is "credibly sourced and plausible."[155] A low level of confidence indicates that the information is unreliable. It also signifies that the information cannot support a strong inference.[156]

Aside from determining the reliability of their sources, intelligence analysts also distinguished between information, assumptions, and their own judgments.[157] This distinction is important so that established facts are not muddled with mere assumptions.

Moreover, intelligence analysts used "strong and transparent logic."[158] The utilization of these standards ensures that there

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[151] Background to "Assessing Russian Activities and Intentions in Recent US Elections": The Analytic Process and Cyber Incident Attribution, DEPARTMENT OF NATIONAL INTELLIGENCE, January 6, 2017 <https://www.dni.gov/files/documents/ICA_2017_01.pdf> 1 (last visited June 28, 2017).

[152] *Id*.

[153] *Id*. at 1.

[154] *Id*. at 13.

[155] *Id*.

[156] *Id*.

[157] *Id*. at 1.

[158] *Id*.

is appropriate basis to back up the assessments or judgments of intelligence agencies.[159]

Evidently, the factual basis upon which the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus is founded cannot just be asserted. The information must undergo an analytical process that would show sound logic behind the inferences drawn. The respondents should show these analyses by indicating as far as practicable their sources and the basis of their inferences from the facts gathered. Thereafter, the respondents should have indicated the levels of confidence they have on their conclusions.

VIII

The government's presentation of facts and their arguments of their sufficiency are wanting.

First, there are factual allegations that find no relevance to the declaration of martial law and the suspension of the privilege of the writ of habeas corpus. Second, there are facts that have been contradicted by Open-Source Intelligence sources. Lastly, there are facts that have absolutely no basis as they are unsupported by credible evidence.

There are factual allegations contained in Proclamation No. 216 dated May 23, 2017 and in the Report of President Duterte to Congress dated May 25, 2017 that are patently irrelevant to the imposition of martial law and suspension of the privilege of the writ of habeas corpus in Mindanao.

The Zamboanga siege arose out of the Moro National Liberation Front's (MNLF) protest against what they deemed to be the "government's failure to fulfill the provisions of the peace agreement that the MNLF signed with the Ramos administration in 1996."[160] On September 9, 2013, 500 members

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[159] *Id*.

[160] Carmela Fonbuena, *Zamboanga siege: Tales from the combat zone*, RAPPLER, September 13, 2014<http://www.rappler.com/newsbreak/68885-zamboanga-siege-light-reaction-battalion> (last visited June 27, 2017).

of the MNLF led by Nur Misuari stormed Zamboanga City in an attempt to derail the peace plan between the government and the Moro Islamic Liberation Front (MILF).[161] The clash between the MNLF and government forces, which lasted for three (3) weeks, killed "19 government forces[,] 208 rebels, and dislocated 24,000 families."[162]

On the other hand, the Mamasapano incident was an encounter between the Philippine National Police Special Action Force (PNP-SAF) and members of the MILF, BIFF, and other private armed groups.[163]

On January 25, 2015, two (2) units of the PNP-SAF carried out an operation in Mamasapano, Maguindanao to capture international terrorist Zulkifli bin Hir, known as "Marwan," and Abdul Basit Usman,[164] a Filipino bomb maker.[165] The 84th PNP-SAF Company was tasked to capture Marwan while the 55th PNP-SAF Company served as the blocking force.[166] Although Marwan was killed, 44 members of the PNP-SAF died during the clash, which was characterized as a case of *pintakasi*.[167]

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[161] *Id*.

[162] *Id*.

[163] Ina Reformina, *DOJ indicts 88 over Mamasapano carnage*, ABS-CBN NEWS, August 15, 2016 <http://news.abs-cbn.com/news/08115/16/doj-indicts-88-over-mamasapano-carnage> (last visited June 27, 2017).

[164] Cynthia D. Balana, *Mamasapano clash: What happened according to the military*, INQUIRER.NET, February 7, 2015 <http://newsinfo.inquirer.net/671126/mamasapano-clash-what-happened-according-to-the-military> (last visited July 3, 2017).

[165] Frances Mangosing, *Its official: MILF killed Basit Usman-AFP*, PHILIPPINE DAILY INQUIRER, May 6, 2015 <http://newsinfo.inquirer.net/689608/its-official-milf-killed-basit-usman-afp> (last visited July 3, 2017).

[166] Cynthia D. Balana, *Mamasapano clash: What happened according to the military*, INQUIRER.NET, February 7, 2015 <http://newsinfo.inquirer.net/671126/mamasapano-clash-what-happened-according-to-the-military> (last visited July 3, 2017).

[167] Ina Reformina, *DOJ indicts 88 over Mamasapano carnage*, ABS CBN NEWS, August 15, 2016 <http://news.abs-cbn.com/news/08/15/16/doj-indicts-88-over-mamasapano-carnage> (last visited June 27, 2017).

The Zamboanga siege and the Mamasapano clash, cited by the President in his Report to Congress dated May 25, 2017, are incidents that neither concern nor relate to the alleged ISIS-inspired groups. Moreover, there is no direct or indirect correlation between these incidents to the alleged rebellion in Marawi City.

There are also disputed factual allegations. These disputes could have been settled by the respondents by showing their processes to validate the information used by the President. This Court cannot disregard and gloss over reports from newspapers. As earlier mentioned, newspapers are considered Open-Source Information (OSINT) from which intelligence information may be gathered.

Proclamation No. 216 dated May 23, 2017	
Factual Allegations	**Verification**
Maute Group attack on the military outpost in Butig, Lanao del Sur in February 2016.[168]	Omar Maute and his brother Abdullah led a terrorist group in raiding a detachment of the 51st Infantry Battalion in Butig town. According to reports received by the Armed Forces Western Mindanao Command, around 42 rebels were killed. On the other hand, three soldiers died and eleven were injured.[169]
Mass jailbreak in Marawi City in August 2016.[170]	50 heavily-armed members of the Maute Group raided the local jail in the southern city of Marawi. The raid led to the escape of 8

[168] Proc. No. 216 (2017).

[169] Alexis Romero, *3 soldiers killed, 11 hurt in Lanao del Sur clash*, THE PHILIPPINE STAR, February 26, 2016 <http://www.philstar.com/nation/2016/02/26/1557058/3-soldiers-killed-11-hurt-lanao-del-sur-clash> (last visited June 28, 2017).

[170] Proc. No. 216 (2017).

	comrades of the Maute Group who were arrested a week ago and twenty other detainees. The 8 escaped prisoners were arrested after improvised bombs and pistols were found in their van by soldiers manning an army checkpoint.[171] Police Chief Inspector Parson Asadil said that the jailbreak was a rescue operation for the release of the recently arrested members including their leader Hashim Balawag Maute.[172]
The Maute Group "[took] over a hospital in Marawi City, Lanao del Sur."[173]	Amai Pakpak Medical Center Chief Dr. Armer Saber (Dr. Saber) stated that the hospital was "not taken over by the Maute Group."[174] Dr. Saber said that two Maute armed men went to the hospital to seek treatment for their injured comrade. When the armed men were inside the facility, Senior Inspector Freddie Solar, intelligence unit chief of the Marawi City Police, together

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[171] Agence France-Presse, *Muslim extremists stage mass jailbreak in Marawi City*, INQUIRER.NET, August 28, 2016 <http://newsinfo.inquirer.net/810455/muslim-extremists-stage-mass-jailbreak-in-marawi-city> (last accessed June 28, 2017).

[172] Bobby Lagsa, *Terror leader escapes in Lanao del Sur jailbreak*, RAPPLER, August 28, 2016 <http://www.rappler.com/nation/144405-prionsers-escape-jail-raid-lanao-del-sur> (last accessed June 28, 2017).

[173] Proc. No. 216 (2017).

[174] Jigger J. Jerusalem, *Hospital in Marawi not taken over by Maute — medical center chief*, INQUIRER.NET, May 28, 2017 <http://newsinfo.inquirer.net/900299/hospital-in-marawi-not-taken-over-by-maute-medical-center-chief> (last accessed June 28, 2017).

	with other policemen, came to the hospital to have his wife treated for appendicitis. The policemen were held hostage by the Maute fighters and thereafter, Senior Inspector Solar was shot.[175] Saber stressed that the only incident when gunshots were fired was during the shootout where Solar was killed.[176] Moreover, the Maute members left the hospital the following day.[177] Health Secretary Paulyn Ubial belied the reports stating that "the Maute insurgents abducted and held hostage at least 21 health personnel of the APMC." He declared that "all government hospitals in Mindanao are operational and fully secured by the Armed Forces of the Philippines (AFP)."[178] AFP Public Affairs Office Chief Marine Colonel Edgard Arevalo and Philippine National Police

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[175] *Id*.

[176] Gerry Lee Gorit, *Marawi City hospital not overrun — official*, THE PHILIPPINE STAR, May 29, 2017 <http://www.philstar.com/headlines/2017/05/29/1704661/marawi-city-hospital-not-overrun-official> (last accessed June 28, 2017).

[177] Jigger Jerusalem, *Hospital in Marawi not wken over by Maute — medical center chief*, INQUIRER.NET, May 28, 2017 <http://newsinfo.inquirer.net/900299/hospital-in-marawi-not-taken-over-by-maute-medical-center-chief> (last accessed June 28, 2017).

[178] Gerry Lee Gorit, *Marawi City hospital not overrun — official*, THE PHILIPPINE STAR, May 29, 2017 <http://www.philstar.com/headlines/2017/05/29/1704661/marawi-city-hospital-not-overrun-official> (last accessed June 28, 2017).

	Spokesman Senior Superintendent Dionardo Carlos denied the reports that Amai Pakpak Medical Center was taken over by the Maute Group.[179] They stated that members of the Maute Group only sought medical assistance for a wounded comrade.[180]
The Maute Group "established several checkpoints within the City."[181]	The Maute Group "reportedly blocked several checkpoints in the vicinity."[182]
The Maute Group "burned down certain government and private facilities and inflicted casualties on the part of the government."[183]	United Church of Christ in the Philippines, the operator of Dansalan College confirmed that the school was burned on the night of May 23, 2017.[184] Other schools said to have been burned were only damaged during the clash between the military and the Maute Group.[185] Marawi City School Division Assistant Superintendent Ana

[179] Janvic Mateo, *FACT CHECK*: *Inconsistencies in Duterte's martial law report*, THE PHILIPPINE STAR, May 31, 2017 <http://www.philstar.com:8080/headlines/2017/05/31/1705369/fact-check-inconsistencies-dutertes-martial-law-report> (last accessed June 28, 2017).

[180] *Id*.

[181] Proc. No. 216 (2017).

[182] Ver Marcelo, *Gov't forces, Maute group clash in Marawi City*, CNN PHILIPPINES, May 23, 2017, <http://cnnphilippines.com/news/2017/05/23/marawi-city-clash.html> (last accessed June 28, 2017).

[183] Proc. No. 216 (2017).

[184] Janvic Mateo, *FACT CHECK*: *Inconsistencies in Duterte's martial law report*, THE PHILIPPINE STAR, May 31, 2017, <http://www.philstar.com:8080/headlines/2017/05/31/1705369/fact-check-inconsistencies-dutertes-martial-law-report> (last accessed June 28, 2017).

[185] *Id*.

	Alonto said Mambuay Elementary School, Raya Madaya 1 Elementary School, and Raya Madaya 2 Elementary School were damaged by bombs.[186] Department of Education Assistant Secretary Tonisito Umali said there were no reports of the Marawi Central Elementary Pilot School burning. Aside from Dansalan College, the City Jail and St. Mary's Church were also burned that day.[187]
The Maute Group "started flying the flag of the Islamic State of Iraq and Syria (ISIS) in several areas."[188]	ISIS flags were raised on top of at least two (2) vehicles roaming Marawi City[189] and on some mosques and buildings where members of the Maute Group positioned themselves.[190]

President's Report Relative to Proclamation No. 216	
Factual Allegations	**Verification**
Davao (night-market) bombing (by either the Abu Sayyaf Group	According to the Philippine army, four (4) suspects in the Davao

[186] *Id*.

[187] *3 fires break out in Marawi as clashes rage*, RAPPLER, May 23, 2017 <http://www.rappler.com/nation/170738-fires-marawi-city-maute-attack> (last accessed June 28, 2017).

[188] Proc. No. 216 (2017).

[189] *Maute Group waves ISIS black flag on Marawi streets*, RAPPLER, May 23, 2017, <http://www.rappler.com/nation/170729-marawi-city-black-flag-maute> (last accessed June 28, 2017).

[190] John Unson, *Maute group frees 107 inmates amid clashes in Marawi City*, THE PHILIPPINE STAR, May 24, 2017 <http://www.philstar.com/headlines/2017/05/24/1703188/maute-group-frees-107-inmates-amid-clashes-marawi-city> (last accessed June 28, 2017).

or ISIS-backed Maute group)[191]	City night market bombing were reportedly members of the Dawla Islamiya Fi Cotabato — Maute Group.[192]
Bombings in Cotabato (by either the Abu Sayyaf Group or ISIS-backed Maute group)[193]	According to Director of the North Cotabato Provincial Police, they were certain that "the New People's Army was behind the roadside bombing and . . . was not in any way connected to the ongoing strife in Marawi City."[194]
Bombings in Sultan Kudarat (by either the Abu Sayyaf Group or ISIS-backed Maute group)[195]	Before the incident, text messages circulated containing warnings about an alleged plot by the Bangsamoro Islamic Freedom Fighters (BIFF) to set-off bombs in Tacurong City, Koronadal, General Santos, Cotabato, Midsayap, North Cotabato, and Davao City.[196]

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[191] President's Report to Congress, p. 3.

[192] CNN Philippines Staff, *Four more suspects in Davao City bombing arrested*, CNN PHILIPPINES, October 29, 2016 <http://cnnphilippines.com/regional/2016/10/29/Davao-City-bombing-suspects-arrested.html> (last accessed on June 27, 2017).

[193] President's Report to Congress, p. 3.

[194] John Unson, *Cop hurt in North Cotabato roadside bombing*, THE PHILIPPINE STAR, May 26, 2017 <http://www.philstar.com/nation/2017/05/26/1703828/cop-hurt-north-cotabato-roadside-bombing> (last accessed June 27, 2017).

[195] President's Report to Congress, p. 3.

[196] Edwin Fernandez, *8 hurt in Tacurong twin explosions*, INQUIRER.NET, April 17, 2017 <http://newsinfo.inquirer.net/889856/8-hurt-in-tacurong-twin-explosions> (last accessed June 27, 2017).

Bombings in Basilan (by either the Abu Sayyaf Group or ISIS-backed Maute group)[197]	Investigators are convinced that "Abu Sayyaf bandits are behind the attack."[198]
May 23, 2017 — Government operation to capture Isnilon Hapilon — "confronted with armed resistance which escalated into open hostility against the government." The Maute Group took control of Marawi City to establish a *wilayah* in Mindanao.[199]	Armed Forces of the Philippines spokesperson Brigadier General Restituto Padilla said, "the on-going clash in Marawi City, Lanao Del Sur is aimed at neutralizing Abu Sayyaf leader Isnilon Hapilon, who was spotted along with an estimated 15 followers in the area."[200]
At 1400H on May 23, 2017— "Members of Maute Group and [Abu Sayyaf Group] along with their sympathizers, commenced their attack on various facilities."[201]	Spokesperson of 1st Infantry Division of the Army, Lt. Col. Jo-Ar Herrera, said the gun battle erupted at 2 p.m. in Barangay Basak, Malulut, Marawi.[202] It was the military who initiated "a surgical operation" following the reports on the presence of Maute Group fighters from the residents.[203]

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[197] President's Report to Congress, p. 3.

[198] John Unson, *Basilan mayor survives roadside bomb attack*, THE PHILIPPINE STAR, February 4, 2017 <http://www.philstar.com/nation/2017/02/04/1669016/basilan-mayor-survives-roadside-bomb-attack> (last accessed June 27, 2017).

[199] President's Report to Congress, p. 3.

[200] Ruth Abbey Gita, *et al., Troops, Maute group clash in Marawi City; 3 dead, 12 injured*, SUNSTAR PHILIPPINES, May 23, 2017 <http://www.sunstar.com.ph/cagayan-de-oro/local-news/2017/05/25/troops-maute-group-clash-marawi-city-3-dead-12-injured-543446> (last accessed June 27, 2017).

[201] President's Report to Congress, p. 4.

[202] Francis Wakefield, *Maute, ASG gunmen clash with troops in Marawi; 5 soldiers wounded*, MANILA BULLETIN, May 24, 2017 <http://news.mb.com.ph/2017/05/23/maute-asg-gunmen-clash-with-troops-in-marawi-5-soldiers-wounded/> (last accessed June 27, 2017).

[203] Audrey Morallo, *AFP: Marawi clashes part of security operation, not terrorist attack*, THE PHILIPPINE STAR, May 23, 2017 <http://www. philstar.

	Armed Forces of the Philippines Spokesman Brigadier General Restituto Padilla stated that it was the AFP and PNP who initiated the operation in Marawi having received reliable information regarding the location of Hapilon and a number of his cohorts.[204]
At 1600H on May 23, 2017, 50 armed criminals assaulted Marawi City Jail, which was being managed by the Bureau of Jail Management and Penology. The Maute Group "forcibly entered the jail facilities, destroyed its main gate and assaulted on-duty personnel[,] BJMP personnel were disarmed, tied, and/or locked inside the cells."[205]	Governor Mujiv Hataman of the Autonomous Region in Muslim Mindanao stated that the "Maute gunmen simultaneously stormed the Malabang District Jail and the Marawi City Jail . . . disarmed guards[,] and freed a total of 107 inmates."[206]
The Group "took cellphones, personnel-issued firearms . . . two [2] prisoner vans and private vehicles."[207]	Governor Hataman stated that the group "took one [1] government vehicle used in transporting detainees from the jail to the court."[208]

com/headlines/2017/05/23/1702885/afp-marawi-clashes-part-security-operation-not-terrorist-attack> (last accessed June 27, 2017).

[204] Francis Wakefield, *Maute, ASG gunmen clash with troops in Marawi; 5 soldiers wounded*, MANILA BULLETIN, May 24, 2017 <http://news.mb.com.ph/2017/05/23/maute-asg-gunmen-clash-with-troops-in-marawi-5-soldiers-wounded/> (last accessed June 27, 2017).

[205] President's Report to Congress, p. 4.

[206] John Unson, *Maute group frees 107 inmates amid clashes in Marawi City*, THE PHILIPPINE STAR, May 24, 2017 <http://www.philstar.com/headlines/2017/05/24/1703188/maute-group-frees-107-inmates-amid-clashes-marawi-city> (last accessed June 27, 2017).

[207] President's Report to Congress, p. 4.

[208] John Unson, *Maute group frees 107 inmates amid clashes in Marawi City*, THE PHILIPPINE STAR, May 24, 2017 <http://www.philstar.com/head1ines/

At 1630H the power supply in Marawi City was "interrupted and sporadic gunfights were heard and felt everywhere[,] [b]y evening, power outage had spread citywide."[209]	As of 6:30 p.m. on May 25, 2017, the Department of Energy, citing a report of the National Grid Corporation of the Philippines, stated that "a tower along the tie line between Agus 1 and 2 hydropower plant in Lanao del Sur was toppled because of a felled tree."[210] The grid disturbance caused the power outage in Marawi City.[211]
From 1800H to 1900H on May 23, 2017, the Maute Group "ambushed and burned the Marawi Police Station." They also took a patrol car. Meanwhile, a member of the Philippine Drug Enforcement Unit was killed. The Maute Group facilitated escape of at least 68 inmates.[212]	Marawi City Mayor Majul Gandamra (Mayor Gandamra) disputed reports that the local police station and city jail were burned. According to Mayor Gandamra: "*[h]indi po totoo na na-takeover nila ang* police station at ang . . . city jail."[213] Mayor Gandamra contacted the chief of police who said that the police station and city jail were not occupied.[214]

2017/05/24/1703188/maute-group-frees-107-inmates-amid-clashes-marawi-city> (last accessed June 27, 2017).

[209] President's Report to Congress, p. 4.

[210] *DOE: Power supply in Marawi cut*, SUNSTAR, May 25, 2017 <http://www.sunstar.com.ph/manila/local-news/2017/05/25/doe-power-supply-marawi-cut-543897> (last accessed June 27, 2017).

[211] *Id*.

[212] President's Report to Congress, p. 4.

[213] Regine Cabato, *Marawi Mayor: Police station, city jail not burned*, CNN PHILIPPINES, May 24, 2017 <http://cnnphilippines.com/news/2017/05/24/ marawi-mayor-police-station-city-jail-not-burned.html> (last accessed June 27, 2017).

[214] Frances Mangosing, *No takeover of gov't facilities in Marawi by Abus, Maute — mayor*, INQUIRER.NET, May 23, 2017 <http://newsinfo.inquirer.net/898833/no-takeover-of-govt-facilities-in-marawi-says-mayor> (last accessed June 27, 2017).

	Mayor Gandamra also declared that no government facilities or offices were occupied.[215]
On the evening of May 23, 2017, "at least (3) bridges in Lanao del Sur, namely Lilod, Bangulo, and Sauiaran, fell under the control of these groups."[216]	"The Mapandi Bridge that leads to the center of Marawi City remained in the control of the Maute group, and an ISIS flag remains there a week after the terrorists laid siege on the city."[217]
On the evening of May 23, 2017, the Maute Group burned: (1) Dansalan College Foundation; (2) Cathedral of Maria Auxiliadora; (3) Nun's quarters in the church; and (4) Shia Masjid Moncado Colony. The group took hostages.[218]	Mayor Gandamra confirmed that a fire had taken place in Dansalan College: "*[m]erong* structure *doon na nasunog po, hindi ho lahat* [There was a structure burned, but not all]."[219] Bishop Edwin Dela Peña said the Maute group torched the Cathedral of Our Lady of Help of Christians: "*[k]inuha nila 'yung aming pari, saka 'yung aming secretary, 'yung dalawang* working student *tapas parokyano namin na nag-novena lang kahapon*."[220] The

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[215] *Id*.

[216] President's Report to Congress, p. 4.

[217] Chiara Zambrano, *Maute terrorists still control key Marawi City bridges*, ABS-CBN NEWS, May 31, 2017 <http://news.abs-cbn.com/news/05/30/17/maute-terrorists-still-control-key-marawi-city-bridges> (last accessed June 27, 2017).

[218] President's Report to Congress, p. 5.

[219] Regine Cabato, *Marawi Mayor: Police station, city jail not burned*, CNN PHILIPPINES, May 24, 2017 <http://cnnphilippines.com/news/2017/05/24/marawi-mayor-police-station-city-jail-not-burned.html> (last accessed June 27, 2017).

[220] Patricia Lourdes Viray, *Bishop: Maute burned Marawi cathedral, abducted priest*, THE PHILIPPINE STAR, May 24, 2017 <http://www.philstar.com/headlines/2017/05/24/1703149/bishop-maute-burned-marawi-cathedral-abducted-priest> (last accessed June 27, 2017).

	Cathedral of Our Lady of Help of Christians is also known as the Cathedral of Maria Auxiliadora.[221]
"About five (5) faculty members of Dansalan College Foundation [were] reportedly killed by the lawless groups."[222]	United Church of Christ in the Philippines' Executive Director Rannie Mercado told the Philippine Star that there were no confirmed reports regarding the alleged death of school personnel.[223]
"Senator Ninoy Aquino College Foundation and the Marawi Central Elementary Pilot School" were burned.[224]	In a phone interview, the Division Assistant Superintendent of Marawi City Schools Division Ana Alonto "denied a report that a public school was among the buildings burnt by the terrorists." She stated that "it was the barangay outpost that was seen burning in a photo circulating online."[225] Furthermore, Department of Education Assistant Secretary

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[221] *Prelature of Marawi*, CATHOLIC BISHOP CONFERENCE OF THE PHILIPPINES <http://www.cbcponline.net/marawi/html/parishes.html> (last accessed July 3, 2017).

[222] President's Report to Congress, p. 5.

[223] Janvic Mateo, *FACT CHECK*: *Inconsistencies in Duterte's martial law report*, THE PHILIPPINE STAR, May 31, 2017 <http://www.philstar.com:8080/headlines/2017/05/31/1705369/fact-check-inconsistencies-dutertes-martial-law-report> (last accessed June 27, 2017).

[224] President's Report to Congress, p. 5.

[225] Janvic Mateo, *DepEd: Opening of classes in Marawi to push through*, THE PHILIPPINE STAR, May 24, 2017 <http://www.philstar.com/nation/2017/05/24/1703412/deped-opening-classes-marawi-push-through> (last accessed June 27, 2017).

	Umali said they did not receive any report of damage at the Central Elementary Pilot School.[226] According to a source on the ground of the Philippine Star, he saw the "Senator Benigno Aquino College Foundation intact when he left the city on May 24, [2017]."[227]
The Maute Group "attacked Amai Pakpak Hospital and hoisted the DAESH flag there[.]"[228]	Mayor Gandamra said that "Amai Pakpak Medical Center had not been overrun, based on a phone call with the hospital director." The hospital was still in operation: "*[y]un sinabi po na tinakeover ay walang katotohanan*."[229]
At "0600H of May 24, 2017, members of Maute Group were seen guarding the entry gates of Amai Pakpak Hospital." They also "held the hospital's employees hostage and took over the PhilHealth office[.]"[230]	Amai Pakpak Medical Center Chief Dr. Amer Saber (Dr. Saber) said that the hospital was not overrun by terrorists.[231] Dr. Saber's statement was corroborated by the PNP Spokesman, Senior Superintendent

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[226] Janvic Mateo, *FACT CHECK*: *Inconsistencies in Duterte's martial law report*, THE PHILIPPINE STAR, May 31, 2017 <http://www.philstar.com:8080/headlines/2017/05/31/1705369/fact-check-inconsistencies-dutertes-martial-law-report> (last accessed June 27, 2017).

[227] *Id*.

[228] Prersident's Report to Congress, p. 5.

[229] Regine Cabato, *Marawi Mayor: Police station, city jail not burned*, CNN PHILIPPINES, May 24, 2017 <http://cnnphilippines.com/news/2017/05/24/marawi-mayor-police-station-city-jail-not-burned.html> (last accessed June 27, 2017).

[230] President's Report to Congress, p. 5.

[231] Gerry Lee Gorit, *Marawi City hospital not overrun-official*, THE PHILIPPINE STAR, May 29, 2017 <http://www.philstar.com/headlines/2017/05/29/1704661/marawi-city-hospital-not-overrun-officia1> (last accessed June 27, 2017).

	Dionardo Carlos who said that the terrorists only went there to seek medical assistance for a wounded member. They did not take over the hospital.[232] The hospital employees were "only asked to provide medical assistance[.]"[233]
"Lawless armed groups . . . ransacked the Land [B]ank of the Philippines and commandeered one of its armored vehicles."[234]	In a statement, the Land Bank of the Philippines (Land Bank) clarified that the Land Bank Marawi City Branch was not ransacked. It merely sustained some damage from the ongoing clash. According to Land Bank, the photo circulating on Facebook is not the Land Bank Marawi Branch but "an image of the closed Land Bank [Mindanao State University Extension Office] that was slightly affected in 2014 by a fire that struck the adjacent building."[235] Land Bank also confirmed that an armored vehicle was seized. However, it clarified that the vehicle was owned by a third-party provider and that it was empty when it was taken.[236]

[232] Janvic Mateo, *FACT CHECK*: *Inconsistencies in Duterte's martial law report*, THE PHILIPPINE STAR, May 31, 2017 <http://www.philstar.com:8080/head1ines/2017/05/31/1705369/fact-check-inconsistencies-dutertes-martial-law-report> (last accessed June 27, 2017).

[233] *Id*.

[234] President's Report to Congress, p. 5.

[235] Janvic Mateo, *FACT CHECK*: *Inconsistencies in Duterte's martial law report*, THE PHILIPPINE STAR, May 31, 2017 <http://www.philstar.com:8080/head1ines/2017/05/31/1705369/fact-check-inconsistencies-dutertes-martia1-law-report> (last accessed June 27, 2017).

[236] *Id*.

IX

Third, the factual bases cited by respondents in their pleadings seem to be mere allegations. The sources of these information and the analyses to vet them were not presented.

In their Consolidated Comment and Memorandum, respondents assert that the Abu-Sayyaf Group from Basilan (ASG Basilan), the Ansarul Khilafah Philippines (AKP) or the Maguid Group, the Maute Group (Maute Group) from Lanao del Sur, and the Bangsamoro Islamic Freedom Fighters (BIFF) are ISIS-inspired[237] or ISIS-linked.[238] They also assert that these groups "formed an alliance . . . to establish a *wilayah*, or Islamic province, in Mindanao."[239]

Respondents failed to show their sources to support the inference that the ASG Basilan, AKP, Maute Group, and BIFF are indeed linked to the ISIS and that these groups formed alliances. Respondents' only basis is Isnilon Hapilon's "symbolic *hijra*."[240] Respondent also relies heavily on the ISIS newsletter, Al Naba, which allegedly announced the appointment of Isnilon Hapilon as an emir.[241]

These allegations neither explain nor conclusively establish the nature of the links of the four (4) groups to the ISIS. The ISIS newsletter, Al Naba, cannot be considered as a credible source of information. It is a propaganda material, which provides skewed information designed to influence opinion.[242]

Individually, these groups have undergone splits and are fragmented into different factions. Their stability and solidarity is unclear.

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[237] Consolidated Comment, p. 5.

[238] OSG Memorandum, p. 5.

[239] *Id*.

[240] *Id*. at 7.

[241] *Id*.

[242] Harold D. Lasswell, *The Theory of Political Propaganda*, 21 AMERICAN POLITICAL SCIENCE REVIEW 627 (1927), also available in <https://www.jstor.org/stable/l945515?seq=1#fndtn-page_scan_tab contents> (last visited July 3, 2017).

The Abu-Sayyaf Group was organized sometime in 1991 by Abdurajak Janjalani.[243] Abdurajak Janjalani's brother, Khadaffy Janjalani, took over the group upon Abdurajak's death in 1998. When Khadaffy died, "Radullon" Sahiron took over as the group's commander.[244]

The split within the Abu-Sayyaf Group began when one of the group's top commanders, Abu Sulaiman, died in 2007. Each subcommand was left to operate independently. Eventually, the Abu-Sayyaf Group became "highly factionalised kidnap-for-ransom groups."[245]

In May 2010, Isnilon Hapilon returned to Basilan and united the Basilan members of the Abu-Sayyaf Group. This officially marked the split between the Abu-Sayaff Basilan group from the Abu-Sayaff Sulu group, headed by Radullan Sahiron, and other Abu-Sayyaf subcommands.[246]

The two main factions of the Abu-Sayyaf Group are headed by leaders that do not share the same ideology. Radullan Sahiron only trusted fellow Tausugs and believed that foreign fighters had no place within his group. On the other hand, Isnilon Hapilon welcomed outsiders. Isnilon Hapilon was characterized as someone who "liked anything that smelled foreign, especially anything from the Middle East," a sentiment not shared by Radullan Sahiron.[247]

The Bangsamoro Islamic Freedom Fighters was founded by Ameril Umbra Kato.[248] Ameril Umbra Kato appointed Esmael

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[243] Institute for Policy Analysis of Conflict, *Pro-Isis Groups in Mindanao and their Links to Indonesia and Malaysia*, Report No. 33, October 25, 2016, <http://file.understandingconflict.org/file/2016/10/IPAC_Report_33.pdf> 3 (last accessed June 30, 2017).

[244] *Id*. at 4.

[245] *Id*.

[246] *Id*.

[247] *Id*. at 4.

[248] *Id*. at 18.

Abu bakar alias Kumander Bungos as his successor much to the disappointment of Ameril Umbra Kato's relative, Imam Minimbang alias Kumander Kagi Karialan.[249]

During his leadership, Kumander Bungos aligned the Bangsamoro Islamic Freedom Fighters with the Maute Group.[250] This was opposed by Kumander Kagi Karialan.[251]

In July 2016, Kumander Kagi Karialan, together with a number of Bangsamoro Islamic Freedom Fighter clerics, broke from the group.[252]

Ansarul Khilafa Philippines (AKP) was led by Mohammad Jaafar Maguid alias Tokboy. Although no major split occurred within Ansarul Khilafa Philippines, the stability of the group is presently unclear due to the death of Tokboy on January 5, 2017.[253]

The ideological divergence within the ASG and the BIFF as well as the vacuum in the leadership of the AKP creates serious doubt on the strength of their entire group's allegiance to the ISIS and their alleged ties with each other.

Aside from the failure to present their sources to support the factual bases cited in Proclamation No. 216 dated May 23, 2017 and the Report of President Duterte dated May 25, 2017, there is also absolutely no factual basis for the dismantling and arrest of illegal drug syndicates and peace spoilers.[254] The inclusion of illegal drug syndicates and peace spoilers unjustifiably broadens the scope of martial law. There has been

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[249] *Id*. at 18-19.

[250] *Id*. at 19.

[251] *Id*. at 19.

[252] *Id*. at 19.

[253] *Philippines kills leader of Islamic linked militant group in clash*, REUTERS, January 5, 2017 <http://www.reuters.com/article/us-philippines-security-idUSKBN14P17I> (accessed June 30, 2017); OSG Memorandum, p. 8.

[254] OSG Memorandum, Annex 3 of Annex 2, Operations Directive 02-2017.

no evidence presented in this case that would explain their inclusion in the Operational Directive for the Implementation of Martial Law.

X

Fourth, the documents presented to this court containing intelligence information have not been consistent. It shows that the presentation and interpretation of the facts have changed from one which showed the variability in the groups reported to a simplification of the terrorist groups to show the impression that the groups are solidly united. In other words, the presentation of the facts and their interpretation changed to accommodate a version that would support martial law.

The most unreliable form of intelligence information is one which has been tweaked and changed to suit the perspective of the policy maker. For purposes of its assessment of the sufficiency of the facts to support Proclamation No. 216, the credibility of the information will also depend on the extent of independence of the organization gathering and analyzing intelligence.

Among the documents presented to the court was the Chief of Staffs Operational Directive in the Implementation of Martial Law. Annex B of that report pertained to the intelligence backdrop of Operational Plan "Southern Shield" dated 25 May 2017. Their confidential document provided clear insights on the strengths and weaknesses of the various terror groups.[255]

On the other hand, the affidavit of the Chief of Staff of the Armed Forces of the Philippines to support the Memorandum of the OSG simply states:

> 12. Sometime on or about August in the year 2014, the AFP received intelligence reports that a number of local rebel groups from Mindanao ha[s] pledged their allegiance to ISIS. These groups include the Abu-Sayyaf Group from Basilan, the Ansarul Khilafah Philippines (also

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[255] Appendix 1 (Joint Intelligence Estimate) to Annex B – Intelligence Support Plan to Operations Directive 02-2017. Confidential Intelligence Document, which cannot be quoted in full but made available to all the Justices by the respondents.

known as "The Maguid Group") from Saranggani and Sultan Kudarat, the Maute Group from Lano del Sur, and the Bangsamoro Islamic Freedom Fighters from Maguindanao;

. . . . . .

24. As proof of this unification, the ISIS-linked rebel groups had consolidated in Basilan to pledge allegiance to ISIS sometime on June 22, 2016. On the first week of January 2017, a meeting among these rebel groups was supposed to take place in Butig, Lanao del Sur for the purpose of declaring their unified pledge of allegiance to the ISIS and re-naming themselves as the Da'wahtul Islamiyah Waliyatul Mashriq (DIWM). This was, however, preempted by the death of Mohammad Jaafar Maguid (also known as Tokboy), as then leader of the Maguid Group, coupled with the conduct of series of military operations in the area.[256]

Notably, the affidavit fails to emphasize several important key points which put into question the conclusion relating to the strengths of the alleged coalition between the four (4) groups. It puts into question their capability to execute the feared rebellion.

First, not all members of the ASG (especially the group of Sahiron in Sulu) as well as the members of the BIFF have expressed their intent to be inspired or affiliated with the ISIS.[257]

Second, many of the kidnappings in Southern Philippines can be attributed to the non-ISIS linked or affiliated ASG in Sulu. From January 2017 to May 2017, six (6) incidents involving 16 individuals should have been attributed to the non-ISIS affiliated ASG. Forty-two (42) of the violent incidents perpetrated by the ASG are attributed to the non-ISIS Sulu group. Of its estimated 446 personnel, AFP's intelligence reports that 168 personalities were neutralized from January to May of 2017.

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[256] OSG Memorandum Annex 2, Affidavit, General Eduardo M. Año, Chief of Staff AFP, pp. 3-5.

[257] Institute for Policy Analysis of Conflict, *Pro-Isis Groups in Mindanao and their Links to Indonesia and Malaysia*, Report No. 33, October 25, 2016,<http://file.understandingconflict.org/file/2016/10/IPAC_Report_33.pdf> 2 (last accessed June 30, 2017).

Third, the Basilan-based ASG which is reported to be led by Hapilon is composed of only about 108 members as of 2016. In its own report, the AFP claims that this ASG is "incapable of sustaining prolonged armed confrontation in view of its limited supply of ammunition and firearms." They also have "a low level of discipline" and are prone to "insubordination and infighting brought about by envy and personal differences within the group." This ISIS inspired ASG has members "motivated purely by financial considerations." They are vulnerable to "rido or clan wars between ASG elements and other armed threat groups in Mindanao."

Fourth, the Maute group is composed of about 263 members as of the end of 2016. However the "figures have changed with the identification of new personalities and neutralization of members as a result of focused military operations (FMO)." Intensified operations have targeted this group since February of 2016. The military intelligence reports consider that the "Maute Group has limited support base which is mostly concentrated in Butig, its stronghold."

Fifth, the third member terrorist group of the alleged coalition is the Maguid Group or the Ansar al-Khilafah Philippines (AKP). As of the end of 2016 the military reports that it has only 7 identified members with 12 firearms. Its leader Mohammad Jaafar Maguid, otherwise known as "Tokboy," together with his foreign ally and his wife had already been killed. The AFP acknowledges that this group is obviously "beset with decreasing manpower and lack of direction from a leader."

It was the death of Tokboy which prevented an alleged meeting of all four terrorist groups inspired by ISIS in January of this year.

With this intelligence information, it is difficult to sustain the conclusion that the ISIS-inspired groups are able to wage actual rebellion that will threaten a province or even the entirety of Mindanao. Clearly, they are capable of isolated atrocities. However, to the extent that they can sustain a rebellion threatening even the existence of any local government is a difficult conclusion to believe.

In other words, even before the Marawi hostilities, law enforcers, including the armed forces were already degrading their capability.

Respondent through the OSG and in the Memorandum also belatedly cite 20 "ISIS cell groups," which, allegedly, coordinated with the ASG Basilan, AKP, Maute Group, and the BIFF.[258] The alleged "ISIS cell groups" are the following:

1. Ansar Dawiah Fi Filibbin
2. Rajah Solaiman Islamic Movement
3. Al Harakatul Islamiyah Battalion
4. Jama'at Ansar Khilafa
5. Ansharul Khilafah Philippines Battalion
6. Bangsamoro Justice Movement
7. Khilafah Islamiya Mindanao
8. Abu Sayyaf Group (Sulu faction)
9. Syuful Khilafa Fi Luzon
10. Ma'rakah Al-Ansar Battalion
11. Dawla Islamiyyah Cotabato
12. Dawlat Al Islamiyah Waliyatul Masrik
13. Ansar Al-Shariyah Battalion
14. Jamaah al-Tawid wal Jihad Philippines
15. Abu Duhanah Battalion
16. Abu Khubayn Battalion
17. Jundallah Battalion
18. Abu Sadr Battalion
19. Jamaah Al Muhajirin wal Anshor
20. Balik-Islam Group[259]

However, respondents failed to show any evidence that would establish links and relationships between and among these groups to support the conclusion that these groups are indeed "ISIS cell groups" and that these groups are coordinating attacks with the ASG Basilan, AKP, Maute Group, and the BIFF. For instance, the Sulu faction of the Abu-Sayyaf Group does not share the

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[258] OSG Memorandum, p. 6.

[259] *Id*.

same ideology as the Basilan faction.[260] This listing of twenty groups are not present in any of the presentations or documents presented to the Court during the oral arguments in these cases.

Respondents cite atrocities that have been committed by rebel groups before May 23, 2017.[261] Unfortunately, they did not identify which group was involved in each particular incident. Hence, the enumerated atrocities cannot be attributed to all four (4) ISIS-inspired groups.

The underlying evidence[262] cited in respondents' Memorandum are unprocessed and are ad hoc pieces of information. Although the Memorandum did mention incidents that were directly attributable to the Abu-Sayyaf Group and the Bangsamoro Islamic Freedom Fighters,[263] it failed to indicate which particular faction was involved. Furthermore, it included acts of violence committed by the New People's Army in Batangas and Samar[264] and those committed by the Abu Sayyaf Group in Bohol.[265]

XI

Fifth, it is possible that the critical pieces of information have been taken out of context. The inferences made as to the affiliation of the alleged Maute group with ISIS leave much to be desired. Context was not properly explained.

The OSG lays down the following backdrop to contextualize the events of May 23, 2017 as acts of rebellion: (1) ISIS leader Abu Bakr al-Baghdadi has established an Islamic State in Syria

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[260] Institute for Policy Analysis of Conflict, *Pro-Isis Groups in Mindanao and their Links to Indonesia and Malaysia*<http://file.understandingconflict.org/file/2016/10/IPAC_Report_33.pdf> 3-4 (last accessed June 30, 2017).

[261] OSG Memorandum pp. 8-11.

[262] OSG Memorandum, Annex 9 of Annex 2, Significant Atrocities in Mindanao Prior to the Marawi City Incident.

[263] *Id*.

[264] *Id*.

[265] *Id*.

and Iraq;[266] (2) Muslims around the world join the Islamic State by pledging allegiance to al-Baghdadi, and this pledge is an obligation to unify under al-Baghdadi's caliphate;[267] (3) ISIS' plan consists of "impos[ing] its will and influence worldwide";[268] (4) ISIS carries out this plan by capturing and administering territories;[269] (5) ISIS, which has been called the "world's wealthiest organization," finances the leaders of these territories, for the proper administration of said territories;[270] (6) ISIS' notoriety and its finances attracted local rebel groups, namely, the Abu-Sayyaf Group from Basilan ("ASG-Basilan"), Ansarul Khilafah Philippines ("AKP"), the Maute Group, and the Bangsamoro Islamic Freedom Fighters ("BIFF"), who previously operated separately, to pledge their allegiance to ISIS;[271] (7) Because of this pledge of allegiance, these groups have now unified as one alliance (the "ISIS-linked rebel groups");[272] (8) Hapilon, leader of ASG-Basilan, was appointed as the *emir*, or the leader of all ISIS forces in the Philippines;[273] (9) Hapilon embarked on a "pilgrimage" to unite with the ISIS-linked rebel groups, which the OSG called a "symbolic *hijra*," as a step towards establishing an administered territory, for ISIS approval or recognition.[274]

The OSG links this "pilgrimage" to the five (5) steps for establishing an ISIS-recognized Islamic province,[275] and claims that the ISIS-linked rebel groups have already accomplished

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[266] OSG Memorandum, p. 4.

[267] *Id*.

[268] *Id*.

[269] *Id*.

[270] *Id*.

[271] *Id*. at 5-6.

[272] *Id*. at 6.

[273] *Id*. at 7.

[274] *Id*. at 7-8.

[275] *Id*.

the third step in the establishment of an ISIS-recognized Islamic province when Hapilon was appointed *emir*.[276] The ISIS-linked rebel groups, together with "ISIS cell groups," have conducted many violent activities to dismember the country.[277]

This is advocated by the OSG as the proper context to interpret the events of May 23, 2017. Thus, when government troops faced heavy assault at around 2 o'clock in the afternoon, the perpetrators were identified as the ISIS-linked rebel groups:

> 29. At 2:18 pm, the government troops from the 51st Infantry Battalion were faced with heavy assault from the rebel groups in the vicinity of the Amai Pakpak Medical Center. Four (4) government troopers were wounded in the encounter.
>
> 30. The ISIS-linked local rebel groups launched an overwhelming and unexpectedly strong offensive against government troops. Multitudes, about five hundred (500) armed men, rampaged along the main streets of Marawi and swiftly occupied strategic positions throughout the city. Snipers positioned themselves atop buildings and began shooting at government troops. The ISIS-linked local rebel groups were also equipped with rocket-propelled grenades ("RPG") and seemingly limitless ammunition for high-powered assault rifles.
>
> . . . . . .
>
> 34. In their rampage, the rebel groups brandished the black ISIS flag and hoisted it in the locations that they occupied. An ISIS flag was recovered by the 51st Infrantry Battalion in the vicinity of the Amai Pakpak Medical Center, where the troops had an armed encounter with the rebels. Another ISIS flag was captured by the 103rd Brigade in Barangay Basak, which was under the control of the rebel groups.[278]

Further, the act of flying the ISIS flag was interpreted, in Proclamation No. 216, as an overt act of attempting to remove part of Mindanao from the allegiance to the Philippine Government:

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[276] *Id*. at 8.

[277] *Id*. at 5-6.

[278] *Id*. at 12-13.

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[.]

To assess the sufficiency of the factual basis for finding that rebellion exists in Mindanao, it is essential to contextualize the acts supposedly suggestive of rebellion, in relation to the culture of the people purported to have rebelled.

This Court must consider, who are Isnilon Hapilon and the Maute brothers? What is their relationship to ISIS? Are the ideologies of Hapilon, the Maute brothers, and ISIS compatible? What is their relationship to the people of Marawi? What is the history of armed conflict within Mindanao?

Ignoring the cultural context will render this Court vulnerable to accepting any narrative, no matter how far-fetched. A set of facts which should be easily recognized as unrelated to rebellion may be linked together to craft a tale of rebellion which is convincing only to those unfamiliar with the factual background in which the story is set. Blindly accepting a possibly far-fetched narrative of what transpired in Marawi leading up to and including the events of May 23, 2017 and ignoring the cultural context will have its own consequences. The public will accept this far-fetched narrative as reasonable or the truth, when it could be nothing but "fake news." In turn, the government may be inadvertently doing a service for Maute Group and ISIS projecting them as bigger than what they really are.

It must be understood that there is no single homogenous monolithic Islam. There are many fundamental differences in beliefs and practices between and among Muslims. The ISIS brand of Islam is unabashedly medieval:

Virtually every major decision and law promulgated by the Islamic State adheres to what it calls, in its press and pronouncements, and on its billboards, license plates, stationery, and coins, "the Prophetic methodology," which means following the prophecy and example of Muhammad, in punctilious detail.[279]

ISIS have been described as following Salafi-jihadis. For Salafists, the Quran is a direct and literal instruction from God:

Salafis encourage a strict constructionist reading of the Quranic verses and prophetic traditions and downplay the role of human interpretive capacity and extratextual rationality . . .

Contemporary Salafism makes claims concerning the permissibility and necessity of *takfir* (declaring a Muslim to be outside the creed, the equivalent of excommunication in Catholicism). Salafis believe Muslims can be judged to have committed major transgressions that put them outside the Islamic faith . . .

. . . . . .

The issue of *takfir* has become relevant because many jihadi Salafis today argue that existing Muslim regimes rule according to secular laws. Thus, because they violate God's sovereignty, they no longer can be considered Muslim. Consequently, it is permissible to reject them and rebel against them until they repent and apply Islamic law or are removed from power. Many jihadi Salafis declare democratic regimes to be un-Islamic because sovereignty is vested in human beings and popular will, not God and his divine will . . . *Takfir* also is invoked against any person working for the "apostate" regimes or the occupation, including police and security services, translators, manual workers, and anyone giving aid or comfort to the occupiers.[280]

Thus, ISIS takes the position that many "Muslims" are marked for death as apostates, having done acts that remove them from Islam:

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[279] Graeme Wood, *What ISIS Really Wants*, THE ATLANTIC, March 2015 <https://www.theatlantic.com/magazine/archive/2015/03/what-isis-really-wants/384980/> (last accessed July 3, 2017).

[280] HAFEZ, MOHAMMED M., *SUICIDE BOMBERS IN IRAQ: THE STRATEGY AND IDEOLOGY OF MARTYRDOM*, pp. 68-70.

These include, in certain cases, selling alcohol or drugs, wearing Western clothes or shaving one's beard, voting in an election — even for a Muslim candidate — and being lax about calling other people apostates. Being a Shiite, as most Iraqi Arabs are, meets the standard as well, because the Islamic State regards Shiism as innovation, and to innovate on the Koran is to deny its initial perfection . . . This means roughly 200 million Shia are marked for death. So too are the heads of state of every Muslim country, who have elevated man-made law above Sharia by running for office or enforcing laws not made by God.

Following *takfiri* doctrine, the Islamic State is committed to purifying the world by killing vast numbers of people . . . Muslim "apostates" are the most common victims. Exempted from automatic execution, it appears, are Christians who do not resist their new government.

. . . . . .

Leaders of the Islamic State have taken emulation of Muhammad as strict duty, and have revived traditions that have been dormant for hundreds of years. "What's striking about them is not just the literalism, but also the seriousness with which they read these texts," [Princeton scholar Bernard Haykel, the leading expert on ISIS theology] said.[281]

ISIS is extremely and fundamentally ideological and Muslims whose practices are inconsistent with ISIS' are apostates.

In contrast, the Maute Group began as a private militia, known primarily for their extortion activities. It was founded by scions of a political clan who regularly fielded candidates for local elections. It was only in 2015 that the group pledged allegiance to ISIS.[282] The ASG-Basilan, which is a faction of the Abu Sayyaf Group, also used to engage in kidnappings and extortion until it declared its allegiance to ISIS. Rather than being bound by ideology, its members are:

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[281] Graeme Wood, *What ISIS Really Wants*, THE ATLANTIC, March 2015 <https://www.theatlantic.com/magazine/archive/2015/03/what-isis-really-wants/384980/> (last accessed July 3, 2017).

[282] Franco, *J.*, *The Maute Group - New Vanguard of IS in Southeast Asia*, RSIS COMMENTARY (2017).

[B]ound together by ethnicity; family ties; loyalty to the leadership; and a strong desire for revenge, given the number of their relatives killed by police and military. Many children of 'martyrs', referred to as *ajang-ajang*(children) or *anak iluh* (orphans), are reported to be among the most militant.[283]

Anyone can pledge allegiance to ISIS. But this pledge does not imply any reciprocity or support from ISIS itself. Thus there are ISIS inspired groups wanting to affiliate but their oaths of affiliation may only be just that. Logistical support from ISIS now bearing the brunt of a multinational assault in Iraq and Syria may not be that forthcoming.

Moreover, among the core beliefs and driving forces of ISIS is that they will bring about the apocalypse:

In fact, much of what the group does looks nonsensical except in light of a sincere, carefully considered commitment to returning civilization to a seventh-century legal environment, and ultimately to bringing about the apocalypse.

. . . . . .

[T]he Islamic State's immediate founding fathers . . . saw signs of the end times everywhere. They were anticipating, within a year, the arrival of . . . a messianic figure destined to lead the Muslims to victory before the end of the world . . .

. . . . . .

Now that it has taken Dabiq, the Islamic State awaits the arrival of an enemy army there, whose defeat will initiate the countdown to the apocalypse. Western media frequently miss references to Dabiq in the Islamic State's videos, and focus instead on lurid scenes of beheading . . .[284]

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[283] Institute for Policy Analysis of Conflict, *Pro-Isis Groups in Mindanao and their Links to Indonesia and Malaysia*<http://file.understandingconflict.org/file/2016/10/IPAC_Report_33.pdf> 2 (last accessed June 30, 2017).

[284] Graeme Wood, *What ISIS Really Wants*, THE ATLANTIC, March 2015 <https://www.theatlantic.com/magazine/archive/2015/03/what-isis-really-wants/384980/> (last accessed July 3, 2017).

ISIS ideology, as salafi-jihadis, is fundamentally nihilistic and apocalyptic, and if properly lived by its alleged adherents, it would naturally alienate the Muslim population in many areas in Mindanao.

It bears noting that ISIS leaders consider "emulation of Muhammad as strict duty." They are therefore relentlessly Koranic. However, Hapilon was not even a fluent speaker of Arabic at the time he was supposedly recognized as *emir* of ISIS forces in the Philippines. His religious knowledge was likewise reported to be limited.[285] His allegiance to ISIS is conjectured to be motivated by his desire to be part of a Middle Eastern organization, as he "has always liked anything that smelled foreign, especially anything from the Middle East."[286]

Among the overt acts supposedly done by Hapilon to show his relationship with ISIS, as well as the relationship of the ISIS-linked rebel groups with ISIS, was a "symbolic *hijra*":

15. On December 31, 2016, Hapilon and about thirty (30) of his followers, including eight (8) foreign terrorists, were surveilled in Lanao del Sur. According to military intelligence, Hapilon performed a symbolic *hijra* or pilgrimage to unite with the ISIS-linked groups in mainland Mindanao. This was geared towards realizing the five (5)-step process of establishing a *wilayah*, which are: *first*, the pledging of allegiance to the Islamic State; *second*, the unification of all terrorist groups who have given *bay'ah* or their pledge of allegiance; *third*, the holding of consultations to nominate a *wali* or a governor of a province; *fourth*, the achievement of consolidation for the caliphate through the conduct of widespread atrocities and uprisings all across Mindanao; and *finally*, the presentation of all of these to the ISIS leadership for approval or recognition.[287]

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[285] Institute for Policy Analysis of Conflict, *Pro-Isis Groups in Mindanao and their Links to Indonesia and Malaysia*<http://file.understandingconflict.org/file/2016/10/IPAC_Report_33.pdf> 7 (last accessed June 30, 2017).

[286] Institute for Policy Analysis of Conflict, *Pro-Isis Groups in Mindanao and their Links to Indonesia and Malaysia*<http://file.understandingconflict.org/file/2016/10/IPAC_Report_33.pdf> 4 (last accessed June 30, 2017).

[287] OSG Memorandum, p. 7.

The OSG Memorandum, in turn, cites *Hijra Before Isis*,[288] which discusses the history of *hijrah* in Islam:

> In order to disseminate their views to a wider constituency the Islamic State began in 2014 publishing an English-language magazine called *Dabiq*. The magazine is produced in glossy format with a colorful layout and careful design. Judging from the flawless English of every article, the authors (all of whom are anonymous) are native English speakers. *Dabiq's* third issue, **dedicated to *hijra*, calls on Muslims to migrate to Syria and participate in the creation of the Islamic State** . . .
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> . . . . . .
>
> Although the third issue of *Dabiq* opens and closes with attacks on US foreign policies, the core of this issue is its seven-part case for why Muslim believers must perform *hijra*. Mindful of its English readership, the magazine contrasts *hijra*, a practice that prioritizes piety over pleasure, to the consumerist orientation of American society. One chapter, entitled "Modern Day Slavery" notes that the "modern day slavery of employment, work hours, wages . . . leaves the Muslim in a constant feeling of subjugation to a kafir [infidel] master." In order to overcome the servitude that is part and parcel of everyday life in industrialized societies, Muslims must migrate to the new Caliphate, the authors argue, where they can live and work under Muslim masters. In this new Caliphate, "there is no life without jihad. And there is no jihad without hijrah." As if to reinforce that *hijra* never ends, the third issue concludes with a citation from the *hadith*, the storehouse of sacred sayings that is a major source of authority in Islamic law: "there will be hijrah after hijrah."
>
> Just as, according to the theologians of ISIS, there will be *hijra* after *hijra*, so too was there *hijra* long before its violent reconfiguration by ISIS. *Hijra* marks the beginning of Islam as a religion, when Muhammad and his followers migrated from Mecca to Medina in 622 in order to preserve their community. The migrants knew that, so long as they continued to reside in Mecca, they would [be] hated by local non-Muslims, and have reason to fear for their lives. Muhammad and his followers were invited to resettle in Medina at just the right moment.

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[288] Rebecca Gould, *Hijra Before ISIS*, THE MONTREAL REVIEW (2015), <http://www.themontrealreview.com/2009/Hijra-before-ISIS.php> (last accessed July 3, 2017).

In addition to signifying the general obligation to migrate, *hijra* refers to the Prophet's departure for Medina. Accordingly, it stands for the beginning of the Islamic calendar. In keeping with this beginning, Muslims are encouraged to migrate to lands under Muslim rule when migration will strengthen the community of faith. The Prophet's *hijra* is a case in point. Against his will, Muhammad migrated in order for Islam to have a stable base and for Muslims to have freedom of worship. With his migration, *hijra* became relevant in perpetuity to all believers.

After the migration to Medina, Islam acquired a political foundation. While Islam became a religion of the community as well as of the individual believer, *hijra* became a story through which Muslims remembered their beginnings. *Hijra* acquired new life in early modernity, with the systematic expulsions of Muslims, first from Islamic Spain in 1492 (the same year that Columbus discovered America), and later from colonial empires that wanted Muslim lands without Muslims living there. These later expulsions—from Spain and Russia especially—changed the meaning of *hijra* in Muslim cultural memory. The concept became inflected not just by the pressure to migrate, as during Muhammad's lifetime, but by an ultimatum from the state: leave or you will be slaughtered.

Although the Prophet's *hijra* is not narrated in the Quran, this sacred book is structured around this event in that it is divided into revelations Muhammad received in Medina and those he received while residing in Mecca. Wherever and whenever in Islamic history there are stories of despair and sacrifice, as well as of courage and of victory, *hijra* casts its shadow. *Hijra* is at once the penultimate origin story and a climactic denouement to any traumatic experience.

Hijra is an answer to a universal predicament faced by all believers—how to be pious in an impious world—and an attempt to move beyond the constraints of everyday life. *Hijra* reconciles the dictates of faith with the dictates of the state, and the impulses of the heart with external constraints. More than a physical action, *hijra* responds to the inability of our dreams to approximate our realities with the injunction to create a better world in lands under Muslim rule. At its most meaningful, *hijra* resolves the contradiction between the worlds we desire and the lives we live.

. . . . . .

The Islamic State's merger of violence with post-national consciousness is unique, and *hijra* is one of the most basic strategies

underlying its vision. *Hijra* as understood by the Islamic state marks a break in the fabric of time. It has the blessings of antiquity, but pursues a more cosmopolitan vision of human belonging than pre[-]modem precedents. It opposes the crass materialism of American culture, as well as the cowardly subservience of US client states in the Middle East. *Hijra* is compelling, persuasive, and uniquely able to solicit a profound sense of emotional belonging.

While its critique of American materialism goes some distance towards explaining the appeal of the Islamic State's rhetoric to prospective migrants, the conception of *hijra* that animates publications like *Dabiq* relies on a selective reordering [of] the historical record. The Islamic State's rhetoric, for example, suppresses the fact that, for most of Islamic history, Muslims have peacefully co-habited with Jews, Christians, Hindus, and Zoroastrians, and followers of many other non-Muslim religious creeds. Such co-habitation was enshrined into Islamic law, not always on equitable terms, but as a guiding assumption for over a thousand years. It has always been a presumption of normative Islamic law that Muslims must live alongside their non-Muslim counterparts. Only in modernity was the dream of an Islamic State populated exclusively by Muslims, and with all non-Muslims living under the threat of extermination, envisioned.

Meanwhile, *hijra* today is used in a very different sense: to signify migration for the purpose of jihad. This was not the normative meaning of *hijra* before modernity. ISIS' crude and contrived medievalism shows how mythical re[-]fashionings of the past can justify many forms of oppression in the present. The contemporary usages of hijra demonstrate how the past is mediated to the present. These usages reveal a rift between the past understood as an object of knowledge and a past which exists for the sake of the present.

In the sense evoked by millions of Muslims over the long course of Islamic history, *hijra* is the perpetual movement between memory and forgetting. *Hijra* is the turn to narrative to keep the past—and ourselves—alive in the present. *Hijra* is what we do when, like Palestinians and Chechens today, and like the Muslims and Jews of Islamic Spain, we have been dispossessed. *Hijra* is how we create homes for ourselves amidst the perpetual homelessness of exile and displacement that is part of the modern condition.

Hijra is useful to the Islamic State insofar as it encourages believers to cut their ties with the past. However, *hijra* has for most of its

history meant much more than the rejection of the past. As a form of storytelling, and an ethical mode of remembering, *hijra* holds the past accountable to the present. *Hijra* indexes distances between past and present, not their convergence. For all these reasons, *hijra* far exceeds and ultimately confounds ISIS' remit. *Hijra*'s appeal to memory, and its grounding in prior forms of life, are nuances that the ideologues of ISIS, in their uncritical appeals to the force of the new, would very much like us to forget.[289]

Later, the OSG mentions *hijrah* again, in support of its contention that the ISIS-linked rebel groups is attempting to "carv[e] out their own territory called a *wilayah*":[290]

206. On December 31, 2016, Hapilon and about thirty (30) of his followers from Basilan, including eight (8) foreign terrorists, were spotted in Lanao del Sur. Hapilon and his cohorts performed a symbolic *hijra*, which is the holy voyage of Prophet Muhammad and his followers from Mecca to Medina. The purpose of this is to further the unification goals for all rebel groups in Mindanao.[291]

Here, however, the OSG cites an intelligence report as basis for the assertion that the *hijrah* was intended to "further the unification goals for all rebel groups in Mindanao." But, the intelligence report says only:

Following the symbolic *hijra* of Isnilon HAPILON, the DAESH endorsed Amir for Southeast Asia, and his followers from Basilan to Butig, Lanao del Sur, he was joined by members of local terrorist groups such as the Maute and Maguid groups. These were done in a bid to unite DAESH-inspired groups in compliance with the five-step process of establishing a *wilayat* in Mindanao.[292]

The source relied upon by the OSG does not explain what a "symbolic *hijrah*" is and how it is a step in establishing an ISIS-recognized Islamic province within the Philippines. Rather, the

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[289] *Id*.

[290] OSG Memorandum, p. 69.

[291] *Id*. at 65.

[292] OSG Comment, Annex 3, p. 1.

OSG source[293] states that, in relation to *hijrah*, ISIS "calls on Muslims to **migrate to Syria**," which is the opposite of establishing an ISIS-recognized Islamic Province in the Philippines. Indeed, it appears that ISIS expressly focuses on bringing fighters to Syria:

> [M]ost jihadist groups' main concerns lie closer to home. That's especially true of the Islamic State, precisely because of its ideology. It sees enemies everywhere around it, and while its leadership wishes ill on the United States, the application of Sharia in the caliphate and the expansion to contiguous lands are paramount. Baghdadi has said as much directly: in November he told his Saudi agents to "deal with the *rafida* [Shia Muslims] first . . . then *al-Sulul* [Sunni Muslim supporters of the Saudi monarch] . . . before the crusaders and their bases."
>
> The foreign fighters (and their wives and children) have been travelling to the caliphate on one-way tickets: they want to live under true Sharia, and many want martyrdom. Doctrine, recall, requires believers to reside in the caliphate if it is at all possible for them to do so. One of the Islamic State's less bloody videos shows a group of jihadists burning their French, British, and Australian passports. This would be an eccentric act for someone intending to return to blow himself up in line at the Louvre or to hold another chocolate shop hostage in Sydney.
>
> A few "lone wolf" supporters of the Islamic State have attacked Western targets, and more attacks will come. But most of the attackers have been frustrated amateurs, unable to immigrate to the caliphate because of confiscated passports or other problems. Even if the Islamic State cheers these attacks — and it does in its propaganda — it hasn't yet planned and financed one.[294]

Using Arabic words like *hijra* without any attempt to explain it and naming it an overt act of establishing an Islamic province

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[293] Rebecca Gould, *Hijra Before ISIS*, THE MONTREAL REVIEW (2015), <http://www.themontrealreview.com/2009/Hijra-before-ISIS.php> (last accessed July 3, 2017).

[294] W Graeme Wood, *What ISIS Really Wants*, THE ATLANTIC, March 2015 <https://www.theatlantic.com/magazine/archive/2015/03/what-isis-really-wants/384980/> (last accessed July 3, 2017).

within the Philippines creates unnecessary ambiguity when what is needed is clarity. It is an act of othering and discourages even the attempt to understand. Such tactics make it all the more necessary for this Court to give proper attention to the culture being invoked to ensure that its interpretation of the facts presented is properly arrived at.

Just as there is no monolithic "Islam," the so-called ISIS-linked rebel groups are just as varied in their principles and ideologies or lack thereof. However, in the cultural phenomenon of "pintakasi," when an enemy enters a community, everyone in the community joins the fight. This common phenomenon resulted in the deaths of many government troops in a botched government operation now known as the Mamasapano Incident, which was an attempt to arrest a foreign terrorist. "Pintakasi" was discussed in a Senate Hearing on the Mamasapano Incident, as summarized in the Committee Report:

> Intelligence in the possession of the PNP prior to the launch of *Oplan Exodus* indicated that there were more than 1,000 hostile troops at or near the target area where Marwan and Usman were believed to be hiding. Yet the PNP-SAF deployed only 392 personnel for the entire operation where almost a quarter of them are positioned to guard the MSR that was so far away from the actual theatre of action.
>
> In addition, the PNP-SAF mission planners were informed of the possibility of a *pintakasi*, a practice common among Muslim armed groups where groups normally opposed to each other would come together and fight side by side against a common enemy or an intruding force, as described by ARMM Governor Mujiv Hataman ("Governor Hataman") in this testimony before the Committees. Governor Hataman described the bloody encounter as a case of *Pintakasi*, a jargon for collective work or *bayanihan*.[295]

Even assuming that the facts alleged to have occurred on May 23, 2017 are true, these facts may have been linked together, ignoring the cultural context, to create a false narrative by the storyteller.

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[295] Comm. Report No. 120, dated March 15, 2015, p. 50.

The facts presented show that there was, indeed, armed confrontation in Marawi City. However, this must be interpreted taking the context into consideration. Without this due consideration, this Court risks misreading the facts, reinforcing a false and dangerous narrative in the minds of the people, and acting as a platform for forces that thrive on image and terror magnified through news reports and social media.

XII

Taking the facts in their proper context, there may be acts of terrorism but not necessarily rebellion. The facts also establish that the Maute group are no more than terrorists who committed acts of violence in order to evade or resist arrest of their leaders.

Terrorism is a pre-meditated, politically-motivated violence perpetrated against non-combatant targets by sub-national groups or clandestine agents.[296] It is motivated by political, religious, or ideological beliefs and is intended to instill fear and to coerce or intimidate governments or societies in the pursuit of goals that are usually political or ideological.[297] Terrorists plan their attack to draw attention to their cause, thus, the mode and venue of attacks are deliberately chosen to generate the most publicity.[298]

The United Nations[299] defines terrorism as:

Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the

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[296] 22 U.S. Code Section 2656f (D)(2).

[297] United States Department of Defense, *DOD Dictionary of Military and Associated Terms* 238 (June 2017), <http://www.dtic.mil/doctrine/new_pubs/dictionary.pdf> (last accessed July 3, 2017).

[298] Francois Lopez, *If Publicity is the Oxygen of Terrorism — Why Do Terrorists Kill Journalists?*, 10 PERSPECTIVES ON TERRORISM, <http://www.terrorismanalysts.com/pt/index.php/pot/article/view/490/html> (last accessed on June 30, 2017)

[299] UN General Assembly Resolution 49/60, Measures to Eliminate International Terrorism (1994).

considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.

However, the United Nations member states still have not come to an agreement on a single definition of terrorism. The majority of definitions of terrorism have been written by government agencies, making them inherently biased as the government is deliberately excluded from the definition of terrorism.[300]

The concept of terrorism requires an objective element which is the use of serious violence against persons as a means of terrorist action.[301] The subjective element includes the motives and intention of the perpetrators.[302] The subjective element is traced back to the roots of terrorism in the French Revolution to create a climate of terror and fear within the population or parts of the population.[303] But with respect to the modern definition of terrorism, the element of fear and insecurity is only a sufficient subjective element but not a necessary requirement, implying that if the intention of intimidating the population is present, the intention of coercing the government is not a necessary additional requirement.[304]

On the other hand, rebellion is an act of armed resistance to an established government or leader. Conflicts between liberation movements and an established government present a unique form of conflict which would involve both guerrilla and regular armed warfare.[305] International law distinguishes between 3 categories

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[300] Arizona Department of Emergency and Military Affairs, *Various Definitions of Terrorism*, <https://dema.az.gov/sites/default/files/Publications/AR-Terrorism%20Definitions-BORUNDA.pdf> (last accessed July 3, 2017).

[301] Christian Walter, *Defining Terrorism in National and International Law* 5 (2003). <https://www.unodc.org/tldb/bibliography/Biblio_Terr_Def_Walter_2003.pdf>

[302] *Id*.

[303] *Id*.

[304] *Id*. at 6-7.

[305] Noelle Higgins, *The Application of International Humanitarian Law to Wars of National Liberation*, JOURNAL OF HUMANITARIAN ASSISTANCE 2 (2004).

or stages of challenges to established state authority, on an ascending scale, (1) rebellion, (2) insurgency, and (3) belligerency.[306]

Insurgency is of a more serious nature than rebellion in that some scholars are of the opinion that the conferring of the status as "insurgents" brings them out of the scope of municipal law and onto the international law forum.[307] Insurgency would constitute a civil disturbance which is usually confined to a limited area of the territory of the state and is supported by a minimum degree of organization.[308] Under the material field of application test, a dissident armed group can claim the status of insurgent only when it is under responsible command and exercises such control over a part of its territory as to enable it to carry out sustained and concerted military operations.[309]

Belligerency is the final category of a challenge to an established government recognized by international law.[310] The *Institut de Droit International*, in the Resolution on Insurrection adopted in 1900 laid down the necessary criteria for a state of belligerency to be recognized: (1) insurgents had occupied a certain part of the State territory, (2) established a government which exercised the rights inherent in sovereignty on that part of territory, and (3) if they conducted the hostilities by organized troops kept under military discipline and complying with the laws and customs of war.[311]

Article 134 of the Revised Penal Code defines rebellion:

[t]he crime of *rebellion or insurrection* is committed by rising publicly and taking arms against the government for the purpose of removing

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[306] *Id*. at 6.

[307] *Id*. at 7.

[308] *Id*. at 8.

[309] Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Art. 1 (1977).

[310] Noelle Higgins, *The Application of International Humanitarian Law to Wars of National Liberation*, JOURNAL OF HUMANITARIAN ASSISTANCE 9 (April 2004) <http://sites.tufts.edu/jha/files/2011/04/a132.pdf>

[311] *Id*.

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.[312]

The elements of rebellion can be summarized as follows:

*[F]*irst, that there be (a) *public uprising* and (b) *taking arms* against the government; *second*, that the purpose of the uprising or movement is either (a) to remove from the allegiance to said government or its laws (1) the territory of the Philippines or any part thereof; or (2) any body of land, naval or other armed forces; or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers or prerogatives.[313]

In contrast, the crime of terrorism has 3 elements, (1) the predicate crime committed, (2) the effect of the perpetration of the crime (to sow and create widespread and extraordinary fear), and (3) the purpose of which is to coerce the government to give in to an unlawful demand.

The difference between terrorists and rebels boils down to their intention. Terrorists use fear and violence to advance their agenda or ideology, which may or may not be political in nature. While rebels use violence as a form of strategy to obtain their goal of destabilizing or overthrowing the government in order to gain control over a part of or the entire national territory. If rebels succeed in overthrowing the government, then they install themselves as the ruling party and their status is legitimized.

Under Republic Act 9372, otherwise known as the Human Security Act of 2007, rebellion is punished as a form of terrorism:

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

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[312] REV. PEN. CODE, Art. 134.

[313] See Justice Angelina Sandoval-Guttierez' Dissenting Opinion in *Lacson v. Perez*, 410 Phil. 78, 123 (2001) [Per *J.* Melo, *En Banc*].

a. Article 122 (Piracy in General and Mutiny in the High Seas or in the Philippine Waters);
b. Article 134 (Rebellion or Insurrection);
c. Article 134-a (Coup d' Etat), including acts committed by private persons;
d. Article 248 (Murder);
e. Article 267 (Kidnapping and Serious Illegal Detention);
f. Article 324 (Crimes Involving Destruction), or under
g. Presidential Decree No. 1613 (The Law on Arson);
h. Republic Act No. 6969 (Toxic Substances and Hazardous Nuclear Waste Control Act of 1990);
i. Republic Act No. 6235 (Anti-Hijacking Law);
j. Presidential Decree No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974); and
k. Presidential Decree No. 1866, as amended (Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunitions, or Explosives)

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

In its broader sense, rebellion falls under terrorism because of its resort to violence, which in turn creates widespread fear and panic, to attain its goals of overthrowing the government. However, not all acts of terrorism can qualify as rebellion. Certainly, the acts of terrorism committed by the Maute Group and their allies, after the attempted service of warrants of arrests against their leaders and the disruption of their plans while trying to escape, is not rebellion in the context of Article 134 of the Revised Penal Code. It is certainly not the kind of rebellion that warrants martial law.

XIII

The danger of mischaracterizing the protagonists in the Marawi incident is that this Court will officially accord them with a status far from who they really are — common local criminals.

Rebellion is a political crime with the ultimate objective of overthrowing or replacing the current government. The acts comprising rebellion, no matter how violent or depraved they might be, are not considered separately from the crime of rebellion:

> In short, political crimes are those directly aimed against the political order, as well as such common crimes as may be committed to achieve a political purpose. The decisive factor is the intent or motive. If a crime usually regarded as common, like homicide, is perpetrated for the purpose of removing from the allegiance to the Government the territory of the Philippine Islands or any part thereof, then it becomes stripped of its "common" complexion, inasmuch as, being part and parcel of the crime of rebellion, the former acquires the political character of the latter.[314]

Enrile v. Amin[315] held that the crime of rebellion consists of many acts and described it as a vast movement of men and a complex net of intrigues and plots, including other acts committed in furtherance of the rebellion even when the crimes in themselves are deemed absorbed in the crime. Furthermore, *Enrile* posits that the theory of absorption in rebellion cases must not be confined to common crimes but also to offenses under special laws perpetrated in furtherance of the political offense.[316]

People v. Lovedioro[317] ruled that the elements of rebellion, including political motive, must be clearly alleged in the Information. Nonetheless, "[t]he burden of demonstrating political motive falls on the defense, motive, being a state of mind which the accused, better than any individual knows."[318]

Being a political crime, the law has adopted a relatively benign[319] attitude when it comes to rebellion. *People v. Hernandez*

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[314] *People v. Hernandez*, 99 Phil. 515, 535-536 (1956) [Per *J.* Concepcion, *En Banc*].

[315] 267 Phil. 603 (1990) [Per *J.* Gutierrez, Jr., *En Banc*].

[316] *Id.* at 610-611.

[317] 320 Phil. 481 (1995) [Per *J.* Kapunan, First Division].

[318] *Id.* at 489.

[319] *Id.*

remarked that the deliberate downgrading of the penalty or treatment of rebellion in the law can be chalked up to the recognition that rebels are usually created by "social and economic evils" in our society:

> Thus, the settled policy of our laws on rebellion, since the beginning of the century, has been one of decided leniency, in comparison with the laws enforce during the Spanish regime. Such policy has not suffered the slightest alteration. Although the Government has, for the past five or six years, adopted a more vigorous course of action in the apprehension of violators of said law and in their prosecution the established policy of the State, as regards the punishment of the culprits has remained unchanged since 1932. It is not for us to consider the merits and demerits of such policy. This falls within the province of the policy-making branch of the government[,] the Congress of the Philippines.[320]

Despite the law's benign attitude towards the local terrorist groups, by characterizing them as rebels, we risk giving the impression that what are mere sporadic or isolated acts of violence during peacetime, which are considered law enforcement problems, have been transformed to ***a non- international armed conflict covered under International Humanitarian Law***.[321]

International Humanitarian Law applies during an armed conflict. An armed conflict is defined as (1) any use of force or armed violence between States (international armed conflict), or (2) a protracted armed violence between governmental authorities and organized armed groups, or between such groups within that State (non-international armed conflict).[322]

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[320] *People v. Hernandez*, 99 Phil. 515, 549 (1956) [Per *J.* Concepcion, *En Banc*].

[321] *What is International Humanitarian Law?*, International Committee on Red Cross, <https://www.icrc.org/eng/assets/files/other/what_is_ihl.pdf> (last accessed July 3, 2017).

[322] Rep. Act No. 9851, Sec. 3 (c) provides:

> Section 3.
>
> . . . . . .

Rebellion may be considered (a) an international armed conflict if it is waged by a national liberation movement, (b) a non-international armed conflict if the fighting is protracted and it is committed by an organized armed group that has control of territory under Additional Protocol II, or (c) a law enforcement situation outside the contemplation of International Humanitarian Law if there is no armed conflict as defined by the Geneva Convention, and if the rebels are not members of an organized armed group, as defined by Additional Protocol II.

Under Additional Protocol II, organized armed groups are those that (a) are under a responsible command and (b) exercise such control over a part of their territory as to enable them to (c) carry out sustained and concerted military operations and to implement this Protocol.[323]

The situation in Mindanao is not one waged by a national liberation movement that would call into application the rules during an international armed conflict. At present, the Philippines is not occupied by a foreign invader or colonist; neither is it being run by a regime that seeks to persecute an entire race. The combatant status applies only during an international armed conflict. Because there is no international armed conflict here, those who take up arms against the government are not considered combatants. As a consequence, they are not immune for acts of war and do not have prisoner-of-war status.

(c) "Armed conflict" means any use of force or armed violence between States or a protracted armed violence between governmental authorities and organized armed groups or between such groups within that State: Provided, That such force or armed violence gives rise, or may give rise, to a situation to which the Geneva Conventions of 12 August 1949, including their common Article 3, apply. Armed conflict may be international, that is, between two (2) or more States, including belligerent occupation; or non international, that is, between governmental authorities and organized armed groups or between such groups within a state. It does not cover internal disturbances or tensions such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

[323] Additional Protocol II, Art. 1, par. 1.

The armed hostilities in Marawi, if at all, may be considered a non-international armed conflict if the Maute group falls under the category of "organized armed group" and if the fighting may be considered "protracted" under Additional Protocol II.

Assuming there is a non-international armed conflict, those who directly participate in hostilities in Mindanao are considered unlawful fighters, not combatants. As unlawful fighters, they are not immune from prosecution for their acts of war. They also do not enjoy prisoner-of-war status; they are merely war detainees.

Finally, if there is no protracted armed violence by an organized armed group, then the rebellion is an entirely law enforcement situation. Article 1(2) of Additional Protocol II states that situations of riots, internal disturbances and "isolated and sporadic acts" of violence are outside the concerns of International Humanitarian Laws.[324] When there is no armed conflict, there is only a law enforcement situation. The use of force is limited and the participants in the violence are liable for common crimes.

The terrorists responsible for the armed hostilities in Marawi cannot be considered rebels. It is true that they may have discussed the possibility of a caliphate. Yet, from all the evidence presented, they are incapable of actually holding territory long enough to govern. Their current intentions do not appear to be to establish a government in Marawi. In all the presentations of the respondents, it was clear that government was able to disrupt the terrorists and the hostilities that resulted were part of the defensive posture of those involved in the terror plot. The armed hostilities in Marawi are not the spark that would supposedly lead to conflagration and the burning down of the entirety of Mindanao due to rebellion.

The Maute Group are terrorists, pure and simple. They are not rebels within the constitutional meaning of the term, neither is there armed conflict as understood under International Humanitarian Law.

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[324] Rep. Act No. 9851, Sec. 3(c).

XIV

Declaring Proclamation No. 216 and related issuances as unconstitutional will not have an effect on Proclamation No. 55.

Although embodied in the same section, the calling out power of the President is in a different category from the power to proclaim martial law and suspend the privilege of the writ of *habeas corpus*.

Integrated Bar of the Philippines v. Zamora[325] classified the calling out power of the President as "no more than the maintenance of peace and order and promotion of the general welfare."[326]

The calling out power of the President can be activated to prevent or suppress lawless violence, invasion, or rebellion. Among the three Commander-in-Chief powers mentioned in Article VII, Section 18, the calling out power is the most benign compared to the suspension of the privilege of the writ of *habeas corpus* and the proclamation of martial law.[327]

Additionally, unlike the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus* which must concur with the twin requirements of actual invasion or rebellion and necessity of public safety, no such conditions are attached to the President's calling out power. The only requirement imposed by the Constitution is that "whenever it becomes necessary [the President] may call out such armed forces to prevent or suppress lawless violence, invasion, or rebellion."[328]

Integrated Bar of the Philippines[329] emphasized that the full discretionary power of the President to call out the armed forces

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[325] 392 Phil. 618 (2000) [Per *J*. Kapunan, *En Banc*].

[326] *Id*. at 636.

[327] *Id*. at 643.

[328] CONST., Art. VII, Sec. 18.

[329] 392 Phil. 618 (2000) [Per *J*. Kapunan, *En Banc*].

is evident in the President's power as Commander-in-Chief under Article VII, Section 18. The lack of Legislative and Judicial review of the calling out power likewise reinforces the President's full discretion when it comes to calling out the armed forces to maintain peace and order.[330]

Clearly, this Court's ruling on the petitions questioning Proclamation No. 216 will not affect or will have no bearing on Proclamation No. 55 or the declaration of a state of national emergency on account of lawless violence in Mindanao. The calling out order of the President pursuant to Proclamation No. 55 will still be in effect even if this Court ends up striking down Proclamation No. 216 due to lack of constitutionality.

Declaring Proclamation No. 216 as unconstitutional therefore will have no effect on the ongoing military operations in the remaining barangays in Marawi. Neither will it have any effect on military operations ongoing in other parts of the country including Mindanao as a result of Proclamation No. 55.

XVI

The words we choose can have violent consequences.

Characterizing or labeling events on the basis of the categories that law provides is quintessentially a legal act. It is not a power granted to the President alone even as Commander-in-Chief. It is the power wielded by this country's judiciary with finality. Through that power entrusted to us by the sovereign Filipino people, we temper the potentials of force. We ensure the protection of rights which embed our societies' values; the same values, which the terrorists may want us to deny or destroy.

I acknowledge the hostilities in Marawi and the valiant efforts of our troops to quell the violence. I acknowledge the huge pain and sacrifice suffered by many of our citizens as they bear the brunt of violent confrontations. I share the suffering of those who, in moments of callous reaction by members of a majority of our society influenced by a postcolonial culture of intolerance,

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[330] *Id*. at 640-642.

have to live through the stigma of undeserved stereotypes. To be Muslim has never meant complicity with the misguided acts of fanatics who appropriate religion for irrational selfish ends.

With due respect to my colleagues, I cannot join them in their acceptance of the President's categorization of the events in Marawi as equivalent to the rebellion mentioned in Article VII, Section 18. In conscience, I do not see the situation as providing for the kind of necessity for the imposition of martial law in Marawi, as well as throughout the entire Mindanao.

Rather, I read the situation as amounting to acts of terrorism, which should be addressed in a decisive but more precise manner. The military can quell the violence. It can disrupt many of the planned atrocities that may yet to come. It can do so as it had on many occasions in the past with the current legal arsenal that it has.

In my view, respondents have failed to show what additional legal powers will be added by martial law except perhaps to potentially put on the shoulders of the Armed Forces of the Philippines the responsibilities and burdens of the entire civilian government over the entire Mindanao region. I know the Armed Forces of the Philippines to be more professional than this narrative.

I honor the sacrifices of many by calling our enemy with their proper names: terrorists capable of committing atrocious acts. They are not rebels desirous of a viable political alternative that can be accepted by any of our societies. With their plans disrupted and with their bankrupt fanaticism for a nihilist apocalypse, they are reduced to a fighting force violently trying to escape. They are not a rebel group that can hope to achieve and hold any ground.

As terrorists, they should be rooted out through the partnership produced by the eyes and ears of our communities and the swift decisive hand of our coercive forces. They cannot be found and kept in check by a false sense of security created by the narrative of martial law.

History teaches us that to rely on the iron fist of an authoritarian backed up by the police and the military to solve our deep-

seated social problems that spawn terrorism is fallacy. The ghost of Marcos' Martial Law lives within the words of our Constitution and rightly so. That ghost must be exorcised with passion by this Court whenever its resemblance reappears.

Never again should this court allow itself to step aside when the powerful invoke vague powers that feed on fear but could potentially undermine our most cherished rights. Never again should we fall victim to a false narrative that a vague declaration of martial law is good for us no matter the circumstances. We should have the courage to never again clothe authoritarianism in any disguise with the mantle of constitutionality.

The extremist views of religious fanatics will never take hold in our communities for so long as they enjoy the fundamental rights guaranteed by our constitution. There will be no radicals for so long as our government is open and tolerant of the activism of others who demand a more egalitarian, tolerant and socially just society.

We all need to fight the long war against terrorism. This needs patience, community participation, precision, and a sophisticated strategy that respects rights, and at the same time uses force decisively at the right time and in the right way. The terrorist wins when we suspend all that we believe in. The terrorist wins when we replace social justice with disempowering authoritarianism.

We should temper our fears with reason. Otherwise, we succumb to the effects of the weapons of terror. We should dissent — even resist — when offered the farce that martial law is necessary because it is only an exclamation point.

For these reasons, I dissent.

ACCORDINGLY, I vote to grant the Petitions. Proclamation No. 216 of May 23 2017, General Order No. 1 of 2017, and all the issuances related to these Presidential Issuances are unconstitutional.

DISSENTING OPINION

CAGUIOA, *J.*:

> "*In any civilized society the most important task is achieving a proper balance between freedom and order.*"[1]

Petitioners come to the Court for the determination of the sufficiency of the factual basis of the May 23, 2017 declaration of martial law and suspension of the privilege of the writ of *habeas corpus* via Proclamation No. 216.[2]

The sufficiency of factual basis for the declaration of martial law or suspension of the privilege of the writ is a justiciable question by Section 18's express provision.

At the outset, it cannot be gainsaid — indeed, it is now hornbook — that the constitutionality of the declaration of martial law and suspension of the privilege of the writ is no longer a political question within the operation of the 1987 Constitution. No attempt should be countenanced to return to that time when such a grave constitutional question affecting the workings of government and the enjoyment by the people of their civil liberties is placed beyond the ambit of judicial scrutiny as long as the Court remains faithful to the Constitution.

The declaration of martial law and suspension of the privilege of the writ are justiciable questions by express authorization of the third paragraph of Section 18, Article VII of the Constitution.

The language of the provision and the intent of the framers[3] clearly foreclose any argument of non-justiciability.

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[1] William H. Rehnquist, *All the Laws But One: Civil Liberties in Wartime* (1998) at p. 222.

[2] Proclamation No. 216, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao."

[3] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 470 (1986).

Moreover, the question before the Court does not squarely fall within any of the formulations of a political question.[4] Concretely, even as the first paragraph of Section 18 commits to the Executive the issue of the declaration of martial law and suspension of the privilege of the writ, the third paragraph commits the review to the Court and provides the standards to use therein — unmistakably carving out the question from those that are political in nature. Clearly, no full discretionary authority on the part of the Executive was granted by the Constitution in the declaration of martial law and suspension of the privilege of the writ. As well, insofar as Section 18 lays down the mechanics of government in times of emergency, it is precisely the province of the Court to say what the law is.

The power of the Executive to declare martial law and to suspend the privilege of the writ, and the review by the Court of the sufficiency of the factual basis thereof, are bounded by Article VII, Section 18 of the Constitution:

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

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[4] As formulated in *Baker v. Carr*, 369 U.S. 186 (1962) and *In re McConaughy*, 119 NW, 408 (1909) as adopted in this jurisdiction as early as *Tanada v. Cuenca* (1957), and *Casibang v. Aquino* (1979), and *Marcos v. Manglapus* (1989).

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

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

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

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

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

The third paragraph of Section 18 is a grant of jurisdiction to the Court.

Jurisdiction is conferred by the Constitution and by law. Article VII, Section 18 of the Constitution positively grants the Court the power to review the sufficiency of the factual basis of the declaration of martial law and suspension of the privilege of the writ; hence, there is absolutely no need to find another textual anchor for the exercise of jurisdiction by the Court apart from Section 18's express conferment. The Court has never attempted to draw distinctions or formulae to determine whether a provision that grants authority grants jurisdiction, or merely lays the basis for the exercise of jurisdiction. To my mind, this is a distinction — semantic or philosophical — that is simply misplaced in this exercise.

Thus, I agree with the *ponencia* that Section 18 contemplates a *sui generis* proceeding set into motion by a petition of any citizen. Plainly, Section 18 is a neutral and straightforward fact-checking mechanism, shorn of any political color whatsoever,

by which any citizen can invoke the aid of the Court — an independent and apolitical branch of government — to determine the necessity of the Executive's declaration of martial law or suspension of the privilege of the writ based on the facts obtaining.

Given its *sui generis* nature, the scope of a Section 18 petition and the workings of the Court's review cannot be limited by comparison to other cases over which the Court exercises jurisdiction — primarily, petitions for *certiorari* under Rule 65 of the Rules of Court and Article VIII, Section 1.

The review under the third paragraph of Section 18 is mandatory.

It has been proposed that the review is discretionary upon the Court, given the use of the word "may," and further supported by arguments that an interpretation that the review is mandatory will lead to absurdity, to clogging of the Court's dockets, and that the 30-day period to decide Section 18 petitions are taxing for the Court and executive officials.

The argument is untenable — it reduces the provision to mere lip service if the Court can shirk its duty by exercising its discretion in the manner so suggested. While the word "may" is usually construed as directory, it does not invariably mean that it cannot be construed as mandatory when it is in this sense that the statute (in this case, the Constitution), construed as a whole, can accomplish its intended effect.[5]

I submit that the only reasonable interpretation within the context and object of the Constitution is that the review is

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[5] Crawford, Statutory Construction, page 104: "A statute, or one or more of its provisions, may be either mandatory or directory. While usually in order to ascertain whether a statute is mandatory or directory, one must apply the rules relating to the construction of statutes; yet it may be stated, as general rule, that those whose provisions relate to the essence of the thing to be performed or to matters of substance, are mandatory, and those which do not relate to the essence and whose compliance is merely a matter of convenience rather than of substance, are directory."

mandatory. Keeping in mind that "under our constitutional scheme, the Supreme Court is the ultimate guardian of the Constitution, particularly of the allocation of powers, the guarantee of individual liberties and the assurance of the people's sovereignty,"[6] the Court's review rises to the level of a public duty owed by the Court to the sovereign people — to determine, independent of the political branches of government, the sufficiency of the factual basis, and to provide the Executive the venue to inform the public.

A Section 18 proceeding filed by any citizen is sui generis, and entails a factual and legal review.

I concur with the *ponencia* that a Section 18 petition may be filed by any citizen. The Court, as intimated above, should not add any qualification for the enjoyment of this clear and evident right apart from what is stated in the provision, especially when the intent of the framers was to clearly relax the question of standing.[7]

In determining the nature and requirements of the Court's review, guidance can be had from the language of the provision and the intent of the framers. Both show that the review contemplated is both factual and legal in nature. As the framers discussed:

> MR. NATIVIDAD. And the Commissioner said that in case of subversion, sedition or imminent danger of rebellion or invasion, that would be the *causus beli* for the suspension of the privilege of the writ of *habeas corpus*. But I wonder whether or not the Commissioner would consider intelligence reports of military officers as evidence of imminent danger of rebellion or invasion because this is usually the evidence presented.
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> MR. PADILLA. Yes, as credible evidence, especially if they are based on actual reports and investigation of facts that might soon happen.

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[6] *Dueñas, Jr. v. HRET*, 610 Phil. 730, 742 (2009).

[7] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 386, 392 (1986).

MR. NATIVIDAD. Then the difficulty here is, of course, that the authors and the witnesses in intelligence reports may not be forthcoming under the rule of classified evidence or documents. Does the Commissioner still accept that as evidence?

MR. PADILLA. It is for the President as commander-in-chief of the Armed Forces to appraise these reports and be satisfied that the public safety demands the suspension of the writ. After all, **this can also be raised before the Supreme Court as in the declaration of martial law because it will no longer be, as the former Solicitor General always contended, a political issue. It becomes now a justiciable issue. The Supreme Court may even investigate the factual background in support of the suspension of the writ or the declaration of martial law**.[8] (Emphasis supplied)

The constitutional mandate to review, as worded and intended, necessarily requires the Court to delve into both factual and legal issues indispensable to the final determination of the "sufficiency of the factual basis" of the declaration of martial law and suspension of the privilege of the writ. This cannot be resisted by the mere expediency of relying on the rule that the Court is not a trier of facts; indeed, even when it sits as an appellate court, the Court has recognized exceptions when examination of evidence and determination of questions of fact are proper.[9]

Section 18, as a neutral and straightforward fact-checking mechanism, 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.

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[8] *Id*. at 470.

[9] *Delos Reyes Vda. Del Prado v. People*, 685 Phil. 149, 161 (2012); *Sacay v. Sandiganbayan*, 226 Phil. 496, 511-512 (1986).

Viewed in this light, the government is called upon to embrace this mechanism because it provides the Executive yet another opportunity to lay before the sovereign people its reasons for the declaration of martial law or suspension of the privilege of the writ, if it had not already done so. This requires the Executive to meaningfully take part in this mechanism in a manner that breathes life to the mandate of the Constitution. In the same manner, the Court is also mandated to embrace this fact-checking mechanism, and not find reasons of avoidance by, for example, resorting to procedural niceties.

Under Section 18, the Executive has the burden of proof by substantial evidence.

Apropos to the question of the burden of proof and threshold of evidence under a Section 18 petition, I submit that fixing the burden of proof upon the petitioners in a neutral and straightforward fact-checking mechanism is egregious error because:

First, there is nothing in the language of Section 18 or the deliberations to show that it fixes or was intended to fix the burden of proof upon the citizen applying to the Court for review;

Second, a Section 18 petition is neither a civil action nor akin to one, but is in the nature of an application to the Court to determine the sufficiency of the factual basis. It is not required to carry a concurrent claim that there was lack or insufficiency of factual basis. Hence, the fixing of burden of proof to the citizen constitutes undue burden to prove a claim (positive or negative) when no claim was necessarily made;

Third and most important, considering that the declaration of martial law and suspension of the privilege of the writ can only be validly made upon the concurrence of the requirements in the Constitution, the very act of declaration of martial law or suspension of the privilege of the writ already constitutes a positive assertion by the Executive that the constitutional requirements have been met — one which it is in the best position to substantiate. To require the citizen to prove a lack or insufficiency of factual basis is an undue shifting of the burden of proof that is clearly not the intendment of the framers.

In his dissenting opinion in *Fortun v. Macapagal-Arroyo*[10] where former President Macapagal-Arroyo's proclamation of martial law in Maguindanao was questioned, Senior Associate Justice Antonio T. Carpio opined that probable cause to believe the existence of either invasion or rebellion satisfies the standard of proof for a valid declaration of martial law and suspension of the writ. He explained:

> Probable cause, basically premised on common sense, is the most reasonable, most practical, and most expedient standard by which the President can fully ascertain the existence or non-existence of rebellion, necessary for a declaration of martial law or suspension of the writ. Therefore, lacking probable cause of the existence of rebellion, a declaration of martial law or suspension of the writ is without any basis and thus, unconstitutional.
>
> The requirement of probable cause for the declaration of martial law or suspension of the writ is consistent with Section 18, Article VII of the Constitution. It is only upon the existence of probable cause that a person can be "judicially charged" under the last two paragraphs of Section 18, Article VII, to wit:
>
> > The suspension of the privilege of the writ of *habeas corpus* shall apply only to persons **judicially charged** for rebellion or offenses inherent in, or directly connected with, invasion.
> >
> > During the suspension of the privilege of the writ of *habeas corpus*, any person thus arrested or detained shall be **judicially charged** within three days, otherwise he shall be released.[11] (Emphasis supplied)

I concur with the *ponencia's* holding that the threshold of evidence for the requirement of rebellion or invasion is probable cause, consistent with Justice Carpio's dissenting opinion in *Fortun*. It is sufficient for the Executive to show that at the time of the declaration of martial law or suspension of the privilege of the writ, there "[existed] such facts and circumstances

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[10] 684 Phil. 526 (2012).

[11] *Id*. at 598.

that would lead a reasonably discreet and prudent person to believe that an offense [rebellion] has been committed."[12]

This standard of proof upon the Executive confirms my position that the burden of proof is originally and continually borne by the Executive throughout the entire fact-checking proceeding, for clearly, the petitioning citizen cannot be expected to prove or disprove the factual basis that is within the exclusive knowledge only of the Executive.

For truly, the Executive does not receive evidence in determining the existence of actual rebellion — only such facts and circumstances that would lead to the belief that there is actual rebellion. However, to satisfy the Court of the sufficiency of the factual basis of the declaration of martial law and the suspension of the privilege of the writ (i.e. that indeed, probable cause to believe that actual rebellion existed at the time of the proclamation, and that public safety required it), the Executive must be able to present substantial evidence tending to show both requirements.

Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.[13]

To me, the requirement of "sufficiency" in a Section 18 proceeding is analogous to the "substantial evidence" standard in administrative fact-finding. The Executive needs to reveal so much of its factual basis for the declaration of martial law and suspension of the privilege of the writ so that it produces in the mind of the Court the conclusion that the declaration and suspension meets the requirements of the Constitution. Otherwise, the Court's finding of sufficiency becomes anchored upon bare allegations, or silence. In any proceeding, mere allegation or claim is not evidence; neither is it equivalent to proof.[14]

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[12] *Ho v. People*, 345 Phil. 597, 608 (1997), citing *Allado v. Diokno*, 302 Phil. 213 (1994).

[13] *Miro v. Vda. De Erederos*, 721 Phil. 772, 787 and 788-789 (2013).

[14] See *Sadhwani v. Court of Appeals*, 346 Phil. 54, 67 (1997).

For the same reason, I submit that presumption of regularity or constitutionality cannot be relied upon, neither by the Executive nor the Court, to declare that there is sufficient factual basis for the declaration of martial law or the suspension of the writ. The presumption disposes of the need to present evidence — which is totally opposite to the fact-checking exercise of Section 18; to be sure, reliance on the presumption in the face of an express constitutional requirement amounts to a failure by the Executive to show sufficient factual basis, and judicial rubberstamping on the part of the Court.

A Section 18 review is a test of sufficiency and not arbitrariness.

The *ponencia* stated that one of the functions of Section 18 is to constitutionalize the holding in *Lansang v. Garcia*,[15] a case questioning the suspension of the privilege of the writ. In *Lansang*, the Court inquired into the **existence** of the factual bases of the proclamation to determine the constitutional sufficiency thereof and applied arbitrariness as a standard of review. It explained:

> Article VII of the Constitution vests in the Executive the power to suspend the privilege of the writ of *habeas corpus* under specified conditions. Pursuant to the principle of separation of powers underlying our system of government, the Executive is *supreme* within his own sphere. However, the separation of powers, under the Constitution, is not absolute. What is more, it goes hand in hand with the system of checks and balances, under which the Executive is supreme, as regards the suspension of the privilege, but only *if* and *when* he acts *within* the sphere allotted to him by the Basic Law, and the authority to determine whether or not he has so acted is vested in the Judicial Department, which, *in this respect*, is, in turn, constitutionally *supreme*.
>
> In the exercise of such authority, the function of the Court is merely to *check* — not to *supplant* — the Executive, or to *ascertain merely whether he has gone beyond* the constitutional limits of his jurisdiction, *not to exercise the power vested in him* or to determine the wisdom of his act. To be sure, the power of the Court to determine

[15] 149 Phil. 547 (1971).

the validity of the contested proclamation is far from being identical to, or even comparable with, its power over ordinary civil or criminal cases elevated thereto by ordinary appeal from inferior courts, in which cases the appellate court has *all* of the powers of the court of origin.

Under the principle of separation of powers and the system of checks and balances, the judicial authority to review decisions of administrative bodies or agencies is much more limited, as regards findings of fact made in said decisions. Under the English law, the reviewing court determines *only* whether there is *some evidentiary basis* for the contested administrative finding; *no quantitative* examination of the supporting evidence is undertaken. The administrative finding can be interfered with *only* if there is *no* evidence whatsoever in support thereof, and said finding is, accordingly, arbitrary, capricious and obviously unauthorized. This view has been adopted by some American courts. It has, likewise, been adhered to in a number of Philippine cases. Other cases, in *both* jurisdictions, have applied the "substantial evidence" rule, which has been construed to mean "more than a mere scintilla" or "relevant evidence as a reasonable mind might accept as adequate to support a conclusion," even if other minds equally reasonable might conceivably opine otherwise.

Manifestly, however, this approach refers to the review of administrative determinations involving the exercise of quasi-judicial functions calling for or entailing the reception of evidence. It does not and cannot be applied, in its aforesaid form, in testing the validity of an act of Congress or of the Executive, such as the suspension of the privilege of the writ of *habeas corpus*, for, as a general rule, neither body takes evidence — in the sense in which the term is used in judicial proceedings — before enacting a legislation or suspending the writ. Referring to the test of the validity of a statute, the Supreme Court of the United States, speaking through Mr. Justice Roberts, expressed, in the leading case of Nebbia *v.* New York, the view that:

> "x x x If the laws passed are seen to have a *reasonable relation* to a proper legislative purpose, and are *neither arbitrary nor discriminatory*, the requirements of due process are satisfied, and *judicial determination to that effect renders a court functus officio* . . . With the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both *incompetent* and *unauthorized* to deal . . ."

Relying upon this view, it is urged by the Solicitor General —

> "x x x that judicial inquiry into the basis of the questioned proclamation can go *no further* than to satisfy the Court *not* that the President's decision is *correct* and that public safety was endangered by the rebellion and justified the suspension of the writ, but that in suspending the writ, the President did not act *arbitrarily*."

No cogent reason has been submitted to warrant the rejection of such test. Indeed, the co-equality of coordinate branches of the Government, under our constitutional system, seems to demand that the test of the validity of acts of Congress and of those of the Executive be, *mutatis mutandis*, fundamentally the same. Hence, counsel for petitioner Rogelio Arienda admits that the proper standard is not *correctness*, but *arbitrariness*.[16]

The standard of review in *Lansang* was sound, as situated in the context of Article VII, Section 10, paragraph 2 of the 1935 Constitution. At the time, the power to declare martial law and suspend the privilege of the writ was textually-committed to the Executive **without a corresponding commitment to the Court of a review**. Even then, on the basis of the principle of checks and balances, the Court determined the constitutionality of the suspension by satisfying itself of some existence of factual basis — or the absence of arbitrariness — without explicit authority from the Constitution then in force.

Lansang's holding that the sufficiency of the factual basis of the suspension of the privilege of the writ is not a political question stands as stated in the third paragraph of Section 18. However, given the changing contours of and safeguards imposed upon the Executive's power to declare martial law and suspend the privilege of the writ, *Lansang* is no longer the standard of review under the 1987 Constitution.

Obviously, the mechanics under the 1935 and 1987 Constitutions belong to different factual and legal milieu. The 1987 Constitution now positively mandates the Court to review

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[16] *Id*. at 592-594.

the "sufficiency of the factual basis" of the President's declaration of martial law or suspension of the privilege of the writ; the deliberations show an unmistakable and widely-held intent to remove the question of the sufficiency of the factual basis for the declaration of martial law and suspension of the privilege of the writ from the category of political questions that are beyond judicial scrutiny.[17]

Lansang's test of arbitrariness as equated to the "existence" of factual basis is clearly a lower standard than the "sufficiency" required in Section 18. The use of the word "sufficiency," signals that the Court's role in the neutral straightforward fact-checking mechanism of Section 18 is precisely to check *post facto*, and with the full benefit of hindsight, the validity of the declaration of martial law or suspension of the privilege of the writ, based upon the presentation by the Executive of the sufficient factual basis therefor (*i.e.*, evidence tending to show the requirements of the declaration of martial law or suspension of the privilege of the writ: actual rebellion or invasion, and requirements of public safety). This means that the Court is also called upon to investigate the accuracy of the facts forming the basis of the proclamation — whether there is actual rebellion and whether the declaration of martial law and the suspension of the privilege of the writ are necessary to ensure public safety.

Thus, if the Executive satisfies the requirement of showing sufficient factual basis, then the proclamation is upheld, and the sovereign people are either informed of the factual basis or assured that such has been reviewed by the Court. If the Executive fails to show sufficient factual basis, then the proclamation is nullified and the people are restored to full enjoyment of their civil liberties.

Since Section 18 is a neutral straightforward fact-checking mechanism, any nullification necessarily does not ascribe any grave abuse or attribute any culpable violation of the Constitution

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[17] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 470, 476 and 482 (1986).

to the Executive. Meaning, the fact that Section 18 checks for sufficiency and not mere arbitrariness does not, as it was not intended to, denigrate the power of the Executive to act swiftly and decisively to ensure public safety in the face of emergency. Thus, the Executive will not be exposed to any kind of liability should the Court, in fulfilling its mandate under Section 18, make a finding that there were no sufficient facts for the declaration of martial law or the suspension of the privilege of the writ.

Accordingly, I disagree with the *ponencia's* statement that in the review of the sufficiency of the factual basis, the Court can only consider the information and data available to the President prior to or at the time of the declaration and that it is not allowed to undertake an independent investigation beyond the pleadings. The reliance on *Macapagal-Arroyo*[18] and *IBP v. Zamora*[19] is misplaced because these cases deal with the exercise of calling out powers over which the Executive has the widest discretion, and which is not subject to judicial review,[20] unlike the declaration of martial law and suspension of the privilege of the writ. To recall, even then, the check on exercise of powers by the Executive was not merely arbitrariness, but "an examination of whether such power was exercised within permissible constitutional limits **or** whether it was exercised in a manner constituting grave abuse of discretion."[21]

As well, in the same manner that the Court is not limited to the four corners of Proclamation No. 216 or the President's report to Congress, it is similarly not temporally bound to the time of proclamation to determine the sufficiency of the factual basis for both the existence of rebellion **and** the requirements of public safety. In other words, if enough of the factual basis

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[18] *David v. Macapagal-Arroyo*, 522 Phil. 705 (2006).

[19] 392 Phil. 618 (2000).

[20] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 409, 412 (1986).

[21] *David v. Macapagal-Arroyo*, *supra* note 18, at 766.

relied upon for the existence of rebellion or requirements of public safety are shown to have been inaccurate or no longer obtaining at the time of the review to the extent that the factual basis is no longer sufficient for the declaration of martial law or suspension of the privilege of the writ, then there is nothing that prevents the Court from nullifying the proclamation.

In the same manner, if the circumstances had changed enough to furnish sufficient factual basis at the time of the review, then the proclamation could be upheld though there might have been insufficient factual basis at the outset. A contrary interpretation will defeat and render illusory the purpose of review.

To illustrate, say a citizen files a Section 18 petition on day 1 of the proclamation, and during the review it was shown that while sufficient factual basis existed at the outset (for both rebellion and public necessity) such no longer existed — at the time the Court promulgates its decision at say, day 30 — then it makes no sense to uphold the proclamation and allow the declaration of martial law or suspension of the privilege of the writ to continue for another thirty days, assuming it is not lifted earlier.

Conversely, if it was shown that while there was insufficient factual basis at the outset, circumstances had changed during the period of review resulting in a finding that there is now sufficient factual basis for the declaration of martial law or suspension of the privilege of the writ, then the Court is called upon to uphold the proclamation.

In this sense, the evaluation of sufficiency is necessarily transitory.[22]

Therefore, while I concur with the holding that probable cause is the standard of proof to show the existence of actual rebellion at the time of the proclamation, I submit that the second requirement of public safety (*i.e.*, necessity) is a **continuing**

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[22] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES p. 494 (1986).

requirement that must still exist during the review, and that the Court is not temporally bound to the time of the declaration of martial law or suspension of the privilege of the writ in determining the requirements of public safety.

The factual basis for the declaration includes both the existence of actual rebellion and the requirements of public safety.

Proceeding now to the crux of the controversy, the Court must look into the factual basis of **both** requirements for the declaration of martial law and suspension of the privilege of the writ: (1) the existence of actual rebellion or invasion; and (2) the requirements of public safety. Necessity creates the conditions of martial law and at the same time limits the scope of martial law.[23] This is apparent from the following exchange:

> MR. VILLACORTA. Thank you, Madam President.
>
> Just two more short questions. Section 15, lines 26 to 28, states:
>
> The President shall be the commander-in-chief of all the armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces . . .

I wonder if it would be better to transfer the phrase "whenever it becomes necessary" after the phrase "armed forces," so that it would read: "The President shall be the commander-in-chief of all the armed forces of the Philippines and HE MAY CALL OUT SUCH ARMED FORCES WHENEVER IT BECOMES NECESSARY to prevent or suppress lawless violence, invasion or rebellion." My point here is that the calling out of the Armed Forces will be limited only to the necessity of preventing or suppressing lawless violence, invasion or rebellion. As it is situated now, the phrase "whenever it becomes necessary" becomes too discretionary on the part of the President. And we know that in the past, it had been abused because the perception and judgment as to necessity was completely left to the discretion of the President. Whereas if it is placed in the manner that I am suggesting,

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[23] Joaquin G. Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 919 (2009 ed.).

the necessity would only pertain to suppression and prevention of lawless violence, invasion or rebellion. May I know the reaction of the Committee to that observation?

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MR. VILLACORTA. I see. Therefore, the Committee does not see any difference wherever the phrase "whenever it becomes necessary" is placed.

FR. BERNAS. It will not make any difference. I may add that there is a graduated power of the President as Commander-in-Chief. First, he can call out such Armed Forces as may be necessary to suppress lawless violence; then he can suspend the privilege of the writ of *habeas corpus*; then he can impose martial law. This is a graduated sequence.

When he judges that it is necessary to impose martial law or suspend the privilege of the writ of *habeas corpus*, his judgment is subject to review. x x x[24] (Emphasis supplied)

Also:

MR. DE LOS REYES. As I see it now, the Committee envisions actual rebellion and no longer imminent rebellion. Does the Committee mean that there should be actual shooting or actual attack on the legislature or Malacañang, for example? Let us take for example a contemporary event — this Manila Hotel incident; everybody knows what happened. Would the Committee consider that an actual act of rebellion?

MR. REGALADO. If we consider the definition of rebellion under Articles 134 and 135 of the Revised Penal Code, that presupposes an actual assemblage of men in an armed public uprising for the purposes mentioned in Article 134 and by the means employed under Article 135. I am not trying to pose as an expert about this rebellion that took place in the Manila Hotel, because what I know about it is what I only read in the papers. I do not know whether we can consider that there was really an armed public uprising. Frankly, I have my doubts on that because we were not privy to the investigations conducted there.

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[24] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 408-409 (1986).

Commissioner Bernas would like to add something.

FR. BERNAS. Besides, **it is not enough that there is actual rebellion**. Even if we will suppose for instance that the Manila Hotel incident was an actual rebellion, **that by itself would not justify the imposition of martial law or the suspension of the privilege of the writ because the Constitution further says: "when the public safety requires it."** So, even if there is a rebellion but the rebellion can be handled and public safety can be protected without imposing martial law or suspending the privilege of the writ, the President need not. Therefore, even if we consider that a rebellion, clearly, it was something which did not call for imposition of martial law.[25] (Emphasis supplied)

Rebellion under Section 18 is understood as rebellion defined in Article 134 of the Revised Penal Code.

I concur with the *ponencia* that the rebellion mentioned in the Constitution refers to rebellion as defined in Article 134 of the Revised Penal Code.

The gravamen of the crime of rebellion is an armed public uprising against the government. By its very nature, rebellion is essentially a crime of masses or multitudes involving crowd action, which cannot be confined *a priori* within predetermined bounds.[26] The crime of rebellion requires the concurrence of intent and overt act; it 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. Both purpose and overt acts are essential elements of the crime and without their concurrence the crime of rebellion cannot legally exist.[27]

Returning to Section 18, the powers to declare martial law and to suspend the privilege of the writ are further limited through

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[25] *Id*. at 412.

[26] *People v. Lovedioro*, 320 Phil. 481, 488 (1995).

[27] *People v. Geronimo*, 100 Phil. 90, 95 (1956).

the deletion of insurrection and the phrase "or imminent danger thereof" from the enumeration of grounds upon which these powers may be exercised, thereby confining such grounds to *actual* rebellion or *actual* invasion, when public safety so requires. This is seen from the deliberations which show that the calling out powers of the President are already sufficient to prevent or suppress "imminent danger" of invasion, rebellion or insurrection, thus:

MR. CONCEPCION. **The elimination of the phrase "IN CASE OF IMMINENT DANGER THEREOF" is due to the fact that the President may call the Armed Forces to prevent or suppress invasion, rebellion or insurrection. That dispenses with the need of suspending the privilege of the writ of *habeas corpus*.**References have been made to the 1935 and 1973 Constitutions. The 1935 Constitution was based on the provisions of the Jones Law of 1916 and the Philippine Bill of 1902 which granted the American Governor General, as representative of the government of the United States, the right to avail of the suspension of the privilege of the writ of *habeas corpus* or the proclamation of martial law in the event of imminent danger. And President Quezon, when the 1935 Constitution was in the process of being drafted, claimed that he should not be denied a right given to the American Governor General as if he were less than the American Governor General. But he overlooked the fact that under the Jones Law and the Philippine Bill of 1902, we were colonies of the United States, so the Governor General was given an authority, on behalf of the sovereign, over the territory under the sovereignty of the United States. Now, there is no more reason for the inclusion of the phrase "OR IMMINENT DANGER THEREOF" in connection with the writ of *habeas corpus*. As a matter of fact, the very Constitution of the United States does not mention "imminent danger." **In lieu of that, there is a provision on the authority of the President as Commander-in-Chief to call the Armed Forces to prevent or suppress rebellion or invasion and, therefore, "imminent danger" is already included there.**[28] (Emphasis supplied)

There is sufficient showing that, at the time of the proclamation, probable

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[28] I RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 773-774 (1986).

cause existed for the actual rebellion in Marawi City.

The armed public uprising in Marawi City is self-evident. The use of heavy artillery and the hostile nature of attacks against both civilians and the armed forces are strongly indicative of an uprising against the Government. The multitude of criminal elements as well as the concerted manner of uprising therefore satisfies the first element of the crime of rebellion.

Anent the second element of intent, the Executive's presentation of its military officials and intelligence reports *in camera* showed probable cause to believe that the intent component of the rebellion exists — that the Maute group sought to establish a "*wilayah*," or caliphate in Lanao del Sur of extremist network ISIS,[29] which has yet to officially acknowledge the said group. The video footage recovered by the military showing the plans of the Maute Group to attack Marawi City further evidences the plan to remove Marawi City from its allegiance to the Government of the Republic of the Philippines.[30]

I adopt Chief Justice Sereno's findings of fact and find, based on the totality of the evidence presented, that it has been sufficiently shown that at the time of the declaration of martial law and the suspension of the privilege of the writ, the information known to the Executive constituted probable cause to believe that there was actual rebellion in Marawi City.

Needless to state, the finding of probable cause to believe that rebellion exists in this case is solely for the purpose of reviewing the sufficiency of the factual basis for the declaration of martial law and suspension of the privilege of the writ; it does not serve to determine the existence of the separate criteria for an objective characterization of a non-international armed conflict. The application of International Humanitarian Law (IHL) is a measure of prudence and humanity, and does not, in

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[29] Respondents' Memorandum, pp. 5, 64-65.

[30] *Id*. at 71.

any way, legitimize these terrorist groups, to use the appropriate appellation.

There is insufficient showing that the requirements of public safety necessitated the declaration of martial law over the entire Mindanao.

The second indispensable requirement that must be shown by the Executive is that public safety calls for the declaration of martial law and suspension of the privilege of the writ. Here, there can be no serious disagreement that the existence of actual rebellion does not, on its own, justify the declaration of martial law or suspension of the privilege of the writ if there is no showing that it is necessary to ensure public safety.

According to Fr. Bernas:

> Martial law depends on two factual bases: (1) the existence of invasion or rebellion, and (2) the requirements of public safety. Necessity creates the conditions for martial law and at the same time limits the scope of martial law. Certainly, the necessities created by a state of invasion would be different from those created by rebellion. Necessarily, therefore, the degree and kind of vigorous executive action needed to meet the varying kinds and degrees of emergency could not be identical under all conditions. They can only be *analogous*.[31]

Due to the incorporation of several safeguards, Philippine martial law is now subject to standards that are even stricter than those enforced in connection with martial law in *sensu strictiore*, in view of the greater limitations imposed upon military participation. Hence, to determine sufficiency of the factual basis of Proclamation 216 in a manner faithful to the 1987 Constitution, such determination must necessarily be done within this strict framework.

That necessity is part of the review is seen in the following:

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[31] Joaquin G. Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 903 (2009 ed.).

MR. VILLACORTA. x x x

x x x x x x x x x

The President shall be the commander-in-chief of all the armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces . . .

I wonder if it would be better to transfer the phrase "whenever it becomes necessary" after the phrase "armed forces," so that it would read: "The President shall be the commander-in-chief of all the armed forces of the Philippines and HE MAY CALL OUT SUCH ARMED FORCES WHENEVER IT BECOMES NECESSARY to prevent or suppress lawless violence, invasion or rebellion." My point here is that the calling out of the Armed Forces will be limited only to the necessity of preventing or suppressing lawless violence, invasion or rebellion. **As it is situated now, the phrase "whenever it becomes necessary" becomes too discretionary on the part of the President. And we know that in the past, it had been abused because the perception and judgment as to necessity was completely left to the discretion of the President.** Whereas if it is placed in the manner that I am suggesting, the necessity would only pertain to suppression and prevention of lawless violence, invasion or rebellion. May I know the reaction of the Committee to that observation?

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FR. BERNAS. It will not make any difference. I may add that there is a graduated power of the President as Commander-in-Chief. First, he can call out such Armed Forces as may be necessary to suppress lawless violence; then he can suspend the privilege of the writ of *habeas corpus*; then he can impose martial law. This is a graduated sequence.

When he judges that it is necessary to impose martial law or suspend the privilege of the writ of *habeas corpus*, his judgment is subject to review. We are making it subject to review by the Supreme Court and subject to concurrence by the National Assembly. But when he exercises this lesser power of calling on the Armed Forces, when he says it is necessary, it is my opinion that his judgment cannot be reviewed by anybody.[32] (Emphasis supplied)

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[32] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 408-409 (1986).

While the *ponencia* holds that the scope of territorial application could either be "the Philippines or any part thereof" without qualification, this does not mean, as the *ponencia* holds, that the Executive has full and unfettered discretionary authority. The import of this holding will lead to a conclusion that the Executive needs only to show sufficient factual basis for the existence of actual rebellion in a given locality and then the territorial scope becomes its sole discretion. *Ad absurdum*. Under this formula, the existence of actual rebellion in Mavulis Island in Batanes, without more, is sufficient to declare martial law over the entire Philippines, or up to the southernmost part of Tawi-tawi. This overlooks the public safety requirement and is obviously not the result intended by the framers of the fact-checking mechanism.

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.**

There is insufficient showing that there was actual rebellion outside of Marawi City.

Therefore, the Executive had the onus to present substantial evidence to show the necessity of placing the entire Mindanao under martial law. Unfortunately, the Executive failed to show this. In fact, during the interpellations, it was drawn out that there is no armed public uprising in the eastern portion of Mindanao, namely: Dinagat Island Province, Camiguin Island, Misamis Oriental, Misamis Occidental, Agusan, Zamboanga, Davao, Surigao, Pagadian, Dapitan.[33]

In this connection, it should be noted that even if principal offenders, conspirators, accomplices, or accessories to the

[33] TSN, June 14, 2017, pp. 126-128.

rebellion flee to or are found in places where there is no armed public rising, this fact alone does not justify the extension of the effect of martial law to those areas.[34] They can be pursued by the State under the concept of rebellion being a continuing crime, even without martial law.

In the landmark case of *Umil v. Ramos*,[35] rebellion was designated as a "continuing crime" by the Court, wherein it sustained the validity of the arrest of a member of the NPA while the latter was being treated for a gunshot wound in the hospital. The accused therein, who was charged for violation of the Anti-Subversion Act, was arrested for being a member of the NPA, an outlawed subversive organization, despite not performing any overt act at the time of his arrest. Said the Court, citing *Garcia-Padilla v. Enrile*[36]:

> The record of the instant cases would show that the persons in whose behalf these petitions for *habeas corpus* have been filed, had freshly committed or were actually committing an offense, when apprehended, so that their arrests without a warrant were clearly justified, and that they are, further, detained by virtue of valid informations filed against them in court. x x x
>
> As to *Rolando Dural*, it clearly appears that he was not arrested while in the act of shooting the two (2) CAPCOM soldiers aforementioned. Nor was he arrested just after the commission of

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[34] The June 6, 2017 arrest of Cayamora Maute, the father of the Maute brothers, in Davao City does not prove actual rebellion or public necessity of martial law in Davao City – the elder Maute said that he only wanted to get himself treated at a hospital in Davao City because he had difficulty walking. The government had not offered any reason for the arrest. Similarly, the June 10, 2017 arrest of Ominta Romato Maute, the mother of the Maute brothers, in Masiu, Lanao del Sur, also does not, on its own, constitute rebellion and public necessity of martial law in Lanao del Sur.

As well, the June 15, 2017 arrest of Mohammad Noaim Maute *alias* Abu Jadid, the alleged bomber of the Maute group, in Cagayan de Oro, could be justified under the concept of rebellion as a continuing crime, but does not show actual rebellion or public necessity of martial law in Cagayan de Oro.

[35] 265 Phil. 325 (1990).

[36] 206 Phil. 392 (1983).

the said offense for his arrest came *a day after* the said shooting incident. Seemingly, his arrest without warrant is unjustified.

However, **Rolando Dural was arrested for being a member of the New Peoples Army (NPA), an outlawed subversive organization**. Subversion being a *continuing offense*, the arrest of Rolando Dural without warrant is justified as it can be said that he was committing an offense when arrested. **The crimes of rebellion, subversion, conspiracy or proposal to commit such crimes, and crimes or offenses committed in furtherance thereof or in connection therewith constitute direct assaults against the State and are in the nature of *continuing* *crimes***. As stated by the Court in an earlier case:

> "From the facts as above-narrated, the claim of the petitioners that they were initially arrested illegally is, therefore, without basis in law and in fact. The crimes of insurrection or rebellion, subversion, conspiracy or proposal to commit such crimes, and other crimes and offenses committed in the furtherance, on the occasion thereof, or incident thereto, or in connection therewith under Presidential Proclamation No. 2045, are all in the nature of continuing offenses which set them apart from the common offenses, aside from their essentially involving a massive conspiracy of nationwide magnitude. Clearly then, the arrest of the herein detainees was well within the bounds of the law and existing jurisprudence in our jurisdiction.
>
> x x x x x x x x x"[37]
>
> (Emphasis supplied)

Without a showing that normative acts of rebellion are being committed in other areas of Mindanao, the standard of public safety requires a demonstration that these areas are so intimately or inextricably connected to the armed public uprising in order for them to be included in the scope of martial law. Otherwise, the situation in these areas merely constitute an "imminent threat" of rebellion which does not justify the declaration of martial law and suspension of the privilege of the writ in said areas.

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[37] *Umil v. Ramos*, *supra* note 35, at 334-336.

In this sense, Justice Feliciano's observations in *Lacson v. Perez*[38] applies with greater force in this case, *i.e.*, the concept of rebellion as a continuing crime does not thereby extend the existence of actual rebellion wherever these offenders may be found, or automatically extend the public necessity for martial law based only on their presence in a certain locality. In *Lacson*, he said:

> 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 "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 or 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.** x x x[39] (Emphasis supplied)

Corollary to the declaration of martial law and suspension of the privilege of the writ having been issued in Mindanao without a showing of actual rebellion except in Marawi City, the Executive **also** failed to show the necessity of the declaration of martial law and suspension of the privilege of the writ in the entire Mindanao to safeguard public safety.

During the oral arguments, the Solicitor General, gave non-answers to questions relating to the requirements of public safety over the entire Mindanao:

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[38] 410 Phil. 78 (2001).

[39] *Id*. at 109.

JUSTICE REYES:

So if the actual rebellion happened in Mindanao or specifically in Marawi City, would it be, why is it that the declarations of martial law covered the whole Mindanao?

SOLICITOR GENERAL CALIDA:

That was his political judgment at that time, Your Honor. And since our President comes from Davao City and has been mayor for so many years, he knows the peace and order situation in Davao. He has been talking to all the rebels of the other groups against government. He has information that is made available to him or to anybody else, Your Honor. And therefore I trust his judgment, Your Honor.[40]

The presentation of military officials heard *in camera* was similarly vague when it came to establishing the necessity of the declaration of martial law and suspension of the privilege of the writ in the entire Mindanao. Given that the only justification offered in these proceedings tends to show that the declaration of martial law[41] is merely "beneficial" or "preferable," then the requirement of public safety is necessarily not met.

That something is beneficial or preferable does not automatically mean it is necessary — especially where, as here, the government could not articulate what "additional powers" it could or wanted to wield that Proclamation No. 55 (s. 2016)[42] did not give them.

At this juncture, I submit that martial law grants no additional powers to the Executive and the military, unless the magnitude of the emergency has led to the collapse of civil government, or by the very fact of civil government performing its functions endangers public safety.[43] This is the import of the fourth

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[40] TSN, June 14, 2017, pp. 136-137.

[41] TSN, June 15, 2017, pp. 53-54, 68-69 and 78.

[42] Proclamation No. 55, series of 2016, entitled "Declaring A State of National Emergency on Account of Lawless Violence in Mindanao."

[43] Joaquin G. Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 902 (2009 ed.), citing *Duncan v. Kahanamoku*, 327 U.S. 304, 323 (1946).

paragraph of Section 18. Perforce, the Bill of Rights remains in effect, and guarantees of individual freedoms (*e.g.* from arrests, searches, without determination of probable cause) should be honored subject to the well-defined exceptions that obtain in times of normalcy.

This is not to say, however, that the capability of the military to pursue the criminals outside of the area of armed public uprising should be curtailed. The Executive, prior to the declaration of martial law and the suspension of the privilege of the writ, had already exercised his calling out power through Proclamation No. 55 covering the entire island of Mindanao. The military remains fully empowered "to prevent or suppress lawless violence, invasion or rebellion," as Proclamation No. 55 remains valid and is not part of the scope of this Section 18 review.

The declaration of martial law is proper only in Marawi City and certain contiguous or adjacent areas.

The *ponencia* authorizes the operation of martial law over the entire Mindanao based on linkages established among rebel groups. While the Court is not so unreasonable not to accept arguments that other areas outside of the place of actual rebellion are so intimately or inextricably linked to the rebellion such that it is required to declare martial law to ensure public safety in those areas, or of operational or tactical necessity, there has been no showing, save for conclusionary statements, of specific reasons for the necessity that would justify the imposition of martial law and the suspension of the privilege of the writ over the entire island. Thus, I cannot agree with the *ponencia* that there is sufficient factual basis to declare martial law over the whole of Mindanao.

Verily, the existence of actual rebellion without the public safety requirement cannot be used as justification to extend the territorial scope of martial law to beyond the locale of actual rebellion. Extending martial law and the suspension of the privilege of the writ even to contiguous or adjacent areas cannot be done without a showing of actual rebellion in those areas or

a demonstration that they are so inextricably connected to the actual rebellion that martial law and suspension of the privilege of the writ are necessary to ensure public safety in such places.

Unfortunately, the Executive was not able to show the necessity of the declaration over the entire island of Mindanao.

However, I find that sufficient factual basis was shown for the necessity of martial law and the suspension of the privilege of the writ only over Lanao del Sur and the other places identified by the Chief Justice in her separate dissenting opinion where she had shown the inextricable connection of these areas to the actual rebellion being waged in Marawi. Thus, I concur fully with the Chief Justice that sufficient factual basis has been shown to validate the proclamation of martial law and the suspension of the privilege of the writ over: Lanao del Sur, Maguindanao, and Sulu.

Conclusion

There is no question that the rebellion waged in Marawi city, and the fighting still happening there to this day, has instilled a fair amount of fear and terror in the hearts of the normal Filipino. There is no denying as well that the murders and atrocities being perpetrated by the Maute extremists, inspired by ISIS, evoke in the normal Filipino the urge for retribution and even create the notion that this group be exterminated, like the vermin that they are, at the soonest possible time and with all resources available, thus justifying a resort to martial rule not only in Marawi but over all of Mindanao. The members of the Court, being Filipinos themselves, are not immune from these emotions and gut reactions. However, the members of the Court are unlike the normal Filipino in that they have a duty to protect and uphold the Constitution — a duty each member swore to uphold when they took their oath of office.

That duty has come to the fore in a very specific manner — to embrace and actively participate in the neutral, straightforward, apolitical fact-checking mechanism that is mandated by Section 18, Article VII of the Constitution, and accordingly determine the sufficiency of the factual basis of the declaration of martial

law or suspension of the privilege of the writ of *habeas corpus*. The Court, under Section 18, steps in, receives the submissions relating to the factual basis of the declaration of martial law or suspension of the privilege of the writ, and then renders a decision on the question of whether there is sufficient factual basis for the declaration of martial law or suspension of the privilege of the writ. Nothing more.

To be sure, the Court will even ascribe good faith to the Executive in its decision to declare martial law or suspend the privilege of the writ of *habeas corpus*. But that does not diminish the Court's duty to say, if it so finds, that there is insufficient factual basis for the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*. That is the essence of the Court's duty under Section 18.

In discharging this duty, the Court does not assign blame, ascribe grave abuse or determine that there was a culpable violation of the Constitution. It is in the courageous and faithful discharge of this duty that the Court fulfills the most important task of achieving a proper balance between freedom and order in our society. It is in this way that the Court honors the sacrifice of lives of the country's brave soldiers — that they gave their last breath not just to suppress lawless violence, but in defense of freedom and the Constitution that they too swore to uphold.

Therefore, I vote to declare the proclamation of martial law over the entire Mindanao as having been issued without sufficient factual basis. I concur with the findings and recommendations of the Chief Justice that martial law and the suspension of the privilege of the writ of *habeas corpus* can be justified only in Lanao del Sur, Maguindanao, and Sulu.

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employee with no choice but to forego continued employment or when there is cessation of work because continued employment is rendered impossible, unreasonable, or unlikely, as an offer involving a demotion in rank and a diminution in pay; the test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his job under the circumstances. (Borja *vs.* Miñoza, G.R. No. 218384, July 3, 2017) p. 133

EVIDENCE

Circumstantial evidence — Circumstantial evidence is sufficient for conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. (Bacerra *y* Tabones *vs.* People, G.R. No. 204544, July 3, 2017) p. 25

— The determination of whether circumstantial evidence is sufficient to support a finding of guilt is a qualitative test not a quantitative one; the proven circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt. (*Id*.)

Clear and convincing evidence — The presence of fraud is a factual question; it must be established through clear and convincing evidence, though the circumstances showing fraud may be varied. (Heirs of Cayetano Cascayan *vs.* Sps. Gumallaoi, G.R. No. 211947, July 3, 2017) p. 108

Direct and circumstantial evidence — Direct evidence proves a challenged fact without drawing any inference; circumstantial evidence, on the other hand, indirectly proves a fact in issue, such that the fact finder must draw an inference or reason from circumstantial evidence. (Bacerra *y* Tabones *vs.* People, G.R. No. 204544, July 3, 2017) p. 25

— Sec. 18, Art. VII itself sets the parameters for determining the sufficiency of the factual basis for the declaration of martial law and/or the suspension of the privilege of the writ of *habeas corpus*, namely (1) actual invasion or rebellion, and (2) public safety requires the exercise of such power; in determining the existence of rebellion, the President only needs to convince himself that there is probable cause or evidence showing that more likely than not a rebellion was committed or is being committed. (*Id.*)

— The phrase "sufficiency of factual basis" in Sec. 18, Art. VII of the Constitution should be understood as the only test for judicial review of the President's power to declare martial law and suspend the privilege of the writ of *habeas corpus* under Sec. 18, Art. VII of the Constitution; in determining the sufficiency of the factual basis of the declaration and/or the suspension, the Court should look into the full complement or totality of the factual basis, and not piecemeal or individually. (*Id.*)

— The President as the Commander-in-Chief wields the extraordinary powers of: a) calling out the armed forces; b) suspending the privilege of the writ of *habeas corpus*; and c) declaring martial law; among the three extraordinary powers, the calling out power is the most benign and involves ordinary police action; the President may resort to this extraordinary power whenever it becomes necessary to prevent or suppress lawless violence, invasion, or rebellion; Constitution imposed the following limits in the exercise of these powers:(1) a time limit of sixty days; (2) review and possible revocation by Congress; and (3) review and possible nullification by the Supreme Court. (*Id.*)

— The President's calling out power is in a different category from the power to suspend the privilege of the writ of *habeas corpus* and the power to declare martial law; the President may exercise the power to call out the Armed Forces independently of the power to suspend the privilege of the writ of *habeas corpus* and to declare martial law,

although, of course, it may also be a prelude to a possible future exercise of the latter powers; President's exercise of his power to call out the armed forces to prevent or suppress lawless violence, invasion or rebellion may only be examined by the Court as to whether such power was exercised within permissible constitutional limits or in a manner constituting grave abuse of discretion. (*Id.*)

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

— The Supreme Court may strike down the presidential proclamation in an appropriate proceeding filed by any citizen on the ground of lack of sufficient factual basis; on the other hand, Congress may revoke the proclamation or suspension, which revocation shall not be set aside by the President; in reviewing the sufficiency of the factual basis of the proclamation or suspension, the Court considers only the information and data available to the President prior to or at the time of the declaration; it is not allowed to undertake an independent investigation beyond the pleadings; on the other hand, Congress may take into consideration not only data available prior to, but likewise events supervening the declaration. (*Id.*)

Void-for-vagueness doctrine — A law is facially invalid if men of common intelligence must necessarily guess at its meaning and differ as to its application; statute or act may be said to be vague when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ in its application; in such instance, the statute is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary

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